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

Shri U.A. Thadani and Another Vs. B.E.S.T. Undertaking and Another

Shri U.A. Thadani and Another Vs. B.E.S.T. Undertaking and Another

SooperKanoon Citation : sooperkanoon.com/350593

Court : Mumbai

Decided On : Jan-17-2000

Reported in : AIR2000Bom264; 2000(2)ALLMR266; 2000(3)BomCR79; (2000)2BOMLR502

Judge : R.M. Lodha, J.

Acts : Electricity Act, 1910 - Sections 26(6); Constitution of India - Article 226

Appeal No. : Writ Petition No. 1075 of 1995

Appellant : Shri U.A. Thadani and Another

Respondent : B.E.S.T. Undertaking and Another

Advocate for Def. : V.R. Dhond, Adv. i/by ;Gagrat & Co.

Advocate for Pet/Ap. : Rajiv Narula and ;Anuj Narula, Advs.

Judgement :
ORDER

R.M. Lodha, J.

1. In this writ petition filed under Article 226 of the Constitution of India the petitioners have challenged the legality, validity and propriety of the supplementary bills/debit notes issued by respondent No. 2 for the period 26-11-91 to 6-5-94 and

for the period 7-3-94 to 29-3-94 (Exhibits 'B' and 'C' respectively) and notice of demand incorporated in bill dated 29-3-95 (Exhibit 'A to the writ petition).

2. The first petitioner is one of the partners of the 2nd petitioner firm. The 1st respondent is Bombay Electricity Supply and Transport Undertaking of the Municipal Corporation of Greater Bombay. The 1st respondent supplies electricity to the consumers in the city of Bombay. The 2nd respondent is the Superintendent Consumer, BEST Undertaking who has issued the impugned debit notes. The petitioners have stated in the writ petition that prior to 1980 one Shri Fakir Mohd. Hussien & Co. was conducting the theater Ganesh Talkies. The said firm transferred the said theater and 1st petitioner is carrying on the business in the name and style of M/s. Ganesh Talkies of screening and exhibiting motion films at 41, Arthur Road, Lalbaug, Bombay. The said theater Ganesh Talkies has been allotted two meters, namely, Meter No. 0922453 and 0328359 for supply of energy by the 1st respondent. On 29-3-95, the petitioners received from the respondents two bills of even date calling upon the petitioners to pay the sum of Rs. 4,14,371/-. The said amount of Rs. 4,14,371/- included the amount of Rs. 2,82,130.48 P. payable in respect of Debit Note dated 3-2-95 which was raised by respondent No. 2 for the period 26-11-91 to 6-5-94 since multiplying factor was wrongly charged. The said total amount of Rs. 4,14,371/- also included a sum of Rs. 9,675/-payable in respect of another debit note of the even date for the period 7-3-94 to 29-3-94 since the said amount was not billed and an amount of Rs. 1,32,240/- was charged towards current bill. The copy of the said bill dated 29-3-94 is marked as Exhibit 'A' and the copies of the two debit notes dated 3-2-95 are marked Exhibits 'B' and 'C' respectively. It is the case of the petitioners that the manager of petitioner No. 2 visited the office of the 2nd respondent upon receipt of the said debit notes and the bill and objected the correctness of the said bill though he showed his readiness to pay the amount of Rs. 1,32,240/- which was amount due towards consumption of energy for the current period. The respondent No. 2 however refused to accept the part payment of Rs. 1,32,240/- and, therefore, the petitioners through their Advocate's letter dated 5-4-95 called upon the 2nd respondent to explain the full terminology of 'M.F. wrongly charged' as recorded in the debit note and also called upon the 2nd respondent to explain as to how the debit note came to be issued. The petitioners also forwarded with the said letter a

