

MADHYA PRADESH HIGH COURT

M. P. Electricity Board

Vs.

Chhaganlal

Civil Revn. No. 316 of 1978

(U.N. Bhachawat, J.)

29.05.1980

ORDER

U.N. Bhachawat, J.

1. This is a revision by the defendant against the order dated 12th December, 1977 of the Court of Civil Judge Class II, Bilaspur in Civil Suit No. 208-A of 1976.
2. The revision has arisen out of the suit filed by the plaintiff/non- applicant herein, for a declaration that the defendants are not entitled to recover Rupees 1,688.06 paise as the energy charges from the plaintiff and for a perpetual injunction restraining the defendants from disconnecting the electric connection of the plaintiff for non-payment of the said amount.
3. The case of the plaintiff, as set out in the plaint, was that since the installation of electric service connection Number IP/72, 30 M.P. on the Oil Mill premises of the plaintiff at Bilha, it was being regularly checked by the officials of the defendants and was always found to be in proper order and the defendants were accepting the payment of monthly bills for the consumption of the electrical energy from the plaintiff according to the consumption of the energy registered by the meter, read, noted and signed by the officials of the defendant; that demand by the defendants vide their supplementary bill, dated 15-9-1976, for consumption of energy from the date of the installation on the ground that the meter was defective and not registering correct consumption, is illegal; there is no defect in the meter and as such the threat of the defendant to disconnect in case of default of payment of the said bill is also unauthoritative.
4. The defendant while resisting the suit of the plaintiff raised a preliminary objection

that the suit of the plaintiff was not maintainable for the reasons that :-

(a) the plaintiff did not comply with the condition precedent of depositing the suit amount as required per Section 5(2) of the M.P. Electrical Undertaking Dues Recovery Act, and

(b) the dispute is regarding the defect in meter and Section 26(6) of the Indian Electricity Act, 1910 (hereinafter referred to as 'the Electricity Act') provides for settlement of such dispute by the arbitration of the Electrical Inspector.

It may be mentioned that the trial Court rejected the preliminary objection on both the counts. The finding with regard to the non-maintainability of the suit on account of non-compliance with provisions of Section 5(2) of the Recovery Act is not challenged by the learned counsel for the applicants for different reasons; but all the same it is not necessary to deal with that question. The objection regarding the maintainability on account of Section 26(6) of the Electricity Act has been dismissed by the trial Court holding that this section is not attracted as "the pleadings of the parties in the suit in this connection are amply clear that there was no defect in the meter but the defendants alleged that there was defect in (its) using. Therefore, this naturally does away with the necessity of referring the matter to the Electrical Inspector."

5. The submission of the learned counsel for the defendants was that according to the pleading of the parties unequivocally the dispute between the parties is on the question whether the meter was defective and not recording correct consumption of energy; and therefore, Section 26(2) of the Indian Electricity Act was attracted and therefore reading Sections 32 and 33 of the Indian Arbitration Act along with Section 46 of the Arbitration Act a Civil suit is barred.

6. The argument of the learned counsel for the plaintiff in counter was that the dispute is not with regard to the defect in meter so as to attract the provisions relating to arbitration contained Section 26(6) of the Electricity Act. His further argument was that even on the assumption that the dispute was relating to the defect in the meter, the only course available to the defendants by virtue of Section 26(6) of the Electricity Act was to have made an application under Section 34 of the Arbitration Act without having participated in the proceedings, that having not been done by the defendants, the suit has to proceed. He further submitted that Sections 32 and 33 of the Arbitration Act are not attracted as the plaintiff has not made averment so as to solicit a decision

upon the existence, effect or validity of an arbitration agreement or award. His submission was that none of the ingredients required to attract Section 32 of the Arbitration Act is present in the pleading of the plaintiff nor of the defendant.

7. To appreciate the questions raised, it is advisable to set out Section 26(1) and (6) of the Electricity Act herein below :-

"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 meter, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter; (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 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."

The significant expressions relevant for the purpose in the fore quoted sub-sections respectively are 'the supply shall be ascertained by means of a correct meter' and "when 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;".

