
(1987) 08 KAR CK 0046

In the Karnataka High Court

Case No : Writ Petition No. 5037 of 1978

The United Oxygen Co. (Pvt.) Ltd.

APPELLANT

Vs

Karnataka Electricity Board, Bangalore and Another

RESPONDENT

Date of Decision : 12-08-1987

Acts Referred:

Electricity (Supply) Regulations — Regulation 28, 28 (a) (1), 28 (a) (3), 29

Citation : AIR 1988 Kar 78 : (1987) 3 KarLJ 254

Hon'ble Judges : M.P. Chandrakantaraj URS, J

Bench : Single Bench

Advocate : S.K.V. Iyengar and S.V. Srinath, for the Appellant; N.K. Gupta and M.P. Eswarappa, for the Respondent

Judgement

1. The petitioner is the United Oxygen Company (Private) Limited, a Company incorporated under the Indian Companies Act, 1956. It has a factory where oxygen is produced. Therefore, it is electricity based industry. It obtained installation to its factory in one of the suburbs of Bangalore. It is alleged by the petitioner that it was paying the bills regularly as and when the demands were served on it according to the reading taken by the officials of the 1st respondent Karnataka Electricity Board (hereinafter referred to as the Board). However, the petitioner was surprised that it had to pay a sum of Rs. 1,09,459-75 being the short claim detailed in the letter dt. 25th July 1977 issued by the Asstt. Engineer, Electrical, ESD-3, Bangalore-1. A true copy of that letter is produced at Annexure -C to the petition. Thereafter, there appears to have been meetings between the representatives of the Company and those of the Board and much correspondence. Finally, a demand was made at Rs. 99,211-09 being the arrears of energy consumption charges for the period between 16-11-1974 and 8-11-1976 when the asserted by the Board, in the correspondence, as averred by the petitioner, that a new meter meant for H.T. consumption was installed on 8-11-1976 and energy of 12 months thereof has been taken to be the basis for demand, the petitioner-company has approached this Court inter alia contending that the demand is without the authority of law and therefore is liable to be

quashed. The prayers (a) and (b) in the petition are as follows

"(a) to quash by the issue of a writ of certiorari or any other appropriate writ, order or direction as the case may be the demand as made in Exhibit "H" (letter No. ESD.3/F/10278/83 dt. 22nd Jan. 1978 and letter No. AAO/ESD.3/462-67 dt. 17th April 1978 as per Exhibit-K.

(b) By issue of a writ of mandamus or writ of prohibition or any other appropriate writ, order or direction as the case may be to prohibit the respondent Board from asking any higher charges than what their meters had recorded without complying with the provisions of law if at all the Board should ask for any difference on the alleged grounds of faulty reading of meters."

2. Rule nisi was issued in this case on 20- 4-1978 and stay of Exhibit-K, the final demand, was stayed. For reasons beyond the control of this Court, the matter was not disposed of. In the meanwhile, the Board has entered appearance and filed its statement of objections on 11-3-1980. It is stated in the return that the contentions raised in the petition have been carefully considered by the Board. It is further stated that to an extent of 400 KVA electricity supply was sanctioned to the petitioner-company and the same was to be availed by the petitioner-company from 1-1-1974, but the petitioner took service on 16-11-1974. It is admitted that due to non- availability of H.T. metering cubicles. The petitioner's installation was metered on L.T. side by fixing three single-phase meters. They were found to be faulty from time to time and the bills prepared on the basis of the consumption recorded by those meters was far less than the allotment. Even though the meters were replaced the erroneous and faulty recording of the meters continued till they were replaced by H.T. metering cubicle. It is further stated by the Board that the H.T. metering in cubicle was installed and the bills were prepared by the Board and paid by the petitioner on the basis of the consumption, recorded by H.T. meter. After the H-T-I metering cubicle was fixed, the consumption went up to 53320 units i.e., more than 50 per cent rise. Therefore the consumption recorded by L.T. metering was plenty erroneous and in accordance with para 28 of the Electricity Supply Regulations and the subsequent Board's order No. A6/2621/71-72 dt. 20-2-1975, the installation was billed on direct connection basis and therefore from Jan., 1975 to Dec., 1976 when the H.T. metering in cubicles was operative, the short claim worked out to be Rs. 1,09,459-75 and the same was intimated to the petitioner company.

