

(1987) 11 GAU CK 0015

In the Gauhati High Court

Case No : Civil Rule No. 314 of 1986

The Manager, Birjhora Tea Estate

APPELLANT

Vs

Assistant Executive Engineer and Others

RESPONDENT

Date of Decision : 17-11-1987

Acts Referred:

Electricity Act, 1910 — Section 24, 24(1), 24(2), 26, 26(1)
Electricity Rules, 1956 — Rule 57(3)

Citation : (1988) 1 GLR 185

Hon'ble Judges : K.N. Saikia, C.J.; T.C. Das, J

Bench : Division Bench

Advocate : J.P. Bhattacharjee, D.K. Bhattacharyya, D.K. Das and M. Choudhury, for the Appellant; B. Sarma, A.C. Sarma and J. Sarma, for the Respondent

Judgement

K.N. Saikia, C.J.—The Petitioner as the Manager of Birjhora Tea Estate, Bongaigaon, hereinafter referred to as "the Tea Estate", challenges the notice issued by the Respondents dated 20.3.86 to disconnect the Tea Estate's Electrical line for his alleged failure to deposit arrear electricity charges as per the Respondents' bill dated 12.4.83 for Rs. 19,48,949.06 and seeks an appropriate writ, order or direction commanding the Respondents to refrain from acting upon the impugned notice and to restore supply of electrical energy to the Tea Estate.

2. The Tea Estate was given electrical connection by the Assam State Electricity Board, shortly "the ASEB" installing a meter as far back as in 1969, and since then it has been supplied electrical energy by stepping down high voltage current from high tension line by a transformer (owned by the ASEB) to the low tension line whereupon the meter has been installed. The transformer and the meter always remained under the custody and control of the ASEB, the transformer being guarded by wire mesh fencing and the meter being kept under seal. The meter has been changed by the ASEB from time to time.

3. The Petitioner has all along been paying the electricity bills on the basis of the

meter. However, on 13.4.83 the Tea Estate received the Respondents' letter dated 12.4.1983 forwarding a bill of the same date for Rs. 19,41,946.06 purporting to be an arrear revised bill for the period from 30.5.74 to 28.8.81 based on a purported revised statement.

4. The Petitioner sent on 18.4.83 a notice to the Executive Engineer, ASEB, Bongaigaon stating that he would present a reference u/s 26(6) of the Indian Electricity Act, 1910 hereinafter called "the Electricity Act" and other relevant provisions thereof and the Indian Electricity Rules, 1956, hereinafter called "the Rule" before the Senior Electrical Inspector to the Government of Assam disputing the validity of the demand made in the bill, and 7 days notice was thereby being served on the Respondents, with a request not to disconnect the electricity line until disposal of the said reference. On 27.4.83 the Petitioner filed the reference u/s 26(6) of the Electricity Act before the Senior Electrical Inspector, Assam, hereinafter referred to as "Electrical Inspector", disputing the bill dated 12.4.83. On 27.4.83 the Electrical Inspector upon the Petitioner's reference requested the ASEB to stay further action to realise the alleged disputed amount or to take any action u/s 24 of the Electricity Act until his decision on the reference. However, on 6.7.83, the Petitioner received a fresh notice demanding the same amount and he filed an application on 11.7.83 objecting to it before the Electrical Inspector whereupon the latter wrote to the Executive Engineer, ASEB, Bongaigaon regretting that the latter failed to act as requested, and requiring him to note:

(a) Section 24(1) of the I.E. Act is applicable when a consumer neglects to pay a valid Bill.

(b) As per Section 26(1) a bill shall be prepared by the supplier by ascertaining energy consumption by means of a correct meter.

(c) In case of the correctness of a meter is disputed the matter will be decided by the Electrical Inspector and in case the meter is found defective the Electrical Inspector will assess consumption of the disputed period (not exceeding six months).

(d) But in this case you have unilaterally assessed consumption and submitted the Bill. As per provisions of the I.E. Act you cannot take any other basis of preparing a Bill other than the consumption recorded by a correct meter.

