

(1995) 03 KL CK 0019
In the High Court Of Kerala
Case No : O.P. No. 902 of 1989-G

Uthup, O.M.

APPELLANT

Vs

Assistant Engineer and Another

RESPONDENT

Date of Decision : 21-03-1995

Acts Referred:

Electricity (Supply) Act, 1948 — Section 79
Electricity Act, 1910 — Section 2, 26, 26(1), 26(1), 26(2)
Kerala State Electricity Board General Tariff Regulations — Regulation 30

Citation : (1995) 1 KLJ 666

Hon'ble Judges : K.K. Usha, J

Bench : Single Bench

Advocate : K.C. John and K.K. John, for the Appellant; O.V. Radhakrishnan, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Usha, J.—Petitioner is a tenant of the building No. 438 in Ward No. 15 of Kottayam Municipality which belongs to a local Mosque. The former tenant Madhavan Pillai died about 10 years back. The electric connection in the building with Consumer No. 871 is still in the name of the above-mentioned Madhavan Pillai. The bills are issued in the name of Madhavan Pillai and they were being paid by the Petitioner.

2. Ext. P-1 is a provisional invoice card issued by the 1st Respondent addressed to K. Madhavan Pillai in January, 1986 fixing the monthly energy charges at Rs. 297. Under Ext. P-2 dated 24th September 1988 by another provisional invoice card the rate was revised as Rs. 451 per mensem. According to the Petitioner, he had been remitting the amount as per the rate fixed under Exts. P-1 and P-2 upto December, 1988. Ext. P-3 dated 4th January 1989 is a copy of receipt for payment of charges for the month of December, 1988. Thereafter the Petitioner received Ext. P-4 bill on 16th January 1989 by which he was directed to pay an additional amount of Rs. 21,737 as charges for supply of electricity energy for

the period from July 1986 to August 1988. Ext. P-4 is also addressed to K. Madhavan Pillai.

3. On receipt of Ext. P-4, the Petitioner made a representation Ext. P-5, dated 17th January 1989 before the 1st Respondent. According to the Petitioner, under Ext. P-5 he had made a request to the 1st Respondent to refer the dispute for decision of Electrical Inspector as per Section 26(6) of the Indian Electricity Act on the ground that the meter is defective. The Petitioner's complaint is that no steps were taken by the 1st Respondent as per his request under Ext. P-5. He seeks to quash Ext. P-4 bill and also prays for a writ of mandamus directing the 1st Respondent to dispose of Ext. P-5 representation according to law.

4. The Petitioner alleges that the demand under Ext. P-4 is based on "sheer guess". He had been regularly paying electricity charges as per the rate fixed under Exts. P-1 and P-2. According to the Petitioner, no notice of reading of the meter was given to him, meter is defective and reading is also defective. The Petitioner would contend that Section 26 of the Indian Electricity Act enjoins that the meter reading required under the Act and the Rules are to be done not behind the back of the consumer, but after notice to him. The learned Counsel appearing on behalf of the Petitioner contended that when Ext. P-5 representation was received by the 1st Respondent, he had a statutory duty to refer the dispute u/s 26(6) of the Indian Electricity Act to the Electrical Inspector and it is only after adjudication of the Electrical Inspector any demand could be made against the Petitioner for additional charges.

5. A counter affidavit has been filed on behalf of the 2nd Respondent. The learned Counsel appearing on behalf of the Respondents takes a preliminary objection that the Petitioner has no locus standi to challenge Ext. P-4, which is a demand made against one Madhavan Pillai. Even if the Petitioner is to come within the definition of the term "consumer" so long as he has not entered into a contract with the 2nd Respondent and substituted himself in the place of the original tenant, the Petitioner cannot be treated as a person aggrieved by the demand made against late Madhavan Pillai. The Respondent was not aware of the death of Madhavan Pillai and the Petitioner becoming the tenant of the building concerned. Admittedly bills were issued in the name of Madhavan Pillai all these years and amounts were also being paid in the name of Madhavan Pillai. Therefore, there was no occasion for the Respondents to come to know about the death of Madhavan Pillai and the Petitioner being inducted as the tenant of the building. Clause 12 of the Conditions of Supply of Electrical Energy deals with the agreement for service connection. Clause 12(1)(a) provides that along with remittance of security deposit as mentioned in para 11, the consumer should execute the service connection agreement in Form No. 6. Clause 12(1)(c) provides that the consumer shall not, without the previous written consent of the concerned Assistant Engineer (Electrical) of the Board, assign, transfer or part with the benefit of his agreement with the Board nor shall be the consumer in any manner part with or create any partial or separate interest thereunder.

