

CASE NO.:
Appeal (civil) 4789 of 2007

PETITIONER:
Suresh Jindal

RESPONDENT:
BSES Rajdhani Power Limited & Ors

DATE OF JUDGMENT: 11/10/2007

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
J U D G M E N T
[Arising out of SLP(C) No. 14308/2006]
S.B. SINHA, J

1. Leave granted.

2. Appellant is a consumer of electrical energy. Respondent is a licensee. A meter for the purpose of recording consumption of electrical energy was installed at his premise. It was replaced by an electronic meter.

3. The electronic meter was tested by the officials of the respondent and it was found that the same was running fast by about +1.79% which is said to be beyond the BIS standard, as the meter installed in the premises was of Class-I category. He filed a writ petition before the High Court inter alia contending;

\0234. That the meter installed in the premises of the Petitioner was intact and OK and was recording the consumption as per Section 57 of the Electricity Supply Rules, 1956 and there was no percentage error in the recording of the consumption in the meter earlier installed by the agents of the Respondent in the premises of the Petitioner.

5. That the Petitioner believing the intention of the Respondent has permitted the Respondent to install the meter of their own choice believing that the meter which was installed in the premises of the Petitioner is of approved design and specification of ISI and also in accordance with the rules and regulations under the Electricity Act, 2003.\024

In the writ petition, the following prayers were made by him :

a. A writ, order or direction in the nature of a writ of mandamus, thereby declaring the acts of the officials of the Respondents as illegal and malafide in replacing the correct and working meter of the Petitioner by another meter in respect of electricity connection bearing K.No.2540F320018 installed for 134, First Floor, Sunder Nagar, Delhi.

b. A writ, order or direction in the nature of a writ of mandamus, thereby quashing the meter testing report prepared on 03/03/2005 in respect of electricity connection bearing K.No. 2540F320018 installed for 134, First Floor, Sunder Nagar, Delhi.

c. A writ, order or direction in the nature of a writ of mandamus thereby directing the Respondent to get the

meter of the Petitioner tested as per rule 57 of the Electricity Supply Rules 1956 through an independent agency or in any other manner as this Hon'ble Court deems fit in the facts and circumstances of the case.

d. A writ order or direction thereby directing the Respondent to calibrate, seal and install at the premises of the Petitioner, the electro mechanical energy meter of ISI make procured by the Petitioner in respect of electricity connection bearing K.No. 2540F320018 for 134, First Floor, Sunder Nagar, Delhi after replacing the existing meter.\024

4. The writ petition was dismissed by a learned Single Judge of the Delhi High Court by a judgment and Order dated 14.12.2005. A letters patent appeal was preferred thereagainst and by reason of the impugned judgment, the same has been dismissed. Appellant is, thus, before us.

5. Mr. Sanjay Parikh, learned counsel appearing on behalf of the appellant in support of the appeal, inter alia, would submit;

(i) Respondent being a licensee governed by the Indian Electricity Act, 1910 (hereinafter referred as \0231910 Act\024); the provisions of Electricity (Supply) Act, 1948 (hereinafter referred as \0231948 Act\024) or the subsequent Acts namely Delhi Electricity Reforms Act, 2000 (hereinafter referred to as \0232000 Act\024) or Indian Electricity Act, 2003 being not applicable, the High Court committed a serious error in passing the impugned judgment.

(ii) Rule 57 of the Indian Electricity Rules, 1956 whereupon reliance was placed by the respondents in their counter affidavit is clearly inapplicable and thus reliance placed thereupon by the High Court in this behalf was wholly unwarranted.

(iii) The tariff framed by Delhi Vidyut Board also did not confer any jurisdiction upon the respondents to remove the correct meter and replace the same by another correct meter.

(iv) The only provision which could have been taken recourse to for replacement of a meter being Section 26 of the 1910 Act and the same being not applicable in this case, the impugned Judgment cannot be sustained.

(v) Margin of error in the meter being 1.79% in one case and 3.79% in the other which is in excess of 1 per cent of error provided for in the proviso appended to Rule 57 of the Indian Electricity Rules, the appellant had a legal right to obtain a writ of or in the nature of mandamus directing the respondents not to rely thereupon for the purpose of calculating the amount of consumption of electrical energy recorded therein.

