

MYSORE HIGH COURT

Gadag Betgiri

Vs

Electrical Inspector

Writ petn. No. 318 of 1959

(A.R. Somnath Iyer and B.M. Kalagate, JJ.)

18.09.1961

JUDGMENT

A.R. Somnath Iyer, J.

1. In this application for certiorari, the petitioner which is a Municipal Borough established under the Bombay Municipal Boroughs Act, asks us to quash the decision given by the Electrical Inspector to the Government of Mysore on April 1, 1959 in a dispute referred to him by the petitioner under Section 26 (6) of the Indian Electricity Act, 1910.

2. Respondent 2 in this application is a licensee supplying electrical energy to the consumers within the limits of the petitioner Municipal Borough under Part II of that Act. The petitioner is one of the consumers to whom respondent 2 has been supplying energy, principally for the illumination of streets. There were disputes between the petitioner and Respondent 2 in the year 1958 in regard to the rates chargeable and in regard to the manner of collection of the amounts due by the Petitioner. On December 23, 1958 the petitioner asked the Electrical Inspector who is respondent 1 before us to decide a dispute which had, according to it, arisen between the petitioner and respondent 2. This reference was made in the form of a letter and it reads:-

"The licensee has fixed 24 Single -Phase Meters for street lights at sight centres, i.e., three meters on one single board at each centre. General Consumer Section fuse and the Section-fuses for street lights are all installed on one and the same pole. In spite of repeated demands and reminders from the Municipality and several warnings from the authorities concerned, the licensee has not cared to supply even to this day the information regarding the different public lamps brought under different meters, together with their wattage etc. The Municipality has, therefore, every reason to believe and, in fact believes, that the licensee has manipulated and is manipulating the readings of the meters for street lights by connecting other loads which are not meant for them. Hence,

the Municipality refuses to recognise the readings recorded by the alleged meters as correct and genuine. Under the circumstances, the Municipality has withheld and refuses to pay the alleged street light bills of the licensee, i.e., Messers. Manvi Bros. Gadag, till the whole matter is finally decided according to law.

Fees, if any, for registration and decision of the disputes and differences referred to above shall be remitted, after hearing from you."

3. The Electrical Inspector refused to decide the dispute referred to him on the ground that that dispute did not fall within Section 26(6) of the Act. He was of the view that the allegation made by the petitioner against respondent 2, was in substance an allegation of fraud in regard to which the petitioner was bound to seek the adjudication of a Civil Court in the ordinary way.

4. The petitioner asks us to quash that decision and seeks a mandamus directing the Inspector to decide the dispute referred to him.

5. The decision of the question arising in this case rests entirely on the construction to be placed on the provisions of Section 26(6) of the Act. Before referring to the provisions of that sub-section, it would be necessary to set out the provisions of sub-sections 1 and 4 of that section. They read-

"26(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 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.

4. The licensee or any person duly authorized 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 referred is so hired as aforesaid, all reasonable expenses of and incidental to, such inspecting, testing, taking off and removing in all, 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 Electric Inspector, and the decision of such Inspector shall be final."

6. There is no allegation made by the petitioner in this case that there was any mechanical defect or fault in the meter installed under Section 26(1) for the supply of electrical energy. It could be seen from the letter addressed to the Inspector by the Petitioner that respondent 2 was accused of

having manipulated the readings of the meter by connecting other loads not meant for the petitioner. In other words, the accusation was that respondent 2 allowed the meter to register electrical energy supplied not only to the petitioner but also in other consumers with the intention of recovering the charges of such supply from the petitioner in excess of what was legitimately due by it. This was therefore a case in which there was a dispute between the petitioner and respondent 2 in regard to the accuracy of the readings taken by respondent 2 with the assistance of the meter installed. So it was that the letter addressed by the petitioner to the Inspector referred to Section 24 of the Act as the section under which the dispute was referred to him.

7. Section 24 reads:-

"24(1) Where any person neglects to pay any charge for energy or any sum, other than a charge for energy, due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days' notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer.

(2) Where any difference or dispute has been referred under this Act to an Electric Inspector before notice as aforesaid has been given by the licensee, the licensee shall not exercise the powers conferred by this section until the Inspector has given his decision.

8. It is manifest that the intention of the petitioner in asking for a decision of the Inspector on the question referred to in that letter addressed by it to the Inspector was to prevent respondent 2 from cutting off the supply of electrical energy pending adjudication by the Inspector of the dispute referred to him. But although the petitioner referred to Section 24 (2) of the Act in this letter to the Inspector, Mr. Krishna Rao has made it very clear to us on behalf of the petitioner that the reference was made to the Inspector under Section 26 (6) of the Act.

9. The question is whether a dispute like the one referred to in the letter addressed by the petitioner to the Inspector is one on which the Inspector could make an adjudication under Section 26(6).

That sub-section reads-

"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 Electric Inspector, or by a competent person specially appointed by the State Government in this behalf; and, where the meter has, in the opinion of such Inspector or person, ceased to be correct, such Inspector or person shall estimate the amount of the

energy supplied to the consumer or the electrical quantity contained in the supply, during such time as the meter shall not, in opinion of such Inspector or person, have been correct; and where the matter has been decided by any person other than the Electric Inspector, an appeal shall lie to the Inspector, whose decision shall in every case be final; but, save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity."

