

(1983) 06 CAL CK 0021

Calcutta High Court

Case No: None

In Re: M/s. Ambika Cold Storage

APPELLANT

Vs

RESPONDENT

Date of Decision: June 28, 1983

Acts Referred:

- Constitution of India, 1950 - Article 226
- Electricity Act, 1910 - Section 24, 26

Citation: 86 CWN 933

Hon'ble Judges: Mookerjee, J

Bench: Single Bench

Advocate: Satyanarayan Bhattacharya, for the Appellant; S.N. Biswas for Respondent No. 1 and Samir Kumar Mukherjee, for the Respondent

Judgement

Mookerjee, J.

The petitioner firm is the owner of a Cold Storage situ acted at Memari in the district of Burdwan and is a consumer of the West Bengal State Electricity Board. The subject matter of challenge in this writ application is a notice u/s 24 of the Indian Electricity Act, 1910 dated the 6th May, 1983 issued by the Divisional Engineer (COML), Burdwan O & M Circle, West Bengal State Electricity Board, threatening to disconnect electric supply to the petitioner's cold storage for alleged non-payment of bill for the month of March, 1983. This application has been heard with notice to the respondents who have appeared through Mr. Samir Kumar Mukherjee and Mr. S. N. Biswas. I record that although the respondents have not filed any affidavit-in-opposition they do not admit any of the allegations made in the writ application. The petitioner's case is that the meter installed by the West Bengal State Electricity Board at the petitioner's premises was defective and inspite of complaints made it was not replaced upto the point of time when the aforesaid notice u/s 24 of the Indian Electricity Act 1910 was issued. I do not propose to decide whether or not the electric meter installed in the petitioner's premises which has

been recently replaced and correctly recorded consumption of electricity by the petitioner and whether the correct reading of the meter was done before the respondent No. 4 demanded payment of the aforesaid bill from the petitioner.

2. The petitioner and the West Bengal State Electricity Board had entered into an agreement for supply of high voltage energy and sitting in writ jurisdiction I am not prepared to entertain disputes relating to the bills for alleged consumption of electricity by the petitioner because both parties have prima-facie alternative remedies available to them for determination of their claims and contentions. Mr. Mukherjee appearing on behalf of the State Electricity Board drew any attention to clause 13 (3) of the aforesaid agreement between the parties according to which in the event a meter is found defective and a check meter is not installed, energy consumption during the period when the meter was deemed to be defective shall be determined by taking an average consumption and other para meters for the preceding three months or during any previous or subsequent period that may be reasonably comparable. My attention has been also drawn to clause 27 of the agreement between the Board and the consumer relating to any of the matters in the agreement shall be referable to two arbitrators, one to be appointed by each party to the dispute and the provision of the Arbitration Act apply to such arbitration in all other respects. Therefore, in the event the petitioner has any grievance about the bills demanded by the Board it is open to both parties to obtain a reference to their disputes and differences to arbitration in the manner provided in clause 27 of the Agreement. I, however, am by no means unmindful of the inaction and passivity on the part of the Board and its officers to promptly attend to complaints lodged by consumers regarding defects in the meters etc. or about incorrectness of the bills issued to them. Partly because of such attitude on the part of the Board the consumers are compelled to seek extraordinary remedy under Article 226 of the Constitution. In my view as already observed, ordinarily the parties ought to avail of the remedy provided under the Agreement between them. To enable them to do so and to preserve their rights in any future proceedings between the parties in any future proceedings between the parties, I propose to grant for limited period the following interim order.

3. Mr. Bhattacharya, appearing on behalf of the petitioner, has submitted that after this application was filed the previous meter was replaced and a new meter was installed in the petitioner's cold storage. According to Mr. Bhattacharyya, the new meter is also defective and same does not correctly record the amount of energy consumed by the petitioner. This is disputed by Mr. Mukherjee who has appeared on behalf of the West Bengal State Electricity Board. The observations which I have already made for resolving the disputes between the parties would be equally applicable to the dispute now raised about the subsequent bill for Rs. 37,625.92 served upon the petitioner. The learned advocates for the parties have also drawn to my attention the sub-section (6) of section 26 of the Indian Electricity Act, 1910. Under the said provision.

(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 consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven day's notice of his intention so to do.

4. Therefore, it is open to the petitioner to avail of the aforesaid provision and approach the Electrical Inspector for deciding whether the meter installed in the petitioner's premises is defective. Sitting in Writ jurisdiction, I am not prepared to decide the aforesaid dispute about the correctness of the bills served upon the petitioner and as to whether or not the previous meter and the present meter installed in the petitioner's premises were defective. As already observed, petitioner is entitled to avail alternative remedies indicated above.

5. I accordingly dispose of the application without recording any finding on the merits of the claims and contentions. The order passed on this application will not prevent either of the parties from filing appropriate proceedings before the competent court and or authority under the law and the said court and or authority would be at liberty to decide the disputes or differences. If raised, in accordance with law. I direct that the interim order made in the application would continue at the first instance for ten days. On the petitioner depositing within the aforesaid period with the State Electricity Board another sum of Rs. 15,000,- without prejudice, the interim order will continue for a period of four weeks from date. I make it clear that this interim order will not affect the right, if any, of the West Bengal State Electricity Board to issue a revised bill for the period in question or to demand payment for electrical energy consumed for the month of May, 1983 or any subsequent months. There will be no order as to costs.