

CASE NO.:
Appeal (civil) 3615 of 1996

PETITIONER:
Bombay Electric Supply & Transport Undertaking

RESPONDENT:
Laffans (India) Pvt. Ltd. & Anr.

DATE OF JUDGMENT: 21/04/2005

BENCH:
CJI R.C. Lahoti, Dr. AR. Lakshmanan & G.P. Mathur

JUDGMENT:
J U D G M E N T

R.C. Lahoti, CJI

This appeal, by special leave, has been preferred against the judgment dated 10.3.1995 of the Division Bench of Bombay High Court, by which the Letters Patent Appeal filed by first respondent, Laffans (India) Pvt. Ltd. was allowed, the judgment dated 17.3.1993 of the learned Single Judge dismissing the writ petition was set aside and the notice of disconnection of electricity supply issued by the appellant was quashed.

The appellant, Bombay Electricity Supply and Transport Undertaking is an undertaking of Municipal Corporation of Greater Bombay (second respondent) and is a licensee under the Indian Electricity Act, 1910 (hereinafter referred to as "the Act"). The appellant was supplying electricity to the first respondent, Laffans (India) Pvt. Ltd. who had a showroom at Veer Nariman Road, Bombay, for carrying on business of retail trade in textiles. The appellant had installed two meters at the premises of the first respondent, for measuring the quantity of electricity consumed : one — by lights, fans and other small fixtures, and, the other — by the air-conditioning unit. The dispute here relates to the meter measuring the quantity of electricity consumed by the air-conditioning unit. Initially, meter No. 850050 had been installed but the same got burnt and a new meter bearing No. 860154 was installed on 2.5.1988. According to the appellant, in a routine checking the said meter was found to be running slow and accordingly the first respondent was informed on 14.6.1989 that the meter would be replaced and revised bills would be issued. Thereafter, a new meter bearing No. 890324 was installed on 30.6.1989. This meter was also found to be running slow and accordingly the first respondent was informed on 25.9.1989 that the meter would be replaced and revised bills would be issued. On 18.12.1989, a new meter bearing No. 880272 was installed. This also got burnt and was replaced by meter No. 890272 on 30.12.1989. The appellant then taking the preceding one year's period i.e. from 2.2.1987 to 1.2.1988 as the base period and on the pattern of consumption recorded therein, revised the bills and sent a demand notice dated 5.9.1990 for Rs. 2,19,602/73 paise for the period 1.2.1988 to 30.12.1989 on the footing that the first respondent had been undercharged by 1,13,212 units. A perusal of the contents of the demand letter shows that for the period for which the meter is alleged to have recorded incorrect readings, bills were sent month by month on the basis of readings as recorded by the meter. As, according to the

appellant, the first respondent had been undercharged due to the meter not accurately recording the readings, a revised bill, based on the average consumption of the respondent for the period 2.2.1987 to 1.2.1988 i.e. for such period for which the meters had recorded incorrect readings was raised. As the first respondent did not pay the amount, a notice of disconnection was sent to it on 25.10.1990 calling upon it to pay the amount within a week, failing which the electricity supply would be disconnected. The first respondent then challenged the notice of demand and disconnection by filing a writ petition which was dismissed by a learned Single Judge of the High Court on 17.8.1993. The Letters Patent Appeal preferred by the first respondent was allowed by the Division Bench and the demand notice was quashed.

The learned Single Judge held that it was for the consumer (first respondent) to raise a dispute before the Electrical Inspector under Section 26(6) of the Indian Electricity Act in case he challenged or disputed the assertion of the appellant that the meter was not recording correctly and was running slow. Since the consumer did not raise any such dispute, the appellant was entitled to replace the meter if the same was defective and to raise a demand on the basis of average consumption in the past period. The Division Bench has reversed this view and has held that if the appellant disputed the correctness of the meter, it should have referred the dispute to the Electrical Inspector as provided in Section 26(6) of the Act and it was for the Electrical Inspector to estimate the amount of energy supplied to the consumer. The appellant having not referred any such dispute to the Electrical Inspector and consequently no estimate of the energy supplied by it to the first respondent (consumer) having been made, it was not open to the appellant to raise a bill on the basis of average of past one year's consumption. The Division Bench further held that the demand notice was for a period exceeding six months immediately preceding the date thereof and, therefore also, the same was illegal.