(e) As your Bill No. 1823/64 Dt. 12.4.83 has been prepared not in accordance with the provisions of the I.E. Act, the validity of the Bill itself is first to be decided. In such a case dis-connection done u/s 24 will not be proper and you are advised to desist from taking this penal action.

It was further said in that letter that the procedure of receipt of deposit by his Inspectorate u/s 24 of the Electricity Act was yet to be decided and the matter had been referred to the Government of Assam by the Chief Electrical Adviser, and that no action on that matter could be taken until the procedure of receiving

deposit etc. was fixed. However, instead of complying with the aforesaid orders of the Electrical Inspector the Respondents served on the Petitioner a disconnection notice dated 5.2.86 on receipt whereof he prayed before the Electrical Inspector for staying its operation. On 20.2.86 the Electrical Inspector wrote to the Additional Chief Engineer (Commercial), ASEB requesting him not to dis-connect the Petitioner's installation until the matter was disposed of by his Inspectorate but instead of doing so, the Respondents sent the impugned disconnection notice dated 20.3.86. On 21.3.86 the Respondents disconnected the electricity line of the Tea Estate. Hence this petition was moved on 22.3.86 and the Court directed that the order of the Electrical Inspector dated 20.2.86 be carried out.

5. Mr. J.P. Bhattacharjee, the learned Counsel for the Petitioner submits, inter alia, that the Petitioner having paid all the regular electricity bills submitted by the Respondents on the basis of the meter reading, they had no right to decide unilaterally that the bills were, erroneous by reason of alleged wrong multiplying factor, and alleged wrong connection in meter that it was obligatory on the part of the Respondents to have checked the meter and its connections regularly and that the Petitioner having already made a reference u/s 26(6) of the Electricity Act to the Electrical Inspector, the Respondents have no authority to dis-connect the electricity line to the Tea Estate by issuing the impugned disconnection notice for alleged arrear charges, and in no case for a period beyond six months.

6. Mr. B. Sarma, the learned Counsel appearing for the Respondents, submits inter alia, that because of erroneous calculation on basis of a wrong multiplying factor (M.F.). 20 instead of 60, the Petitioner was undercharged for a period, and later because of a wrong connection in the meter it did not correctly indicate the energy consumed during the later period which resulted in undercharging; that the A.S.E.B. has the right to realise the arrears and that the Electricity Inspector cannot proceed with the reference unless the whole disputed amount is first deposited with him by the Petitioner.

7. The first question to be decided is whether the Respondents had the authority and jurisdiction to decide unilaterally that the M.F. was erroneously applied during a period and that later the meter did not properly reflect the consumption due to wrong meter connection. In paragraph 6 of the affidavit-in-opposition the Respondents said that the revised bill had to be submitted for the following reasons:

(i) The meter reading recorded should have been multiplied by MF 60, but the said reading was multiplied only by 20. From the ratio of CT 300/5, it was confirmed that the M.F. was 60.

(ii) That it transpires that one phase of the C.T. was connected reversely with respect to polarity and potential, neutral disconnected and the meter in the result recorded less reading. Test under this condition showed that it recorded 68.53% less reading in the result for every 100 units actual consumption the

meter recorded only 31-47 units.

(iii) That the meter was tested with the C.T. connection of R phase changed according to the polarity i.e. with correct connection and other two phases kept intact, potential neutral Connected the percentage error comes to 2.04 percent which is allowable as per I.E. Rules, 1956. This shows that the meter is correct.

In paragraph 8 it is stated :

that the adoption of the wrong M.F. was detected on 11.1.78, but the meter was utilised from 30.5.74 and the wrong connection was detected on 28.7.81. There was no change of meter from 30.5.74 till the wrong C.T. connection was detected.