cheque for the sum of Rs. 1,32,240/-. The petitioners also called upon respondent No. 2 to not to disconnect the electric supply till the liability was legally determined. A copy of the notice dated 5-4-95 has been annexed by the petitionersas Exhibit 'D'. The 2nd respondent though received the said notice dated 5-4-95 but deliberately failed and neglected to give any reply to the said notice. It is the case of the petitioners that on Friday, i.e. 28-4-95 a new motion picture named 'BOMBAY' was stated to be screened in the petitioners' theater. On the morning of 28-4-95 some officers of the respondents came to petitioners' theater Ganesh Talkies and illegally disconnected the electric supply. The manager of the petitioners went to the office of respondent No. 2 and explained the position to the concerned officer but the respondents refused to reconnect the electric supply to the theater and insisted that the minimum amount of Rs. 1,25,000/- be paid by the petitioners otherwise the electric supply shall not be reconnected. The manager of the petitioners was also told that reply to the petitioners Advocate's notice dated 5-4-95 has been posted by the respondents on or before 19-4-95. One copy of the said reply was also handed over to the manager of the petitioners which is marked as Exhibit E to the writ petition. Since the tickets of the entire work were sold out by the petitioners for the new picture 'BOMBAY', the petitioners under duress had to pay the amount of Rs. 1,25,000/-. The petitioners have raised various grounds in the writ petition challenging the correctness of the debit notes dated 3-2-95 and the bill Exhibit A, but during the course of arguments, the learned Counsel for the petitioners confined to following arguments:

(i) till the date of the filing of their reply in the writ petition, the terminology 'M.F. wrongly charged' was not explained by the respondents and, therefore, the petitioners were totally unaware of the reasons for the supplementary bills and debit notes raised by the respondents:

(ii) that the demand pertains to the period November 1991 to May 1994 but the said demand was raised for the first time in March 1995 and as laid down in Belwal Spinning Mills Ltd. v. U.P. State Electricity Board and another, : AIR 1997 SC2793 , in the absence of fraud, the register of meter shall be conclusive proof of the supply of the electricity to consumer and the same is binding upon the consumer and the licensee and even the electrical inspector cannot entertain

dispute pertaining to the period beyond the statutory period i.e. beyond the period of six months as provided in sub section (6) of section 26 of the Indian Electricity Act, 1910:

(iii) the licensee i.e. respondent No. 1 can raise revise claim for the period anterior to statutory period but such claim is always open to challenge by the consumer; and

(iv) in view of the judgment of the Division Bench of this Court in Maharashtra State Electricity Board v. M/s. Madhusudandas and Brothers, : AIR1966 Bom160 , if the consumer had bona fide dispute in respect of the bills raised, then the licensee is not justified in disconnecting the electricity supply. Having done so, the respondents acted illegally.

3. Besides the aforesaid contentions on merits, Mr. Narula, the learned Counsel appearing for the petitioners raised the objection that a copy of the affidavit in reply was furnished to the petitioners on 15-12-99 when the matter was on board for hearing and the petitioners objected to the said reply being considered which has been filed at the belated stage and without prejudice to this submission, though the 1st respondent has sought to explain that the multiplying factor was overlooked during the relevantperiod, no particulars were furnished as to in what circumstances the said mistake was committed.

4. Though the learned Counsel for the petitioner submitted that copy of the affidavit in reply was furnished by the respondents to the petitioners on 15-12-99 when the matter was on board, the fact remains that the said affidavit in reply was filed by the respondents before this Court way back on 27-6-95 and even if the copy of the affidavit in reply was furnished to the petitioners on 15-1.2-99, the petitioner had enough opportunity to file affidavit in rejoinder since the writ petition was taken up for hearing by me on 14-1-2000. The petitioners had about one month's time for filing the affidavit in rejoinder but no affidavit in rejoinder has been filed.