3. The other averments do not require to be noticed except the one in para 10 which states that the L.T. meters fixed to the petitioner's installation were changed twice. Once on 18-2-1975 and again on 6-4-1976 but they were still recording erroneously.

4. In that circumstance, the Board contends that what it has done is correct. As a statutory Board, it has an obligation to collect charges from every consumer in accordance with law and not allow any consumer to escape liability to pay charges. Therefore it is prayed that the petition may be dismissed.

5. In the light of these rival stands, this Court has to examine the correct position emanating from the Regulations formulated by the Board in terms of S. -79(j) of the Electricity (Supply) Act, 1948. The Regulations provide for definitions, the manner in which the application will be made for supply, the mode of servicing an installation, shifting of services, classification apparatus as L.T. and H.T. for purpose of consumer classification, approval of installations, among many other things. We may confine ourselves to a detailed reference to Regn. 28 of the Electricity (Supply,) Regulations (hereinafter referred to as the Regulations) and Regn. 29 of the Regulations which is referred to as paragraphs by the Board in its statement of objections. Regn. 28 of the Regulation is as follows

"28. Faulty Meters:

(a) (i) In the event of the energy meter of an installation being out of order for any reason (other than tampering by a human agency) the installation may be back-billed for a maximum period of six months or for such period as may be in the circumstances of the case deemed appropriate, on the basis of the average of the highest consumption recorded during any three months of the year in which the fall in consumption is noticed and in cases where that is not possible, then on the basis of the average of the highest consumption recorded during any three months of the preceding year. The faulty meter will be replaced by another one in good working order immediately or the same will be repaired and reinstalled as expeditiously as possible.

(ii) In the event of the meter going out of order on the very day on which it is installed and serviced or any other day before the first meter reading date after the installation is serviced, the installation shall be billed on direct connection basis for the period during which the consumption is not recorded subject to the consumption for that period being subsequently regulated taking into account the average of one year consumption after a working meter is installed.

(iii) In the event of the maximum demand meter of an installation being out of order for any reason (other than tampering by a human agency) the installation may be back billed for a maximum period of six months or for such period as may in circumstances of the case be deemed appropriate on the basis of the highest consumption recorded during any three months of the year in which the maximum demand meter is found to have become out of order and in cases where that is not possible then on the basis of the average of the highest consumption recorded during any three months of the preceding year. The faulty meter will be replaced by another one in good working order immediately or the same will be repaired and reinstalled as expeditiously as possible. .

Exception: (i) Whenever meters of I.P. installations are found recording incorrectly or not recording, the consumer shall be billed on the basis of average consumption of preceding 12 months (or any lesser number of months the installations are in service).

Exception :(ii) Whenever, for want of metering equipments the KVA recording meters are not installed or where tri-vector meters installed are faulty and not replaced, for billing purposes the standard power factor, 0.9 will be adopted for conversion of KW to KVA.

(b) In case the meter belongs to the consumer, the consumer should get his meter repaired and tested if possible, by the Board by paying the standard charges or by any other approved agency. Till that period the Board will install its own meters to record the consumption for which the consumer shall have to pay the fixing and removing charges of Rs. 3 only."

As the marginal heading indicates, it deals with faulty meters. That is, a meter installed which turns out to be faulty and thereby fails to record the actual consumption of electrical energy supplied to the consumer thereby causing loss to the Board. If one may observe, no provision corresponding to Regulation 28 of the Regulations is made if a faulty meter records more than what it ought to, when the consumer becomes liable to pay excessive charges. That is only an observation in the light of the untenable construction that was sought to be put by the teamed Counsel on the scope of application of Regn. 28 of the Regulations.

