

Punjab State Electricity Board and Another

Vs

Ashwani Kumar

Civil Appeal No. 2507 of 1997

(K. Ramaswamy, G. B. Pattanaik JJ)

14.03.1997

ORDER

1. Leave granted. We have heard the learned counsel on both sides.
2. The appeal by special leave arises from the judgment of the Punjab and Haryana High Court made on 9-12-1992 in RSA No. 1865 of 1991. The appellant Board had given connection of supply of electrical energy to the respondent on 16-1-1983. Since the meter installed was suspected to have been tampered with it was removed on 6-5-1984. On an application made by the respondent, a new meter was installed on 9-5-1984. On 18-3-1985 Bill No. 44 for Rs. 1,90,498.79 for the period December 1983 to 16-1-1985 was sent to the respondent. Feeling aggrieved, the respondent filed the Civil Suit No. 85 of 1985 on 25-3-1985 for permanent injunction, restraining the Board or its officers from collecting and recovering the amount from the respondent. The Sub-Judge on 16-9-1987 granted the decree. On appeal, it was confirmed and the second appeal has been dismissed. Thus, this appeal by special leave petition.
3. On 19-7-1996 when the matter came up for hearing, this Court passed an order observing that Section 4, Instruction 115(1)(b) of the sales manual which is placed on record, indicates the procedure to be followed when the meter was found to be accurate, but the reading was inaccurate. Instruction relating the procedure to be followed for resolving the dispute was not made part of the record and, therefore, time was granted to the appellant to produce the necessary record in that behalf. In furtherance thereof, the record has been placed on record.
4. Now, it is clear that the Electricity Board itself has issued circulars from time to time in that behalf. Circular No. 111 of 1980, dated 20-12-1980, was issued in partial modification of the earlier Circulars No. 151 of 1979 dated 21-2-1979 and No. 4723/cadre dated 24-7-1980. Therein it states that the Flying Squads/Enforcement Staff shall henceforth prepare their report in respect of checking of the defaulting premises of the delinquent consumers and serve the requisite notice to the consumer at site itself with a copy to the SDO/DS concerned. Thereafter, the Flying Squad shall not revise their findings or the quantum of penalty already intimated. Cases of default of payment up to Rs. 5000 are reviewable by the Superintending Engineer/DS and the cases of default beyond Rs. 5000 are reviewable by CE or DS concerned. Subsequently, instructions were issued under Order No. 427 dated 26-11-1981 stating that the negotiations with the consumers or withdrawal of cases from the court or the arbitration proceedings or faulty meter cases may be taken by the Committee consisting of (1) Chief Engineer (DS concerned); (2) Chief Accounts Officer or Chief Auditor as may be decided by the Member, Finance; (3) Legal Advisor; (4) Director, Commercial. The above Committee shall exercise the power up to Rs. 5000 in each case and decide all the cases including those pending in the court, except enforcement of the waiving.

5. Subsequently, further Circular No. 111 of 1984 dated 5-12-1984 was issued reiterating the powers of the Flying Squads given in earlier circulars in part 2(i) and para 2(ii). The Flying Squads/Enforcement Staff shall not revise their findings or the quantum of compensation already intimated. Under clause (iii) it provides for the following authorities to review the compensation amount once intimated to the consumer :

#(a) Cases up to Rs. 10,000 - SE/DS(b) Cases beyond Rs. 10,000 and up to Rs. 5 - CE/DS lakhs(c) Cases beyond Rs. 5 lakhs (the cases shall - Member (T) be put up by CE/Commercial through Director/Enforcement).##

Clause (v) postulates that where the consumer himself accepts the findings of the Flying Squads and makes the payment of compensation amount, such cases shall not later on be the subject-matter or review by the DS officers.

6. Clause (vi) provides that notwithstanding the fact that the DS officers agree or disagree with the findings of the Flying Squads, but if the consumer protests against the charges, the review, appeal of such a consumer shall be registered by the SDO/DS concerned and forwarded to the reviewing authority through proper channel. The proper channels have been noted in the subsequent sub-para of para (vi). Para (vii) indicates that every effort shall be made by the reviewing authority to ensure that the review appeal is decided within the stipulated period of disconnection; where it is not possible to do so, the consumer shall be asked by the reviewing authority to deposit at least 75% of the amount of compensation under protest so that supply could be restored, after the expiry of stipulated period of disconnection. Where a consumer does not come forward to deposit the amount so worked out in the manner as stipulated above, the supply shall not be restored till finalisation of the review/appeal.

