Raghuvir Vithoba Balgi and Another Vs Bombay Electric Supply and Transport Undertaking

Court: Bombay High Court

Date of Decision: Feb. 26, 2004

Acts Referred: Electricity Act, 1910 â€" Section 26(6)

Citation: (2004) 3 ALLMR 797 : (2004) 5 BomCR 690 : (2004) 3 MhLj 174

Hon'ble Judges: D.G. Karnik, J

Bench: Single Bench

Advocate: Tushar Goradia, instructed by M.D. Mali, for the Appellant; H. Toor, i./b., Crawford Bailey and Co., for the Respondent

Judgement

D.G. Karnik, J.
This notice of motion is taken out by the plaintiffs for restraining the defendant from disconnecting the electric supply to

shop No. 3 and 4 (for short ""the said shops"").

2. Plaintiff No. 1 was conducting the business in shop No. 4 since long and in the year 1983 he allowed the plaintiff No. 2 to carry on the said

business, as a conductor. The plaintiff No. 2 is running a hotel in the name and style of Hotel Natraj in the said shops. The plaintiffs were provided

with an electricity supply to the said shops under meter number D-804594 and D-408446, and the plaintiffs were paying the electricity bills

regularly. There is also no dispute about the correctness of the bills upto March 1995. In respect of one meter, the dispute relates to the period

between 20th April 1995 and 13th July 1999 and in respect of the other meter for the period between April 1995 and 12th June 1999,

3. By a letter dated 6th January 1999 (the date on the letter appears to be erroneous), the defendant informed the plaintiffs that in the investigation

carried out on 9th March 1999 the meter No. D-804594 was found to be defective/damaged/not registering properly, and therefore it was

arranging to replace that meter with a new meter, shortly. The letter further states that the defendant would carry investigation into the cause of

failure of the old meter and the costs incidental to the repairs and replacement would be intimated by a special bill. It appears that similar defects

were noticed in the second meter also and both the meters were changed in July 1999 or thereabout. It is admitted that the results of the

investigations, if any, carried out by the board as stated in the defendants letter dated 6th January 1999 were never informed to the plaintiffs.

4. By a letter dated 4th September 2000, the defendant wrote to the plaintiff that the two meters which were replaced on 6th July 1999 were

tested and the meters were found to stopped on one lamp test. By the said letter, the defendant also informed that as the meters had recorded

downward trend of consumption from 28th April 1995 that had resulted in under billing from 28th April 1995 to 12th June 1999 in respect of one

meter and upto 13th July 1999 in respect of the other meter. According to the defendant there was a short recording of consumption of electricity

of 409 and 1073 units (per month or per billing cycle) respectively in respect of the said two meters. Accordingly, the defendant made a claim in

the sum of Rs. 5,56,365.25 in respect of the alleged under billed units by the said letter dated 4th September 2000. The defendant disputed that

there was any under billing and the series of correspondent ensued which shows that the plaintiff asked the defendant to produce conclusive

documentary evidence to show that there was under recording of consumption resulting in under billing. As the plaintiff did not make the payment

as per the demand made by the defendant. The defendant disconnected the electricity supply of the plaintiff on 12th February 2002 for non-

payment of Rs. 3,56,365.25, being the amount of the alleged under billing.

5. The plaintiffs have, therefore, filed the present suit for a declaration that the demand of Rs. 3,56,365.25 made by the defendant by a letter dated

4th September 2000 is illegal, null and void and not enforceable. The plaintiff have also claimed mandatory injunction directing the defendant to

restore the electricity supply and prayed for other consequential reliefs. By an order dated 30th April 2002, passed in this motion a learned Single

Judge of this Court declined to grant any ad interim relief. However, in an appeal lodging No. 414 of 2002 the Division Bench of this Court by an

ad-interim order directed the restoration of the electricity supply subject to deposit of Rs. 75,000/- by the plaintiffs. By the final order dated 17th

June 2002, the appeal lodging No. 414 of 2002 was disposed off in terms of ad interim order and the matter was remanded back to the Single

Judge for disposing off the motion on merits. In this way, the matter is before me again.