(vi) In any view of the matter, replacement of the meter having taken place prior to coming into force of the 2003 Act and the regulations framed thereunder, the High Court was wholly incorrect in arriving at its findings.

6. Mr. Arun Jaitley, the learned senior counsel appearing on behalf of the respondents, on the other hand, would principally rely upon Section 20 of the 1910 Act to submit that by reason thereof a general power has been conferred on the licensee to remove a correct meter and replace the same by another meter which records more accurately the actual consumption of electrical energy having regard to the development of technology and thus such an action, being de-hors provisions of Section 26 of the Act, would not be controlled thereby. Appellant being a consumer of electrical energy from Delhi Vidyut Board which was a State Electricity Board within the meaning of 1948 Act and the respondent being its successor in terms of 2000 Act and 2003 Act, the impugned judgment is unassailable.

7. The 1910 Act was enacted on 18th March, 1910.

8. The said Act regulated the terms and conditions of supply of electrical

energy to the consumers. Licensees in those days used to be private companies. Actual terms of the contract for supply of electrical energy by the licensees to its consumers were governed by the terms and conditions of contract entered into by and between the parties thereto. The said Act provide for powers and obligations of the licensee on the one hand as also the rights and obligations on the part of the consumers on the other. By reason thereof, licensees under the said Act being public utility concerns were bound thereby. It could exercise the statutory powers conferred upon it, which was otherwise not available under the common law or the terms of the contract entered into by and between the parties.

9. Section 20 of the Act confers power on the licensee to enter into the premises, inter alia, for the purpose of inspecting, testing, repairing or altering meters instituted in the premises of the consumers. The said provision ex-facie is not controlled by any other provision thereto. Section 21 of the Act empowers a licensee to prescribe any form of appliance in utilising energy supplied by him. All kind of utilisation of appliances is governed by the said provisions. The said provision has nothing to do with installation or testing or replacing any meter. Section 26 ensures installation of correct meter so that the consumption of electrical energy may be recorded. A meter can be installed either by the licensee or by the consumer. An obligation, thus, to keep the meter correct will be either on the licensee or the consumer, as the case may be. Sub-section (4) of Section 26 empowers the licensee to have access for the purpose of inspecting and testing the meters and for the said purpose the same could be taken off or removed.

10. In case however of any dispute or difference and in the event the meter installed in the premises of the consumer is found to be not correct, in regard to the quantum amount of reasonable expenses for the purpose of taking off or removal of the meter, the Electrical Inspector would be the sole authority to determine the same. The Electrical Inspector as a statutory authority was also empowered to enter into and determine the disputes and differences between the parties not only in regard to the correctness of the meter but also quantify the amount payable by the consumer to the licensee if he comes to the opinion that the meter has ceased to be correct subject of course to the condition that the same would not exceed the period of six months.

11. The principal question which arises for our consideration is as to whether the power conferred upon the licensee under Section 20 of the Act is controlled by Section 26 thereof. We would deal with the said question a little later.

12. We may now have a quick look at the provisions of the other statutes. The provisions of 1948 Act, which is a post-independence Act, cast a duty on the State to constitute a Board for the purpose of generation, transmission, distribution and supply of electrical energy. It is a body corporate and can sue and be sued in its own name. Section 26 of the 1948 Act provides for conferment of powers and obligations of the licensees in the Board as provided for under the 1910 Act wherefor a legal fiction has been raised. The proviso appended to Section 26 of 1948 Act reads as under:-

\023Provided that nothing in sections 3 to 11, sub-sections (2) and (3) of section 21 and section 22, sub-section (2) of Section 22A and sections 23 and 27 of that Act or in clauses 1 to V, clause VII and clauses IX to XII of the Schedule to that Act relating to the duties and obligations of a licensee shall apply to the Board:\024

13. Section 20 of the 1910 Act was, therefore, made operative under the 1948 Act so far as the Board is concerned and thus the said power was exercisable by it. Rules were made in terms of Section 37 of the 1910 Act only in the year 1957. Rule 57(1) of the Rules reads as under:-

\02357(1) Any meter or maximum demand indicator or other apparatus placed upon a consumer\022s premises in accordance with section 26 shall be of appropriate capacity and shall be deemed to be correct if its limits of error are within the limits specified in the relevant

Indian Standard Specification and where no such specification exists, the limits of error do not exceed 3 per cent above or below absolute accuracy at all loads in excess of one tenth of full load and up to full load:\024

14. Although reliance has been placed by the respondents in their counter affidavit on the said rule, ex-facie the same is not very relevant for our purpose. We would, however, deal with the contention of Mr. Parikh with regard to the construction of the said provision at a later stage.

