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Calcutta High Court

Case No: O.C. No. 10173 (W) of 1992

Ganges Manufacturing Co. Ltd. and Others	APPELLANT
Vs	
W.B. State Electricity Board and Others	RESPONDENT

Date of Decision: Aug. 16, 1993

Acts Referred:

- Constitution of India, 1950 - Article 14, 19(1), 226, 300A
- Electricity Act, 1910 - Section 24, 24(1), 26(1), 26(6), 39

Citation: 98 CWN 1

Hon'ble Judges: Kalyanmoy Ganguli, J

Bench: Single Bench

Advocate: Gautam Chakrabory and Rabinder Nath Dutta, for the Appellant;Anindya Mitra, for the Respondent

Judgement

Kalyanmoy Ganguli, J.

In the instant application under Article 226 of the Constitution of India, the Petitioners, inter alia, pray for a declaration declaring that the decision making process adopted by the West Bengal State Electricity Board, hereinafter to as the Board in the determining the alleged dues to the Petitioner company as contained in the two supplementary bills both dated August 2,1991 being annexure "H" collectively to the petition and the consequential notice of disconnection issue by the Respondent Board u/s 24 of the Indian Electricity Act, 1910 being annexures "K" and "M" collectively to the writ petition are ultra vires the provisions of Articles 14, 19(1) (g) and 300A of the Constitution of India and de hors the provisions of Section 26(6) of the Indian Electricity Act, 1910. The Petitioners further pray for a writ in the nature of mandamus commanding the Respondents to forbear from giving effect or from taking any steps pursuant to the two supplementary bills as referred to above

and the notices of disconnection also referred to above.

2. Although this matter was argued at length by both the parties yet point for determination is rather short. But to arrive at that determination some recital of facts is required.

3. The Petitioner is an existing company incorporated under the Companies Act, 1956 having its registered office and and factory at 7, Council House Street, Calcutta-700001 and "Bansberia, Dist. Hooghly respectively and the Petitioner No. 2. is a shareholder of the Petitioner No. 1.

4. The impugned bills and the impugned notices of disconnection were issued for the alleged unrealised electricity charges for a period as far back as 5 to 7 years i.e. from May, 1984 to July, 1986 and from August, 1986 to December, 1986. It is the averment of the Petitioners that regularly the meters were checked by the authority concerned as the consumer used to consume electricity in bulk. It is the further assertion of the Petitioners that almost in every month testing of the meters by the testing engineer of the Board was done and that the Board''s Officer regularly visited the factory of the Petitioner No. 1 for the purposed checking the metering installation and sealing of the same and on each occasion the staff of the Board recorded their comments on the meter reading card with is kept along with the meter. It is further asserted by the Petitioners that the metering installation of the Board at the Petitioners'' factory is also inspected, checked, seals are unsealed and resealed every month by the Board''s senior officers for taking monthly meter reading and resetting the maximum demand indicator to ''O'' level every month. The Petitioners further state that the whole of the metering installation including the chamber of the P.T. and H.T. fuses are so close that all the seals can be observed and inspected at a glance. It is the admitted case of both the parties that there are no current arrears of bills for electricity consumed but the impugned notices relate to alleged under charging which is alleged to have occurred between 5 and 7 years ago.

5. The Petitioners state that upto the year 1984, the Petitioner company had two independent feeders having two separate and independent meters in its factory at two different places. The company applied for a single meter starting from January 31, 1985 and on that application various checks were made by the Board of the metering installation and all connected apparatus and the engineers of the Board checked the meters and found the same to be without any fault as would be evident from annexure ''B'' to the writ petition.

6. On August 21,1986 the testing engineer of the Board inspected the Petitioner''s metering installation in the factory when they allegedly found H.T.P.T. fuse R phase in blow off condition. Immediately, the defect was rectified on the very same day and the Board, in respect of the month of August, 1986 raised a bill on the basis of the average consumption and the Petitioners duly paid the said bill. It is noteworthly

that in the said bill nothing was mentioned about the seal of the meter being found broken or otherwise as has been sought to be made out for the first time, according to the Petitioners, in the affidavit-in-opposition. It is the strong assertion of the Petitioners that during the entire correspondence there was never any whisper of allegation about any tampering with the system breaking of any seals in the metering installation, The Petitioners state that it is for the first time in the affidavit-in-opposition that the question of fraud has introduced.

7. That again on December 23, 1986 the testing engineer of the Board, in course of inspection, allegedly found that the L.T.P.T. fuse of R phase was blown off. The officers again immediately replaced the fuse element. For the blowing of the fuse in the L.T.P.T. no supplementary bills were raised against the Petitioners in respect of any period. The useful bill came as per meter reading and the same was paid by the Petitioners. The factum of the blowing off the R phase of the L.T.P.T. fuse was duly noted in the yellow card but no allegation of tampering was recorded in the books of the Board or in the yellow card. From a perusal of the report dated December 26,1986 it transpires that "on check red phase P.T. phase on the L.T. side the LT. fuse was found in blown out condition. The seals for both i.e. located in the P.T. panel and T.V.M. panel were found in tact. It may be mentioned here that at the time of the last visit to this consumer''s premises on 21st August, 1986 the squad detected the blow out fuse on the H.T. side of the P.T. for red phase. Hence it is suspected that some sort of intermittent short circuit (either due to insulation failure or some other reasons) is taking place in P.T. secondary wiring leading to such failure of fuses." The recommendation made in the said report dated December 26,1986 was inter alia, as follows: "Secondary circuit i.e. outgoing from P.T. secondary to the T.V.M. metering and other circuits need thorough checking to ascertain the reason behind such frequent blowing out of the fuses.

