(2006) 03 BOM CK 0069

In the Bombay High Court

Case No : Writ Petition No. 4387 of 2001

Veena S. Bajaj APPELLANT

Vs

Maharashtra State Distribution Co. Ltd. and Another RESPONDENT

Date of Decision : 06-03-2006

Acts Referred:
Electricity Act, 1910 — Section 26, 26(1), 26(6)

Citation : AIR 2006 Bom 200 : (2006) 4 BomCR 324 : (2006) 3 CivCC 444 : (2006) 4 MhLj 234 : (2006) 4 RCR(Civil) 184

Hon'ble Judges : V.R. Kingaonkar, J;V.G. Palshikar, J

Bench : Division Bench

Advocate : F. Dubash and S. Das, instructed by Dunmorr Sett, for the Appellant; A.R.S. Baxi and S.R. Nargolkar, AGP, for the Respondent

Final Decision : Allowed

Judgement

V.R. Kingaonkar, J.—The petitioner impugns electricity Bills dated 24th November, 2000 and 18th July, 2001 and action of respondent No. 1 causing disconnection of electricity supply.

2. One deceased Smt. Padma Kirpalani was consumer of respondent No. 1 - Maharashtra State Electricity Board. The electricity supply was being provided to her residential premises through Meter No. 9100020034. She demised on 15th April, 1980 and was survived by son Prakash Kirpalani who continued to use the residential premises. He was a divorcee and demised as such on 29th April, 2000. He is said to have bequeathed the properties in favour of his sister - petitioner - Smt. Veena BajaJ.

3. The petitioner received a supplementary Bill dated 24th November, 2000 showing dues of Rs. 75,142.78 p. for a period of 50 months prior. She further received an Electricity Bill dated 18th July, 2001 purporting to claim arrears of huge amount towards electricity consumption charges. Since there were no details shown in the Electricity Bills, she made an enquiry with respondent No. 1

and was furnished copy of Personal Ledger Account. The petitioner alleges that both the demand bills are incorrect, illegal and improper.

4. According to the petitioner, somewhere between 19th September, 2000 and 18th November, 2000 respondent No. 1 changed the previous Electricity Meter No. 9100020034 and replaced another Meter bearing No. 9100021510 without any information to her. It is believed that respondent No. 1 caused change of the Electricity Meter because the earlier meter was defective, incorrect and did not record the consumption as per the factual position. The petitioner alleges that the demands under both the Bills are arbitrary and illegal. Respondent No. 1 failed to keep the prior meter in proper condition and did not follow the procedure set out u/s 26(6) of the Indian Electricity Act, 1910. Respondent No. 1 illegally caused disconnection of the electricity supply for so called default in the payment of the bills which are improper and illegal. Hence the petition.

5. Respondent No. 1 resisted the petition mainly on the ground that the electricity supply was provided and the consumer was called upon to pay average bill. It is stated that the average billing was credited at the time of preparation of the supplementary bill and the reason was that the premises were found locked on so many occasions. It is contended that the actual meter reading was not available and hence the average billing was fed in the computer system until the actual reading was made available. It is contended that for the first time in September, 1996 the reading was available and as and when the reading was available the bills were drawn. According to respondent No. 1 the consumer/ petitioner has failed to pay the electricity charges as per the demand Bill and as such the electricity supply was rightly disconnected.

6. We have heard the learned Counsels for the parties. We have gone through the relevant documents produced on record. On behalf of the petitioner, it is contended that the details of electricity consumption charges are not at all explained by respondent No. 1 and exorbitant demands are made. It is pointed out that the previous electricity Meter No. 9100020034 was replaced by new Meter No. 9100021510 without any information to the petitioner/Consumer. The billing system itself is, therefore, defective and the change of meter was caused in hush-hush manner. On the other hand, learned Counsel for respondent No. 1 supported the demand Bills and the administrative action for disconnection of electricity supply.

7. There is no dispute about the fact that the electricity meter of the consumer was replaced by respondent No. 1 and that too without any dispute raised by the consumer. The consumer had not applied to the Electrical Inspector for replacement of the earlier electricity Meter No. 9100020034. Respondent No. 1 has come out with a case that the meter was replaced on 29th October, 1993. The relevant record pertaining to reason for the change of electricity meter is not forthcoming.