Admittedly in the present case late Madhavan Pillai had not assigned or transferred the benefit of the agreement, which he had with the Board, to the Petitioner. The Petitioner is not a legal heir of late Madhavan Pillai. The learned Counsel appearing on behalf of the Respondents relied on a decision of the High Court of Delhi in Pawan Kumar Tandon v. New Delhi Municipal Committee AIR 1986 Del 454, in support of his contention that the Petitioner cannot put forward any legal right on the basis of the agreement entered into between late Madhavan Pillai and the Respondents.

6. It is further contended on behalf of the Respondents that Ext. P-4 has been issued in accordance with the rules. A reading of Exts. P-1 and P-2 would show that the consumer was bound to pay in addition to the amount shown in the provisional invoice card, an additional amount which will be fixed on the basis of reading of the meter taken once in six months. For such amount separate adjustment invoice will be sent to the consumer. Ext. P-4 is such an adjustment invoice and according to the Respondents, the consumer is bound to pay the above amount. There is no merit in the contention of the Petitioner that he having paid electricity charges at the rate fixed in Exts. P-1 and P-2, no further demand can be made against him. The rate is fixed under the provisional invoice card subject to the above-mentioned conditions.

7. The Respondents would also contend that no notice is contemplated under the Act or Rules before taking reading of the meter. Clause 24 of the Conditions of Supply of Electrical Energy provides that the authorised employees of the Board bearing identity badges/cards are entitled by statute, at all reasonable times, to enter upon the premises of the consumer to which energy is supplied for the purpose of inspecting, reading meters, etc. Notice contemplated under Sub-section (4) of Section 26 of the Indian Electricity Act, 1916 is for a totally different purpose. Sub-section (4) provides that the licensee or any person duly authorised by the licensee shall, at any reasonable time and on informing the consumer of his intention, have access to and be at liberty to inspect and test, and for that purpose if he thinks fit, take off and remove, any meter referred to in Sub-section (1). It is clear, according to the Respondents, that notice is contemplated only when the Respondent has to enter the premises of the consumer for the purpose of inspection and testing of the meter and not for the purpose of reading the meter.

8. The Respondents would further submit that it has no obligation to refer the matter to the Electrical Inspector u/s 26(6) of the Indian Electricity Act on the basis of a representation made by the consumer that the meter is defective. u/s 26(6), it is open to either party to apply to the Electrical Inspector where any difference or dispute arises as to whether any meter is correct or not. If the Petitioner had a case that the meter is defective, it was for him to apply to the Electrical Inspector for decision on the dispute after giving the Respondent not less than 7 days' notice of his intention to do so. Under Regulation 30 of the Conditions of Supply of Electrical Energy there is a provision by which a

consumer who disputes the accuracy of the meter installed by the Board in his premises to send a written application to the Local Assistant Engineer with a remittance of Rs. 5 for a special test. On receipt of the application and testing fee the Assistant Engineer shall have the meter specially tested by the Board or Electrical Inspector to the Government. The Petitioner has no case that he has made any such application as contemplated by Regulation 30, for the conduct a special test. Under these circumstances, the Respondents would contend that there is no merit in the complaint of the Petitioner that the 1st Respondent had failed to refer the matter to the Electrical Inspector for a decision u/s 26(6) on the basis of Ext. P-5 representation.

9. It has come out from the pleadings that one Madhavan Pillai was the consumer as defined u/s 2(c) of the Indian Electricity Act, 1910 in respect of the hotel and tea shop in building No. 438 in Ward No. XV of Kottayam Municipality. An agreement was also entered into by Madhavan Pillai as per the terms of conditions of the Regulation regarding supply of electrical energy issued by the Kerala State Electricity Board. On the terms of the above conditions the consumer is bound to execute service connection agreement in the prescribed form and that the consumer, shall not, without previous written consent from the officer of the Board assign, transfer or part with the benefit of his agreement with the Board. Clause 12(i)(b) provides that even in the absence of a formal contract between the Board and the consumer, the latter shall be bound by the terms and conditions of supply contained in the Regulation for conditions of supply of electrical energy. Once supply of electricity has commenced and the consumer shall not refuse to tender an agreement and if such an agreement is entered, the commencement of the contract shall be from the date of commencement of supply to the consumer. In the light of the decision of this Court in Assistant Engineer v. Entheenkutty ILR 1983 Ker 428 : 1982 KLT 851 where it has been held that a person whose premises are connected for the purpose of receiving energy with the works of a licensee or other person, is also a consumer, the Petitioner would also come within the term "consumer". The fact that original consumer did not get previous written consent before inducing the Petitioner may not be relevant for the purpose of treating the Petitioner as a consumer. But admittedly the Petitioner has not entered into an agreement with the Kerala Electricity Board which he is bound to under the terms of Conditions of Supply of Electrical Energy. In view of the provisions contained under Clause 12(1)(b) even in the absence of formal contract the Petitioner will be bound to comply with the terms and conditions of supply of electrical energy as detailed in the regulations relating to the conditions of supply of Electrical Energy issued by the Kerala State Electricity Board in exercise of its powers conferred u/s 79(j) of the Electricity Supply Act (Central Act 54 of 1948) and provisions of the Kerala State Electricity Board General Tariff Regulations made under Sub-section (j) of Section 79. I therefore make it clear that it is open to the Respondents to insist on the Petitioner entering into formal contract and when such contract is entered into it will relate to a date 10 years back when supply to the Petitioner was

