

(Reportable)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8613 OF 2017

1 The Maharashtra State Electricity
 Distribution Company Limited,
 Division Office, Jalgaon (UCR).
 Through its Executive Engineer.

2 The Executing Engineer and
 Nodal Officer, MSEDCL,
 Circle Office, Jalgaon,
 District Jalgaon.

...PETITIONERS

-VERSUS-

M/s Vega Chemicals Pvt.Ltd.,
Plot No.F-23/24/25, MIDC,
Jalgaon, Tq. & District Jalgaon.
(Consumer No.110019002180).

...RESPONDENT

...

Shri A.S.Shelke, Advocate for the Petitioner.
Shri V.D.Hon, Senior Advocate a/w Shri A.V.Hon, Advocate for the
Respondent.

...

CORAM: RAVINDRA V. GHUGE, J.

**Reserved on 29th November, 2018.
Pronounced on 18th December, 2018.**

JUDGMENT:

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 The Petitioner is aggrieved by the order dated 25.03.2017 delivered by the Consumer Grievance Redressal Forum (established under the Section 42(5) of the Electricity Act, 2003) vide which, the grievance of the Respondent has been accepted and the following order has been passed :-

- "1. *The Forum sets aside the supplementary bills dated 15.09.2015 of Rs.1,05,22,108/- and dated 07.11.2015 of Rs.14,14,341/- raised by the Distribution Company and directs the Distribution Company to rework the bill for the period 3 months prior to 19.08.2015 (date of detection of defect in metering system) and also bill for the period 19.08.2015 to 14.10.2016 (date of detection of defect to the date of replacement of new meter) within 20 days from date of issue of this order.*
2. *As per regulation 8.7 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006, order passed or direction issued by the Forum in this order shall be implemented by the Distribution Licensee within the time frame stipulated and the concerned Nodal Officer shall furnish intimation of such compliance to the Forum within one month from the date of this order.*
3. *As per regulation 22 of the above mentioned regulations, non compliance of the orders/ directions in this order by the Distribution Licensee in any manner whatsoever shall be deemed to be a contravention of the provisions of these Regulations and the Maharashtra Electricity Regulatory Commission can initiate proceedings suo motu or on a complaint filed by any person to impose penalty or prosecution proceeding under Sections 142 and 149 of the Electricity Act, 2003.*
4. *If aggrieved by the non-redressal of his Grievance by the Forum, the Complainant may make a representation to the Electricity Ombudsman, 606, 'KESHAVA', Bandra Kurla Complex, Bandra (East), Mumbai 400051 within sixty (60) days from the date of this order under regulation 17.2 of the MERC (Consumer Grievance*

Redressal Forum & Electricity Ombudsman) Regulations, 2006."

3 The Petitioner is the Electricity Distribution Company. The Respondent is a High Tension (HT) consumer since 08.09.2004 having a contract demand of 400 KVA and availing power supply 11 KV Non Express Feeder Line from 33/11 KV Sub Station at J Zone, MIDC, Jalgaon.

4 The three phase connection of the Respondent was earlier handled by M/s Crompton Greaves Limited, which was in-charge of the HT Consumers from Jalgaon and Bhusawal. The contract between the Petitioner and M/s Crompton Greaves Limited was from 01.11.2011 for a period of five years. Subsequently, the contract concluded and the Petitioner took over the HT Consumers.

5 On 19.08.2016, the Petitioner conducted periodical testings. The load test of the Respondent was conducted as per the mutual consent dated 24.08.2016, on 25.08.2016. The recording of HT meter of the Respondent indicated less recording of electricity consumed. Prior thereto, the HT meter readings along with the LT meter readings were conducted from 19.08.2016 to 24.08.2016. It was noticed that the wires of R phase of the Current Transformer (CT) were required to be connected to the R phase of the Potential Transformer (PT). Similar wires have to be connected as regards the Y phase and B phase. These wires were not properly connected and because of the cross connection, though more

electricity was consumed, the meter was under-recording and did not reflect the proper consumption.

6 Since the periodical testing and the load test indicated some mischief, the matter was referred to the Testing and Quality Assurance Laboratory at Nashik, which submitted its report on 21.11.2016. The said report indicated an erroneous recording. Consequentially, the bills were raised by the Petitioner, after drawing an average of the consumption, for payment of arrears.