5. Turning now to the affidavit in reply filed by the respondent, it may be stated that the respondents have justified the issuance of two debit notes dated 3-2-95. As

regards debit note No. 36695 dated 3-2-95 calling upon the petitioners to pay an amount of Rs. 2,82,130.48 the respondents have stated in the reply that each individual meter has its individual 'multiplying factor' by which the reading on the meter has to be multiplied to come to the actual number of units consumed by a consumer. The Meter No, 910030 (old) through which the petitioners derived electricity supply had a multiplying factor of 40, thereby requiring the meter reading to be multiplied by 40 to arrive at the actual consumption of the petitioners. According to the respondents, the bills preferred prior to November 1991 were preferred after multiplying the reading of the said meter by 40. In or about December 1991, during the process of systematization of the meter reading process the account of the 1st petitioners was transferred from old account No. 909/913/200 to a new account No. 568/186/1, even though the meter remained the same. During the process of transfer of the petitioners account, the multiplying factor of 40 for the said meter No. 910030 was overlooked and as a result thereof the meter reading of the said meter was not multiplied by 40 for the billing period from 26-11-1991 to 6-5-94 and the petitioners were charged as per the reading shown by the meter only without multiplying the same by 40. The respondents have stated that there was a sudden drop in the bills issued to the petitioners from 26-11-91. This sudden drop would have been quite obvious to the petitioners but this fact was not brought to the notice of the 1st respondent. The respondents have annexed a copy of the statement showing the meter reading and the corresponding consumption for which the petitioners were charged from 26-11-91 to 6-5-94. It is the case of the respondents that meter No. 910030 was replaced by meter No. 924626 on 29-3-94 at the request of the petitioners to obtain a concessional rate of tariff. It came to light after changing the said meter, that the multiplying factor had not been applied for the period 26-11-91 to 6-5-94 and hence debit note of Rs. 2,82,130.48 which includes the under billed amount for the period from 26-11-91 to 6-5-94 was issued. The respondents have annexed as Exhibit - 2 the xerox of the reading folios to indicate the multiplying factor of the meter installed at the premises of the petitioners. In respect of debit note No. 36696 dated 3-2-95 it is stated that at the request of the petitioners meter Nos. 0922453 and 0328359 which were previously installed at petitioners place were removed on 29-3-1994 for the purpose of consolidation of meters. Thelast meter

reading was taken prior to the removal of the said meter on 7-3-1994. Since the meter reading was taken on a monthly basis, the next meter reading after 7-3-1994 was taken on 6-5-1994. However, since the meter has already been removed on 29-3-1994, the 1st respondent meter reader found no meter on the installation and, therefore, no bill was issued for the period 7-3-1994 to 6-5-1994. Later on when this fact was detected, the said debit note No. 36696 was issued to the petitioner for the sum of Rs. 9,675/- which was for the electricity consumed by the petitioners for the period 7-3-94 to 29-3-94. The 1st respondent in his affidavit in reply has categorically stated that the 1st petitioner and his manager attended the office of the 1st respondent upon receipt of the said debit notes and sought an explanation of the said two debit notes. The entire position was explained to the manager in detail including the meaning and effect of multiplying factor and its non-application in the previous bills as well as the reason for the issuance of the said debit notes dated 3-2-95. The first petitioner and his manager expressed inability to pay the entire amount in one instalment and requested respondent No. 2 to allow the petitioners to make payment in suitable instalments. In view of the request made by the 1st petitioner and his manager, the 2nd respondent asked them to address a letter praying for instalments but no such letter was received by the respondents. Instead of payment of due amount as agreed by the petitioners, on the other hand the petitioners through their advocates sent a letter on 5-4-1995 which was replied by the respondents on 19-4-1995. The 1st respondent also called upon the petitioners to pay the amount of the said debit notes failing which they were notified that the supply to the petitioners installation would be discontinued. Since there was no reply from petitioners the supply, to the petitioners installation was disconnected on 28-4-1995. Thereupon the 1st petitioner and his manager once again attended the office of respondent No. 2 and they were informed that reconnection could be effected only on payment of the due amount as claimed in the said debit notes. The first petitioner and his manager agreed to make payment of Rs. 1,25,000/- immediately and undertook to pay the rest of the outstanding amount in few instalments and accordingly on payment of Rs. 1,25,000/- supply to the petitioners installation was reconnected. It has, thus, been submitted in the affidavit in reply by the respondents that the writ petition filed by the petitioners is wholly misconceived.