The main question, which requires consideration, centres around sub-section (6) of Section 26 of the Indian Electricity Act, 1910 — whether the applicability of said provision is attracted to the facts and circumstances of the present case and, if so, to what extent?

The relevant parts of Section 26 of the Indian Electricity Act, 1910 and Rule 57 of the Indian Electricity Rules, relevant for the purpose of this judgment, are reproduced hereunder:-

The Indian Electricity Act, 1910

"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:

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.

(3) xxx xxx xxx

(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 is so hired as aforesaid, all reasonable expenses of, and incidental to, such inspecting, testing, taking off and removing shall, 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 Electrical Inspector, and the decision of such Inspector shall be final:

Provided that the licensee shall not be at liberty to take off or remove any such meter if any difference or dispute of the nature described in sub-section (6) has arisen until the matter has been determined as therein provided.

(5) xxx xxx xxx

(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 Inspect; 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 Inspect, have 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 Inspect under this sub-section, he shall give to the other party not less than seven days' notice of his intention so to do.

(7) xxx xxx xxx

Explanation. — 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, and a maximum demand indicator or other apparatus referred to in sub-section (7) shall be deemed to be "correct" if it complies with such conditions as may be prescribed in the case of any such indicator or other apparatus."

Indian Electricity Rules, 1956

"57. Meters, maximum demand indicators and other apparatus on consumer's premises. \026 (1)

Any meter or maximum demand indicator or other apparatus, placed upon a consumer's 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 Specifications 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 loads and up to full load.

Provided that for extra high voltage consumers the limit of error shall be 1 per cent.

(2) No meter shall register at no load.

(3) Every supplier shall provide and maintain in proper condition such suitable apparatus as may be prescribed or approved by the Inspector for the examination, testing and regulation of meters used or intended to be used in connection with the supply of energy:

Provided that the supplier may with the approval of the Inspector and shall, if required by the Inspector, enter into a joint arrangement with any other supplier for the purpose aforesaid.

(4) Every supplier shall examine, test and regulate all meters, maximum demand indicators and other apparatus for ascertaining the amount of energy supplied before their first installation at the consumer's premises and at such other intervals as may be directed by the State Government in this behalf.

(5) Every supplier shall maintain a register of meters showing the date of the last test, the error recorded at the time of the test, the limit of accuracy after adjustment and final test, the date of installation, withdrawal, re-installation, etc. for the examination of the Inspector or his authorized representative.

(6) Where the supplier has failed to examine, test and regulate the meters and keep records thereof as aforesaid, the Inspector may cause such meters to be tested and sealed at the cost of the owner of the meters in case these are found defective."

The abovesaid provisions have been the subject-matter of consideration by this Court in three cases which have been brought to our notice. They are *M.P. Electricity Board v. Basantibai* — (1988) 1 SCC 23, *Belwal Spinning Mills Ltd. & Ors. v. U.P. State Electricity Board & Anr.* — (1997) 6 SCC 740 and *J.M.D. Alloys Ltd. v. Bihar State Electricity Board* — (2003) 5 SCC 226. The first and the last of the cases are decisions by three learned Judges and the second one is a decision by two learned Judges. We have carefully perused the three decisions and we find ourselves in entire agreement with the view of the law taken in these cases. In particular, in *Belwal Spinning Mills's* case, this Court has examined the provisions of Section 26, specially sub-section (6) thereof, in very many details, also taking into consideration the legislative