7 The Respondent approached the Internal Grievance Redressal Cell. An order was passed on 12.01.2017, which indicates that the percentage of slowness of the meter was considered to be 50%. The Petitioner submits that a specific correct grouping sketch and grouping sketch as seen on the site (Respondent's meter connection) show incorrect grouping of the wires and therefore, though the meter was not faulty, wrong connections were made, which enabled the Respondent to save money on payment of electricity charges as per actual due to under-recording that occurs in such circumstances.

8 It is submitted that for correct metering of consumed energy, it is always necessary to connect Red (R), Yellow (Y) and Blue (B) phases to the CT and PT as provided by the meter manufacturer. If these phases are connected correctly, the manufacturer can assure that the recorded energy consumption is exactly equal to the consumer's consumption. If

these connections are altered with malicious intention or negligence, the consumption of energy will be lower than the actual consumption.

9 The learned Advocate for the Petitioner submits that in the instant case, R phase CT was connected to the Y phase PT, the Y phase CT was connected to the B phase PT and the B phase CT was connected to R phase PT. By such wrong connections, the element number 2 of the meter got R phase current and Y phase voltage. At unity power factor, the interpreted angle is 120 degree. This causes the recording to drop to 50% of the actual consumption as $\cos 120$ degree is 0.5 while $\cos 0$ degree is 1. Same incorrect calculations occurred in the remaining two elements resulting in 50% less recording than the actual consumption.

10 The Respondent had initially approached the Electricity Ombudsman, Mumbai in Representation No.29/2014. The Petitioner submits that in similar matter between M/s Bafna Auto Cars India Limited and the Petitioner herein, the Ombudsman delivered an order on 25.08.2014 and the assessment period was taken for 286 days and the percentage slowness of the meter was considered and the bill was directed to be raised.

11 The Petitioner submits that a defective meter is not defined under the Electricity Act. Clause 2(p) of the Central Electricity Authority (Installation and Operation of Meters) Regulations 2006 (for short "the CEA Regulations, 2006), defines a "meter". Wiring is not a part of the

meter. If the electrician or any person has knowingly (willfully) or inadvertently wrongly connected the wires, it would cause slow recording of the meter, which would not mean that the meter is defective, but would not rule out the possibility that a consumer has indulged in theft of electricity. Unfortunately, the Forum concluded that the meter is defective and no fault can be found with the Respondent. The Petitioner further submits that due to human intervention, either by mistake or on the instructions of somebody, the phase wires as stated above, were wrongly connected and hence, the meter ran slowly and the Petitioner escaped the actual billing. Such escaped billing can be recovered in full.

12 The Petitioner further submits that before the bills could be issued, the Petitioner resorted to the Meter Retrieval Information (MRI) to trace out the entire history of the meter. It was noticed that M/s Crompton Greaves Limited had installed a new meter on 25.07.2015 and the wrong wiring connection occurred due to human error. The fact remains that higher energy was consumed by the Respondent and lesser reading occurred. Since the meter was sent for testing at the request of the Respondent, a new meter was installed on 14.10.2016. It is nobody's case that the CT or PT or even the meter, are defective. Regulation 3.4 of the 2006 Regulations empowers the Petitioner to recover the entire charges for the electricity supplied, if the meter is not defective. As the electricity was consumed and charges for such consumption were not raised on the

Respondent due to the above fact situation, the Petitioner has rightfully issued the bill for recovery of the electricity actually consumed.

13 The Petitioner places reliance upon the following judgments :-

- (a) ***Tata Hydro Electric Power Supply Co. Ltd. vs. Union of India, AIR 2003 SC 1581*** (paragraphs 4, 5, 8 to 18 and 21).
- (b) ***Swastic Industries vs. Maharashtra State Electricity Board, AIR 1997 SC 1101*** (paragraphs 4 and 5).

14 The learned Senior Counsel appearing for the Respondent Company submits that the impugned order is perfectly legal, just and proper. Though the wires, which are connected externally to the RYB phases, they are construed to be a part of the meter and hence, the meter will have to be accepted as being defective. He has read the entire impugned order. It is pointed out that the definition of the "meter" is found under clause 2(q) of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 (for short "the MERC Supply Code, 2005"). Meter is defined to be a set of integrating instruments used to measure and/or record and store the amount of electrical energy supplied or the quantity of electrical energy contained in the supply, at a given time, which includes whole current meter and metering equipment, such as current transformer, capacitor, voltage transformer or potential or voltage

transformer with necessary wiring and accessories and also includes prepayment meters.