6. The respondents have annexed the statement at Exhibit-1 which shows the meter readings and consumption of units under the two meters supplied to the petitioners. It is clearly revealed from the said statement that for the period prior to 26-11-91, the meter reading shown on the meter was multiplied by 40 to reach the correct amount of electricity consumed by the petitioners while for a period 26-11-91 to 6-5-94, the actual meter reading was billed without multiplying by multiplying factor. The respondents in their affidavit in reply have in unequivocal terms stated that the meter No. 910030 (old) through which the petitioners derived electricity supply had a multiplying factor of 40 and for arriving at the correct amount of actual consumption of electricity the said meter reading was to be multiplied by 40. For the period prior to November 1991 the bills were raised to petitioners after multiplying the meter reading by 40 but for the bill period from 26-11-91 to 6-5-94 the petitioners were billed only as per the reading shown by the meter withoutmultiplying the same by multiplying factor of 40. This happened because the account of the 1st petitioners was transferred from old account No. 909/913/200 to new account No. 568/186/1 during the process of systematisation of the meter process. These facts stated by the respondents in their affidavit in reply are not at all controverted. Though the affidavit in reply was filed by the respondents before this Court on 27-6-95 and even if it be assumed that the petitioners were supplied with copy of the said affidavit in reply only on 15-12-1999, the hearing of the writ petition took place only on 14-1-2000 and the petitioners had sufficient opportunity to rebut the facts stated in the affidavit in reply if the same were not true. I find no justifiable reason to disbelieve the case set up by the respondents in their affidavit in reply that there was error on the part of the respondents in rising the bills for the electricity consumed by the petitioners for the period from 26-11-91 to 6-5-' 94 by not multiplying the reading shown on meter by multiplying with multiplying factor and this happened during the process of systematisation of the meter reading process. Similarly, for the amount of Rs. 9,675/- demanded vide debit note No. 36696 dated 3-2-95, the respondents in affidavit in reply have explained that the electricity consumed by the petitioners for the period from 7-3-94 to 29-3-94 was not billed. It was because at the request of the petitioners, the meter No. 0922453 and 0328359 which were installed at petitioners' place were removed on 29-3-1994 for the purpose of consolidation of

meters. The last meter reading was taken prior to removal of the said meter on 7-3-94. Since the meter reading is taken on bi monthly basis and the next meter reading was to be taken on 6-5-94 and by that time the meter had already been removed on 29-3-94, the meter reader having found on meter at installation for the period 7-3-94 to 6-5-94 no bill was issued. These facts are again not disputed or rebutted by the petitioners since no affidavit in rejoinder has been filed. There is absolutely no reason to disbelieve the correctness of the stand taken by the respondents that the second debit note No. 36696 dated 3-2-95 for an amount of Rs. 9,675/- was issued for electricity consumed by petitioners for the period from 7-3-94 to 29-3-94. It is, thus, clear that both the debit notes dated 3-2-95 were issued by respondents for recovery of amount of electricity charges for the electricity consumed by the petitioners but were not fully billed due to human errors. The debit note No. 36695 for an amount of Rs. 2,82,130.48 was issued for the electricity supplied to petitioners for the period 26-11-1991 to 6-5-94 for which the petitioners was under billed in as much as reading shown on meter was not multiplied by multiplying factor of 40 and debit note No. 36696 for an amount of Rs. 9,675/- was issued since the petitioners were not billed for the period 7-3-94 to 29-3-94 though the electricity was consumed by the petitioners during that period. It is thus a simple case of human error and, therefore, if the respondents issued the debit notes demanding the amount towards the charges of electricity already supplied and consumed by petitioners, it cannot be said that any illegality was committed by the respondents in issuing the two debit notes. The learned Counsel for the petitioners heavily relied on the judgment of the Apex Court in Belwal Spinning Mills Ltd. v. U.P. State Electricity Board and another, : AIR 1997 SC2793 (supra) particularly paragraphs 48, 49 and 52 of the said report. The said relevant paragraphs 48, 49 and 52 read thus :----