6. As the electricity supply has already been re-connected as the order of the Division Bench, learned counsel for the plaintiff seeks an injunction

restraining disconnection pending hearing and final disposal of the suit. Learned counsel for the defendant, however, prays that as the supply has

already been reconnected the plaintiff should be directed to deposit atleast 50% of the total amount of the disputed amount of Rs. 3,56,365.25.

7. Learned counsel for the plaintiffs submits that as the plaintiffs dispute and had always disputed the correctness of the demand made by the

defendant about alleged under recording of the consumption by the electricity meters, the defendants were not entitled to demand the payment or

disconnect the electric supply unless the dispute was decided the Electrical Inspector under Sub-section (6) of Section 26 of the Indian Electricity

Act, 1910 (for short Electricity Act). Learned counsel further submits that as there was a dispute, only the Electrical Inspector could decide the

amount of electrical energy supplied to the plaintiffs during the period not exceeding 6 months and the decision of the Electrical Inspector, subject

to an appeal provided under the Electricity Act, was final and binding on the parties. The learned counsel further submits that under Sub-section

(6) of Section 26 of the Indian Electricity Act, the difference can be claimed only in respect of the period of 6 months prior to the dispute and not

more and therefore the demand made for the recording of the alleged under consumption was bad in law.

8. Learned counsel for the defendant submits that there was no difference of dispute between the parties that the meters in question were not

recording the correct consumption. There may be a dispute between the parties as to what extent the meters had recorded under consumption but

the fact that the meters were not recording electric consumption properly was never disputed by the plaintiffs. Learned counsel for the defendants

also showed me a copy of the report made at the time of changing of the meters on which the endorsement has been made ""meters stopped"" and

the plaintiff has signed below the said endorsement. The learned counsel submits that as the plaintiffs have admitted that the meters had stopped

there was no dispute which was referable to the Electrical Inspector under Sub-section (6) of Section 26 of the Indian Electricity Act. The

admission by the plaintiffs in the shape of the signature below the endorsement ""meters stopped"" prima facie appears to be an admission given

under misconception. Even according to the defendant, when it replaced the meters, they had not stopped running completely. At Exhibit 2 to the

affidavit in reply dated 12th March 2002 filed by the defendant, then defendant has given charts showing the meters reading of the two meters. The

charts conclusively show that for each of the billing period, the consumption of few hundred units was recorded by the two old meters. Therefore,

the meters were working though they may not be recording the correct consumption of electricity and had not stopped working completely. The

alleged admission of the plaintiffs that the meters had stopped was, therefore, not a correct statement of fact. The admission that the meter had

stopped appears to have been given under a misconception when the signature was obtained at the time of replacement of the meters on the

ground that the meters had stopped. However, the plaintiffs appear to have raised no dispute at any time that the meters were not defective. Even

if the admission that the meters had stopped (i.e. meters were not working at all; recording nil consumption) is overlooked, no dispute was ever

raised by the plaintiff that the meters were not recording proper consumption. The dispute that was raised by the plaintiff was only regarding the

extent of under consumption recorded by the meters but the fact that the meters were not correct was never disputed.

9. Sub-section (6) of Section 26 of the Indian Electricity Act, 1910 reads as under :

26(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 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

meter shall, in the absence of fraud, be conclusive proof of such amount of quantity:

Provided that before either a licensee of a consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not

less than ten days'' notice of his intention so to do.

Sub-section (6) makes it clear that when a dispute arises as to whether the meter is or is not correct, the matter shall be decided upon the

application of either party by an Electrical Inspector. Learned counsel invited my attention to the observations made in paragraph 17 of the

judgment of the Apex Court in The Tata Hydro-Electric Power Supply Co. Ltd. and Others Vs. Union of India (UOI), to the following effect.