15 He has then referred to the definition of "meter" under clause 2(s) of the MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 (for short "the MERC Regulations, 2014"), which reads thus :-

"2(s) "Meter" means a set of integrating instruments used to measure and/or record and store the information regarding amount of electrical energy supplied or the quantity of electrical energy contained in the supply, in a given time, which includes whole current meter and metering equipment, such as current transformer, capacitor voltage transformer or potential or voltage transformer with necessary wiring and accessories, communication systems used for Automatic Meter Reading (AMR) and also includes pre-payment meters."

16 He, therefore, supports the impugned order in which, the Forum has concluded that *"wrong (slow) recording of the consumption resulted due to wrong/ defective wiring connections/ phase grouping. The wiring being integral part of the "meter", it amounts to a defective meter. Hence, this is a case of "defective meter".*

17 In the light of the above, it would be apposite to reproduce certain provisions.

Clause 2(q), Clause 3.4 and Clause 15.4 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other

Conditions of Supply) Regulations, 2005 read as under :-

"2(q) "Meter" means a set of integrating instruments used to measure, and / or record and store the amount of electrical energy supplied or the quantity of electrical energy contained in the supply, in a given time, which include whole current meter and metering equipment, such as current transformer, capacitor voltage transformer or potential or voltage transformer with necessary wiring and accessories and also includes pre-payment meters."

"3.4 Charges for Electricity Supplied

3.4.1 The Distribution Licensee is authorized to recover charges for electricity supplied in accordance with such tariffs as may be fixed from time to time by the Commission:

Provided that in case of distribution of electricity in the same area by two or more Distribution Licensees, the Commission may fix only the maximum ceiling of tariff for retail sale of electricity.

3.4.2 The Distribution Licensee is also authorized to recover such surcharge and charges for wheeling as may be specified under the provisions of sub-section (2) and sub-section (3) of Section 42 of the Act and such additional surcharge as may be specified under the provisions of sub-section (4) of Section 42 of the Act.

3.4.3 Unless otherwise specified, all HT and LT charges refer to one point of supply and each separate establishment shall be given separate point of supply.

3.4.4 The charges for electricity supplied under this Regulation 3.4 may include a fixed charge in addition to a charge for actual electricity supplied, in accordance with terms and conditions of tariff as may be specified.

3.4.5 In addition to the charges fixed by the Commission, consumers shall be required to pay all taxes, duties and other statutory charges as may be required under any law for the time being in force."

"15.4 Billing in the Event of Defective Meters

15.4.1 Subject to the provisions of Part XII and Part XIV of the Act, in case of a defective meter, the amount of the consumer's bill shall be adjusted, for a maximum period of three months prior to the month in which the dispute has arisen, in accordance with the results of the test taken subject to furnishing the test report of the meter alongwith the assessed bill:

Provided that, in case of broken or damaged meter seal, the meter shall be tested for defectiveness or tampering. In case of defective meter, the assessment shall be carried out as per clause 15.4.1 above and, in case of tampering as per Section 126 or Section 135 of the Act, depending on the circumstances of each case:

Provided further that, in case the meter has stopped recording, the consumer will be billed for the period for which the meter has stopped recording, up to a maximum period of three months, based on the average metered consumption for twelve months immediately preceding the three months prior to the month in which the billing is contemplated."

Section 126 of the Electricity Act, 2003 reads thus :-

"Section 126: (Assessment):-

- (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use.
- (2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.
- (3) The person, on whom an order has been served under sub-section (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable

opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment of the electricity charges payable by such person.

- (4) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:
- (5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if , however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.
- (6) The assessment under this section shall be made at a rate equal to [twice] the tariff rates applicable for the relevant category of services specified in sub-section (5).

Explanation.- For the purposes of this section,-

- (a) “assessing officer” means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;
- (b) “unauthorised use of electricity” means the usage of electricity –
 - (i) by any artificial means; or
 - (ii) by a means not authorised by the concerned person or authority or licensee; or
 - (iii) through a tampered meter; or
 - (iv) for the purpose other than for which the usage of electricity was authorised; or
 - (v) for the premises or areas other than those for which the supply of electricity was authorized.”