7. The position was subsequently reviewed under Circular No. 26 of 1989 dated 7-8-1989. Therein, it is postulated that the Committee shall be headed by the Superintending Engineer/DS concerned and shall have the following members :

#1. SE/DS Chairman of the Committee2. XEN/DS concerned Member Convenor3. XEN/Enforcement Member (for cases involving checking by Enforcement staff)4. AOO/Field Member5. Representative of Industry Member##

It is further provided that the Committee shall have powers to review and decide all cases for recovery waiving off the irrecoverable amount up to Rs. 30,000 in each case. This Committee shall decide all disputed cases including the cases arising out of enforcement checking. This Committee shall act on the basis of general fairness and equity and not necessarily by the rigid departmental instructions. It would, thus, be seen that these statutory rules issued by the Board intended to dispose of the disputes expeditiously without under delay, so that the consumer may not be subjected to hardship due to disconnection or non-payment of the amount charged, as demanded under the rules, for long period. At the same time the Board is also entitled to recover the amount expeditiously from the consumer, so that the Board functions efficiently and effectively and also supplies the electrical energy to the consumer without any inconvenience to the consumer as non-supply of electrical energy hampers the progress of the industry, etc.

8. The question then arises whether the civil court would be justified in entertaining the suit and issue injunction as prayed for ? It is true, as contended by Shri Goyal, learned Senior Counsel, that the objections were raised in the written statement as to the maintainability of the suit but the same

were given up. Section 9 of the CPC provides that the civil courts shall try all suits of civil nature, subject of pecuniary jurisdiction, unless their cognizance is expressly or by necessary implication barred. Such suit would not be maintainable. It is true that ordinarily, the civil court has jurisdiction to go into and try the disputed questions of civil nature, where the fundamental fairness of procedure has been violated. The statutory circulars adumbrated above to indicate that a fundamental fairness of the procedure has been prescribed in the rules and is being followed. By necessary implication, the cognizance of the civil cause has been excluded. As a consequence, the civil court shall not be justified in entertaining this suit and giving the declaration without directing the party to avail of the remedy provided under the Indian Electricity Act and the Indian Electricity (Supply) Act and the Instructions issued by the Board in that behalf from time to time as stated above.

9. Shri Goyal has contended that the authorities do not hear the parties, nor give a reasoned order. Therefore, the parties cannot be precluded to avail of the remedy of a suit. We cannot accept such a broad and generalised proposition. When the provision for appeal by way of review has been provided by the statutory instructions, and the parties are directed to avail of the remedy, the authorities are enjoined to consider all the objections raised by the consumer and to pass, after consideration, the reasoned order in that behalf, so that the aggrieved consumer, if not satisfied with the order passed by the Board/appellate authority, can avail of the remedy available under Article 226 of the Constitution. Therefore, by necessary implication, the appropriate competent authority should hear the parties, consider their objections and pass the reasoned order, either accepting or negating the claim. Of course it is not like a judgment of a civil court. It is then contended that the respondent has been subjected to pay huge amount of bill in a short period; hence, it is a case for interference. We find no force in the contention. May be that due to the advice given by the counsel, the respondent obviously has availed of the remedy of the suit, instead of departmental appeal. In our view, by necessary implication the suit is not maintainable. Therefore, the respondent is at liberty to avail the remedy of appeal within six weeks from today and raise the factual objections before the Board and the Board/appellate authority would consider and dispose of them, as indicated earlier, on merits.

10. It is next contended that the respondent has been charged a huge amount. It would be difficult for him to pay the amount in lump sum. Therefore, he may be given permission to pay the amount in instalments. We find that the request is genuine and in view of the long lapse of time, we direct that the respondent would pay the amount in demand in six monthly instalments. The first instalment shall be paid on or before 5-4-1997. In case he succeeds in appeal or in the proceedings, the Board shall refund the amount with interest at the rate of 12 per cent per annum from the date of deposit.

11. The appeal is accordingly allowed, but in the circumstances, without costs.