From the letter of the Superintending Engineer, Inspection, Gauhati to the Executive Engineer, Bongaigaon dated 3.2.83 it appears that Rs. 19,48,949.60 was calculated taking the following factors into consideration:

(1) Period of adoption of 20 as M.F. instead of 60 is taken from 30.5.74 to 11.1.78 amounting to Rs. 3, 39, 120. 04.

(2) Revised bill due to wrong meter connection is prepared from 30.5.74 to 28.8.81. amounting to Rs. 16,09,929.60 including 7% non-realised amount.

It has also been stated that in the previous assessment the date of wrong meter connection was assumed to be from 11.1.78 since on that date adoption of wrong M.F. was detected though actual date should have been 30.5.74. Admittedly, no reference was made to the Electrical Inspector after detection of wrong M.F. or wrong meter connection.

8. The next question is who was to keep the meter correct, and beyond dispute. Section 26 of the Electricity Act deals with meters. Under Sub-section (1) thereof in the absence of an agreement to the contrary, the amount of energy supplied to a consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter: provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter. Admittedly, in the instant case, the meter was supplied by the Respondents and it was maintained by them and kept under their custody. The Explanation to Sub-section (7) of that Section provides that a meter shall be deemed to be "correct" if it registers the amount of energy supplied, or the Electrical quantity contained in the supply, within the prescribed limits of error and a maximum demand indicator or other apparatus referred to in Sub-section (7) shall be deemed to be "correct" if it complies with such conditions as may be prescribed in the case of any such indicator or other apparatus.

9. A meter is an instrument which measures the amount of energy supplied to a consumer. The reading of such a meter therefore, shall in the absence of any fraud or unless the meter is held by an Electrical Inspector to be incorrect, be

conclude proof of the amount of energy supplied or the quantity contained in the supply. The meter supplied by the licensee or (sic) to be supplied by the licensee shall be a correct meter. Sub-Rule (3) of Rule 57 of the Rules provides that every supplier shall provide and maintain in proper condition such suitable apparatus as may be prescribed or approved by the Inspector for the examination, testing and, regulation of meters , used or intended to be used in connection with the supply of energy ; provided that the supplier may with the approval of the Inspector and shall, if required by the Inspector enter into a joint arrangement with any other supplier for the purpose aforesaid. Under Sub-section (4) every supplier shall examine. test and regulate all meters, maximum demand indicators and other Apparatus for ascertaining the amount of energy supplied before their first installation at the consumer's premises and at such other intervals as may be directed by the State Government in this behalf. Under Sub-section (5) every supplier shall maintain Register of meters showing the date of the last test, the error recorded at the time of the test, the limit of accuracy after adjustment and final test, the date of installation, withdrawal, re-installation, etc. for the examination of the inspector or his authorised representative. Thus Rule 57 casts a liability on the licensee to provide and maintain in proper condition of meters and other apparatus for ascertaining the amount of energy supplied and to examine regulation of meters, etc. before their first installation at the customer's premises and at such other intervals as may be directed by the State Government in this behalf and to maintain register of meters showing the date of the last date, the (sic) recorded at the time of the test, the limit of accuracy after adjustment and final test, the date of installation, withdrawal, reinstallation, etc. for the examination of the Inspector or his authorised representative.

10. The next question is what is the procedure to be followed in case of a dispute arising, out of defect or deficiency in the meter. We find that sub Section (6) of Section 26 of the Electricity Act provides:

(6) Where any difference or dispute arises as to whether any meter referred to in Sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct; but save as aforesaid, the register of the meter shall in the absence of fraud, be conclusive proof of such amount or quantity:

Provided that before either a licensee or a consumer applies to the Electrical Inspector under this Sub-section, he shall give to the other party not less than seven days notice of his intention so to do.

