

M.P.E.B. & Others vs Smt. Basantibai on 10 November, 1987

Equivalent citations: 1988 AIR 71, 1988 SCR (1) 890, AIR 1988 SUPREME COURT 71, 1988 (1) SCC 23, 1988 IJR 27, 1988 HRR 245, 1988 21 REPORTS 208, 1988 SCC(CRI) 23, 1988 BLJR 104, (1988) 1 CURLJ(CCR) 384, 1988 CRILR(SC MAH GUJ) 165, 1988 (1) UJ (SC) 44, 1988 UJ(SC) 1 44, 1987 5 JT 294, (1987) 4 JT 294 (SC), (1988) 1 LANDLR 175, (1988) 1 CIVLJ 325, (1988) JAB LJ 110, (1988) 2 LANDLR 325, (1988) 1 SCJ 20, (1988) 2 CURCC 93

Author: B.C. Ray

Bench: B.C. Ray, K.J. Shetty

PETITIONER:

M.P.E.B. & OTHERS

Vs.

RESPONDENT:

SMT. BASANTIBAI

DATE OF JUDGMENT 10/11/1987

BENCH:

RAY, B.C. (J)

BENCH:

RAY, B.C. (J)

SHETTY, K.J. (J)

CITATION:

1988 AIR 71 1988 SCR (1) 890

1988 SCC (1) 23 JT 1987 (4) 294

1987 SCALE (2) 985

ACT:

Indian Electricity Act, 1910 : Section 26(6)-Scope of-
Disputes regarding electricity meter-Jurisdiction of
Electrical Inspector to decide-Electricity Board-Whether
competent to issue supplementary bill for energy consumed
during pendency of dispute regarding inherent defect/fault
in the meter.

HEADNOTE:

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An electricity meter with three phases installed by

appellant No. 1 for running an oil mill owned by the respondent was burnt. This was brought to the notice of appellant No. 4. The respondent was directed to deposit a certain amount towards price of the meter and the meter connection charges, which the respondent complied, but the meter was not installed, nor electric supply connection restored. The respondent requested appellant No. 1 to restore electric supply by installation of another meter. However, appellant No. 1 sent a letter dated 4.3.1983 calling upon respondent to pay a sum of Rs.12,346.10 as per the attached supplementary bill dated 2.3.1983, prepared on the basis that the meter was not recording actual energy supplied and consumed, as it was running on two phases, since one of the three phases was not working, and threatening disconnection of supply without notice, for non-payment.

The respondent filed a writ petition in the High Court challenging the legality of the aforesaid letter and the supplementary bill.

On behalf of the appellants, it was contended that when the power connection was checked by an Assistant Engineer of the Board, it was found that out of three phases, one phase was not working, and body seal of the meter was intact and, therefore, respondent was informed that the bill should be revised due to non-working of one phase. It was alleged that respondent got the meter burnt, since it did not burn ordinarily, and the body seal of the meter was broken, and the meter tampered with subsequently in order to avoid any liability.

The High Court held that since the dispute, was as to whether the meter was or was not correct it had to be decided by the Electrical

891

Inspector, under sub-section (6) of s. 26 of the Indian Electricity Act, 1910 and so long as it was not decided, appellant No. 1 was not competent to prepare the supplementary bill or revised bill, and quashed the letter dated 4.3.83 and supplementary bill of 2.3.83, as illegal.

In the appeal by special leave it was urged on behalf of the appellants that the respondent committed fraud in breaking the body seal of the meter and running the same, and as such, the dispute did not attract the provisions of s. 26(6) of the Act and the dispute could not be decided by the Electrical Inspector.

