

RAJASTHAN HIGH COURT

R. S. E. Board

Vs.

Ram Bhakta Hanuman Oil Industries

S.B. Civil First Appeal No. 33 of 1990
(Gopal Krishan Vyas, J.)

19.05.2009

ORDER

Gopal Krishan Vyas, J.

1. In this civil first appeal filed under Section 96, C.P.C., the appellant-Rajasthan State Electricity Board has challenged the judgment dated 26-10-1989 passed by the Addl. District Judge, Rajsmand in Civil Original Case No. 12/ 1986, whereby, the learned trial Court decreed the suit filed by plaintiff-respondent and quashed the recovery of bill issued to the respondent by the appellants in the sum of Rs. 12,277.08 ps. holding the same illegal and further restrained the appellants-defendants from disconnecting the electricity supply to the respondent-plaintiff industry. The trial Court further passed order that the defendant-department will be free to refer the matter to the Electrical Inspector under Section 16 (6) of the Indian Electricity Act and after decision of the Electrical Inspector, in the event of such decision, the defendant-department will be free to send supplementary bill.

2. Brief facts of the case are that the suit was filed by the plaintiff- respondent Ram Bhakta Hanuman Oil Industry before the trial Court, in which, it was stated that it is doing business of extracting oil of Ratanjot and, for that purpose, it has obtained electricity connection from the defendant-Board and plaintiff is regularly depositing the payments of bills issued by the defendant-department towards consumption of electricity by the plaintiff. In the plaint, it is further stated that on 10-3-1986, a bill was issued by the appellant-defendants in which Rs. 2,520.60 ps. were shown as current electricity consumption and Rs. 12,277.08 ps. were shown as outstanding amount. The total amount shown was Rs. 14,798.68 ps.

3. After receiving the aforesaid bill, the plaintiff went to the office of the appellant-

department for clarification and made request that he is regularly depositing the payments of bills sent to him, whereupon, it was told by the appellants that the said amount is average charges. According to the respondent-plaintiff, he made request to reduce the bill or to correct the bill but it was denied by the defendant No. 3. Thereafter, he approached the higher officials of the department but they showed their inability and asked the plaintiff to make payment of the said bill. The plaintiff-respondent, however, deposited amount of Rs. 2,520/60 ps. towards current charges of electricity consumption and for the rest of the amount he made request that he may be heard personally before recovery of the said amount; but, the request was not acceded to and he was directed to deposit the complete amount otherwise his electricity connection would be disconnected.

4. After filing the suit before the trial Court, the appellant-defendants filed written-statement and it is said in the reply that the bill sent on 10-3-1986 for the current charges and average charges is in accordance with law and specifically it is stated that the electricity meter which is fixed in the premises of the plaintiff industry is the property of the consumer, therefore, as per general condition No. 19-A(II) of the Supplies and Scale of Miscellaneous Charges General Conditions, 1964, if the meter is property of the consumer, then, he is under obligation to take proper care and if any default and mistake arises, the consumer himself is responsible for the same, therefore, impugned bill was rightly sent in accordance with general condition No. 19-A (II). In the reply, it is also stated that no error has been committed by the Electricity Department for sending the average bill.

5. After filing the written-statement by the appellant-defendants, on the basis of the pleadings of the parties, the trial Court framed the following issues for adjudication:

(Vernacular matter omitted - Ed.)

6. Thereafter, the learned trial Court proceeded to record evidence of both the sides. The respondent-plaintiff produced himself as P.W. 1 to prove his case and appellants, in defense, produced five witnesses viz. D.W. 1 Rajkumar Singh, D.W.-2 Govind Singh, D.W. 3 Umashankar, D.W.-4 G.S. Manwani and D.W.-5 Takhtmal. The trial Court, thereafter, proceeded to decide the matter issue- wise.

7. The trial Court after considering the entire evidence on record decided all the three issues against the defendants and in favor of the plaintiff- respondent and decreed the suit of the plaintiff vide impugned judgment dated 26-10-1989.

