

CASE NO.:
Appeal (civil) 4979 of 2006

PETITIONER:
Sub Divisional Officer (P), UHBVNL

RESPONDENT:
Dharam Pal

DATE OF JUDGMENT: 15/11/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:

JUDGMENT
(Arising Out of S.L.P.(C) No. 20653 of 2004)

ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the order passed by the National Consumer Disputes Redressal Commission, New Delhi (in short the 'Commission'). By the impugned order, the Commission dismissed the revision petition filed in terms of Section 21 of the Consumer Protection Act, 1986 (in short the 'Act').

Background facts in a nutshell are as follows:
The respondent is a consumer of electricity and a meter was installed by the appellant at his factory premises. An inspection was done on 04.07.2000. The Inspecting staff found that there was tampering with the meter and, therefore, a demand of Rs.1,07,326/- was made purporting to be charges payable for actual consumption of energy. Questioning the demand, a complaint was filed before the District Consumer Disputes Redressal Forum, Yamuna Nagar, Jagadhiri, Haryana (in short 'District Forum').

The basic stand of the respondent as complainant was that prior to the inspection, on 02.07.2000 there was a sparking in the C.T. Box installed at his factory premises and the complainant immediately informed the appellant and requested for rectification of the defect. The complainant had also given a letter dated 2.7.2000 to the department in this behalf and since the meter was defective the appellant should have rectified the meter. Instead of doing that, the demand was raised for alleged tampering with the meter. With reference to the inspection report it was averred that the seals were found intact and, therefore, there was no question of any tampering. It was, therefore, prayed that reference should be made to the Electrical Inspector for action in terms of Section 26(6) of the Indian Electricity Act, 1910 (in short 'the Act'). It was further submitted that notice was to be given before raising of demand. This was stated to be in line with principles of natural justice and statutory prescriptions. The said prayer was rejected by the present appellant taking the stand that in case of tampering there was no question of any reference to the Electrical Inspector. The District Forum found substance in the complaint filed by the respondent and held that the demand was illegal and instead reference ought to have been

made in terms of Section 26(6) of the Act.

An appeal was filed by the appellant herein before the State Consumer Disputes Redressal Commission, Chandigarh (in short the 'State Commission'). The appeal under Section 15 of the Act was dismissed by the State Commission holding that the direction given by the District Forum was in order and action in terms of Section 26(6) of the Act was required to be taken. A revision was filed before the Commission which, as noted above, has been dismissed holding that proper direction has been given by the District Forum which was upheld by the State Commission.

In support of the appeal, learned counsel for the appellant submitted that in case of tampering there was no scope for reference to the Electrical Inspector in terms of Section 26(6). Notice is to be given only when there is a default in payment of the demand raised and in cases of this nature, no notice is required.

Learned counsel for the respondent on the other hand submitted that this is not a case of tampering. The respondent had, two days prior to the inspection, requested the authorities to verify the meter as the same was defective. Instead of rectifying the meter, and a reference under Section 26(6) to the Electrical Inspector, arbitrarily the demand has been raised. Before raising the demand, no notice was issued to the respondent which is in clear violation of the principles of natural justice. As the respondent was denied opportunity of placing his stand before the demand was raised, the same cannot be maintained being in violation of the principles of natural justice.

Question as to when action in terms of Section 26(6) of the Act is to be taken has been considered by this Court in many cases. (See Bombay Electricity Supply and Transport Undertaking v. Laffans (India) (P) Ltd. & Anr. (2005 (4) 5CC 327). Section 26(6) of the Act and Rule 57 of Indian Electricity Rules, 1956 (in short 'Electricity Rules') read as follows:

"5. 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.

(2) xxx xxx xxx

(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 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 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.

(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.

- (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 or error shall be 1 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."

6. The above-said 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. and Ors. v. U.P. State Electricity Board and 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).

7. 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.

8. 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".

9. 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 State of W.B. and Ors. v. Rupa Ice Factory (P) Ltd. and Ors. (2004 (10) 5CC 635) it was observed as follows:

"5. As regards the second claim, namely, the claim for the period from December 1993 to December 1995, the finding of the High Court is that the a Vigilance Squad had found that Respondent 1 had tapped the electric energy directly from the transformer to the LT distribution board bypassing the meter circuit. If that is so, we do not know as to why the High Court would go on to advert to Section 26 of the Electricity Act and direct reference to the Electrical Inspector for decision under Section 26(6). In two decisions of this Court in M.P Electricity Board v. Basaniibai and J.M.D. Alloys Ltd. v. Bihar SEB it has been held that in cases of tampering or theft or pilferage of electricity, the demand raised falls outside the scope of Section 26 of the Electricity Act. If that is so, neither the limitation period mentioned in Section 26 of the Electricity Act nor the procedure for raising demand for electricity consumed would arise at all, In this view of the matter, that part of the order of the Division Bench of the High Court, directing that there should be a reference to the Electrical Inspector, shall stand set aside. In other respects the order of the High Court shall remain undisturbed. The appeal is allowed accordingly."

Though strong reliance was placed by learned counsel for the respondent on a decision in M.P.E.B. & Ors. v. Smt. Basantibai (AIR 1988 SC 71) more particularly, paragraph 13 thereof, a bare reading of the decision shows that the same did not relate to a case of tampering and, therefore, has no application to the present case.

Above being the position, the District Forum, State Commission and the Commission were not justified in holding that a reference in terms of Section 26(6) of the Act was called for. The orders passed by these authorities are quashed.

The appeal is allowed but without any order as to costs.