intention and the object sought to be achieved by substituting sub-section (6) by Act 32 of 1959 in its present form over the predecessor provision. We would be referring to the relevant findings of law recorded in these cases. However, at the outset and here itself, we would like to mention that the applicability of sub-section (6) of Section 26 is attracted only when the meter is not correct. Section 26(6) will have no applicability (i) if the consumer is found to have committed a fraud with the licensee and thereby illegally extracted the supply of energy preventing or avoiding its recording, or (ii) has resorted to a trick or device whereby also the electricity is consumed by the consumer without being recorded by the meter. In effect the latter class of cases would also be one of fraud. Tampering with the meter or manipulating the supply line or breaking the body seal of the meter resulting in non-registering of the amount of energy supplied to the consumer or the electrical quantity contained in the supply - are the cases which were held to be not covered by Section 26(6) in the case of *Basantibai (supra)*, while the provision was held applicable to any case of meter being faulty due to some defect and not registering the actual consumption of electrical energy. Similar is the view taken in the case of *J.M.D. Alloys Ltd. (supra)*.

What is a correct meter? The language of sub-section (6) of Section 26 starts with — "where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct". The dictionary meaning of the word "correct" is: Adhering or conforming to an approved or conventional standard; Conforming to or agreeing with fact; Accurate.

As to what would be a "correct" meter, there is sufficient indication in the Act and the Indian Electricity Rules, 1956 in the explanation given at the end of sub-section (7) of Section 26 of the Act and sub-rules (1) and (2) of Rule 57, quoted hereinabove. Where the meter is completely non-functional on account of any fault or having been burnt, it will not register the supply of energy at all. Since a burnt meter does not record any supply of energy, it virtually means "no meter".

What is contemplated by Section 26(6) is a running meter, but which on account of some technical defect registers the amount of energy supplied or the electrical quantity contained in the supply beyond the prescribed limits of error. It contemplates a meter which is either running slow or fast with the result that it does not register the correct amount of energy supplied. There is an additional reason for coming to such a conclusion. Section 26(6) confers power upon the Electrical Inspector to 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, have been correct. Where the meter is running slow or fast, it will be possible for the Electrical Inspector to estimate the amount of energy supplied to the consumer by determining the extent or percentage of error in recording the supply, whether plus or minus. However, where the meter is burnt or is completely non-functional, such an exercise is not at all possible. Therefore, Section 26(6) can have no application in a case where a meter has become completely non-functional on account of any reason whatsoever.

In *Belwal Spinning Mills's* case, this Court has held *inter alia*:-

(1) Any difference or dispute arising between the licensee and the consumer, as to whether any meter

has recorded or is recording correct reading or not, can be raised by either party and referred, upon the application of either party, for decision by an Electrical Inspector.

(2) If the Electrical Inspector comes to the finding that the meter has ceased to be 'correct', he has to determine the quantum of electricity consumed for the statutory period of six months, referred to in sub-section (6). The determination made by the Electrical Inspector on twin questions (i) whether meter was correct or not, and (ii) if the meter was not correct then the estimate of supply of electricity to the consumer for the statutory period of six months, is binding on the licensee and the consumer (subject only to judicial review by a competent Court).

(3) For any other period anterior to the statutory period, the legislature has in no uncertain terms indicated in the latter part of sub-section (6) that reading registered in the disputed meter will not only be presumed to be correct but such reading shall be conclusive proof of the quantity of electricity consumed or the amount of electricity supplied to the consumer. For any period other than the statutory period of six months, referred to in sub-section (6), the legislature has intended by the amendment of sub-section (6) of Section 26 (as made by Act 32 of 1959) to put an end to such contest between the licensee and the consumer and has set at rest any dispute relating to any period anterior to the statutory period on estimation by providing that in a case of dispute as to functioning of meter, the reading in the meter for the period beyond the period of statutory estimation, will be final.

(4) Any unilateral decision of either of the parties about the correct status of the meter is not to be accepted by the other party if the other party raises objection as to the status of the meter.

(5) The estimate to be prepared by the Electrical Inspector, on the dispute being referred to him, may go only up to six months prior to the date of raising the dispute and reference but such estimate will only cover that period prior to raising the dispute during which, according to the Electrical Inspector, the meter had ceased to be correct.

