U.P.S.E.B.

Vs

Atma Steels & Ors.

(B. N. Kirpal, S. P. Kurdukar JJ)

20.01.1998

ORDER

1.Special leave granted in both the matters.

2.The respondent obtains electricity from the appellant. On 10th December, 1992 a surprise check was made at the respondent's place and it was found that in the potential transformer (PT) a fuse had been blown off with the result that it was not supplying any electricity from primary cable to secondary cable, and as a consequences thereof, the quantum of electricity consumed was not being correctly recorded in the matter. A notice was issued requiring the respondent to show cause as to why charges for less consumption be not charged for the period December 1991 to December 1982.In order to avoid the disconnection of the electricity, the respondent, with the permission of the authority, installed a new PT on the respondent undertaking to pay in future for the supply given to it.

3.On 29th December, 1992 respondent gave a reply to the show cause notice and inter alia raised a dispute that the PT and the meter paneling were not working properly. After taking into consideration the reply, the Executive Engineer on 2nd January, 1993 made an assessment of Rs.57,77,891.38 and raised a bill. Thereupon the respondent filed a suit in the Court of Civil Judge, Ghaziabad challenging the said assessment. The Civil Judge passed an ex-parte ad-interim injunction restraining the appellant from recovering the assessment amount and from disconnecting the supply. In the written statement filed by the appellant herein the demand of Rs.57,77,891.38 was justified. According to the appellant the respondent, while the suit was still pending, filed an application before the Chief Electrical Inspector on 20th February 1993 purporting to be under Section 26 of the Indian Electricity Act, 1910 requiring the Inspector to exercise his jurisdiction under the said provision and to quash the aforesaid assessment which had been made by the Executive Engineer. On 6th April, 1993 the respondent filed an application before the Civil Judge, Ghaziabad, inter-alia, prayed that the electricity which had been disconnected should be restored and the respondent be permitted to pay the aforesaid demand by installment's. Along with the application 12 post dated cheques were filed and the respondent gave an undertaking to the Court to the effect that if after the acceptance of the cheques and restoration of electricity any cheque is not encashed or it is dishonored then the appellant herein will have the right to disconnect the electricity of the respondent without any notice. This application was made while reserving the right of the respondent to make a reference for arbitration. On the same day, the Trial Court accepted the application and ordered the reconnection of the electricity and it was specifically mentioned in this order that the conditions mentioned in the respondent's application will form part of the order.3 days thereafter, the suit itself was withdrawn.

4.The Chief Electrical Inspector took cognizance of the application which was filed before it and issued notice to the appellant herein. Though reply was filed to the said application, the respondent filed a Writ Petition before the Allahabad High Court which was disposed of on 5th November, 1993 with a direction to the Electrical Inspector to decide the reference within 6 weeks.

5.By the order dated 15th April, 1994 the Electrical Inspector allowed the application after coming to the conclusion that the fuse in one of the PT had blown off but the amount which was demanded by the appellant was not reasonable. Curiously enough, having come to the conclusion that the meter had not recorded the correct amount of the consumption of electricity because of the blowing off the fuse the Electrical Inspector did not himself assess as to what should have been correct amount payable by the respondent.

6.The appellant than filed an appeal before the State Government under Section 36(2) of the Indian Electricity Act, 1910.This appeal was allowed with the appellate authority coming to the conclusion that transformer could not be regarded as a meter and therefore the Electrical Inspector had no jurisdiction under Section 26(6) of the said Act to entertain the application of the respondent. This finding was again challenged by the respondent by way of a Writ Petition and the High Courts by the impugned judgment, came to the conclusion that the transformer had to be regarded as a meter within the meaning of that word in Section 26(7) and the appellate authority was not justified in coming to the conclusion that the Electricity Engineer had no jurisdiction to decide the application. The appellate authority's order having been set aside, the matter was remanded by the High Court but with the direction that the appeal should be decided by the competent authority preferably by a technical hand nominated by the State Government other than the Energy Secretary.

7.We have heard the counsel for the parties and seen the material on record and we see no reason to disagree with the conclusion of the High Court regarding the Inspector entertaining the application under Section 26(7) specially in view of the fact that in the Manual on H.T. Consumers Metering published by the Central Board of Irrigation and Power regarding the potential transformer with relation to salient feature of metering equipment's its is stated as under:-

> "(i) The metering equipment's consist of CT and PT units For LT meters (i.e., for 3 phase 4 wire) only three single phase VTs are required. For HT metering 3 phase PT and two CTs in R & B phases are required. CTs and PTs or only CTs for L metering are to be tested for their correct polarity and ratio as per their terminal markings and name plate details respectively, beside their insulation resistance etc. since the CT and PT ratios have a direct relation with the consumption recorded by a meter."

8.It is clear that the only function of the PT in a given case like the present where the power is being supplied to the respondent at 11000 Volt, is to reduce it to 110 Volt so as to enable the meter to record the amount of power which is consumed by the industry, to make it common ground that the existing meter could not record the power consumed unless there was stepping down of the voltage from 11000 to 110.This stepping down was done by the PT. It is also not in dispute that after the recording of the consumption by the meter the power, which was reduced from 11000 to 110 Volt, is not used by the respondent. This clearly shows that the only function of the PT was to enable the ascertaining or regulating of the amount of energy supplied to the respondent This instrument namely the PT has, therefore, to be regarded as a meter in view of the provisions of sub-section (7) of Section 26 and the second proviso, in particular, and therefore the High Court was right in coming to the conclusion that the Electrical Inspector had the jurisdiction to exercise his powers under Section 26(7) of the Act. The order of the appellate authority, therefore, was rightly set aside.

9.The High Court, however, was not justified in issuing a direction that the appeal should be heard by a technical hand and by a person other than the Energy Secretary. Under Section 36, sub-section (2) an appeal which is filed against the order of the Electrical Inspector has to be heard by the Government, who may by a general or special order, direct it to be heard by an Advisory Board. Who is hear the appeal is for the Government to decide and therefore a direction indicating as to who in the Government should hear is ordinarily not in conformity with the provision of Section 36(2) and was not called for on the facts and in the circumstances of this case. Therefore, the judgment, of the High Court to this extent cannot be sustained.

10.The High Court also overlooked the fact that the respondent had secured a favorable order from the Civil Judge, Ghaziabad on its own giving an undertaking that he would pay the amount demanded by the respondent if the electricity is ordered to be reconnected. The undertaking so given formed part of the order when the said application was accepted and reconnection directed. In view of the conduct of the respondent, who of course had reserved its right to take recourse to arbitration as it disputed the demand of the appellant, the High Court ought to have put the respondent to terms while directing the hearing of the appeal. In our opinion, the respondent cannot be absolved of its obligation to pay the amount demanded, as agreed by it in the undertaking which it had furnished to the Civil Judge, Ghaziabad. We accordingly direct that the appellant would be entitled to realise the amount outstanding as per the demand dated 20th January, 1993.We are informed that a part of the demand has paid inasmuch as 5 out of 12 cheques which were tendered were encashed and for the balance amount a Bank guarantee has been furnished. The appellant will be at liberty to encash the said Bank guarantee. The direction of the High Court remanding the case to the appellate authority for decision on merits is upheld. If the appeal is dismissed the respondent would be entitled to refund of the excess amount paid by it but if ultimately the whole or part of the demand raised by the appellant is upheld then the respondent will be liable to pay interest. Similarly, if the appeal is dismissed the respondent will be entitled to interest on the amount to be refund to him. The rate of interest in either case will be 24%.Both the appeals are disposed of. There will be no order as to costs.