18 It is, therefore, obvious from the facts of the case and the contentions of the parties read with the provisions cited that the entire issue revolves around whether, the meter can be said to be defective on

account of the electrician having wrongly connected the R, Y and B phase connections. It cannot be ignored that professional companies like Crompton Greaves (who had installed the meter for the first time) engage trained electricians. It is unbelievable that a trained electrician would accidentally cause cross attachments of important wires.

19 While delivering the impugned order, the Forum has relied upon an earlier case in the matter of M/s Rajlaxmi Home Products Private Limited decided by the Ombudsman by order dated 17.08.2010 wherein, the R phase PT stud was broken and no R phase voltage was reaching the meter. Similarly, in the case of Shri Abdul Hamid Salam, Malegaon decided by the Ombudsman on 05.03.2012, two screws in the terminal were loose and a gap was created between the CT screw and the terminal contact. Hence, the meter was held to be defective.

20 As such, the question raised by the Petitioner is as to whether, the act of the Electrician in wrongly attaching the wires to the R, Y and B phases could be said to be a defective meter. Various provisions relied upon by the Forum, while delivering the impugned order, pertain to the limitation for recovering the arrears of electricity charges, if the meter is held to be defective. If the meter is not held to be defective, the Petitioner would be entitled to fully recover the shortfall in the payment of charges, which was discovered by the Petitioner by conducting a surprise check. The Respondent has not disputed that the electrician had wrongly

connected the wires, which led to the actual consumption having escaped the recording in the meter.

21 In *Tata Hydro Electric (supra)*, the Honourable Apex Court concluded that though the Umpire to whom the dispute was referred to, has held that the current transformer (CT) was not an apparatus, it was neither contended before the Umpire nor was it decided by the Umpire that the CT was defective since the parties agreed that the CT was defective.

22 In *Swastik Industries (supra)*, the Honourable Apex Court concluded that Section 24 of the Indian Electricity Act empowers the Board to demand and collect any charge from the consumer and collect the same towards the electrical energy supplied by the Board, on certain terms.

23 In *MPEB and others vs. Smt.Basantibai, AIR 1988 SC 71*, it was concluded that whether, the meter in question is correct or is faulty, will have to be decided and without such decision, the Board cannot raise a supplementary bill.

24 In *M.P.Electricity Board, Jabalpur and another vs. Chhaganlal, AIR 1981 Madhya Pradesh 170*, it was held that an electric meter not registering the correct consumption due to defect not in the meter, but in the wiring, would not attract Section 126(6) under the Electricity Act. If the wiring is defective, it would not mean that the meter

is defective. Whether, the meter is defective would not be a question of arbitration by the Electrical Inspector. The question as to who is responsible for the defective wiring is not material for the purpose of Section 126(6) of the Act. Even if it is a result of the consumer's manipulation and the actual energy consumed is not allowed to pass to the meter, which has no fault, it cannot be said that the meter is not correct. This judgment squarely applies to the case in hand.

25 Akin to ***M.P.Electricity Board case*** (supra), this Court had an occasion to deal with an almost similar case in the matter of ***Municipal Corporation for Greater Bombay vs. Sharda Dyeing and Printing Works and others, 2005 (2) Mh.L.J. 690***. The facts recorded in the said judgment in paragraphs 1, 2 and 3 are as under :-

"The first respondent is a consumer of the Bombay Electric Supply and Transport Undertaking and carries on the business of dyeing and printing. The first respondent has derived electric supply through three meters situated at the premises of the factory. Meter D-833723 was being used for commercial purposes while Meters 0273715 and 0442967 were being used for industrial purposes. The consumption pattern on Meter 0442967 showed that there was a sudden and considerable drop in consumption from 3rd May, 1994. The meter was checked by the Deputy Engineer in the Energy Audit Department of the petitioner on 7th December, 1995 in the presence of a representative of the first respondent. On being checked, it was found that the meter was under-recording the consumption of electricity by 65.76% due to the Secondary Circuit of the Current Transformer being open on the red and yellow phases and because of a loose potential connection on the red

and yellow phases. According to the petitioner, in ordinary parlance what this meant was that the wires connecting the current transformer and the meter of the red phase and yellow phase were open, as a result of which, the supply through the red and yellow phases was not fed to the meter which was recording the consumption of the consumer. Hence, according to the petitioner, though the supply was being used by the first respondent as usual, due to the loose connection in wiring, the consumption which was recorded in the meter was 1/3rd of the actual and hence 2/3rd of the supply was not recorded. On this aspect of the matter, parties, it is evident, are ad idem. In paragraph 6 of the Writ Petition filed by B.E.S.T. Undertaking there is the following averment in regard to the cause for the under-recording of the electricity consumption to the extent of 65.76%:-

