

(1987) 06 AHC CK 0004

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 11425 of 1987

The Premier Ice Factory, Kanpur

APPELLANT

Vs

The Commercial Manager,
Kanpur Electricity Supply
Administration and Another

RESPONDENT

Date of Decision: June 22, 1987

Acts Referred:

- Electricity Act, 1910 - Section 24(1), 26(6)

Citation: AIR 1988 All 8 : (1987) 2 AWC 1134

Hon'ble Judges: R.K. Gulati, J

Bench: Single Bench

Advocate: Arjun Singhal, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R.K. Gulati, J.

The petitioner "The Premier Ice Factory", is engaged in business of production of "ice in block" at Kanpur. It is claimed that the aforesaid Ice Factory prior to 1-4-1986 was a partnership business of which Dr. Sudhir Kumar was one of the partners. It is further claimed that on account of difference between the partners the said partnership was dissolved on 1-4-1986. From the said date the business which was previously carried on by the erstwhile firm was taken over by Dr. Sudhir Kumar as a sole proprietor. For the purpose of running the aforesaid factory and production of ice the petitioner had obtained a connection for electric power supply being industrial and domestic connection No. 1610/1566 for 97.68 HP from Kanpur Electricity Supply Administration, Kanpur (for short "KESA") arrayed as respondent No. 1 in this petition. On account of non-payment of electric dues the factory fell into arrears to the tune of Rs. 1,90,006.85 P. up to 27-3-1987. The petitioner made a

representation to the U.P. State Electricity Board, Lucknow, respondent No. 2 to permit the petitioner to make payment of the outstanding arrears in installments and to restore the electric supply. This request of the petitioner was granted by respondent No. 2 vide its order dt. 29-4-1987 a copy of which has been filed as Annexure I. By this order the petitioner was permitted to liquidate the arrears in ten equal monthly installments. The facility to pay installments was subject to number of conditions stated in the said order. Conditions Nos. iv and v are to the following effect:

"iv. Re-connection shall be done after recovery of the first installment together with reconnection and disconnection charges. The subsequent installment shall be paid along with the monthly bills.

v. If any of the subsequent installment (s) is not paid in time then these orders for accepting payment in installments, shall automatically be treated as cancelled and the installation of the consumer shall be disconnected without any further notice. In such case, the re-connection shall be made only after the consumer pays entire up-to-date dues along with late payment surcharge or forfeited rebate and reconnection and disconnection charges in one lumpsum."

2. During the course of hearing the learned counsel for the petitioner stated that in pursuance of the said order the petitioner paid one installment. On the said payment being made the electric supply was restored. However, the petitioner did not pay any further installments. Instead it sent a written objection addressed to the Commercial Manager, KESA, respondent No. 1 vide Annexure III to the writ petition. By this objection the petitioner disputed its liability to pay the arrears on the ground that the amount demanded had been determined on a meter reading which was not functioning properly. The grievance in this writ petition is that without disposing of the petitioner's objections oral threats are being given by respondent No. 1 to disconnect the electric supply to the petitioner if the entire arrears are not paid immediately.

2A. The present writ petition has been filed seeking a mandamus from Court restraining respondent No. 1 from disconnecting the supply of electricity to the petitioner in pursuance of the oral threats held out by respondent No. 1.

3. I have heard the learned counsel for the petitioner at some length and do not feel inclined to interfere in the matter.

4. The learned counsel for the petitioner referred to me the provisions contained in Sub-section (6) of Section 26 of the Indian Electricity Act, 1910 (hereinafter to be referred as "the Act"). It is contended that whenever a dispute relating to the correct functioning of the meter is raised the matter should be referred by the licensee (Electric Supply Undertaking) to the Electrical Inspector as envisaged in the said provisions and pending adjudication before the Electrical Inspector no demand could be made from the petitioner.

5. Section 26(6) of the Act is to the following effect :

"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."

6. From a bare reading of the aforesaid provisions it is evident that when any difference or dispute arises as to whether any meter referred to in Sub-section (1) of Section 26 (the meter supplied by the licensee to the consumer) is or is not correct a reference could be made at the instance of the consumer or the licensee to the Electrical Inspector by making an application by one or both the parties to the dispute. Under the proviso to Sub-section (6) any party before applying for such reference must give a notice of not less than seven days to the other of its intention of making such reference. The reference could only be on a single point whether the meter has ceased to be correct, if so, the Electrical Inspector is required under the said provisions to estimate the amount of energy supplied to the consumer of the electrical quantity contained in the supply during such time not exceeding six months as the meter would not in the opinion of such Inspector have been correct. In such eventuality the consumer's liability would be of trial amount as may be determined by the Electrical Inspector.

7. Pending adjudication before the Electrical Inspector when can a consumer be called upon to make payment of the disputed amount and whether electric supply to him can be disconnected is provided u/s 24 of the Act. Section 36 of the Act provides for appointment of Electrical Inspectors and says that the appropriate Government may, by notification in the Official Gazette, appoint duly qualified persons to be Electrical Inspectors and every Electrical Inspector so appointed shall exercise the powers and perform the functions of an Electrical Inspector under this Act within such areas or in respect of such classes of works and electric installations and subject to such restrictions as the appropriate Government may direct.