commenced.

10. Even though it was improper on the part of the Petitioner to have continued to enjoy the benefit of energy connection in the name of late Madhavan Pillai to the premises occupied by the Petitioner for the last 10 years, but in the light of the provisions contained under Regulations, regarding conditions of Supply of Electrical Energy, the Petitioner is bound by the terms of those Regulations. In the decision of the Delhi High Court, relied on by the Respondents, it was held that when there is a change of person of the consumer occupying the premises it is open to a licensee to stop supply of energy to the premises on the ground that the consumer to whom the electricity was being supplied under a contract is no longer in rightful occupant of the said premises. But in the present case the Electricity Board has not taken any such action and therefore it is not necessary to consider that aspect in this Original Petition. But as mentioned earlier, the Petitioner is bound by the terms of the regulations regarding the Conditions of Supply of Electrical Energy and therefore he has to be considered as the rightful consumer for all purposes.

11. I find no merit in the complaint of the Petitioner that after having paid charges as per Ext. P-1 and Ext. P-2, no further demand could be made against him for the period covered by Exts. P-1 and P-2. A reading of the note on the reverse side of Exts. P-1 and P-2 would clearly show that in addition to the amount shown in Exts. P-1 and P-2, on the basis of meter reading taken once in six months, if it is seen that higher amount has to be paid than what is shown in Exts. P-1 and P-2 special adjustment invoices will be issued and the Petitioner has to make payment in accordance with that. Ext. P-4 is such a special invoice sent as per Clause 4 of the "note" contained in Exts. P-1 and P-2. Therefore, I hold that the action of the Respondents in sending Ext. P-5 is in accordance with law and the Petitioner cannot take the stand that no amount in excess of Exts. P-1 and P-2 can be demanded for the period covered by Exts. P-1 and P-2.

12. The Petitioner has a case put forward in Ext. P-5 representation, dated 17th January 1989 submitted after receipt of Ext. P-4 that the consumption of electrical energy noted in the invoice Ext. P-4 is highly exorbitant, reading was not taken in his presence nor any notice regarding the reading was given to him, there was patent mistake in the reading of the meter and that the meter was defective. The learned Counsel appearing on behalf of the Petitioner relied on the provisions contained u/s 26(4) of the Indian Electricity Act, 1910 in support of the contention that the Petitioner, is entitled to a notice before the meter reading is taken. Sub-section (4) of Section 26 reads as follows:

The licensee or any person duly authorised by the licensee shall, at any reasonable time and on informing the consumer of his intention, have access to and be at liberty to inspect and test, and for that purpose, if he thinks fit, take off and remove, any meter referred to in Sub-section (1); and, except where the meter is so hired as aforesaid, all reasonable expenses of, and incidental to, such inspecting, testing, taking, taking off and removing shall, if the meter is found to

be otherwise than correct, be recovered from the consumer; and, where any difference or dispute arises as to the amount of such reasonable expenses, the matter shall be referred to an (Electrical Inspector), and the decision of such Inspector shall be final:

Provided that the licensee shall not be at liberty to take off 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.