"On the said meter being checked it was found that the said meter was under recording consumption by 65.76 per cent due to the C. T. Secondary Circuit being open on the Red and Yellow Phase and due to loose potential connection on the Red and Yellow Phase. In ordinary parlance, what it really means is that the wire connecting the current transformer and the meter of the Red Phase and Yellow Phase were open, As a result of which the supply through Red Phase and Yellow Phase respectively were not been fed to the meter which records the consumption of the consumer. Thus even though the supply was being used by the 1st respondent as usual, due to the above disconnection in wiring, the consumption recorded on the meter was only one third and hence two third of the consumption of supply was not recorded on the meter."

Insofar as this averment is concerned, there is an admission in the following terms in para 9 of the affidavit in reply:

"It is true that due to the defect in the connection of Current Transformer (C.T.) and Meter of Red Phase and Yellow Phase, the Meter was not giving proper reading."

2. At this stage, it would be worthwhile to advert to the

working of a C. T. operated meter. In meters through which supply for loads upto 100 Amps is derived, the electricity supplied to the consumer passes through the meter itself and is recorded by the meter. However, for consumption with higher installed loads, it is not possible for the entire current consumed to pass through the meter as that would require a meter of an extremely large size. Thus, the meter is connected parallel to the main supply line of the consumer. A current transformer is installed for each phase supplied to the consumer (red, yellow and blue phases) which allows a proportionately small quantity of electricity to pass through the meter, which is then recorded by the meter. The meter thus has a multiplier factor by which the actual recording by a meter is required to be multiplied in order to record actual electricity consumed. For instance, if a meter has a multiplier factor of 20 and the meter indicates 1000 units as having been consumed, the actual consumption of the consumer would be 20,000 units. The current transformer is connected to the meter by wires through which the meter receives electricity.

3. In the present case, as a result of a defect in the wiring, the meter recorded only 1/3rd of the actual electricity consumed by the first respondent. The meter was tested in the presence of a representative of the first respondent and a site testing report dated 7th December, 1995 was accordingly prepared and was signed by the said representative of the first respondent. No dispute was raised at that stage. The testing report showed that the meter was slow beyond permissible limits; that the red and yellow phases to the current transformer were open and that connections of the potential of the red and blue phases on the terminal block were found to be loose. In order to ascertain the actual amount of electricity that was consumed by the first respondent, a check meter was installed on 20th December, 1995 after which the recording of consumption on the erstwhile meter completely stopped. There was, as noted earlier, a sudden drop in the meter recording from 3rd May, 1994 and in order to assess the consumption of electricity, the first respondent took the base period as 30th April, 1993 to

3rd May, 1994, a period of one year prior to the drop in consumption. The average monthly consumption was computed on this basis which worked out to 49,436 units per month. This average consumption was then applied for the period during which the meter had under recorded consumption of electricity viz., 3rd May, 1994 till 20th December, 1995. After giving credit to the first respondent for the amount which was already paid, a supplementary bill in the amount of Rs. 30,54,266.99 was submitted to the first respondent for the period 3rd May, 1994 to 20th December, 1995."

26 It is thus, obvious that in the ***Municipal Corporation case (supra)***, the issue was that the CT had a loose potential connection on the Red (R) and Yellow (Y) phases. The concerned wires were not properly fixed on the R and Y phases. Consequentially, $\frac{2}{3}^{\text{rd}}$ of the supply was not recorded. It was also recorded that even though the supply was being used as usual, due to the loose wiring, the consumption recorded on the meter was only $\frac{1}{3}^{\text{rd}}$ and hence, $\frac{2}{3}^{\text{rd}}$ consumption of supply was not recorded in the meter. These facts are quite similar to the case in hand.