Thus the procedure to be followed in case of sick meters or meters which do not register consumption of energy correctly is laid down in this Sub-section. It provides for calculating the estimated amount of energy consumed on the basis

of past consumption, but such estimate could not continue beyond six months when no steps were taken to refer the matter of alleged defect in the meter to the Electrical Inspector and estimate calculated following the procedure prescribed. In *Kamala Shanker Upadhya Vs. State Electricity Board, U.P. and Another*, it has been held that the demand based on estimated consumption for a period of more than six months would be incompetent. The proviso to the Sub-section (4) also says that the licensee shall not be at liberty to take of or remove any such meter if any difference or dispute of the nature described in Sub-section (6) has arisen until the matter has been determined as therein provided Under Sub-section (6), as was held in *Gadag Betgiri v. Government of Mysore AIR 1962 Mys. 209* the question whether the meter was a false meter capable of improper use or whether it registered correctly and accurately the quantity of electrical energy passing through it could be decided by the Electrical Inspector. We respectfully agree.

11. In the instant case, Mr. Sarma submits that insofar as the application of wrong M. F. was concerned it could not be said to be a defect in the meter and similarly the giving of wrong connection could not also be regarded as a defect in the meter and hence neither Sub-section (4) nor (6) of Section 26 was attracted. We are unable to agree. Sub-section (6) speaks of any difference or dispute as to whether the meter is not correct. If the meter does not give the correct reading due to a wrong connection given to it, the meter would be regarded as incorrect as it failed to indicate the actual energy consumed. If a wrong M.F. is used as a result of which there is a difference between the meter reading and actual energy consumed that would also amount to a defect in the meter In the sense of there having been a different between the amount of energy charged as indicated by the meter and the amount of energy charged. In either case there would be a dispute between the consumer and the licensee and both Sub-section (4) and Sub-section (6) of Section 26 would, therefore, be attracted and consequently in either case it would be incumbent on the part of the licensee or the consumer who disputes the charge to refer the matter to the Electrical Inspector under this Section. Again Removing the meter and removing of a purportedly wrong connection given to it would have the same consequence and the licensee could not do it without the Inspector having decided that such a wrong connection was given resulting in defective reading Similarly if the energy charged was different from what was indicated as consumed by reading of the meter, the licensee could not have unilaterally charged it without referring it to the Electrical Inspector where there was dispute about it. We are accordingly persuaded to hold that the Respondents did not have the authority and jurisdiction to rectify the wrong M.F. and wrong connection unilaterally without referring the matter to the Electrical Inspector when the consumer disputed both the corrections.

12. The next question is that of the jurisdiction of the Electrical Inspector. Admittedly, the Petitioner gave 7 days" notice and referred the dispute to the Electrical Inspector who was pleased to order stay of the disconnection notice.

Sub-section (6) makes it clear that on reference the Inspector shall estimate the amount of energy supplied to consumer or the electrical quantity contained in the apply during such time, not exceeding 6 months as the meter shall not, in the opinion of such inspector, have been correct. The Electrical Inspector shall, therefore, first decide whether the meter is correct or not and if it is found to be incorrect he shall estimate the amount of energy supplied within a period not exceeding six months.

13. u/s 24 of the Electricity Act-where any person neglects to pay any charge for energy or any sum, other than a charge for energy due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving 7 days" notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works, being the property of the licensee, through which energy may be supplied and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting of and reconnecting the supply, are paid, but no longer. Under Sub-section (2) where any difference or dispute which by or under this Act is required to be determined by an Electrical Inspector, has been referred to the Inspector before notice as aforesaid has been given by the licensee the licensee shall not exercise the powers conferred by this section until the Inspector has given his decision; provided that the prohibition contained in this Sub-section shall not apply in any case in which the licensee has made a request in writing to the consumer for a deposit with the Electrical Inspector of the amount of the licensee"s charges or other sums in dispute or for the deposit of the licensee"s further charges for energy as they accrue, and the consumer has, failed to comply with such request. Thus, this section comes into play when the consumer neglects to pay any charge for energy due from him to a licensee, or the consumer neglects to pay sums other than a charge for energy due from him to the licensee. The neglect must be to pay any charge for energy due from the consumer and the licensee may cut off the supply after giving the consumer a written notice of not less than 7 clear days. The power to cut off supplies may be exercised by the licensee only after 7 days" notice and as soon as payment shall have been made the supply shall be restored. The cost of restoration and cutting off shall also have to be paid before such restoration may be made. However, as was held in Hindustan Aluminium Corporation Ltd. Vs. The U.P. State Electricity Board, there would be no neglect to pay if the non-payment was due to a bonafide dispute in which case the supply could not be cut off. Similarly, it was held in Orissa Fibre Vs. The Orissa State Electricity Board and Another, that if any difference or dispute under this Act is referred to the Electrical Inspector, including a difference or dispute relating to the payment of any charge for energy or any sum other than a charge for energy due under Sub-section (1) is referred to him before the notice as required under Sub-section (1) is referred to him before the notice as required under Sub-section (1) was given by the licensee then the licensee shall not cut off the supply until the Inspector shall have given