8. Learned counsel for the appellants vehemently argued that the finding of the trial Court with regard to issue No. 1 is totally erroneous because the meter which is installed in the respondent factory belongs to the consumer and, as per rules, if the meter belongs to the consumer, then, liability to maintain correctly the same also lies with the consumer. For the said purpose, learned counsel for the appellants invited attention of the Court towards general condition No. 19-A (II) which provides that where the meter is property of the consumer, then, he shall keep the matter correct and, in default, the Board may cease to supply the electricity after giving seven days" notice. Therefore, the learned trial Court has committed an error while passing the decree in favor of the respondent-plaintiff which is in contravention of Condition No. 19-A (II) of the Supplies and Scale of Miscellaneous Charges General Conditions, 1964.

9. Further, it is argued by learned counsel for the appellants that the plaintiff-respondent intentionally used to tamper with the meter and the vigilance-party found that the meter was faulty and accordingly asked the plaintiff to install new meter. In respect of the total period for which the meter was defective, bill for average charges was prepared as per Condition No. 19 (VII) of the General Conditions, in which, it is provided that in the event of meter being out of order for any reason during any month/months the consumption for that month/months will be formally determined on the basis of average consumption over the preceding three months" period which becomes payable by the consumer. In case, however, the meter becomes out of order within three months of releasing the connection, consumption for the period during which the defective meter remained on the premises will be determined on the basis of the average consumption over the following three months after the correct meter is installed. It is, therefore, vehemently contended that no illegality was committed by the department while raising the demand for payment of the average bill.

10. Learned counsel for the appellants contended that the trial Court gravely erred while holding that Section 26 (6) of the Indian Electricity Act applies in the facts and circumstances of the case because said section applies only where there is any difference or dispute as to whether any meter is correct or not, then, the matter shall be decided on application by either party by the Electrical Inspector; but, the plaintiff-respondent never raised such difference or dispute regarding the meter, therefore, it cannot be said that there was any dispute regarding the correctness of the meter. In this case, if the respondent-plaintiff was of the opinion that the meter was not correct, then, he should have filed application before the Electrical Inspector because the

burden lies upon the consumer if the meter was defective. However, learned trial Court has committed error while arriving at the finding, therefore, the judgment and decree deserves to be set aside.

11. Per contra, learned counsel for the respondent-plaintiff vehemently argued that the dispute with regard to correctness of the meter was raised by the appellant-defendants, therefore, they were under obligation to refer the matter to the Electrical Inspector in accordance with Section 26(6) of the Indian Electricity Act, but, without regard to Section 26(6), straightway, the average bill has been sent and plaintiff-respondent was directed to deposit the huge amount and he was threatened by the department that his electricity connection will be discontinued. Learned counsel for the respondent vehemently argued that as per the judgment of the Hon^{ble} Supreme Court in *M. P. E. B. and others v. Smt. Basantibai*,¹ if the dispute relates to whether the electricity meter is correct one or it is faulty and not recording the actual electricity consumption in running oil mill of the consumer, then, it is to be decided by the Electrical Inspector as per Section 26(6) of the Indian Electricity Act, which is mandatory in nature. The trial Court while deciding the matter has passed the judgment and decree in which it has been held that bill of recovery of Rs. 12,277.08 paise sent by the appellant- defendants to the plaintiff respondents is illegal and he is not bound to pay the said amount, so also, on the basis of not depositing the said amount, his electricity connection cannot be discontinued. Further, liberty has been granted to the appellant-department to refer the matter to the Electrical Inspector if according (sic) with Section 26(6) of the Act and further liberty has been granted to recover the amount after due adjudication by the Electrical Inspector. Therefore, no error has been committed by the learned trial Court while deciding the suit in favor the plaintiff respondents. The findings arrived at by the trial Court are based on cogent evidence and record of the case, which does not require any interference and, so also, it is not perverse in any manner, therefore, this appeal may be dismissed with cost.

12. I have considered the rival submission made by both the parties and gone through the record of the case.

13. In this case, it is not disputed by the appellant defendant that respondent plaintiffs is regularly depositing the amount of bills for electricity consumption. The case of the defendants is that the meter installed in the industry of the respondent-plaintiff was the consumer's property and was to be maintained by the consumer and he has not maintained the meter and meter was found to be defective, therefore, while taking recourse to Section 19-A(2) and Section 19(7), the average bill was sent. In my

opinion, if electricity Act provides for certain procedure for determination of the fault then appellant-defendants are under obligation to take recourse to the provisions of the Act. In this regard, Section 26(6) of the Act is required to be seen, which is as follows:

"26 (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 the either party, by an Electrical Inspector; and where the matter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of 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 has been correct; but save as aforesaid, the register of 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."