Where there is no dispute that the meter is defective, such a dispute is not one contemplated by Sub-section (6) of Section 26 of the Act. It is no

doubt true that if a dispute as contemplated by Sub-section (6) of Section 26 of the Act arises, the matter has to be referred to the Electrical

Inspector, and in view of the statutory provisions, private arbitration in the case of such a dispute is not permissible in law. However, if there is no

dispute as to whether the meter is defective or not, there is nothing which prevents the parties from referring their other disputes to arbitration for

determining the liability of the consumer in such cases.

10. These observations show that dispute arises between the two parties where one party asserts that the meter has rightly recorded the energy

supplied while the other party controverts that position and contends that the meter has not correctly recorded the supply of electrical energy. Such

a dispute is referable to an Electrical Inspector under Sub-section (6) of Section 26. Where however, one party avers that the meter has not rightly

recorded the energy and further avers that the meter recorded less consumption of electricity say by one unit and the other party admits that the

meter is not correct and it has not recorded the consumption correctly but contends that the meter has recorded less consumption say only by half

unit and not by one unit as contended by the other party, the dispute is not covered by Sub-section (6) of Section 26. Electrical Inspector would

not get the jurisdiction much less an exclusive jurisdiction to decide such dispute. The jurisdictional fact giving the jurisdiction to the Electrical

Inspector to entertain the dispute under Sub-section (6) of Section 26 is an assertion made by one party that the meter has not rightly recorded the

energy supplied and denial of that proposition by the other party by contending that the meter has rightly recorded the electrical consumption.

11. In the present case, there is an assertion by the defendant that the two meters have not recorded the consumption of electrical energy correctly.

The plaintiffs have not disputed this fact. The only thing that is contended by the plaintiffs is that the estimation of consumption of energy made by

the defendant on the basis of average consumption shown by the replaced meters is not the correct estimation of consumption during the period

when the meters were defective.

12. Learned counsel for the plaintiffs submits that with the change in the nature of hotel business and purchase of additional electrical equipments

from time to time, resulted in periodical and gradual increase in the electrical consumption over a period of time. Therefore, the average

consumption of electricity recorded by the correct meters in the year 1999-2000 would not be a fair and appropriate guide for the purpose of

estimating the consumption of electricity in the years 1995 to 1999. The contention raised by the learned counsel for the plaintiffs cannot be

brushed aside completely. Though the plaintiffs have not denied that the meters were defective, the plaintiffs do deny that the estimation of the

consumption made by the defendant is not correct and such estimation cannot be made on the basis of the consumption of electricity in the year

1999-2000. This dispute must be decided by some authority. It may be decided, in case of an agreement between the parties by private

arbitrators or else by a Civil Court in exercise of its plenary powers recognised u/s 9 of the Code of Civil Procedure. Admittedly, the dispute exists

between the parties as to whether the demand made by the defendant; in the sum of Rs. 3,56,365.25 by a letter dated 4th September 2000 is a

correct demand and as to whether the estimation of consumption of electricity made by the defendant is correct. Until the said dispute is resolved,

the defendant cannot take coercive steps like disconnection of electric supply.

13. Learned counsel for the defendant submits that under the terms and conditions of the electricity supply, the defendant is entitled to disconnect

the electric supply for non-payment of the bill. He further urges that under the terms and conditions of the supply, if the consumer has a dispute as

to the correctness of the bill, he is first required to deposit the amount of the bill which is treated as a deposit and then the dispute is decided by the

review committee of the defendant. I am afraid such a generalisation cannot be made. A query was made by me to the learned counsel for the

defendant namely: If the average consumption of a consumer is 10 units a month and the defendant wrongly raises a bill of 10,000/- units then is

the consumer required to first make the payment for the 10,000 units and raise a dispute before the Review Committee? Is the consumer deprived

of any another remedy like suit? Learned counsel for the defendant submitted that howsoever unreasonable or erroneous the bill may be, under the

conditions of supply, first the payment would have to be made which would be held as deposit and then make the complaint to the Review