27 The minutes of the meeting duly signed by all the parties, indicate that the HT meter readings were taken for the period 19.08.2016 to 24.08.2016. It was found that there was an incorrect connection of the wires to R, Y and B phases, which led to under-recording of the consumption. Finally, it was concluded that the recording in the HT meter of the consumer was reduced by 51.76% compared to the consumption recorded by the Reference Standard Meter (RSM) ZERA. It was decided to

correct the wiring of HT meter. When the matter reached the Integral Grievance Redressal Cell, it passed a reasoned order on 10.01.2017 concluding that the percentage slowness of the meter should be considered as 50% instead of 51.76% and the bill be revised accordingly. The NABL Lab testing report also indicated that the meter was functioning perfectly. The Meter Retrieval Information (MRI) also did not report that the meter was faulty.

28 Considering the above backdrop, the view taken by this Court in the ***Municipal Corporation*** case (supra), which is similar to this case, would be decisive. It was concluded in paragraphs 16, 17, 18, 19 and 20 as under :-

"16. *The second fundamental principle which must guide the decision of the present case is that the jurisdiction of the Electrical Inspector being to adjudicate when there is a dispute whether the meter is or is not correct, a mere dispute in regard to a fault in the wiring does not fall within the ambit of Section 26(6). This principle was initially laid down in a judgment of a learned Single Judge of the M. P. High Court (U. N. Bachavat, J.) in M. P. Electricity Board v. Chhaganlal, 1981 MPLJ 417 = AIR 1981 MP 170. The learned Judge held there that the expression "meter is correct" would mean that there is no fault or defect in the meter and conversely, "meter is not correct" would mean that the meter is defective - that there is a fault in the meter. However, where there was no fault in the meter but the fault was in wiring due to which the total energy which was consumed by the consumer did not pass through the meter (in that case because of the non-supply of 'Y' potential to the meter), this defect could not be held to be a defect in the meter. Consequently, the jurisdiction under Section 26(6) would not be attracted.*

This decision of the M. P. High Court was specifically affirmed by the Supreme Court in M. P. K. B. v. Smt. Basantibai, AIR 1988 SC 71. The observations of the learned Single Judge of the M. P. High Court were adverted to in para 11 of the judgment of the Supreme Court and were approved and the contrary view was not accepted. Following this principle, a Division Bench of the Kerala High Court, held in Southern India Marine Products Co. (Pvt.) Ltd. v. Kerala State Electricity Board, 1995 AIHC 4959 that the Electrical Inspector does to have jurisdiction under Section 26(6) when there is a defect in the wiring and so long as there is no defect in the meter itself, no question arises as to whether the meter is correct or not. The same view has been taken by a Division Bench of the Patna High Court in Bihar State Electricity Board v. Shree Plywoods (Pvt.) Ltd., AIR 2002 Patna 84, wherein it was held that where a case involving melting of wire resulted in the loss of current in one of the phases and consequently, of incorrect recording of energy, it would not fall within the purview of Section 26(6).

17. Now the facts of the present case have to be scrutinized in the back drop of these principles which are settled. It appears both from the pleadings as well as the contemporaneous conduct of the parties that there was no dispute between them in regard to the cause which led to the under recording of electrical consumption in the meter that was installed by the BEST Undertaking. The cause which is adverted to in para 6 of the petition has been extracted in the earlier part of the order and to which there a reply in para 9 of the affidavit filed by the first respondent. Both the parties have expressly proceeded on the basis that the reason why electricity consumed was under recorded by 67.76% was because the second circuit on the red and yellow phases was open and because of a loose potential connection with red and yellow phases. The first respondent in its reply specifically admits that "it is true that due to a defect in connection of the current transformer and the meter of red phase and yellow phase, the meter was not" recording a proper reading. The first respondent raised no dispute when the meter was tested in his presence on 7th September, 1995. Even when the first