(6) The estimate of supply of energy by the Electrical Inspector is to be made for a period not exceeding six months calculated backwards from the date of reference to the Electrical Inspector. Thus, it is the date of reference to Electrical Inspector which is conclusive of the period of six months; the date of inspection, the date of raising dispute and the date of adjudication are immaterial. (Here, we may add, that such period of six months shall apply).

The above said deductions, drawn in the case of Belwal Spinning Mills, are accompanied by in-depth analysis of several provisions of the Act, the historical background and practical aspects of supply and consumption of electricity. As we find ourselves in entire agreement with the abovesaid statement of law, it is not necessary for us to make a detailed independent discussion of our own of the reasons as the same is available in the case of Belwal Spinning Mills.

In the present case, the demand raised by the appellant against the first respondent can be divided into two parts: (i) for the period during which the meter was burnt, and (ii) for the period for which the meter was not correct. For the period for which the readings could not be recorded or retrieved because the meter was burnt there is nothing wrong in the licensee having raised the demand based on the average consumption for the similar period during the previous year. It is a reasonable basis. Nothing has been brought on record by respondent No.1 to show or even suggest that any basis other than the one adopted by the appellant could have been more reasonable and more appropriate for calculating the quantity of electricity consumed during the period of no-meter or no-meter-reading.

For the period for which, according to the appellant, the meter was not correct, none of the parties has referred the dispute to the Electrical Inspector. The meter though it is alleged by the appellant to have remained not correct, readings have been regularly recorded, bills raised and also paid by the consumer-respondent No. 1. According to Section 26(6), the readings would bind the appellant and respondent No. 1 both. It has never been the case of the appellant at any stage that the meter was not correctly recording the consumption of electricity on account of being non-functional due to any fraud committed or device or trick adopted by the consumer-respondent No. 1 or that the body seal of the meter was found broken or tampered with. The respondent No. 1 was accepting and honouring the demands raised by the appellant and, therefore, respondent No. 1 cannot be expected to have raised a dispute and sought for a reference for determination by Electrical Inspector. The appellant could not have, therefore, revised the demand for such period based on average consumption during the previous year. There is yet another reason why the entitlement of the appellant to recover charges from the respondent No. 1 may have to be denied. According to the proviso appended to sub-section (4) of Section 26, the licensee cannot take off or remove any such meter as to which difference or dispute of the nature described in sub-section (6) has arisen until the matter has been determined by the Electrical Inspector. The purpose is to preserve the evidence. The dispute shall be expeditiously disposed of by the Electrical Inspector by applying scientific method of investigation to find out if the meter was incorrect and if so then what was the extent of error. In the present case, the meters said to be incorrect have been removed and replaced by the appellant. Admittedly, no dispute has been raised and referred to the Electrical Inspector. The most material evidence being the meter itself has been lost by the act of the appellant in removing the incorrect meter. The appellant cannot be permitted to take advantage of its own act and omission \026 the act of removing the meter and the omission to make a reference to the Electrical Inspector.

The material available on record before us does not enable the separation of the impugned demand by bifurcating the same into two on the criterion discussed hereinabove. The appellant

shall have to be left free to examine its records and then revise its demand. We may clarify that the demand raised by the appellant based on the average consumption during the similar period in the last year is justified, in the facts and circumstances of the present case, for the period for which the reading was lost on account of the meter having been found burnt. Accordingly, the calculation based on the record of consumption for the corresponding period from the previous year shall hold good. The appellant shall raise a demand accordingly and the first respondent shall be bound to honour the same. So far as the period for which the meter is said to be incorrect, the demand has not been revised by basing it on the finding arrived at by the Electrical Inspector and hence is not available to be revised. The meter is alleged by the appellant to be not correct and yet the appellant has not made a reference to the Electrical Inspector under Section 26(6). The appellant cannot now be allowed to raise an additional demand over and above the demand raised through the bills which were issued for that period and paid by the first respondent. The right to raise additional bills stands lost by the appellant for its failure to proceed in accordance with Section 26(6) of the Electricity Act, 1910.

We direct accordingly and dispose of the appeal in the above terms with no order as to the costs.