

Bihar State Electricity Board, Vs. the State of Bihar,

Bihar State Electricity Board, Vs. the State of Bihar,

SooperKanoon Citation : sooperkanoon.com/137884

Court : Patna

Decided On : Jan-13-2009

Judge : Ajay Kumar Tripathi, J.

Acts : [Indian Electricity Act, 1910](#) - Sections 24, 26(2) and 26(6)

Appeal No. : Civil Writ Jurisdiction Case Nos. 2970, 3333 and 3733 of 1992

Appellant : Bihar State Electricity Board, the Electrical Superintending Engineer,
the Electrical Executive Engi

Respondent : The State of Bihar, the Electrical Inspector and Sri Mathura Prasad
S/O Sri Bhagwan DasThe State of

Advocate for Def. : Mani Bhushan Kumar No. 1, Adv. in CWJC 2970/92 for
Respondent No. 3, Manoj Kumar Jha, JC to GA-1 in CWJC Nos. 2970/92, 5685/92
and 5686/92, Suresh Kumar, JC to SC-VII in CWJC No. 3733/1992, M. Jha, JC

Advocate for Pet/Ap. : Vinay Kirti Singh, Addl. SC and Akhileshar Singh, J.C. to
Addl. S.C.

Disposition : Application allowed

Judgement :

Ajay Kumar Tripathi, J.

1. Since in all these writ applications common question of law have been raised for consideration therefore they had been ordered to be heard together. After hearing the cases they are being disposed of by this common order.

2. The basic question which has been raised in these writ applications by the petitioner Bihar State Electricity Board is whether the impugned orders passed by the Electrical Inspector while exercising power under Section 26(2) can pass order setting aside any electrical bill raised by the petitioner for the reasons beyond the ambit of Section 26(6) of the [Indian Electricity Act, 1910](#) (hereinafter referred to as the Act).

3. In all writ applications no doubt certain dispute was raised with regard to the authenticity or the correctness of the bills raised on the consumers, but from perusal of the impugned orders passed by the Electrical Inspector it is apparent that he has gone into the question of load factor, tampering of meter and other issues to set aside the bills which in no way can be said to be as a result of defective meter.

4. Submission has been made by learned Counsel for the Electricity Board that law is well laid down on this issue as early as in the year 1988 in the case of M.P.E.B. and Ors. v. Smt. Basantibai reported in : [1988]1SCR890 . Hon'ble Supreme Court in this decision had this to say in paragraphs 10 and 11 which is as follows:

10: In the instant case it appears from the report of the Assistant Engineer of the State Electricity Board that one phase of the meter was not working at all, so there is undoubtedly a dispute as to whether the meter in question is a correct one or a faulty meter and this dispute has to be decided by the Electrical Inspector whose decision will be final. It is also evident from the said provision that till the decision is made no supplementary bill can be prepared by the Board estimating the energy supplied to the consumer, as the Board is not empowered to do so by the said Act. It is pertinent to refer in this connection to the observations made in the case of Gadag Betgiri, Municipal Borough, Gadag v. Electrical Inspectorate, Govt. of Mysore AIR 1962 Mys 209 as follows.

What the Inspector may decide under Sub-section (6) is whether or not the readings obtainable from the meter are accurate and whether the meter is faulty or mechanically defective, producing erroneous readings. That is the limited adjudication which is my opinion, an Inspector or other authority functioning under Sub-section (6) may make under its provisions.

x x

In my opinion, the legislative intent underlying Section 26(6) of the Act is similar. The only question into which the Inspector or other authority functioning under that Sub-section might investigate is, whether the meter is a false meter capable or improper use or whether it registers correctly and accurately the quantity of electrical energy passing through it.

If in that sense, the meter installed by respondent 2 this case was a correct meter as it undoubtedly was and as it has been admitted to be, the fact that respondent 2, even if what the petitioner states is true, so manipulated the supply lines that more energy than what was consumed by the petitioner was allowed to pass through the meter would not render the meter which was otherwise correct an incorrect meter.

11: This decision was followed in M.P. Electricity Board, Jabalpur v. Chhaganlal : AIR 1981 MP170 where it has been observed:

Where an electric meter is not registering correct consumption of energy not because there is any defect in the meter but because the wiring is defective Section 26(6) will not be attracted and the meter not being defective the question of arbitration by Electrical Inspector will not also arise.

5. On behalf of the respondents however they justified the exercise of power by the Electrical Inspector and the decision rendered by him based on the observation made by a Division Bench of this Court in the case of Bihar State Electricity Board v. The State of Bihar and Ors. reported in 1993 (1) PLJR 344. Reliance is on paragraph 26 of the decision. A bare perusal of paragraph-26 of the decision would show that it does not lay down a law on the question and therefore

is of no value or assistance to the private respondents in these cases. The law laid down by the apex court still occupies the field and therefore the Court comes to an opinion that the Electrical Inspector has exercised his authority beyond the power and ambit of Sections 24 or 26(6) of the Act.

6. Yet another issue raised by respondents which has some bearing on the disputed bills raised by the Bihar State Electricity Board is with regard to their power to demand or even raise bill on the basis of 45% load factor. But then in view of the decision of the Division Bench rendered in the case of Parmeshwar Kumar Agarwala v. The Bihar State Electricity Board reported in 1989 PLJR 40, learned Counsel for the Board has fairly submitted that if any of the bills in question have been raised on the basis of the load factor then in view of the law they shall be corrected in consonance with the decision in this regard.

7. In view of the above stand of the Electricity Board it is hoped and expected that the dispute would be settled by correcting the bills as per the stand taken before this Court with regard to the load factor.

8. These writ applications are allowed and the impugned orders under challenge stand quashed in all the writ applications.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com