8. On going through the copy of the Consumer''s Personal Ledger (Exhibit "B" to

the Petition), it may be gathered that for the period between November, 1996 till September, 1999 the consumer meter number shown was 9100020034. Had the electricity meter been replaced by respondent No. 1 on 29th October, 1993 then there was no reason whatsoever to indicate the earlier electricity meter number for all the relevant years from 1996 till 1999. The subsequent development may be noticed. The petitioner made complaint regarding the huge billing and thereupon a letter dated 25th April, 2001 was issued showing that the Consumer''s Personal Ledger Account for the electricity meter was being provided.

9. It is surprising to note that Consumer''s Personal Ledger extract furnished on 25th April, 2001 along with letter mentioned above is handwritten. This Consumer''s Personal Ledger Account for the first time shows date of connection of new Meter No. 9100021510 as 29th October, 1993. The earlier extracts (Exhibit "B") are computer printouts and yet do not show the new meter number and the date of its replacement. There is absolutely no reason to hold that the information was not available with the office of respondent No. 1 and that it was not fed in the computer between 1993 till 2000. Ordinarily, the computer printouts are to be believed more since the chances of error are minimized due to the electronic reproduction of data available in the computer''s hard disc. It is difficult to appreciate that such computer printouts were not available when the letter dated 25th April, 2001 was issued. The handwritten copy of Personal Ledger Account was furnished probably in order to make certain additions pertaining to the subsequent meter number and so called date of its installation. The computer printout (Exhibit "B") reveals that in November, 1996 average consumption was of 416 units and the total billing was of Rs. 10,756/- whereas the subsequent handwritten copy of the Personal Ledger Account shows that it was 830 units and the energy charges calculated are Rs. 2,448.50p. These discrepancies have not been properly explained by respondent No. 1. Obviously, inference may be drawn that the subsequent change of meter was done somewhere between September, 2000 to November, 2000 as alleged by the petitioner. One cannot overlook the fact that the average billing was done by respondent No. 1 for the reason that the premises were found to be locked on many occasions. Apparently, after the death of original consumer, namely, Smt. Padma Kirpalani, the premises were being used by her son Prakash. The latter was a divorcee and was perhaps single occupant of the premises for few years prior to his demise on 29th April, 2000. That appears to be the reason for keeping the premises locked since said Prakash was not expected to be at home on working days when the meter reading was intended to be taken. Under these circumstances, it is difficult to countenance the stand of respondent No. 1 regarding the replacement of the previous meter in September, 1993.

10. The present case is not covered by Sub-section (6) of Section 26 of the Indian Electricity Act, 1910. The relevant portion of Section 26 may be reproduced for ready reference:

26. Meters. - (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 meters, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter.

(2) x x x x x x x

(3) x x x x x x x

(4) x x x x x x x

(5) x x x x x x x

(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 of 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.

(7) x x x x x x x

Sub-section (6) commences with the sentence "where any difference or dispute arises as to whether any meter referred to in Sub-section (1) is or is not correct,...". The dictionary meaning of the word "correct" is : adhering or conforming to an approved or conventional standard; conforming to or agreeing with fact; accurate. The consumer never informed respondent No. 1 that the earlier meter was incorrect nor any dispute was raised. Meter reading was not available at all due to keeping the premises locked during the relevant period. It is more probable, therefore, that respondent No. 1 on its own got changed the meter at subsequent stage after furnishing the copy of extract of Consumer''s Personal Ledger Account (Exhibit "B") since the meter reading was faulty.

11. Under the circumstances, the petitioner cannot be called upon to pay the amount shown in the Bill dated 24th November, 2000. The subsequent Bill dated 18th July, 2001 will have to be also modified by respondent No. 1 after the deduction of the amount shown in the previous bill. The administrative action of causing disconnection of the electricity supply is per se illegal. The electricity supply has already been restored as per the interim order in this petition. The impugned demand Bill dated 24th November, 2000 and the action of respondent No. 1 is, therefore, arbitrary, illegal and liable to be quashed.

12. In the result, the petition succeeds. The demand Bill dated 24th November, 2000 issued by respondent No. 1 is hereby quashed and the order to disconnect

the electricity supply is also quashed. The petitioner is entitled to adjustment of amount deposited by him with respondent No. 1 towards the proper Bills of electricity consumption. Respondent No. 1 shall pay costs of Rs. 1,000/-to the petitioner and shall bear its own. Rule made absolute accordingly.