8. It is in the light of the fore quoted sub-sections that from the pleadings of the parties it has to be ascertained whether the difference or dispute between the parties is as to whether the meter "is or is not correct." Therefore, I would like to set out the relevant part of the pleadings of the parties :-

"Plaint; (6) That on 17-9-1976, the plaintiff received by registered post a supplementary bill dated 15-9-1976, sent by the M.P.E.B. Vide this bill, the

plaintiff has been asked to pay an additional amount of Rs. 1,482.50 N.P. as per supplementary bill vide peon book No. 496 dated 15-9-1976 as per order of the defendant No. 2, the Divisional Engineer No. DEB/Rev/Tft/Bilha/14766. Bilaspur dated 14-9-1976. It is alleged by the defendants that the connections of the meter installed at the plaintiff's premises were found wrong and it has been found that the meter was recording only one third of the actual consumption. Therefore since the date of the connection itself in December 1973, the plaintiff has been held liable by the defendants for the payment of additional amount of Rs. 1,482.50 N.P.

xx xx xx xx

(9) It is submitted that the meter has been installed by the officers and the employees of the defendants and the same was correctly installed as per their own report. The meter and the meter seals were further regularly checked and found correct each month by the staff of the defendants."

"Written Statement; (3) The allegations in para 5 of the plaint that the plaintiff was not present at the time of inspection by the D.E. (Vig) Jabalpur are denied, the rest of the allegations are admitted. On inspection it was detected that 'Y' potential was not given to meter and that meter was moving on one phase only with 1KM 1 amp load, and as such the meter was recording only 1/3rd consumption of energy actually consumed by the consumer for his Oil Mill; the D.E. (Vigilance) referred the case to the D.E. (Testing) Bilaspur for his decision; on receipt of his opinion the correct consumption was calculated and supplementary bill for the balance amount was sent to the plaintiff for the period from the date of connection referred to in para 6 of the plaint.

(4) The allegations in para 6 of the plaint are denied. It is submitted that the supplementary bill was issued to the plaintiff for the actual consumption of electricity. There was no defect in the meter as alleged but the meter was recording only one-third of the actual consumption because of defective wiring".

In substance, the averments in the plaint amount to this that the meter was correct and registering correct consumption whereas, in substance, the pleading of the defendants is to the effect that there is not defect in the meter; the meter could register correct consumption of the energy but for the defective wiring. The grievance of the defendant is that as 'Y' potential was not given to meter and so it was moving on one phase only with 1 KM 1 amp load and, therefore, it was recording only one third

consumption of the energy that was actually consumed.

9. In the light of these averments in the pleadings, the question for decision that arises is whether when a meter does not record the actual energy not because of the defect in meter as such, but because of the defective wiring, Section 26(6) of the Electricity Act is attracted?

10. The word "correct" is used in sub-section (1) as well as in sub-section (6) of Section 26 of the Electricity Act. The context in which this word is used in both these sub-sections, same meaning has to be assigned to it. It is not a word of art and, therefore, it has to be understood in its ordinary meaning. In the common parlance, the expression "meter is correct" would mean that there is no fault or defect in the meter and the expression "meter is not correct" would mean that the meter is defective - there is fault in the meter. If the pleadings of the parties are judged in this light, on defendants' own showing, in paragraph 4 of the written statement, there was no defect in the meter; the fault is in wiring due to which the total energy that was consumed by the consumer-plaintiff did not pass through that meter. In other words, because of the defective wiring, i.e., non-supply of 'Y' potential to the meter. This defect cannot be held to be a defect in meter. This view is buttressed from the Explanation to sub-section (7) of Section 26 of the Electricity Act, the relevant part whereof reads as under :-

"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,....."

The question who is responsible for the defective wiring is not material for the purpose of Section 26(6) of the Act. Even if it is a result of consumer's manipulation that the actual energy consumed is not allowed to pass through the meter which has no fault, it cannot be said that the meter is not correct so as to attract Section 26(6) of the Electricity Act. The view taken by me hereinabove is in line with the view taken by the Division Bench of the Mysore High Court in *Gadag Betgiri Municipal Borough v. Government of Mysore*,¹ The relevant portions of this decision are set out herein below (At p 211) :-

"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.

xx xx xx xx

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 Electrical Inspector, therefore, rightly declined to exercise jurisdiction under Section 26(6) of the Act."

11. Because I have taken a view that there is no dispute about the correctness of meter. Section 26(6) of the Electricity Act is not attracted and this point is enough to dispose of this revision. It is not necessary, in the light of this view, to go into the question whether the suit is barred under Sections 32 and 33 read with Section 46 of the Arbitration Act.

12. In the result, the revision is dismissed. I, however, make no order as to costs.

Revision dismissed.

Cases Referred.

1. AIR 1962 Mysore 209