8. We have seen earlier that reference to the Electrical Inspector could be at the instance of the licensee i.e. the Electric Supply Undertaking or at the instance of the consumer. There is no averment in the writ petition that the petitioner had at any point of time made any application seeking reference of the dispute raised by it to the Electrical Inspector. There is also no averment that the petitioner had at any time before making such reference given notice of its intention to do so to the

respondents as envisaged in the proviso to Sub-section (6) of Section 26. Notwithstanding that the petitioner has sought no reference on its own initiative the case taken up by the petitioner appears to be, as is evident from para 9 of the writ petition also, that on the petitioner's filing its objection before respondent No. 1 it ought to have made a reference to the Electrical Inspector. The contents of para 9 of the writ petition are extracted below :

"That the" respondent No. 1 has neither checked the meter nor directed the Electrical Inspector for checking and unless the respondents either check themselves or refer the matter to the Electrical Inspector, they should not and cannot make undue demand from the petitioner in respect of electricity charges."

There is also no averment in the writ petition that the Commercial Manager, KESA, is the person notified as Electrical Inspector u/s 36 of the Act.

9. The plea taken by petitioner is wholly unsustainable. Sub-section (6) of Section 26 does not cast any duty on the licensee to refer any difference or dispute in respect of any meter for determination to the Electrical Inspector on behalf of the petitioner. If any difference or dispute was raised by the petitioner it was for it to make a reference to the Electrical Inspector for its determination. As the petitioner has not made any such application as required by Sub-section (6) of Section 26 to the Electrical Inspector it cannot successfully urge that the respondents were not entitled to demand the arrears due against it because of the provisions contained in Sub-section (6) of Section 26.

10. The learned counsel for the petitioner then contended that in any case respondents were not entitled to demand any amount from the petitioner unless its objections were disposed of. In this connection he referred to the, provisions of Section 24 of the Act.

Section 24 of the Act runs as under :

"24. Discontinuance of supply to consumer neglecting to pay charge. -- (1) Where any person neglects to pay any charge for energy or any sum other than a charge for energy, due from him to a licensee in respect of the supply of "energy to him, the licensee may, after giving not less than seven clear days" notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum together with any expenses incurred by him in cutting off and reconnecting the supply are paid, but no longer.

(2) Where any difference or dispute which by or under this Act is required to be determined by an Electrical Inspector has been referred to the Inspector before notice as aforesaid has been given by the licensee, the licensee shall not exercise

the powers conferred by this section until the Inspector or has given his decision.

Provided that the prohibition contained in this sub-section shall not apply in any case in which the licensee has made a request in writing to the consumer for a deposit with the Electrical Inspector of the amount of the licensee's charges or other sums in dispute or for the deposit of the licensee's further charges for energy as they accrue, and the consumer has failed to comply with such request."

11. From Sub-section (1) of Section 24 it is clear that where a consumer neglects to pay any charge for energy or any sum other than a charge for energy, due from him to a licensee in respect of the supply of energy to him, the licensee is entitled to disconnect the electric supply after giving one week's notice in writing to the consumer for payment of the amount due. In this case we are not concerned with Sub-section (2) of Section 24 since no reference was made for determination of any dispute to the Electrical Inspector. Sub-section (1) of Section 24 uses the words "neglects to pay" and "any charge or sum due from him". Therefore, the "sine qua non" for operation of this section is that there must be a charge or sum due that the person neglects to pay. In [Orissa Fibre Vs. The Orissa State Electricity Board and Another](#), R.N. Misra, J. (as his Lordship then was) while explaining the scope and purpose of Section 24 of the Act held as under :

"Section 24(1) of the Indian Electricity Act of 1910, is intended to be exercised as a coercive measure to force the consumer to pay the charges to the licensee. Arrear dues in respect of energy bills are certainly claims recoverable through court. The power vested u/s 24(1) of the Act is to ensure payment of the energy charges without forcing the licensee to resort to a suit."

12. The provisions of Section 24(1) of the Act have been the consideration in several cases before this Court as well as before other High Courts. The view expressed in all these cases is that "negligence to pay" talked of in Section 24(1) means something more than a mere failure or omission to pay and in some cases relief has been granted to the consumer where in the opinion of the Court the omission to pay was the result of the consumer raising a bona fide dispute with the licensee as to his liability to pay the amount due from him. In the instant case though a copy of the objection raised before respondent No. 1 has been filed and some of those objections have also been stated in the body of the writ petition but no attempt whatsoever was made before me to substantiate any of the objections taken before respondent No. 1. In this view of the matter it is not necessary for me to go into this question. The learned counsel for the petitioner based his case on an abstract proposition, that the moment any objection is raised with regard to the demand sought to be realised from the petitioner, respondents are not entitled to proceed with realisation unless such objections are disposed of. This contention of the learned counsel for the petitioner cannot be accepted. As stated earlier in order that provisions of Sub-section (1) of Section 24 are not invoked against a consumer who is in arrears it has to be established that the dispute raised by the consumer is bona

fide and when consideration on merits it cannot be regarded as frivolous and vexatious. That, apart, the petitioner on its own accord and voluntarily had approached respondent No. 2 to liquidate the arrears if the payment is allowed in installments and at that stage it did not dispute its liability and the correctness of the amount demanded. The electric supply was restored to it on certain conditions including conditions Nos. iv and v extracted earlier. In this view of the matter the petitioner cannot be heard of any complaint in these proceedings if the respondents are taking resort to realise the arrears due from the petitioner. In any case the objections raised by the petitioner may involve investigation and if the respondents are satisfied that those objections were made for the objection sake only, I do not see any reason to restrain the respondents from recovering the amount due against the petitioner. Whether the electric supply will be disconnected without notice and what would be its effect does not fall for consideration at the present.

13. For the reasons stated above this writ petition is rejected summarily.