15. The Parliament enacted Electricity Regulatory Commission Act in the year 1998 wherewith we are not concerned. It may however be noticed that the National Capital Territory of Delhi enacted the Delhi Electricity Reforms Act, 2000 (hereinafter referred to as \0232000 Act\024).

16. Section 2(e) thereof defines \023licence\024 to mean a licence granted under the Indian Electricity Act, 1910.

17. Section 14 provides for re-organisation of electricity industries; sub-section (1) whereof reads as under:-

\023Sec. 14(1) The Government may, as soon as may be after the commencement of this Act, cause one or more companies to be incorporated and set up under the provisions of the Companies Act, 1956 (1 of 1956) for the purpose of generation, transmission or distribution of electricity, including companies engaged in more than one of the said activities, in the National Capital Territory of Delhi and may transfer the existing generating stations or the transmission system or distribution system, or any part of the transmission system or distribution system, to such company or companies.\024

Sub-sections (3) and (6) of Section 14 of the said Act read as under :

Sec. 14(3) The companies incorporated and set up under sub-section (1) shall undertake the functions specified in this section and such other functions as may be assigned to them by the Government.

Sec. 14(6) The Government may convert the companies set up under this Act to joint venture companies through a process of disinvestment, in accordance with the transfer scheme prepared under the provisions of this Act.

18. Section 15 provides for reorganisation of Delhi Vidyut Board and transfer of properties, functions and duties thereof.

19. Delhi Vidyut Board was constituted by the National Capital Territory of Delhi in terms of the provisions of 1948 Act.

20. By reason of sub-section (1) of Section 15 all the powers conferred upon the Companies as had been existing in the Boards under Section 26 of the 1948 Act were saved.

21. By reason of Section 63, the provisions thereof were to prevail over the provisions of 1910 Act and 1948 Act in regard to the matters which were inconsistent therewith or contrary thereto. Sub-section (3) of Section 63 provides that upon establishment of the Commission, the provisions of the 1910 Act and 1948 Act were to be read subject to the modifications and reservations contained therein, the relevant clauses whereof are as under:-

\023(i) All references to State Electricity Board in the Indian Electricity Act, 1910 (9 of 1910) in so far as the National Capital Territory of Delhi is concerned shall be read as references to the Delhi Electricity Regulatory Commission or the companies established under section 14 or other licensees or wherever it relates to general

policy matters, to the Government.

(ii) In respect of matters provided in sections 3 to 11, 28, 36(2), 49A, 50 and 51 of the Indian Electricity Act, 1910 (9 of 1910), to the extent this Act has made specific provisions, the provisions of the Indian Electricity Act, 1910 (9 of 1910) shall not apply in the National Capital Territory of Delhi.\024

So far as 1948 Act is concerned, it is provided :
\023(v) All references to State Electricity Board in the Electricity (Supply) Act, 1948 (54 of 1948) in so far as the National Capital Territory of Delhi is concerned shall be read as references to the Delhi Electricity Regulatory Commission or the companies established under section 14 or other licensees or where it relates to general policy matters, to the Government.

(vi) In respect of matters provided in sections 5 to 18, 19, 20, 23 to 27, 37, 40 to 45, 46 to 54, 56 to 69, 72 and 75 to 83 of the Electricity (Supply) Act, 1948 (54 of 1948), to the extent this Act has made specific provisions, the provisions of the Electricity (Supply) Act, 1948 (54 of 1948) shall not apply in the National Capital Territory of Delhi.\024

22. Section 26 of the 1948 Act therefore, would not apply only when there exist any corresponding provision in the 2000 Act. It is not disputed that no such provision is in existence. If there does not exist any provision contrary to or inconsistent with Section 26 of the Act, the same would, indisputably, continue to apply.

