

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.24503 OF 2006

ORDER:

1. This writ petition is filed seeking to issue a writ of Mandamus declaring the impugned final assessment order of supplemental bills (back-billing) issued by the 1st respondent vide proceedings No. DEE/O/BVRM/AAE/Commercial-I/F.B.B.No./D5585/06, dated 12.9.2006 calling upon the petitioner to pay Rs.1,27,762/- for the period from 17.11.2000 to 17.5.2001, as illegal, arbitrary and contrary to the provisions of Section 26(1)(6) of the Electricity Act, 1910 and Rule 57(1) of Electricity Rules, 1956.

2. Heard Sri P. Narasimha Rao, learned Counsel for the petitioner and Sri M. Ravindra, learned Standing Counsel for APEPDCL.

3. The case of the petitioner in brief is as follows:

He got electrical service connection bearing No.4432 under Low Tension Category III for running rice and flour mill at Bhimavaram. The respondents provided three phase C.T. meter to the mill. The petitioner has been regularly paying current bills to the respondents. On 17.5.2001, the 2nd respondent-Assistant Divisional Engineer inspected the mill and found the meter working with an error of 68.2% and consequently, the 2nd

respondent issued a provisional notice. After receipt of the provisional notice, the petitioner raised objection and subsequently, after a lapse of five and half years, the 1st respondent passed the impugned final order dated 12.9.2006. Aggrieved by the same, the petitioner filed this writ petition.

4. In the counter-affidavit filed on behalf of the respondents, it is stated that the petitioner submitted a representation to the provisional assessment notice and thereafter, the 1st respondent passed final order and against the said order, there is alternative remedy of appeal before the S.E. and without exhausting that remedy, the petitioner approached this Court straightaway. It is stated that the petitioner did not dispute with regard to the malfunctioning of the meter and therefore, it cannot be said that the assessment order is illegal.

5. The learned Counsel for the petitioner submits that the respondents installed the meter and it was their duty to ensure that it was working correctly within the permissible limits and that the respondents had to refer the defective meter to the electrical inspector under Section 26(6) of the Act and that the respondents removed the defective meter, but they did not refer the same to the electrical Inspector, and for non-compliance of the statutory provisions, the respondents lost their right to claim any

supplemental amount. He further submits that the 1st respondent without conducting any enquiry with regard to the objections raised by the petitioner passed the order impugned after lapse of more than 5 years and therefore, the order impugned is not sustainable.

6. The learned Counsel for the petitioner mainly contended that the respondents have to examine as to whether the electric meter is defective or not or it is faulty or not or whether it was recording incorrect consumption, but without examining the same, the respondents straightaway issued notice under Section 26(6) of the Act, and therefore, the final notice issued under Section 26 (6) of the Electricity Act, 1910 is arbitrary and illegal. In support of his contention, he has relied upon the following decisions:

- (1) Klayman Porcelains Limited V. Superintending Engineer, Operation, Mahabubnagar Circle¹;
- (2) H.D. Shourie V. Municipal Corporation of Delhi and another²;
- (3) Belwal Spinning Mills Ltd., V. U.P. State Electricity Board and another³;
- (4) Bombay Electric Supply and Transport Undertaking V. Laffans (I) Private Limited., and another⁴;
- (5) M.P.E.B and others Vs. Smt. Basantibai⁵

He further contended that the respondents have a statutory duty to maintain the correct working of the meter through recalibration once in a year, but in the instant case, no such exercise was carried

¹ AIR 2002 (AP) 19

² AIR 1987 Delhi 219

³ AIR 1997 SC 2793

⁴ AIR 2005 SC 2486(1);

⁵ AIR 1988 SC 71(1)

out, and it is the fault on the part of the respondents in fixing a defective meter.

7. The learned Counsel for the petitioner also contended that when the premises of the petitioner was inspected during the year 2001, a new meter was installed and a provisional notice of assessment was issued, for which the petitioner submitted a letter addressing to the 1st respondent to furnish a copy of the inspection notes so as to make effective representation in detail as the provisional assessment made by the respondents is highly objectionable, but without furnishing the details of inspection notes, the respondents have provisionally assessed exorbitant charges, and after nearly 5 ½ years from the date of inspection, respondent No.1 has passed final order on 12.9.2006, which was received by the petitioner on 18.9.2006, and that the final order is barred by limitation and it should not be enforced against the petitioner. He further contended that Rs.1,27,762/- is a total demand made in the final order and the said amount is exorbitant, and when the meter is defective, the respondents must have referred the dispute to the electrical Inspector under Section 26(6) of the Act for adjudication, which is a mandatory provision and even though the defective meter was removed from the premises of the petitioner on 5.7.2001, the respondents have not referred the matter to the electrical Inspector under Section 26(6) of the Indian

Electricity Act, and that since the respondents have failed to comply with the statutory provisions regarding referring of the dispute to the electrical Inspector under Section 26(6) of the Indian Electricity Act, the demand raised in the final order is nonest in the eye of law.