respondent moved the Undertaking with a representation dated 2nd January, 1997, the express averment therein was that there was no defect in the meter at all and that the lower consumption of electricity was due to the problems that the factory had faced. On an opportunity being granted by the Undertaking, the first respondent then moved the Review Committee. The submission recorded before the Review Committee in the minutes dated 25th September, 1997 again was that the lower consumption of electricity was due to the fact that the Factory was handed over to various conductors and because of labour problems that were faced in the factory resulting in a closure for a certain period of time. At that stage, the first respondent was informed again that the under recording was due to open circuiting of the C. T. wire at two phases and loose connection of the potential wire on two phases. The first respondent took time to produce documents in support of his submission that the factory remained closed during the period for which the bill had been amended. He, however, chose not to produce any document in support of his own case. Belatedly on 20th April, 1999 or thereabout, reference was made to the Electrical Inspector. Even in the application before the Electrical Inspector, the case of the first respondent was that there was no defect in the meter and that the lower consumption of electricity was on account of a stoppage of production. The Undertaking on its part recorded in its reply before the Electrical Inspector that the meter was working slow beyond permissible limits as the R and Y phases were found open and because the potential connection of two phases on the terminal meter was found to be loose.

18. On this state of record, there is in my opinion, merit in the submission which was urged on behalf of the petitioner that the jurisdiction of the Electrical Inspector would not have been invoked. The condition precedent to the invocation of the jurisdiction of the Electrical Inspector and to the exercise of that jurisdiction is a dispute as to whether a meter is or is not correct. In the present case, the first respondent did not dispute the factual position that there was nothing intrinsically wrong or erroneous

with the meter. In fact, his case was that the lower consumption of electricity was due to the problems which were faced by him in his own factory. Insofar as the Undertaking was concerned, its case also was that there was nothing intrinsically wrong about the meter but there was an under recording of electricity consumed to the extent of 66% because of the defect in wiring associated with the current transformer.

19. Both the Electrical Inspector and the appellate authority have been fundamentally in error in the view which they took in affirming their own jurisdiction on the ground that though the meter was detected to be faulty on 7th December, 1995, "no information was given to the consumer about a possible percentage error and billing average, but that a bill was directly served on him after a lapse of one year." In the Memo of appeal that was filed before the appellate authority, the petitioner pointed out that the Inspector erred in coming to this conclusion since the record indicated that intimation was given to the consumer which was duly acknowledged by his representative on 7th December, 1995 and that he was personally present when the testing was carried out by the Energy Department of the Undertaking. The order of the appellate authority, to say the least, shows a complete non-application of mind to the issue of jurisdiction. The Appellate Authority held that the meter and its wiring are independent and separate. Of this position there can be no dispute. The Appellate Authority notes that the meter and its current transformer are inter-related and that without the C. T., the consumption on the meter cannot be recorded when there is a C. T. operated meter. Again there can be no dispute about this proposition, nor indeed in the view of the appellate authority that if there is a defect in the meter, it cannot record a proper reading. The appellate authority held that it is essential that the C. T. of the meter and the meter should both be correct. Having said this, the appellate authority then proceeded to hold that Section 26(6) was applicable and that a supplementary bill could not exceed a period of six months. The conclusion of the appellate authority does not flow from its premise. What the appellate authority

completely lost sight of was the absence of any dispute between the parties on the fact that both the meter and the C.T. were correct. Once that was the position, then a defect in the wiring would not attract the jurisdiction under Section 26(6). This is the clear position in law enunciated by the Supreme Court.

20. In the circumstances, I am of the view that the petitioner is entitled to succeed and that the impugned order of the appellate authority dated 29th May, 2000 has to be quashed and set aside. The order of the appellate authority dated 29th May, 2000 is accordingly quashed and set aside and the dispute filed by the first respondent before the Electrical Inspector under Section 26(6) of the Indian Electricity Act, 1910 shall stand dismissed. In the event that the first respondent has paid any part of the disputed bill, due credit shall be given in arriving at the amount which is now due and payable. The first respondent shall pay the balance which is due and payable under the supplementary bill within a period of six weeks failing which the petitioners would be at liberty to take necessary steps in accordance with law."

(Emphasis supplied)

29 Clause 21.7.5 of the Regulations, 2005 prescribes that if it is a case of defective meter, the amount of the consumer's bill shall be adjusted for a maximum period of three months prior to the month in which, the dispute has arisen. It is not the case of the Respondent that the CT or PT are defective. The Respondent contends that if the meter is under-recording the consumption, since the wires were wrongly connected to the phases, the Respondent/ Consumer is not at fault. The load test carried out from 19.08.2016 to 24.08.2016 indicates that the meter was not defective.

