

(2014) 04 UK CK 0019

In the Uttarakhand High Court

Case No : Writ Petition No. 1607 (MS) of 2001 and Old Number Writ Petition No. 30703 of 2000

U.P. Power Corporation Ltd.

APPELLANT

Vs

Kumar Oxygen Ltd. and Others

RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Electricity Act, 2003 — Section 26, 26(6)

Citation : (2015) 1 UC 585

Hon'ble Judges : Alok Singh, J.

Bench : Single Bench

Advocate : Naresh Pant, Advocate, for the Appellant; Piyush Garg, for the Respondent

Final Decision : Allowed

Judgement

Alok Singh, J.?Learned counsel for the respondent No. 1 has no serious objection in restoring the petition. He, however, submitted that original writ petition is pending disposal for last more than thirteen years, therefore, same may be heard finally after restoring the same. Learned counsel for the petitioner has no objection in it. Thus, for the reasons stated, restoration application (MCC No. 176 of 2014) is allowed. Order dated 16.04.2014 dismissing the petition for non prosecution is hereby recalled. Petition is restored to its original number. With the consent of learned counsel for the parties, petition was heard finally and is being disposed of by this judgment.

2. Present petition is filed assailing the order dated 28.06.1999 (Annexure No. 21 to the writ petition) passed by the Director, Electrical Safety, Government of U.P. and order dated 17.04.2000 passed by Special Secretary, Department of Energy, State of U.P., Lucknow.

3. Brief facts of the present case, inter alia, are that a surprise checking was made of the premises of consumer/respondent No. 1 on 01.08.1997. During

surprise checking, lock was found open and re-welded, the seal wire of plastic seal was found broken, lead seal wire was also found broken and paper seal was found torn. Memory data was also found off-loaded. On the basis of surprise checking, an opinion was formed by the Electricity Board that respondent No. 1/ consumer has broken the seals and was involved in the theft of electricity and ultimately, assessment was made and consumer/respondent No. 1, herein, was directed to make payment of Rs. 31,67,973. Feeling aggrieved, consumer/respondent No. 1, herein, filed Writ Petition No. 26783 of 1997 before the Allahabad High Court, which was dismissed by the Division Bench of Allahabad High Court vide judgment dated 16.09.1997 having observed that petitioner, if so advised, may challenge the order of the assessment before the Appellate Authority under Regulation 23 (ii) of the Electricity Supply (Consumers) Regulations, 1984. Pursuant to the judgment dated 16.09.1997, Appellate Authority heard the appeal under Regulation 23 (ii) of the Electricity Supply (Consumers) Regulations, 1984 and was pleased to direct to consumer/respondent No. 1 to pay Rs. 32,73,273/-. It was observed by the Appellate Authority that consumer with ulterior motives had broken the seals and was guilty of tampering of meter and case was of theft of electricity.

4. Order of Appellate Authority dated 17.10.1997 was once again challenged by the consumer/respondent No. 1 by way of filing Writ Petition No. 36432 of 1997 before Allahabad High Court, however, writ petition was dismissed by the Division Bench of Allahabad High Court vide judgment dated 28.10.1997. Consumer/respondent No. 1, thereafter, preferred Review Application No. 79646 of 1997 against the judgment dated 28.10.1997, however, review application, so filed, also came to be dismissed by the Division Bench on 06.02.1998.

5. It seems that instead of making payment of Rs. 32,73,273/-, as directed by the Appellate Authority, vide order dated 17.10.1997 and upheld by the Allahabad High Court, vide judgment dated 28.10.1997 and reaffirmed by the Allahabad High Court by rejecting the review application on 06.02.1998, consumer/respondent No. 1 preferred Civil Suit being Original Suit No. 49 of 1998 before the Civil Judge, (SD), Nainital seeking relief of restoration of electricity connection and setting aside the assessment order passed by Appellate Authority vide order dated 17.10.1997.

6. Learned Civil Judge, vide interim order dated 23.05.1998, passed in O.S. No. 49 of 1998, was pleased to give liberty to the consumer/respondent No. 1 to approach Electrical Inspector under Section 26(6) of the old Electricity Act. Pursuant to the interim order dated 23.05.1998, matter was referred to the Electrical Inspector/respondent No. 3 and ultimately, impugned order dated 28.06.1999 was passed thereby holding that meter was faulty, there was no theft of electricity, assessment order made by the Assessing Authority was bad in law and no recovery would be made against the consumer. Order passed by respondent No. 3 was challenged before respondent No. 4 -Secretary, Department of Energy, State of U.P., Lucknow and respondent No. 4 was pleased

to confirm the order passed by respondent No. 3 vide order dated 17.04.2000. Feeling aggrieved, petitioner/Electricity Department has preferred this writ petition.

7. I have heard Mr. Naresh Pant, Advocate for the petitioner and Mr. Piyush Garg, Advocate for respondent No. 1/consumer and have carefully perused the record.