'48. Although the licensee is clothed with the power to maintain a correct meter installed at the premises of the consumer and for such purpose can enter the premises of the consumer and the licensee can also repair or alter the meter and other electrical apparatus if found defective on checking on testing by the licensee, but if the dispute as to the correct status of the meter or other electrical apparatus is raised either by the licensee or by the consumer by making reference to the Electrical Inspector under sub-section (6) of section 26, then such dispute can be

determined only by the Electrical Inspector and the meter or apparatus cannot also be changed by the licensee unless the dispute is resolved by the Electrical Inspector. If there is a dispute as to the proper functioning of the meter or check meter or other electrical apparatus under sub-section (6) of section 26, the Electrical Inspector upon entering the reference would determine the dispute as to the proper functioning of the meter and other electrical apparatus and in the event the Electrical Inspector comes to the finding that the meter ceased to be correct, he is to determine the quantum of the electricity consumed during the statutory period referred to in sub-section (6) but for any other period anterior to the statutory period, the legislature, in no uncertain term, has indicated in the latter part of sub-section (6) of section 26 that reading registered in the disputed meter will not only be presumed to be correct but such reading shall be conclusive proof of the quantity of electricity consumed or the amount of electricity supplied to the consumer provided no fraud has been practised by the consumer. In appreciating the intention of the Legislature, the provision for treating the recording of the disputed meter to be the conclusive proof of the amount of quantity supplied to the consumer in the absence of fraud where a dispute is raised by either of the party about the functioning of the meter, cannot be overlooked. Sub-section (6) has been amended and the legislature has introduced a conscious departure by deleting the requirement of assessing the quantity of electricity consumed for the entire period during which the Electrical Inspector or the competent authority was of the opinion that the meter has ceased to be correct. In our view by limiting the period for estimation to be made by the Electrical Inspector by the amendment of sub-section (6) and further providing that for the anterior period, in the absence of fraud, the register of the meter shall be conclusive proof of the supply of the electricity it is quite evident that even if it transpires that the installed meter ceased to be correct, then for the period anterior to the statutory period for which the estimation is not to be made by the Electrical Inspector, the register of the meter about the consumption of the electricity supplied to the consumer shall be binding between the parties by treating such recording as conclusive proof of the consumption in the absence of any fraud practised by the consumer. By the amendment of sub-section (6) the Electrical Inspector has been purposely absolved from the duty to determine as to from which point of time beyond the said

statutory period, the meter had ceased to function so that for such entire period, the estimation of the supply of electricity need not be made. Such amendment of sub-section (6), in our view, only means that beyond the statutory period, in the event of dispute between the parties as to the proper functioning of the meter and other electrical apparatus, the consumer has liability to pay the estimated amount indicated by the Electrical Inspector limiting the estimate upto the statutory period and not beyond that but for the otheranterior period the consumer is required to pay according to the consumption of electricity registered in the disputed meter provided there is no fraud practised by the consumer because dispute of such anterior period remains unresolved by the change introduced by the amendment.

