Barafwala Vs. Assistant Executive Engineer (Elec)

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Court : Karnataka

Decided On : Aug-27-1992

Reported in : ILR1992KAR3312

Judge : Hakeem and ;Kedambady Jagannatha Shetty, JJ.

Acts : Electricity Supply Regulations, 1988

Appeal No. : W.P. No. 17286 of 1985

Appellant : Barafwala

Respondent : Assistant Executive Engineer (Elec)

Advocate for Def. : C.R.V. Swamy, Adv.

Advocate for Pet/Ap. : R.U. Goulay, Adv.

Disposition : Writ petition allowed

Judgement :

Hakeem, J.

1. The petitioner is running an Ice Factory at Belgaum. He is a consumer of electricity supplied by the Karnataka Electricity Board. For the purpose of measuring voltage and the energy consumed meters of different strength are installed in the factory premises. One such meter called as maximum demand

meter (M.D. Meter), is installed for the purpose of indicating the maximum K.V.A., supplied to the factory.

2. It appears that in the month of May 1982 the said M.D. Meter failed resulting in showing higher consumption upto 84 KVA (as against normal reading earlier within 65 KVA) and stopped there. Ordinarily such meter was required to be repaired or replaced at the time of taking the reading, which, in the instant case, was on the 1st June 1992. But no such correction was made upto 31.12.1982. However, the bill for the supply for electric energy, during the disputed period was made on the basis of the maximum reading recorded in that month. According to the petitioner the said maximum reading being incorrect on account of the failure of the meter, charging of higher rate is arbitrary and unjust.

3. The stand taken on behalf of the Board is that the billing was made on the average consumption and hence the payment made by the petitioner was in conformity with Clause 28(a)(ii) of the Electricity Supply Regulations (hereinafter referred to as the Regulation). As such the same cannot be challenged on the ground of arbitrariness.

4. The only question that arises for consideration is: Whether, on the facts and in the circumstances of the case, the billing for the energy on the basis of the reading indicated by a defective meter can be said to be unwarranted and arbitrary?

5. Clause 28(a)(ii) of the Regulations reads as under:

'(ii) In the event of the Maximum Demand Meter of an installation being out of order for any reason (other than tampering by a billed agency) the installation may be back billed for a maximum period of six months or for such period as may, in the circumstances of the case, be deemed appropriate on the basis of the highest consumption recorded during any three months of the year in which the maximum demand meter if found to have become out of order, and in cases where that is not possible, then on the basis of the average of the highest consumption recorded during any three months of the preceding year. The faulty meter will be replaced by another one in good working order immediately or the same will be repaired and reinstalled as expeditiously as possible.'

6. A perusal of the last portion of the clause makes it very clear that the provision of the billing contemplated could be only for a short period, since it was incumbent upon the Board to replace the faulty meter immediately or the same to be repaired and reinstalled as expeditiously as possible. In the instant case, admittedly, the M.D. Meter was not reinstalled till the end of December 1992. It appears that during this period even the normal consumption meter also burnt and direct connection was given to the petitioner's factory.

7. No reason is forthcoming regarding the inordinate delay in replacing or repairing the M.D. Meter. For this delay on the part of the Board the consumer cannot be penalised. There is provision for levying the average maximum charge for any three months only where immediate or expeditious action is taken for the repair or replacing of the defective meter. However, it is urged by the learned Counsel for the Board that since the Regulations allow a period of six months for replacing or repairing of the defective meter, there was nothing illegal in back billing on the basis of the maximum average consumption for any three months in the year. We are unable to agree with this contention either. The reasonable view appears to be that even in such a case it would be open for the Board to take either the average consumption of three months immediately preceding the stoppage of the meter or the average consumption of the preceding 12 months for the purpose of determining the amount payable by the consumer. In fact this appears to be the principle adopted in the new Regulations promulgated in the year 1988. In that view of the matter we make the following order:

8. Writ Petition is allowed. Rule is made absolute. The petitioner is liable to be charged during the relevant period between May 1982 till the installation was connected to direct line (without meter facility) on the basis of the average consumption of three months immediately preceding the stoppage of the meter. The difference between the amount so determined and the amount actually paid shall be adjusted towards the future bills.