6. As is apparent from the arrangement of Regn. 28 of the Regulations, it has two subclass namely, (a) and (b). sub-cl. (a) of Regn. 28 of the Regulations provided three contingencies for back-billing as permissible in accordance with the mode and manner provided therein. However, two exceptions are created. In respect of irrigation Pump installation with which we may not concern ourselves in this case. But, nevertheless, a look at the second exception which provides that for want of metering equipments the KVA recording meters are not installed or where tri-vector meters installed are faulty and not replaced for billing purposes the standard power factor, 0.9 will be adopted .for conversion of KW to KVA. It is nobody's case that this second exception provided to c I. (a) of Regn. 28 of the Regulations has been adopted by the Board. Cl. (b) of Regn. 28 of the Regulations provides that where the meter belongs to the consumer, the consumer should get his meter repaired and tested if possible, by the Board by paying the standard, charges or by any other approved agency. Till that period the Board will install its own meters to record the consumption for which the consumer shall have to pay the fixing and removing charges of Rs. 3/- only.

7. Cl. (a) of Regn. 28 of the Regulations has no application to the facts of this case which are not in dispute and which have been stated earlier, The question is, is it a case which falls under sub-cl. 00 of Cl. (a) of Regn. 28 of the Regulations? Sub-cl. (ii) of Cl. (a) of Regn. 28 of the Regulations comes into operation when the meter goes out of order on the very day on which the installation is made and serviced or any other day before the first meter reading date after the installation is serviced, and not otherwise. In such an event, the installation is required to be billed on direct connection basis for the period during which the consumption is not recorded. However, subject to the consumption for that period being subsequently regulated taking into account the

average of one-year consumption after working meter is installed. Therefore, the need for billing for a back claim in accordance with sub-cl. (ii) of Cl. (a) of Regn. 28 of the Regulation will arise only when the meter has stopped recording either on the day on which it was serviced or when it was discovered not after installation and service and not otherwise. In the instant case, we have indisputable evidence supported by the admission of the Board itself that a proper type of meter for H.T. installation was not available and therefore they made their arrangements by installing a LT. meter with certain alterations which it expected to work properly and record the consumption. They discovered more than once the substitution they had made was not recording properly. But the Board or its officers did not choose to stop metering the energy consumed by the petitioner at any point of time. But continued to allow the petitioner to get the supply through the meter till finally a replacement was made by a meter meant for H.T. supply. It is then that they have decided to back-bill.

8. Therefore, in the opinion of this Court, the matter is likely to be covered only by the method provided for in Regn. 28(a)(i) or Regn. 28(a)(iii) of the Regulations and definitely not under sub-cl. (ii) of Cl. (a) of Regn. 28 of the Regulations.

9. However, Mr. K. N. Gupta contended that in any event this Court should consider that despite the defective meter having been installed, the supply of energy must be deemed to have been on the basis of direct connection and therefore the back billing done must be sustained.

10. The argument may be technically correct, in the sense that it is common knowledge that electrical energy is transmitted only if the flow of the energy is continuous through the conductors. In that sense every connection is a direct connection. That would absolve the liability of the Board to install meters and frame regulations to settle the accounts between themselves and the consumers, That argument, however, must be rejected for the reason that the Board while making regulations were aware of the situation that may crop up on account of non-availability of meters. Therefore, a special regulation has been made to cover the said situation and that Regn. is 29. - Regn. 29 provides as follows: -

"29. Charges for supply

(a) The price and methods of charging for energy supply shall be those as fixed by the Board from time to time.

Note: - When meter are not available and direct connections are given, bills will be prepared on the - basis of burning hours/working hours indicated herein subject to revision based on average consumption ascertained for a period of one year subsequent to the installations of the meter.