23. Section 64 of the said Act provides for the saving clause.

24. We may now notice constitution of various entities in terms of the 2000 Act and the Rules framed thereunder. The National Capital Territory of Delhi in exercise of its power conferred by Section 60 read with Sections 15 and 16 of 2000 Act made Rules known as Delhi Electricity Reform (Transfer Scheme) Rules, 2001. The said Rules are statutory in nature. They provide for transfer and vesting of assets, liabilities, proceedings and personnel of Delhi Vidyut Board in the successor entities and for determining the terms and conditions on which such transfer or vesting shall take effect.

25. In the said Rules, \023Board\024 has been defined to mean Delhi Vidyut Board constituted under Section 5 of the Electricity (Supply) Act, 1948. Rule 2(f) defines \023DISCOM 2\024 to mean \023South-West Delhi Electricity Distribution Company Limited\024, a company incorporated under the Companies Act, 1956 (1 of 1956) with the principal object of engaging in the business of distribution and supply of electricity in the area as specified in Part II of Schedule \021H\022.

26. The term \023transferee\024 has been defined in Rule 2(r) to mean \021GENCO\022, \021TRANSCO\022, \021DISCOMS\022 and \021PPCL\022, as the case may be, in whom the undertaking or undertakings or the assets, liabilities, proceedings and personnel of the Board, as the case may be, are vested in terms of these rules and shall include the holding company;

27. Rule 4(1) provides that assets, liabilities and proceedings transferred to the government under sub-rule (1) of rule 3 shall stand classified as under:
(a) Rights and interests in Pragati Power Project as set out in Schedule \021A\022
(b) Generation Undertaking as set out in Schedule \021B\022.
(c) Transmission Undertaking as set out in Schedule \021C\022
(d) Distribution Undertaking as set out in Schedule \021D\022
(e) Distribution Undertaking as set out in Schedule \021E\022.

- (f) Distribution Undertaking as set out in Schedule \021F\022.
- (g) Holding Company with assets and liabilities as set out in Schedule \021G\022.

28. Rule 5(1)(d) of the Rules provides that the undertaking forming part of the Distribution Undertaking as set out in Schedule \021D\022, shall stand transferred to and vest in the DISCOM 1, on and from the date of the transfer appointed for the said purpose.

29. Sub-Rule (2) of Rule 5 provides for the consequences of such transfers in the following terms :

\023Rule 5(2) On such transfer and vesting of the undertakings in terms of sub-rule (1), the respective transferee shall be responsible for all contracts, rights, deeds, schemes, bonds, agreements and other instruments of whatever nature, relating to the respective undertaking and assets and liabilities transferred to it, to which the Board was a party, subsisting or having effect on the date of the transfer, in the same manner as the Board was liable immediately before the date of the transfer, and the same shall be in force and effect against or in favour of the respective transferee and may be enforced effectively as if the respective transferee had been a party thereto instead of the Board.\024

30. Rule 10 provides for the rights and powers of the transferees, sub-Rule (2) whereof reads as under :

\023Rule 10(2) Within sixty days of the effective date of transfer, the DISCOMS shall apply to the Commission for the grant of licence under the Act to undertake the business of distribution and retail supply of electricity in the respective areas of supply as specified in Schedule \021H\022 :\024

31. Indisputably, pursuant thereto and/or in furtherance thereof, applications were made for grant of license by the first respondent herein and such license have since been granted in its favour by the Commissioner.

32. We may also notice that regulations have been framed in terms of Section 61 of the 2000 Act known as The Delhi Electricity Regulatory Commission (Performance Standards \026 Metering and Billing) Regulations, 2002.

33. Chapter 5 of the said Regulations provide for metering, laying down that all installations subject to exemption shall be serviced with a meter and all the requirements as laid down in Section 26 of the 2000 Act shall be complied with.

34. To complete the narration of the statutory Scheme, we may also notice that Delhi Electricity Supply Company undertaking framed conditions of supply whereupon strong reliance has been placed by the High Court in arriving at its finding. But, we may ignore the same inasmuch as the same are not statutory in nature.

35. Before embarking on other questions raised at the Bar, we would like to place on record that the High Court had placed strong reliance on the rationale of replacing the existing meters with electronic meters, but, we are of the opinion that the same is not at all relevant as in the event it is held that the respondent had no authority to replace the existing meters with electronic meters, rationale or other justifications in support thereof would not legalise an illegal act.

