

## Shanthi Theatres Private Ltd. Vs The Tamil Nadu Electricity Board

**Court:** Madras High Court

**Date of Decision:** Nov. 25, 2009

**Acts Referred:** Electricity Act, 1910 " Section 17(10), 26(1), 26(6)

**Hon'ble Judges:** N. Kirubakaran, J

**Bench:** Single Bench

**Advocate:** A. Jenasenan, for the Appellant; Selvendran, for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

N. Kirubakaran, J.

The writ petition is filed challenging the Bill No. 2034 dated 31.01.2003 through which the Petitioner was called upon

to pay a sum of Rs. 2,41,768/- termed as arrears for the period from November 2002 to 20th January 2003. The facts of the case are as follows:

2. The Petitioner is running a cinema theatre known as ""Shanthi Theatre"" at Anna Salai, Chennai and is screening movies. According to the

Petitioner, there was a surprise power check conducted by the Assistant Engineer of the first Respondent, the Tamil Nadu Electricity Board and he

observed that the meter was suspected to be defective. Subsequently, the Assistant Engineer visited the theatre again on 20.01.2003 and replaced

the existing meter with a new meter and made an endorsement that the existing meter was defective.

3. Thereafter, on 27.01.2003 the reading of the new meter was recorded to be 4400 units for 8 days. Bill for the month of January 2003 sent to

the Petitioner showed that the Petitioner consumed 27510 units for the month of January 2003 and called upon the Petitioner to pay a sum of Rs.

1,21,554/- being the arrears for the period from November 2002 to 20th January 2003 amounting to Rs. 1,07,304/- in all amounting to Rs.

2,41,768/-. The said bill is challenged before this Court.

4. The Learned Counsel for the Petitioner submitted that when the meter was found to be defective, it is bounded duty of the Respondent to refer

the matter to the Electrical Inspector for his opinion as per Section 26(6) of the Electricity Act, 1910. In this case, according to the counsel, no

such procedure was followed and in the absence of the said procedure, the demand for the said amount is not sustainable. He relied upon the

judgment of the Honourable Supreme Court rendered in Bombay Electric Supply and Transport Undertaking Vs. Laffans (India) Pvt. Ltd. and

Another, . In that case, the defective meter was not referred to the opinion of the Electrical Inspector. In paragraph 14 of the said judgment, it was

stated that the demand raised by the Appellant/Electricity Board is justified based on the average consumption during the similar period and the

calculation based on the record of consumption for the corresponding period from the previous year shall be taken as average consumption and so

far as the period which the meter is said to be incorrect, the demand has not been revised by the Electrical Inspector and hence it is not available to

be revised. It was further held that when the meter alleged by the Electricity Board to be not correct it should have been referred to the Electrical

Inspector u/s 26(6). But Electricity Board cannot be allowed to raise the demand over and above the demand raised through the bill issued for the

period and paid by the first Respondent and that the right to raise additional bills stands aloof by the Appellant/ Electricity Board for re-valuation to

be proceeded in accordance with Section 26(6) of the Electricity Act, 1910.

5. The Learned Counsel also referred to another judgment of this Court rendered in A.A. Mohd Raffi v. Tamil Nadu Electricity Board represented

by its Chairman, Anna Salai, Madras-2 and 2 others reported in 2003 CTC 137. In that case also it was held by His Lordship Justice P.

Sadasivam, as he then was, that Electricity Board again raised a bill in case of defective meter without approaching Electrical Inspector and without

having resorted to u/s 26(6) and the said bill was held to be invalid and quashed.

6. On the otherhand, Mr. Selvendran, the Learned Counsel for the Respondent/Electricity Board contended that the defective electric meter was

referred to the Executive Engi-neer(MRT) and the same was stated in paragraph 4 of the counter affidavit and based on his opinion the amounts

were demanded. He further submitted that as per Section 17(10) of the terms and conditions of the Electricity Supply, the Executive Engineer is

authorised to assess the consumption and hence the amounts demand is justified.

7. It is seen from the records that the inspection was conducted on 08.01.2003. During that period, the act namely Electricity Act, 1910 was in

force and said statute clearly governs the facts of the case. As per Section 26(6) of the Act when there is a dispute with regard to the meter it

should be referred to the Electrical Inspector. Section 26(6) of the Act reads as follows:

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, notices of his intention so to do.

8. Thus, it is clear from Section 26(6) that when there is a dispute with regard to the meter or the functioning of the meter, whether it is defective or

non defective, the opinion of the Electrical Inspector had to be obtained. As far as the consumer is concerned he could take advantage of non

referring the meter to the Electrical Inspector because he would not be prejudiced whereas the Electricity Board would be prejudiced. Based on

the opinion of the Electrical Inspector only, the Electricity Board would raise an additional bill whereas in this case no such procedure was

followed and that it would definitely be detrimental to the interest of the Electricity Board. When a procedure has been contemplated by an Act,

the same has to be followed as per the said procedure as stated in the Act. The Learned Counsel for the Respondent relied upon Clause 17(10) of

the terms and conditions of supply to sustain his contention that the Electricity Board obtained the opinion of the Executive Engineer (MRT). The

terms and conditions are only a contract and at the best it could only be termed as sub-ordinate legislation whereas the Electricity Act u/s 26(6) is

the statute. It is settled law that sub-ordinate legislation cannot over ride the statute and the statute alone will prevail.

9. Apart from that, the Honourable Supreme Court had categorically stated in the judgment referred to above namely Bombay Electric Supply and

Transport Undertaking Vs. Laffans (India) Pvt. Ltd. and Another, , that the right to raise additional bills stands lost by the Electricity Board for its

failure to proceed in accordance with Section 26(6) of the Electricity Act, 1910. In view of the procedural irregularity which is mandated by Section

26(6) of the Act and also in view of the categorical pronouncement of the Honourable Supreme Court, the Respondent/Tamil Nadu Electricity

Board cannot raise the additional bill for the period from November 2002 to 20th January 2003 and that portion of the bill is quashed. The above

order shall not stand in the way of Electricity Board in referring the matter to the Electrical Inspector as per Section 26(6) of the Act. Further this

Court cannot lose sight of the fact that 6 years since inspection passed and if any material is available, the Respondent can proceed as stated

above.

10. The above writ petition stands allowed with the above direction. No costs. Consequently the connected W.P.M.P. No. 5370 of 2003 is

closed.