(For installations of meter see below)

Monthly- minimum charges shall be collected even when the annual minimum charges are waived for reasons of drought etc. Subject to revision based on

energy

CHARGES FOR H. T. SUPPLY:

1. Cases coming under Tariff H.T. I (A)

H.T.I. (B), H.T.I. (D) and H.T.I. (E). i) Demand charges on 75% of the contract demand

Plus energy charges at 25% load factor (i.e. six hours full load for a eight hours shift). ii) Demand charge on 75% of the contract demand plus energy charges at 50% load factor (Le. twelve hours full load for a sixteen hours shift). iii) Demand charges on 75% of the contract demand plus energy charges at 66-2/3% load factor (i.e. sixteen hours full load for a twenty-four hours shift).

2. Cases coming under tariff H.T.I. (C) Demand charges on 75% of " the contract demand plus (I.P. Sets) energy charges at 20% load factor (or five hours basis per day).

3. Cases coming under tariff H.T. 3. Same as corresponding installation under L.T. supply.

4. Cases coming under tariff H.T. 4. Temporary supply-Demand charges on the entire contract

demand plus energy charges at 50% load factor and

working hours at 12 hours per day.

CHARGES FOR L.T. SUPPLY:

Classes of service Burning Hours per day

. (Low Tension)

(i) Domestic lighting : Two and a half

ii) Domestic lighting heating and power : Five

iii) Commercial lighting, heating and power : Eight

iv) Industrial power : Six for eight hours shift, twelve for sixteen hours shift eighteen for twenty-four hours shift.

v) Cinema : Six hours for two shows per day nine hours for three shows per day.

vi) I.P. Sets : Monthly minimum charges equal to

1/12th of the amount of the annual

minimum charges for H.P. per month. Consumption ascertained for a period of one year subsequent to the installation of the meter.

Before serving the installations, both H.T and L.T. installations, on direct connection basis, the officers of the Board should obtain a separate agreement from the consumers in the form prescribed hereunder.

11. From the note to c1. (a) of Regn. 29. it is clear that when meters are not available and direct connections are given bills will be prepared on the basis of burning hours or working hours indicated therein. Now, from the statement of objections filed, it is clear that none of the methods enumerated in Regn. 29 has been followed in making the demand. Therefore, the demand which is resisted by the petition is not a demand computed in any one of the methods provided for high tension installations under Regn. 29. Therefore, it is too late in the day to contend that this Court must deem it as a direct connection when by their own acts of omissions and commissions, the Board has failed to get the advantage, if any, that was available under Regn. 29.

12. In that view of the matter, the petitioner must succeed and will be entitled to a mandamus restraining the Board from enforcing its impugned demand.

13. Mr. N. K. Gupta nevertheless contended that liberty should be reserved to the Board to determine afresh in accordance with the regulation which is applicable to back-billing and recover the dues so that the public exchequer will not lose. It is true this Court has only decided that on the facts of the case, the petitioner's case was not covered by sub-cl. (ii) of cl. (a) of Regn. 28. But the court is not in a position to determine whether it falls under sub-cl. (i) or sub-cl. (iii) not being appraised of the difference between the energy meter reading and the maximum demand meter referred to in the sub-clauses under Regn. 28(a). Therefore, this Court is not in a position to reserve the liberty. Any action the Board proposes to take must be on, its own initiative subject to the petitioner resorting to any remedy available if revised demand is issued to him.

14. I must also place on record in this behalf that Annexure-E to the petition speaks of the energy consumed as metered by the meter installed at various points of time finally resulting in 52000 units per mensem being recorded when proper meter was installed and that accuracy of Annexure-E has never been disputed.

15. With the above observation as the petition is disposed of. Any amount paid by the petitioner on the direction of this Court against the demand impugned is liable to be refunded or adjusted against future dues of the petitioner. A direction to that effect shall issue.

16. In the circumstances of the case, there will be no order as to costs.

17. Order accordingly.