his decision. Similarly in Maharashtra State Electricity Board Vs. Madhusudandass and Brothers, where there was a long term agreement and the licensee changed the method of charging, the consumer honestly believed that the method adopted was incorrect, it was held that the consumer did not neglect to pay, but that owing to a bonafide dispute the bill was not paid and hence the licensee was not Justified in cutting off the supply. We find ourselves in agreement with this interpretation. A dispute would include a matter relating to the demand for an arrears revised bill on unilateral change of meter connections and change in M.F. for the purposes of charging a consumer for the supply of electricity. Under Sub-section (1) of Section 24 if a dispute of such character is raised by the consumer, it is for him to make a reference to the Electrical Inspector as was held in State Electricity Board, U.P. Banda Vs. Prakash Talkies, Sub-section (2) of Section 24 applies only in those cases where a dispute has already been referred to the Electrical Inspector before occasion arises for issue of a notice u/s 24(1). If such a reference has been made the licensee is under obligation not to take any drastic action such as discontinuance of supply of energy. The prohibition enjoined by Sub-section (2) on the licensee not to cut off the supply is operative only for the duration and pendency of the dispute before the Inspector. Once the Inspector has given his decision adverse to the consumer the consumer is not protected even though he may have appealed against the decision of the Inspector under the provisions of Sub-section (2) of Section 26 of the Act.

14. In the instant case, the dispute has already been referred and the Electrical Inspector is in the seisin of the matter. By our interim order dated 22-3-86 we directed that the stay order of the Electrical Inspector dated 20-2-86 be carried out, and admittedly, the electricity line has been restored. In his letter dated 11.7.83 to the Executive Engineer, Bongaigaon, the Electrical Inspector stated that the procedure of receipt of deposit by his Inspectorate u/s 24 of the Act was yet to be decided and that the matter has been referred to the Government of Assam by the Chief Electrical Adviser Assam and no action on this matter could be taken until the procedure of receiving deposit, ect. was fixed. Nothing has been shown to us to indicate that the Government of Assam has meanwhile stated the procedure. What is to be done under the circumstances is to be decided by the Inspector. As the Petitioner gave the requisite notice before reference, we are of the view that ends of justice will be met if the Electrical Inspector, who is in seisin of the matter by way of reference u/s 26(6), is allowed to give his decision according to law after giving the parties a hearing. He should also decide the, matter regarding the procedure of receipt of deposit by his Inspectorate and should also decide whether the amount or any part of it is required to be deposited under the law applicable to the case, after giving hearing to the parties on this question as well.

15. In the result, we direct the Respondents to continues the supply of electricity to the, Petitioner's Tea Estate. We direct the Petitioner to pay the current electricity charges according to law. We also direct the Electrical Inspector to decide the reference as well as the question of deposit in accordance with law

after giving notice and hearing to both the parties as expeditiously as possible, preferably within a period of 3 (three) months from the date of receipt of this order. We hereby direct the parties to appear before the Electrical Inspector within a week from to day and receive instructions regarding hearing of the reference.

16. We dispose of this petition accordingly leaving the parties to bear their own costs.