14. Upon bare perusal of the above Section 26(6) of the Act, it is abundantly clear that in case of dispute with regard to defective meter, adjudication is required to be made by the Electrical Inspector and either party can file application for such adjudication before the Electrical Inspector. Here, in this case, the appellant-defendants are raising voice that meter of the consumer was defective. The plaintiff-respondent was regularly depositing the amount of bills, which is not disputed by the appellant-defendants. Therefore, obviously, if the appellant-defendants were raising voice that meter of the consumer is defective then after issuing the notice the matter was to be referred to the Electrical Inspector for adjudication but it was not done and, straightway, average bill was sent to the plaintiff-respondent. In *M. P. E. B. v. Smt. Basanti Bai*, (AIR 1988 Supreme Court 71) (*supra*), the Hon"ble Apex Court has categorically held that dispute whether meter in question is correct one or faulty is to be decided by the Electrical Inspector in accordance with Section 26(6) of the Act. Paras 10 and 13 of the said judgment run as follows:

"10. In the instant case it appears from the report of the Assistant Engineer of the State Electricity Board that one phase of the meter was not working at all, so there is undoubtedly a dispute as to whether the meter in question is correct one or a faulty meter and this dispute has to be decided by the Electrical Inspector whose decision will be final. It is also evident from the said provision that till the decision is made no supplementary bill can be prepared by the Board

estimating the energy supplied to the consumer, as the Board is not empowered to do so by the said Act. It is pertinent to refer in this connection to the observations made in the case of *Gadag Betgiri, Municipal Borough, Gadag v. Electrical Inspector, Govt. Electrical Inspectorate, Govt. of Mysore*,² as follows:

"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."

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"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 subsection 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."

13. We are, however, unable to accept this contrary view as it is obvious from the provisions of Section 26, sub-section (6) of the said Act that dispute whether a meter is correct or faulty would come under the said provisions and not the dispute regarding tampering of meter. In our view, the view taken about the scope of Section 26(6) in the decisions cited above are correct. In the instant case the dispute relates to whether the meter is correct one or it is faulty not recording the actual energy consumed in running the oil mill of the respondent. So this dispute squarely falls within the provisions of the said Act and as such it has been rightly found by the High Court that it is the Electrical Inspector who alone is empowered to decide the dispute. If the Electrical Inspector comes to the finding that the meter is faulty and due to some defect it has not registered the actual consumption of electrical energy, then the Inspector will estimate the amount of energy consumed and will fix the amount to be paid in respect of such energy consumed within a period not exceeding six months. The appellant No. 1 is not competent pending the determination of this dispute by the Electrical

Inspector to issue the impugned notice threatening disconnection of supply of electricity for non- payment of supplementary bill prepared and sent by it. The Board is also not competent to prepare and send a supplementary bill in respect of energy consumed by the respondent from the one phase which stopped functioning and did not record any consumption of energy. For the reasons, aforesaid we affirm the order of High Court and dismiss the appeal without costs."

15. Upon perusal of the above judgment, so also, judgment impugned in this appeal, it is abundantly clear that learned trial Court has rightly decided the matter and has rightly restrained the Electricity Board to recover the amount of average bill and further restrained the defendants from discontinuing the electricity connection. So also, it has rightly granted liberty to the appellant-defendants to take recourse to Section 26(6) of the Act to refer the matter to the Electrical Inspector for adjudicating the matter of correct or faulty meter and thereafter, recover any amount from the plaintiff-respondent. In my opinion, the finding of the learned trial Court does not require any interference in view of the fact that the matter was not referred to the Electrical Inspector by the appellant Board and straightway the average bill was sent on the ground that the meter was faulty.

16. In this view of the matter, this appeal has no force and the same is accordingly dismissed. Judgment and decree passed by the trial Court is upheld.

Appeal dismissed.

Cases Referred.

1. AIR 1988 SC 71
2. AIR 1962 Mysore 209