30 The contention of the consumer is that clause 21.7.5 of the Regulations 2005, would permit recovery of electricity charges only for a period of three months prior to the date of inspection, if the meter is faulty. Under clause 21.7.6, the recovery can be for maximum period of three months if the meter has stopped recording. Neither of these has occurred in this case.

31 The Petitioner contends that it is nobody's case that the meter is defective or the meter has stopped recording. Therefore, clause 21.7.5 / 21.7.6 of the Regulations, 2005 would not apply and clause 3.4.1 of the said Regulations, 2005 would be applicable by which, the Board would be authorized to recover the charges for the electricity actually supplied to the consumer.

32 In paragraph 16 of the ***Municipal Corporation*** case (*supra*), this Court recorded that in a similar case in the matter of ***MPEB Board (supra)***, the Madhya Pradesh High Court concluded that the expression “meter is correct”, would mean that there is no fault or defect in the meter. Where there was no fault in the meter, but the fault was in the wiring, this defect could not be held to be a defect in the meter. It was further concluded, by relying upon the judgment of the Division Bench of the Kerala High Court in ***Southern India Marine Products Co. (Pvt.) Ltd. v. Kerala State Electricity Board, 1995 AIHC 4959***, that the electrical inspector does not have the jurisdiction under Section 26(6) when there is

a defect in the wiring and so long as there is no defect in the meter itself, no question arises as to whether, the meter is correct or not. A same view has been taken by the Division Bench of the Patna High Court in ***Bihar State Electricity Board vs. Shree Plywoods Pvt. Ltd., AIR 2002 Patna 84***, that where a case involves melting of a wire that resulted in the loss of current in one of the phases and consequently, there was an incorrect recording of consumption, it would not fall within the purview of Section 26(6).

33 It is, therefore, obvious in the present case that there was nothing intrinsically wrong with the meter. An under-recording of electricity consumed was associated with the act of the electrician in wrongly attaching the wires to the R, Y and B phases. I am, therefore, of the view that such a wrong attachment of wiring by the electrician would not amount to a defect in the meter. Consequentially, due to the under-recording of the meter, the consumer has consumed such energy as was normally required to be consumed and the Petitioner has lost the revenue for such under-recording.

34 Clause 3.4.4 of the Regulations, 2005 enables the Petitioner to recover the charges for the electricity actually supplied, which would include a fixed charge as per the prescribed rates. The consumer, therefore, has to pay full charges for the electricity actually consumed.

35 In the ***Municipal Corporation case*** (supra), this Court has

sustained the supplementary bill raised by the Electricity Company and this Court has upheld the recovery of the amount mentioned in the supplementary bill.

36 In view of the above, this Writ Petition is allowed in terms of prayer clause "C", which reads as under :-

"C. *By issuing appropriate writ, order or direction in the like nature, the impugned Decision and order dated 24.03.2017 passed by the Ld. Consumer Grievance Redressal Forum, Jalgaon Zone, Jalgaon in Case No.CGRF/ JLGZ/ JAL CIRCLE/ JAL U Dn./C.No. 21-2016-17, may kindly be quashed and set aside.*"

37 Rule is made absolute accordingly.

38 After pronouncement of this judgment, the learned Advocate for the Respondent/ Company prays for staying this judgment for a period of eight weeks. It is submitted that as the impugned order was the direction to the Petitioners to recalculate the amount of the bill, the Petitioners are likely to press for the recovery of the bill at issue towards arrears of amounts.

39 The learned Advocate for the Petitioners strongly opposes the request in view of the observations of this Court that a trained electrician engaged by the professional company like M/s Crompton Greaves Limited, is not likely to commit the mistake of attachment of R, Y and B phases. Therefore, the Respondent Industry who has consumed energy, has to pay for the same. He, therefore, prays for the rejection of the request. In the

alternative, he submits that if 50% of the supplementary bill amount is deposited by the Respondent, the Petitioners may agree for the request for a period of four weeks.

40 The learned Advocate for the Respondent/ Company submits, on instructions, that the Respondent is not willing to deposit even 50% of the supplementary bill raised. The learned Advocate for the Petitioners, therefore, opposes the said request.

41 Considering the above, I am unable to accede to the request of the Respondent/ Company, which I could have, had the Respondent shown its bonafides by agreeing to deposit 50% of the bill amount raised. As such, the request for staying this judgment is rejected.

kps

(RAVINDRA V. GHUGE, J.)