Committee. I am unable to agree. Review Committee established by the defendant may be for redressal of the grievances of customer at its own

end. The defendant -- or its own review committee -- cannot be a judge in its own cause and against the wish of the consumer. This is against the

principles of natural justice - no one can be judge in his own cause. Secondly, it is not shown that the jurisdiction of a Civil Court to decide all

disputes of civil nature is ousted by any statutory provision. If a suit is filed by a consumer against disconnection of electric supply for non-payment

of a bill, which is alleged to be ex-facie or patently illegal or improper. The Court would not grant an injunction to the plaintiff merely on the ipse

dixit of the plaintiff that the bill is illegal or improper, but the Court would examine the facts and exercise the discretion judiciously to prevent

injustice. The Court may grant subject to such terms as to the payment of the bill or a part thereof or furnishing of an appropriate security in such

sum as the Court considers appropriate. There cannot be a straight-jacket formula as to the terms on which the injunction can be granted. It would

depend upon the facts and circumstances of each case. Of course, before granting of in injunction, the Court must be prima facie satisfied that the

bill for non-payment of which the electric supply is sought to be disconnected is illegal or improper. Again, if the dispute regarding the bill is

covered under Sub-section (6) of Section 26 of the Electricity Act, the Civil Court would not exercise the jurisdiction but require the parties to get

the dispute decided by an Electrical Inspector. It is only in cases like the present one where the dispute is not covered under Sub-section (6) of

Section 26 and where the demand made in the bill appears to be prima facie illegal or improper that the Court would grant an injunction on terms

considered appropriate by the Court.

14. Reverting back to the present case, it is admitted by the learned counsel for the defendant that the meters had not stopped completely but

meters were recording consumption, which was lower than the actual consumption. Ordinarily, if the meter is recording less consumption, the

percentage by which the consumption is shown less would be constant and not erratic. For example, if the defective meter is recording the

consumption of 6 units when first 10 units are consumed also it would record only 6 units and would not record 2 units. The percentage by which

the consumption is recorded less would ordinarily be the same unless further defect occurs in the meter. The original meters were removed by the

defendant. The defendants letter dated 6th January 1999 states that the defendant would be investigating the causes of the failure. If the matter has

been investigated the investigation report may be showing the cause and percentage by which the electricity meters were showing less

consumption. The facts about the investigation of the meter are within the knowledge of the defendant. The investigation report is not disclosed in

the affidavit in reply. The best evidence which is in possession of the defendant namely the electricity meters, the report of its investigation is in the

defendant''s possession and is not produced. If such report is produced, the estimation could possibly have been made to what extant the

consumption recorded by the old meters was less. Another factor other than the average consumption in the year 1999-2000 can be available to

test the argument of the plaintiff that the average consumption in the year 1999-2000 can be an appropriate basis for ascertaining the consumption

in the year 1995-1999 especially for earlier years.

15. Learned counsel for the plaintiff further submitted that assuming that the period of limitation be six months under Sub-section (6) of Section 26

is not applicable still under the general law of limitation, the defendants cannot recover the bill for an energy consumed more than 3 years ago. On

the view which I have taken earlier, it is not necessary to express any opinion on the said contention at an interlocutory stage. Considering that the

defendant has already deposited a sum of Rs. 75,000 and it is a little over 20% of the total demand made by the plaintiff and considering the

pattern of consumption of the electricity by the defendant, it would be appropriate to grant an injunction subject to the defendants depositing a

further sum of Rs. 50,000/- with the defendants. Needless to say, that this amount should be treated as the deposit and would be subject to the

final decision of the suit. Hence, I pass the following order,

16. The defendants are restrained from disconnecting the electricity supply of the plaintiff on the ground of non-payment of the amount of Rs.

3,56,365.25 as demanded in the letter dated 4th September 2000 subject to the defendant depositing a further sum of Rs. 50,000/-in addition of

the sum of Rs. 75,000/-already deposited, with the defendant within a period of 12 weeks.

17. Copy of this order to be authenticated by the associate.