49. Such legislative change by the amendment of sub-section (6) of section 26, in our view, has been introduced to set at rest any dispute between the licensee and the consumer about the actual consumption of the quantity of electricity by the consumer where no fraud has been practised by the consumer for all other period anterior to statutory period for estimation. There is good reason for such legislative change because it may not be possible to precisely determine exactly from which point of time the meter ceased to be correct. The scheme under the Electricity Act clearly reveals that a correct meter is to be maintained by the licensee in the premises of the consumer so that consumption of electricity is computed on the basis of reading in the meter. The scheme also reveals that unilateral decision of either of the parties about the correct status of the meter is not to be accepted by the other party if the other party raises objection as to the status of the meter. Whenever both parties do not accept a meter to be correct and the dispute is raised, such dispute is got to be resolved by referring to a statutory authority under section 26(6), namely, the Electrical Inspector. Within the integrated scheme under section 26 of the Electricity Act, it is not possible but even though dispute is raised about the mal functioning of the meter such dispute will be treated as statutorily resolved for a limited period in accordance with the amended sub-section (6) of section 26 but for the other period, anterior to the same, the dispute will remain unresolved and claim of the licensee be open to be challenged. Therefore, simply on the finding that meter had ceased to be correct by the Electrical Inspector on entering the reference a licensee may not be justified in contending that a particular meter had ceased to be correct from a particular point of time even

though the licensee, despite its statutory duty to maintain the correct meter by repairing or rectifying the defective meter by replacing it if necessary has failed to take appropriate step. Both Mr. Sen and the learned Solicitor General in their fairness, have submitted that beyond the statutory period for which no estimation for the consumption of electricity is to be made by the Electrical Inspector attaching statutory finality to such estimation, although the licensee is not precluded from raising revised claim for other period anterior to the statutory period of estimation but such claim will be open to be challenged by the consumer. In our view by the amendment of sub-section (6) of section 26, the Legislature has intended to put an end of such contest between the licensee and the consumer and has set at rest of any dispute relating to any period anterior to the statutory period of estimation by providing that in a case of dispute as to functioning of meter, the reading in the meter for the period beyond the period of statutory estimation, will be final.

52. Before we part, we may indicate that although the licensee has the obligation to keep the installed meter and other electrical apparatus in proper condition by resorting to regular checking and testing, repairing etc. but the feasibility of constant checking, repairing etc. of large number of consumers in the present day set up may not be a practical proposition. In the teeth of sub-section (6) of section 26 as amended, it is quite likely that in many cases, the licensee may suffer serious prejudice in not being able to realise from the consumers the revenue for theelectricity consumed where even though no fraud was practised by the consumer, the defect in the meter escaped attention of the employees of the licensee either for genuine reasons or in a designed manner thereby bringing an unfortunate situation when the licensee can recover the estimated amount determined by the Electrical Inspector in a disputed case limited only to the statutory period but confining the revenue for the entire anterior period, which may go for years, only on the basis of reading in the defective meter. Since after amendment of section 26(6) of the Electricity Act, the position in law is such, we feel that the proper legislative amendment is desirable so as to protect the large number of licensees including the Electricity Boards from suffering huge loss of revenue.'

The aforesaid observations made by the Apex Court in Belwal Spinning Mills Ltd., cannot be applied here since present case is not a case where the electric meter has been found defective and there is any dispute about the correctness of the reading shown on the meter. In the present case it was human error in as much as while raising the bills for energy consumed, the reading was shown on the meter was not multiplied by multiplying factor which was essential to arrive at the actual electricity consumed. For finding that the consumption of electricity by petitioners, the reading shown in the meter was required to be multiplied by multiplying factor of 40 but for the period from 26-11-91 to 6-5-94 while raising bills, the meter reading was not multiplied by multiplying factor resulting into error and that has been sought to be corrected by the respondents by way of debit notes. It cannot be said by any stretch of imagination that the amount claimed by respondents by way debit notes is not the amount due since the petitioners consumed the electricity but they were under billed by not multiplying the reading shown in meter by multiplying factor. In this view of the matter, six months restriction imposed in section 26 of the Electricity Act, 1910 has no application. Section 26 of the Electricity Act, 1910 reads thus :---

'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 authorised 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 hired as aforesaid, all reasonable expenses of, and incidental to, such inspecting, testing taking off andremoving 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 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 be giving not less than forty-eight hours notice in writing to the licensee requires 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 thinks 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 indicating 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.'