8. Hon"ble Apex Court in paragraphs 9 and 13 of *Madhya Pradesh Electricity Board and Others Vs. Smt. Basantibai*, as held as under:

"9. It is evident from the provisions of this section that a dispute as to whether any meter referred to in Sub-section (1) is or is not correct has to be decided by the Electrical Inspector upon application made by either of the parties. It is for the Inspector to determine whether the meter is correct or not and in case the Inspector is of the opinion that the meter is not correct he shall estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply during a period not exceeding six months and direct the consumer to pay the same. If there is an allegation of fraud committed by the consumer in tampering with the meter or manipulating the supply line or breaking the body seal of the meter resulting in not registering the amount of energy supplied to the consumer or the electrical quantity contained in the supply, such a dispute does not fall within the purview of Sub-section (6) of Section 26. Such a dispute regarding the commission of fraud in tampering with the meter and breaking the body seal is outside the ambit of Section 26(6) of the said Act. An Electrical Inspector has, therefore, no jurisdiction to decide such cases of fraud. It is only the dispute as to whether the meter is/is not correct or it is inherently defective or faulty not recording correctly the electricity consumed, can be decided by the Electrical Inspector under the provisions of the said Act.

13. We are, however, unable to accept this contrary view as it is obvious from the provisions of Section 26, Sub-section (6) of the said Act that dispute whether a meter is correct or faulty would come under the said provisions and not the dispute regarding tampering of meter. In our view, the view taken about the scope of Section 26(6) in the decisions cited above are correct. In the instant case the dispute relates to whether the meter is correct one or it is faulty not recording the actual energy consumed in running the oil mill of the respondent. So this dispute squarely falls within the provisions of the said Act and as such it has been rightly found by the High Court that it is the Electrical Inspector who alone is empowered to decide the dispute."

9. As per dictum of Hon"ble Apex Court in *Basanti Bai* (supra), if there is allegation of fraud committed by the consumer in tampering with the meter or manipulating the supply line or breaking the body seal of the meter, resulting in not registering the amount of energy supplied to the consumer or the electrical quantity contained in the supply, such a dispute does not fall within the purview of sub-Section (6) of Section 26. Such a dispute regarding the commission of fraud in tampering with the meter and breaking the body seal is outside the

ambit of Section 26(6) of the said Act. An Electrical Inspector has, therefore, no jurisdiction to decide such cases of fraud or theft of electricity.

10. It is important to mention here that during the surprise checking made on 01.08.1997, lock was found open and re-welded, the seal wire of plastic seal was found broken, lead seal wire was also found broken and paper seal was found torn, therefore, opinion was formed by the Electricity Board that consumer/respondent No. 1 himself has broken and tampered with seals and the meter. Therefore, in my considered opinion, matter was beyond the jurisdiction of respondent No. 3.

11. Undisputedly, respondent No. 1 himself preferred Writ Petition No. 26783 of 1997 before Division Bench of Allahabad High Court wherein relief sought was to restore the electricity connection and setting aside the assessment order made on the basis of theft of electricity. At the initial stage of filing of first writ petition, no relief was sought saying that it was not a case of theft of electricity and in fact, meter was defective or faulty, therefore, matter be referred to the Electrical Inspector under sub-Section 6 of Section 26 of the Electricity Act.

12. Not only this, in second writ petition filed by the respondent No. 1 being Writ Petition No. 36432 of 1997, no such plea to refer the matter to Electrical Inspector under Section 26(6) of the Electricity Act was taken and again no pleading was made to the effect that present was not a case of theft of electricity or tampering with the meter rather it was the case of faulty meter.

13. Moreover, when consumer filed review application then also he did not take the plea that meter was faulty or defective and it was not a case of theft or fraud. Thereafter, consumer filed original civil suit wherein surprisingly Civil Judge directed the parties to approach Electrical Inspector under Section 26(6) of the Electricity Act and respondent No. 3/Electrical Inspector not only set aside the finding of assessment order made by the Appellate Authority made pursuant to the judgment by Division Bench of the Allahabad High Court on 16.09.1997 but also recorded absolutely contradictory finding to the effect that it was not a matter of fraud and theft of electricity. Findings of respondents No. 3 and 4, on the face of it, were contrary to the pleadings of consumer, which were taken before the Allahabad High Court in two writ petitions and one review application.

14. There is another aspect of the matter that civil suit being O.S. No. 49 of 1998, wherein interim order was passed directing the parties to appear before the Electrical Inspector, was ultimately dismissed, therefore, anything done pursuant to the interim order passed in civil suit, which was ultimately got dismissed stood vested in the final order of suit. Anything done pursuant to the interim order stood vested in the dismissal of the civil suit. Therefore, impugned orders are non est in the eyes of law and amounts to misuse of process of law. It goes without saying that no authority can be permitted to say that orders confirmed by the High Court were bad in law and should be ignored and set aside. On this score also, impugned orders do not sustain in the eyes of law,

therefore, writ petition is allowed with exemplary costs of Rs. 1,00,000/-. Out of Rs. 1,00,000/-, Rs. 50,000/- shall be paid to State Legal Service Authority, Nainital and Rs. 50,000/- shall be paid to the petitioner within thirty days from today.