8. So upto this time we find that no allegation of the seals being found in unsealed condition, was made by the Board against the Petitioner company. On the contrary it appears from the report that seals were found in tact. It may be mentioned here that if seals are found to be in tact then the allegation of fraud cannot stand and it may be remembered in this connection that the allegation of fraud and/or tampering was made for the first time in the affidavit-in-opposition before this Court.

9. But the point for decision is not as to whether there was or was not any tampering with the metering installation of the Petitioner company. If there was in fact any tampering the Board is competent not only to proceed against the consumer u/s 39 of the Indian Electricity Act, 1910 but also to cause disconnection of the supply. This power to disconnect is independent of any power of the Board proceed to against the consumer for realisation of the unmettered charges.

10. Certain other questions were raised at the hearing as to whether the blowing out of the fuses and the consequent under reading could be attributed to any defect

in the meter. The Board sought to argue that there was no defect in recording of the meter but because of blowing off the fuses, the meter concerned could not record the actual consumption of electricity or the amount of electrical quantity coming to the meter.

11. Section 24 of the Indian Electricity Act, 1910 provides:

(1) Where any person neglects to pay any charge for energy or any sum, other than a charge, 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 day''s notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut of 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.

The other part of Section 24 is not relevant for our purpose.

12. Sub-section (1) of section 26 provides:

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.

13. Reading together Sub-section (1) of Section 26 and Section 24 it appears that the legislative intent is that the licensee may disconnection (he supply of a consumer when such consumer neglects to pay any charge for energy which amount of energy is deemed to be supplied to a consumer through a correct meter. We are not concerned here with any other dues other than a charge for energy. We are not also concerned with the correctness or otherwise of a meter. What we are on is that on a reading of the sections together and to give a harmonious construction to the scheme of the Act, it is an inescapable conclusion that the power of disconnect for non payment of dues for consumption of electrical energy can be taken recourse to only when a consumer fails to pay such charges which he is asked to pay by the presentation of a bill in accordance with the reading of the meter.

14. There may be cases where due to contrivances adopted by the consumer the meter reading may be impeded or there may be cause where because of contrivances adopted by a consumer the meter does not record the actual consumption of electricity or the electrical quantity in the supply. If such be the cause the licensee is certainly entitled to realise such unrealised charges for consumption of electricity by a consumer. So long as bills are raised on the basis of the reading of a meter, correct or otherwise, no further question arises and the consumer is bound to pay the amount of the bill raised in accordance with the

reading of the meter subject to the provisions of Sub-section (6) of Section 26 of the Indian Electricity Act, 1910. But it becomes altogether a different matter when the licensee admittedly seeks to raise a bill for past period of enormous amounts on the ground that the meter was prevented from recording the correct consumption because of contrivances adopted by a consumer. In all such cases the licensee is certainly entitled to recover all such amounts by which the consumer was undercharged but such realisation must be in accordance with the procedure established by the law of the land and not by putting a consumer to ransom by threatening him with disconnection and taking recourse to Sub-section (1) of Section 24 of the Act. The only course left to the licensee in such cases is to set in motion the machinery of law which may either be a suit or any other proceeding according to the law of the land including the law of limitation for realisation of such amounts. A licence may be a mammoth organisation armed with all the powers conferred on it by the statute but it is never above the law of the land. Whenever a licensee seeks to realise dues for past of unmetered consumption it has to prove such dues duly in a constituted proceeding where evidence may have to be led and where the consumer is given a chance to refute the charges of the licensee. Otherwise the consequences will be lethal for the consumer because if the licensee is allowed to present a bill of an enormous amount to the consumer on the allegation that the consumer has been under- charged for a past period and threatens the consumer with instant disconnection for non payment of such past dues, the consumer will be held at ransom by the high handed and arbitrary action of a licensee and he will have no option but to yield to such demands which may or may not turn out to be lawful. This may lead to a very dangerous situation and a licensee is never permitted to hold a consumer at ransom thereby compelling a consumer to pay even unreasonable demands of the licensee. If this procedure is allowed the consumer will be held totally at the mercy of the licensee and would be obliged to meet all illegal demands of a licensee. There is no presumption that the demands of a licensee is always lawful, genuine and beyond question. A licensee is not necessarily Caesar''s wife. It is true that there are dishonest consumers also but such dishonest consumers are to be brought to book by the procedure established by law and not by being held to ransom by the licensee. This is the only meaning which can be attributed to the provisions of Sub-section (1) 24 read in the context of Sub-section (1) of Section 26.

15. It is once again made clear that this Court does not say that a licensee is not entitled to realise its past dues for under charging a consumer but all that this Court says is that such dues are to be realised through a procedure established by law and by taking recourse to legal proceedings. Only in such way the consumer is protected form the vagaries and arbitrariness of a licensee. Every authority or citizen of India is protected by the provisions of the Constitution of India and in case of any arbitrariness Article 14 will spring up and strike down such arbitrariness. Arbitrariness can only be ruled out when both the parties are put on the same scale

and their rights are adjudicated by as appropriate authority.

16. In the circumstances, nor of the impugned bills and the impugned notices of disconnection can be sustained in law and have to be struck down. For the reasons stated here in before this application succeeds and is allowed. Both the impugned bills and the impugned notices of disconnection are quashed and set aside but the Respondent Board is given liberty to initiate any proceeding in any appropriate forum for the realisation of its dues, if any, in accordance with law.

17. There will be no order as to costs. Let the operation of this order remain stayed for a period of three weeks from date. It is needless to mention that during the period of these three weeks, the interim order already passed in the case will continue.