8. In (M/s. Bharat Barrel & Drum . v. The Municipal Corporation of Greater Bombay and another], : AIR1978 Bom369 , the Division Bench of this Court in paragraph 15 of the report held thus :---

'15. Before dealing with the second submission we may dispose of the argument based on the provisions contained in section 26 which might seem to have a bearing both on the words due and neglects to pay. It was submitted that the

provisions contained in section 26 make in abundantly clear that a claim can be made by the licensee or by the consumer only in respect of the dues for the six months prior to the date of the claim and not for any period prior thereto. This appears to us to be based on a misreading of the provisions contained in section 26. If either the licensee or the consumer disputes the correctness of the meter, then it is true that section 26 enables that dispute to be resolved by the Electrical Inspector but such right of correction is restricted to a period of six months. But that can have no bearing on the claim made by the licensee in the matter before us. Very briefly stated, the learned trial Judge rejected the argument on the simple basis that additional amounts for the eleven-year period were claimed not on the basis of a faulty meter but on the basis of failure to multiply the reading by 2(two), which was an entirely different thing. That there was such a mistake was contended by the licensee and the Electrical Inspector (on a reference by the Court) held that the reading of the meter was required to be doubled in order to show the real consumption. Under section 26 of the Electricity Act the restriction as to six months period does not seem to apply to such a claim made by the licensee.'

9. The aforesaid ratio clearly applies to the facts and circumstances of the present case and I have no hesitation in holding that the restriction as to six months period provided in section 26 of the Electricity Act has no application to a demand made by the license or the Electricity Board or undertaking for the unpaid amount for the electricity consumed if the consumer was Under billed due to clerical mistake or human error or such like mistake.

10. I, therefore, do not find any merit in the contention of the learned Counsel for the petitioners that the register of meter is conclusive proof of supply of electricity made and consumed in the absence of any fraud by the consumer and that the respondents were not entitled to claim the amount under debit notes beyond the period six months as provided under sub-section (6) of section 26.

11. I may also deal with the contention of the learned Counsel for the petitioners that in view of the bona fide dispute to the claim raised by the respondents, the respondents were not justified in disconnecting the electric supply. In view of the

facts stated by respondents in their affidavit in reply which go uncontroverted in the absence of any affidavit in rejoinder, it cannot be said that there was any bona fide dispute between the parties. The respondents in the affidavit in reply have stated that upon receiving the said bills along with the debit notes the first petitioner and his manager attended the office of the respondents and sought an explanation for the two debit notes. The meaning and effect of the multiplying factor and its non application in the previous bills, as well as the reason for the said debit notes was explained. The petitioner and his manager informed the 2nd respondent thatthey were not in a position to pay the entire amount in one instalment and requested the 2nd respondent to allow the petitioners to make payment in suitable instalments to which the 2nd respondent asked them to address a letter in writing but instead of writing the letter for suitable instalments as was prayed by the petitioner and his manager, a notice was sent through advocates on 5-4-95 denying its liability and demanding an explanation to the terminology 'M.F. wrongly charged' which was already explained but even then a reply thereto was given on 19-4-95 by the respondents and when no payment was made, the petitioners supply was disconnected on 28-4-1995. In view of these facts, it cannot be said that the petitioners had raised any bona fide dispute and that the respondents were not justified in cutting off the electricity supply to the petitioners.

12. Consequently, I do not find any merit in the writ petition and it is dismissed accordingly. Rule is discharged. No costs.

13. The oral prayer made by the learned Counsel for the petitioner for continuation of ad interim order passed on 15-5-95 is rejected.

14. Certified copy expedited.

15. Petition dismissed.

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