13. A reading of the above provision clearly shows that the notice contemplated therein is not one which has to be issued to the consumer when meter reading is taken before issuing bill or invoice regarding the charges. On the other hand, such notice need be given only when the licensee or any person duly authorised by the licensee finds it necessary to inspect and test the meter installed in the premises of the consumer. In the light of the provisions contained under Clause 24 of the Regulation it is open to the authorised employee to enter the premises of the consumer for the purpose of reading the meters. But there is no provision under the Act or in the Regulations that when an employee enters the premises of the consumer, only for the purpose of reading the meter, prior notice has to be given to the consumer. The learned Counsel appearing on behalf of the Petitioner relied on a decision of the Allahabad High Court in Kamala Shanker Upadhyaya Vs. State Electricity Board, U.P. and Another, , in support of the contention that notice should have been issued to the Petitioner before meter reading was taken. The Allahabad High Court took the view that the word "inspect" is of wide amplitude and includes the meter reading for the purpose of ascertaining the units of energy consumed. In coming to the above conclusion the learned Judges have relied on meaning of the term "inspect" given in Webster's Dictionary as "to look upon, to view closely and critically, to detect errors, to scrutinise, to view and examine officially". With great respect to the learned Judges of the Allahabad High Court I am not persuaded to agree with the above view. If the scheme of Section 26 is taken into consideration it will be clear that the words "testing" and "inspect" used in Sub-section (4) were not in connection with a mere reading of the meter. Section 26 deals with meters. Sub-sections (1), (2) and (3) read as follows:

(1) 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.

(2) Where the consumer so enters into an agreement for the hire of a meter, the licensee shall keep the meter correct, and, in default of his doing so, the consumer shall for so long as the default continues, be liable to pay for

the hire of the meter.

(3) Where the meter is the property of the consumer, he shall keep the meter correct and, in default of his doing so, the licensee may, after giving him seven days notice, for so long as the default continues, cease to supply energy through the meter.

14. If the provisions of Sub-section (4) is read along with Sub-sections (1) to (3) it will be clear that the "inspection" and "test" are to be conducted in connection for verifying whether the meter is faulty or not. The latter portion of Sub-section (4) itself would make it clear that the test and inspection are not for the purpose of mere reading of the meter. It provides that all reasonable expenses of inspecting, testing, taking off and removal of the meter shall be recovered from the consumer if the meter is found to be faulty unless the meter is one hired from the licensee. If any dispute arises between the parties as to whether the meter is correct or not such dispute shall be decided by the Electrical Inspector on the application of either party as provided under Sub-section (6) of Section 26. All these provisions would clearly indicate that the access allowed to the licensee or any authorised person with notice to the consumer under Sub-section (4) to inspect and test is to find out whether the meter is faulty. It is not for the purpose of taking periodical reading of the meter. Even going by the Dictionary meaning as quoted by the learned Judges of the Allahabad High Court I am of the view that the word "inspect" would refer to a deeper examination than the meter reading. I have, therefore, no hesitation to hold that a consumer is not entitled to a prior notice before periodical readings of the meter are done.

15. The complaint of the Petitioner is that Respondents have refused to discharge their duty by not referring the dispute to the Electrical Inspector on the basis of Petitioner's representation Ext. P-5. A reading of Ext. P-5 would clearly show that the request made by the Petitioner to the 1st Respondent, Assistant Engineer, was to refer the matter for decision of the Electrical Inspector as contemplated u/s 26(6) of the Indian Electricity Act. Sub-section (6) of Section 26 reads as follows:

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.

A mere reading of the above would clearly show that it is open to either of the parties to apply to the Electrical Inspector to decide the dispute between them as to the correctness or otherwise of the meter. There is no provision by which the consumer can apply to the licensee requesting the licensee to move the Electrical Inspector. Therefore, Petitioner's request under Ext. P-5 is not liable to be granted. But Respondents have pointed out another provision viz., Clause 30 of the regulations Regarding Conditions of Supply of Electrical Energy, 1972. The above clause provides that if the accuracy of the meter installed by the Board is disputed by the consumer, he may send a written application to the Local Assistant Engineer with remittance of Rs. 5 for a special test. On receipt of the application and testing fee the Assistant Engineer shall have the meter specially tested by the Board or Electrical Inspector to Government and where the meter is found to be beyond the limits of accuracy as prescribed Indian Electricity Rules, in force from time to time, the testing fee shall be returned to the consumer and the consumer's bill adjusted in accordance with the result of the test taken with respect to the meter reading of the three months prior to the month in which the dispute has arisen. Clause 30 therefore contemplates an application by the Petitioner along with testing fee. Admittedly, no such application has been made by the Petitioner. Even if Ext. P-5 has to be taken as such an application it was not accompanied by the testing fee and therefore the 1st Respondent was not obliged to get the meter specially tested by the Electricity Board or Electrical Inspector to the Government. Therefore, I find that there was no abdication of jurisdiction by the 1st Respondent in not referring the matter to Electrical Inspector on the basis of Ext. P-5.

In the light of the above, the Petitioner is found not eligible for any of the relief sought in the Original Petition. The Original Petition therefore fails and it stands dismissed.