10. Mr. Krishna Rao does not dispute that what may be decided by an Inspector or the other authority referred to in sub-section (6) is the correctness of the meter referred to in Section 26 (1). That, is the only question, it is obvious, which can be decided under Section 26 (6).

11. Mr. Krishna Rao however urges that the accusation made by the petitioner against Respondent 2 is for the purpose of Section 26 (6) an accusation that respondent 2 has installed an incorrect meter and that therefore it was the duty of the Inspector in this case to deal with the accusation on its merits and decide it. The argument advanced before us was that if respondent 2 allowed the electrical energy supplied to the petitioner to pass through the meter installed by him under Section 26 (1), and in addition so manipulated the supply lines that it also registered the electrical energy supplied to other consumers, since the meter registered not only the electrical energy consumed by the petitioner but also what was consumed by the other consumers, it ceased to be a correct meter, thereby attracting the provisions of Section 26 (6).

12. The answer to the question arising in this case rests on the interpretation to be placed on the words "where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct" occurring in sub-section (6).

13. If it could be said that although a meter is mechanically sound and registers the energy supplied to a particular consumer correctly, it is not a correct meter because the licensee supplying the electrical energy to that consumer also allowed that meter to register electrical energy supplied to another consumer, then alone could the contention advanced by Mr. Krishna Rao succeed. In other words, what is contended is that the meter in this case although mechanically correct became incorrect since it was allowed by the licensee to register, in addition to the electrical energy supplied to the petitioner, that supplied to others.

14. Now sub-section (1) of Section 26 requires that in the absence of an agreement to the contrary, the electrical energy supplied to a consumer shall be ascertained by means of a correct meter. The requirement of that sub-section is that the meter should be correct in the sense that it performs its functions correctly, correctly recording the quantity of electrical energy passing through it. If the meter is able to give accurate readings in that way, it is undoubtedly a correct meter; otherwise it is not.

15. It seems to me that the expression "correct" occurring in sub-section (6) has to be similarly understood. What the Inspector may decide under sub-section (6) is whether or not the readings

obtainable from the meter are accurate and whether the meter is faulty or mechanically defective, producing erroneous readings. That is the limited adjudication which, in my opinion, an Inspector or other authority functioning under sub-section (6) may make under its provisions.

16. In the *Great Western Ry. Co. v. Bailie*¹, the question which arose for decision was, whether a weighing machine which was installed by a railway company and which had been so out of repair that, when anything was weighed by it, the weight appeared to be four pounds more than was really the weight, was a correct weighing machine.

¹(1864) 34 LJMC 31

Their Lordships of the Queen's Bench found no difficulty in coming to the conclusion that it was not. On p.34 of the report this is what Crompton, J. observed :

"Now, the machine in question showed a weight of 4 Lb. as against the passengers or customers; the object of the act of parliament was to prevent people from keeping in their shops or places of business machines for the purpose of weighing, which would show an unjust weight; nobody supposes that it was kept fraudulently by the company for the purpose of defrauding the passengers, but the act intended that they should not keep such a false machine as might lead to mischief if it was improperly used. It is said that it might be easily made right, but the same might be said in every case of a complaint against a person for keeping false scales, that directions had always been given to the servants that an allowance was to be made, and that the scales were to be properly and fairly used. The intention was, that the scales should not be kept in such an incorrect state as that they might be improperly used."

17. In my opinion, the legislative intent underlying Section 26 (6) of the Act is similar. The only question into which the Inspector or other authority functioning under that sub-section might investigate is, whether the meter is a false meter capable of improper use or whether it registers correctly and accurately the quantity of electrical energy passing through it. If, in that sense, the meter installed by respondent 2 in this case was a correct meter as it undoubtedly was and as it has been admitted to be, the fact that respondent 2, even if what the petitioner states is true, so manipulated the supply lines that more energy than what was consumed by the petitioner was allowed to pass through the meter, would not render the meter which was otherwise correct, an incorrect meter.

18. The view that I take derives support from the explanation occurring in sub-section (7) of Section 26 that a meter shall be deemed to be "correct" if it registers the amount of energy supplied, or the electrical quantity contained in the supply, within the prescribed limits of error. This explanation makes it abundantly clear that if the meter registers the amount of electrical energy supplied within the prescribed limits of error, it shall be deemed to be a correct meter. Since there was no allegation in this case that the meter was not registering the amount of energy supplied within the prescribed limits of error, it was impossible for the petitioner to contend

before the Inspector that the meter itself was an incorrect one.

19. The explanation "correct" also occurs in sub-section (4) which provides for the removal, testing and taking off of a meter which is otherwise than correct. That sub-section(4) provides for the removal, testing and taking off of a meter indicates that what is to be examined is the mechanical condition of the meter, for which an investigation would be necessary into the causes for the inaccurate readings recorded by it.

20. This was, therefore, not a case in which the Inspector could do anything under Section 26 (6) of the Act, since admittedly the meter registering the electrical energy supplied to the petitioner was in perfect condition, capable of registering accurately within the prescribed limits of error, the electrical energy supplied to the petitioner. The Electric Inspector, therefore, rightly declined to exercise jurisdiction under Section 26 (6) of the Act.

21. This application, therefore, fails and is dismissed with costs of respondent 2 - Advocate's fee being fixed at Rupees one hundred (Rs.100/-).

Kalagate, J.

22. I agree.

Application dismissed.