Dismising the appeal,

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HELD: Under sub-section (6) of s. 26 of the Indian Electricity Act, 1910, it is only the dispute as to whether any meter referred to in sub-section (1) is/is not correct or it is inherently defective or faulty, not recording correctly the electricity consumed, which can be decided by the Electrical Inspector. [896A-B]

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 by the Act to do so. [896C-D]

A dispute regarding the commission of fraud in tampering with the meter and breaking the body seal is one outside the ambit of section 26(6) of the Act. An Electrical Inspector has no jurisdiction to decide such cases of fraud. [895H; 896A]

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 a correct one or a faulty one. This dispute, therefore, squarely falls within the provisions of the Act, and it has been rightly held 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

892

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. [896B-C; 897F-H; 898A-B]

It appears from the report of the Executive Engineer dated 17th February, 1983 that the body seal of the meter was intact at the time of inspection. He only found that the meter which was installed was closed on one phase. Therefore, there is no question of fraud in breaking the body seal of the meter. The story of so-called fraud was an after thought, and was not raised at any stage prior to the filing of the return in the High Court. [894E-F]

Gadag Betgiri, Municipal Borough, Gadag v. The Electrical Inspector, Government Electrical Inspectorate, Government of Mysore, AIR 1962 Mysore 209 and M. P. Electricity Board Jabalpur and another v. Chhanganlal, AIR 1981 M.P. 170 approved.

Abdul Razak v. M.P. Electricity Board, [1982] M.P.L.J. 22 overruled.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 716 of 1985.

From the Judgment and order dated 20.9.1984 of the Madhya Pradesh High Court in Misc. Petition No. 307 of 1983.

K.K. Venugopal, S.K. Gambhir and Sanjay Sareen for the Appellants.

C.P. Mittal and C.K. Ratnaparkhi for the Respondent. The Judgment of the Court was delivered by RAY, J. This appeal on special leave is directed against the judgment and order passed by the High Court of Madhya Pradesh on 20.9.1984 in Civil Misc. Petition No. 307 of 1983 allowing the writ petition and directing the respondents to reconnect and restore the electric supply by installing another meter.

The petitioner is a proprietor of Santosh Industries DII BC, Sector, Sanwar Road, Indore and she obtained service connection No. 192352 of 30 H.P. load for running the oil mill. The Madhya Pradesh Electricity Board, the appellant No. 1, who is the licensee installed a meter with three phases for ascertaining the amount of energy supplied and consumed by the petitioner under the aforesaid service connection. On February 18, 1983 the meter was burnt and this was brought to the notice of respondent No. 4, an Assistant Engineer of the Zone wherein the petitioner's industry is situated. On March 1, 1983 the petitioner was directed to deposit a sum of Rs.433 as price of the meter and Rs.44 for meter connection charges.

The sum was deposited on the same day but no meter was installed and the electric supply connection was not restored. A letter was sent by the petitioner to the respondent No. 1 requesting to restore the electric supply by installation of another meter. The State Electricity Board sent a letter dated 4.3.1983 calling upon the petitioner to pay a sum of Rs.12346.10 as per the supplementary bill dated 2.3.1983 sent alongwith said letter failing which the supply will be disconnected without notice. The basis of the supplementary bill was that the meter was not recording actual energy supplied and consumed as it was found that one phase out of the three phases was not working and the meter was running two phases only.

The petitioners filed a writ petition No. 307 of 1983 challenging the said letter dated 4.3.1983 as well as the supplementary bill dated 2.3.1983 on the ground that the demand made on the basis of the supplementary bill was illegal.

A return was filed by the respondent to the effect that on 17.2.1983 the power connection was checked by an Assistant Engineer of the respondent Board and it was found that out of three phases one phase was not working. The body seal of the meter was found to be intact. It has also been stated therein that the petitioner was informed that the bill should be revised due to non working of one phase as found at the time of checking. It has also been submitted that the petitioner got the meter burnt as the meter according to respondent did not burn ordinarily. It was further alleged that body seal of the meter was broken. This tampering of the meter was alleged to have been done between 17 to 19 of February, 1983 in order to avoid any liability. The respondent further alleged that the petitioner's husband refused to sign the panchnama which was prepared on the spot.