8. Learned Standing Counsel for the respondents contends that without exhausting the remedy of appeal, the petitioner straightaway approached this Court and that the petitioner did not dispute the defective running of the meter and he did not follow the ingredients of Section 26(6) of the Act and there are no merits in the present writ petition.

9. This Court has considered the rival submissions made by the parties and perused the material available on record. In view of the above contentions raised by the petitioner, it is relevant to peruse Section 26(6) of the Act.

Section 26 -Meters.—

- (1) 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: Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter.
- (2) Where the consumer so enters into an agreement for the hire of a meter, the licensee shall keep the meter correct, and, in default of his doing so, the consumer shall, for so long as the default continues, cease to be liable to pay for the hire of the meter.
- (3) Where the meter is the property of the consumer, he shall keep the meter correct and, in default of his doing so, the licensee may, after giving him seven days' notice, for so long as the default continues, cease to supply energy through the meter.
- (4) The licensee or any person duly authorized by the licensee shall, at any reasonable time and on informing the consumer of his intention, have access to and be at liberty to inspect and test, and for that purpose, if he thinks fit, take off and remove, any meter referred to in

sub-section (1); and, except where the meter is so hired as aforesaid, all reasonable expenses of, and incidental to, such inspecting, testing, taking off and removing shall, if the meter is found to be otherwise than correct, be recovered from the consumer; and, where any difference or dispute arises as to the amount of such reasonable expenses, the matter shall be referred to an 1[Electrical Inspector], and the decision of such Inspector shall be final: Provided that the licensee shall not be at liberty to take off or remove any such meter if any difference or dispute of the nature described in sub-section (6) has arisen until the matter has been determined as therein provided.

(5) A consumer shall not connect any meter referred to in sub-section (1) with any electric supply-line through which energy is supplied by a licensee, or disconnect the same from any such electric supply-line but he may by giving not less than forty-eight hours' notice in writing to the licensee require the licensee to connect or disconnect such meter and on receipt of any such requisition the licensee shall comply with it within the period of the notice.

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

(7) In addition to any meter which may be placed upon the premises of a consumer in pursuance of the provisions of sub-section (1), the licensee may place upon such premises such meter, maximum demand indicator or other apparatus as he may think fit for the purpose of ascertaining or regulating either the amount of energy supplied to the consumer, or the number of hours during which the supply is given, or the rate per unit of time at which energy is supplied to the consumer, or any other quantity or time connected with the supply: Provided that the meter, indicator or apparatus shall not, in the absence of an agreement to the contrary be placed otherwise than between the distributing mains of the licensee and any meter referred to in sub-section (1): Provided also that, where the charges for the supply of energy depend wholly or partly upon the reading or indication of any such meter, indicator or apparatus as aforesaid, the licensee shall, in the absence of an agreement to the contrary, keep the meter, indicator or apparatus correct; and the provisions of sub-sections (4), (5) and (6) shall in that case apply as though the meter, indicator or apparatus were a meter referred to in sub-section (1). Explanation.—A meter shall be deemed to be “correct” if it registers the amount of energy supplied, or the electrical quantity contained in the supply, within the prescribed limits of error, and a maximum demand indicator or other apparatus referred to in sub-section (7) shall be deemed to be “correct” if it complies with such conditions as may be prescribed in the case of any such indicator or other apparatus.

The requirement under Section 26(6) of the Act is that where any difference or dispute arises as to whether any meter referred under 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' notice of his intention so to do.

10. Now, the contention of the petitioner is that he had submitted a representation to the respondents on 12.9.2001. Perusal of the said representation discloses that the petitioner sought for supply of copies of test results only, but he had not requested the authorities either for referring his case under Section 26(6) of the Act or for checking of the meter by the Electrical Inspector. The petitioner failed to follow the ingredients of Section 26(6) of the Act. Similar issue fell for consideration before this Court in W.P.No.5227 of 2006 wherein this Court vide order dated

20.4.2017 dismissed the identical case. The petitioner therein has also not followed the ingredients of Section 26(6) of Act.

11. In the above circumstances, this Court is of the view that there are no merits in this writ petition and therefore, this writ petition is liable to be dismissed.

12. Accordingly, the Writ Petition is dismissed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

ABHINAND KUMAR SHAVILI, J

Dated: 10.09.2018
Nn.



HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.24503 OF 2006



10/09/2018

Nn.