[See Hindustan Times and Others Vs. State of U.P. and Anr. [(2003) 1 SCC 591] Para 30].

36. We have referred to at some details the statutory scheme only for the purpose of showing that there had all along been a continuity in the matter of supply of electrical energy in the National Capital Territory of Delhi either by a private company or by a State Electricity Board, as the case may be. We, at this stage, make it clear that we do not intend to go into the question

of applicability of the provisions of the 2003 Act and the regulations made thereunder, for the reason that regulations made under Section 50 of the 2003 Act came into force on and from 8.4.2007 and Section 55 thereof came into force on 10.3.2006 and, thus, the said Act was not in force at the relevant time.

37. Our attention has also been drawn to Section 49 of the 1948 Act and the regulations and the tariff framed by the Delhi Vidyut Board.

38. At the outset we have noticed that the appellant did not object to the change of the meter. It proceeded on the basis that the change of the meter is permissible in law. He being allegedly unaware of his rights allowed the respondent to enter into his premises and change a correct meter by another one which according to him is also correct. It, therefore, in our opinion does not lie in the mouth of the appellant now to turn round and contend that electronic meters do not record correct consumption of electrical energy. It is one thing to say that electronic meters when tested do not register the actual consumption, as a result whereof, the consumer would have to pay the energy charges more than he is otherwise liable but it is another thing to say that it was legally impermissible. It is not, however denied or disputed that whether meter is installed by the licensee or by the consumer himself, the same must have the requisite certificate granted in terms of the regulations, the provisions wherefor have been made in the regulations made under the 2000 Act.

39. If Section 20 of the 1910 Act conferred a power which is not otherwise controlled by Section 26 thereof, the question of the respondent acting wholly without jurisdiction or arbitrarily would not arise. Indisputably, after the Electricity Regulatory Commission came into being, it issued certain directions. It had to make tariff. For the purpose of making tariff, certain checks and balances were required to be made. The loopholes then existing in the matter of transmission of electrical energy which resulted in a huge transmission loss was to be taken care of. Therefore, a direction was issued by the Commission that all the existing meters should be replaced by electronic meters. We do not see any illegality therein.

40. Various steps had been taken by the respondent No. 2 to resolve the grievances of the consumers. Grievance Redressal Forum was established in terms of Section 42(5) of the 2003 Act. Regulations made in the year 2002 provided for detailed guidelines in regard to the procedures required to be followed by the utilities for providing new connections, replacement of defective meters etc. The said regulations admittedly were amended in 2003 providing for payment of compensation to consumers in case of repeated levy of arrears for bills already paid. If there had been any violation of the meter and billing regulation, the utilities could be imposed with penalties. It is at that stage, a policy decision was taken for replacement of old electromechanical meters with new electronic meters as a part of the Scheme. The Commission in its Order on Annual Revenue Requirement issued directions with regard to replacement of meters which were carried out pursuant thereto or in furtherance thereof, which reads as under :
Replacement of meters is the responsibility of the DISCOMs and the DISCOMs have submitted details of the meter replacement programme to the Commission, the Commission would like to inform the objector that the old electromechanical meters are subject to mechanical wear and tear and tend to record lower consumption over a period of time. Moreover, these meters are also more susceptible to tamper. The replacement of such meters with electronic meters will enable the utility to record the consumption more accurately as well as reduce the chances of tampering. The DISCOMs have submitted that the existing meters are being replaced by the electronic meters which is a good step.

41. Under the 1948 Act, the State had a role to play. Its directions in

relation to the policy matters were binding on the State Electricity Boards. Such a power continued to be operative. If, therefore, the Electricity Regulatory Commission which was an independent body could make tariff and for that purpose had the statutory authority to issue certain directions, no exception thereto can be taken.

42. We, therefore, are required to consider as to whether the authority to make such replacement of meter by the licensee is contained in Section 20 of the 1910 Act or not. Even if a harmonious construction is given to the Scheme of the Indian Electricity Act as was submitted by Mr. Parikh, we do not see as to how Section 26 would govern Section 20 of the 1910 Act.