The High Court of Madhya Pradesh after hearing the parties held that since the dispute relates to whether the meter is or is not correct has to be decided by the Electrical Inspector and so long the A said dispute is not decided, the respondent No. 1, Madhya Pradesh Electricity Board was not competent to prepare the supplementary bill or revised bill as the said power is entrusted to the Electrical Inspector under sub- section 6 of section 26 of the Indian Electricity Act, 1910 (Act 9 of 19 10). It has been further held that the alleged notice calling upon the petitioner to deposit the amount of supplementary bill before seeking reconnection or restoration of electricity supply was also not in accordance with the provisions of the Act. The letter dated 4.3.1983 issued by the respondent no. 1 as well as the supplementary bill of 2.3.1983 were quashed holding the same to be illegal. The question of fraud was not even intimated to the respondent consumer. It was raised for the first time in the return to the writ petition. It is an after thought. The respondents were directed to reconnect and restore the electricity supply by installing another meter.

Against this judgment and order the instant appeal on special leave has been filed. It has been urged by Mr. Venugopal, learned counsel appearing on behalf of the appellant that the respondent committed fraud in breaking the body seal of the meter and in burning the same and as such the dispute does not attract the provisions of the section 26(6) of the said Act. This dispute cannot be decided by the Electrical Inspector. In support of the submission our attention was drawn to the said provisions of the Act. It appears from the report of the Executive Engineer dated 17th February, 1983 that the body seal of the meter was intact at the time of inspection. He only found that the meter which was installed was closed on one phase. So the contention that there was fraud in breaking the body seal of the meter cannot be sustained. Moreover, it has been found that the question of fraud was raised at no stage prior to the filing of the return in the High Court. The said story of so called fraud was an after thought. Mr. Venugopal after seeing the report of the Assistant Engineer frankly submitted that he would not press the ground of fraud.

In order to decide the question whether the impugned notice dated 4.3.1983 can be issued by appellant calling upon her to pay the amount of supplementary bill as well as whether supplementary bill can be prepared by the Board when there is a dispute relating to question whether the meter is a correct meter or not, it is necessary to consider the relevant provisions of sub sections (1) and (6) of section 26 of the said Act. The said provisions are set out hereunder:

"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 the 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."

"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 meter 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."

It is evident from the provisions of this section that a dispute as to whether any meter referred to in sub-section (1) is or is not correct has to be decided by the Electrical Inspector upon application made by either of the parties. It is for the Inspector to determine whether the meter is correct or not and in case the Inspector is of the opinion that the meter is not correct he shall estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply during a period not exceeding six months and direct the consumer to pay the same. If there is an allegation of fraud committed by the consumer in tampering with the meter or manipulating the supply line or breaking the body seal of the meter resulting in not registering the amount of energy supplied to the Consumer or the electrical quantity contained in the supply, such a dispute does not fall within the purview of sub- section 6 of section 26. Such a dispute regarding the commission Of fraud in tampering with the meter and breaking the body seal is A outside the ambit of section 26(6) of the said Act. An Electrical Inspector, has, therefore, no jurisdiction to decide such cases of fraud. It is only the dispute as to whether the meter is/is not correct or it is inherently defective or faulty not recording correctly the electricity consumed, can be decided by the Electrical Inspector under the provisions of the said Act.

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 a 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. The Electrical Inspector. Government Electrical Inspectorate, Government of Mysore, AIR 1962 Mysore 209 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. "

x x x x x x x x "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 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."

This decision was followed in *M.P. Electricity Board, Jabalpur and another v. Chhanganlal*, AIR 1981 M.P. 170 where it has been observed:-

"Where an electric meter is not registering correct consumption of energy not because there is any defect in the meter but because the wiring is defective Section 26(6) will not be attracted and the meter not being defective the question of arbitration by Electrical Inspector will not also arise . "

A contrary view was however taken in the case of *Abdul Razak v. M.P. Electricity Board*, [1982] M.P.L.J. 22 where it has been held that:-

"About the fittings on the meter and tampering them in such a manner that the reading of the energy would not be correct, such a dispute in view of the language of section 26(6) read with Rule 3 of Schedule VI of the Electricity Act squarely falls within the jurisdiction of the Electrical Inspector.

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.

N.P.V.

Appeal dismissed.