43. Section 20 operate in one field namely conferring a power of entry on the licensee. The said provision empowers the licensee inter alia to alter a meter which would include replacement of a meter. It is an independent general provision. In absence of any statutory provision, we do not see any reason to put a restrictive meaning thereto. Even under the General Clauses Act, a statutory authority while exercising statutory power may do all things which are necessary for giving effect thereto. There does not exist any provision in any of the statutes referred to hereinbefore which precludes or prohibits the licensee to replace one set of meter by another. If such a provision is read into the statute, the same would come in the way of giving effect to the benefits of new technological development. Creative interpretation of the provisions of the statute demands that with the advance in science and technology, the Court should read the provisions of a statute in such a manner so as to give effect thereto.

[See State of Maharashtra & Anr. v. Dr. Praful B. Desai & Anr. (2003) 4 SCC 601]

44. Section 26 of the Act operates in different fields. It comes into being only when there exists a dispute. The dispute may be in regard to the quantum of the amount required to be expended for removing the meter or the correctness of the meter. The dispute may also be, in the event, the meter is held to be not recording the consumption of electrical energy correctly, the amount to which the consumer would be liable to pay, in relation thereto.

45. Electrical Inspector acts as a statutory authority. He has been conferred with a quasi-judicial power to determine the disputes of particular kinds. His decision thereupon is final and conclusive. The correctness of such decision can be questioned only before a superior court of law. Subject of course to a decision of a superior court, the decision of the Electrical Inspector is final and binding on the parties.

46. It is correct that the matter at the relevant point of time was not covered by any statutory regulations, but even otherwise, the respondent had the said authority under Section 20 of the 1910 Act.

47. Construction of Section 20 vis-à-vis Section 26 of the 1910 Act came up for consideration before this Court in Belwal Spinning Mills Ltd. And Others Vs. U.P. State Electricity Board And Another [(1997) 6 SCC 740], wherein a Division Bench of this Court clearly opined;

\02337. After giving our careful consideration to the facts and circumstances of the cases in these appeals and the submissions made by Mr. Gupta, Mr. Sen and Mr.

Andhyarujina, the learned Solicitor General, it appears to us that Section 20 of the Electricity Act authorises the licensee to enter the premises of the consumer to remove fittings and other apparatus installed by the licensee.

Clause (a) of sub-section (1) of Section 20 authorises the licensee to enter the premises of the consumer for \023inspecting, testing, repairing or altering the electric supply lines, meters, fittings, works and apparatus for the supply of energy belonging to the licensee\024. The licensee, therefore, cannot only enter the premises of the consumer for inspecting, testing etc. but the licensee can also alter the meter whenever such alteration is needed. Such power under Section 20 does not depend on the

adjudication of correctness of the meter and other apparatus by the Electrical Inspector on a reference under Section 26(6) of the Electricity Act. But such power flows from the statutory duties and functions of the licensee to maintain the correct meter for recording the quantum of electricity supplied to the consumer. Such duty to ensure maintenance of correct meter in the premises of the consumer has been indicated in sub-section (1) and sub-section (2) of Section 26. The power of removing the meter under Section 20, however, is circumscribed by the proviso to sub-section (4) of Section 26 only when the dispute as to the functioning of the meter has been referred to the Electrical Inspector under sub-section (6) of Section 26. A licensee is authorised under sub-section (7) of Section 26 to place, in addition to the meter installed in the premises of the consumer as referred to in sub-section (1) of Section 26, other meter or apparatus as the licensee deems fit for the purpose of recording or regulating the amount of energy supplied to the consumer. Such power also does not depend on the existence of any dispute as to the correctness of the meter installed.\024

48. Reliance on the said decision has also been placed by the High Court. Mr. Parikh, however, would submit that the High Court failed to notice paragraph 48 of the said decision wherein it was laid down that Section 26(6) would apply where the meter is not correct and the power to remove the meter could be exercised only in such a situation and not otherwise.

49. We may, however, notice that the observations made in paragraph 48 were made while considering the question as to whether the decision in terms of sub-section (6) of Section 26 should be limited to a statutory period or not. Observations in paragraph 48 of the said decision having been made in the aforementioned context, the same cannot be said to have any application whatsoever in the instant case.

50. For the reasons stated hereinbefore, we are of the opinion that there is no merit in this appeal. It is dismissed accordingly. There shall be no order as to costs.