

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

JUDGMENT

RSEB Vs. P.P. Industries
S.B.CIVIL FIRST APPEAL NO.47/2000

Against judgment and decree dated 04.10.1999 passed by Addl. District Judge No.1, Bikaner in Civil Suit No. 41/1999 - P.P. Industries Vs. Rajasthan State Electricity Board through Asstt. Engineer.

DATE OF PRONOUNCEMENT OF JUDGMENT :: 30TH
January, 2006.

PRESENT

HON'BLE MR. JUSTICE SATYA PRAKASH PATHAK

Mr. R.K. Singhal for appellant.
Mr. Alsam on behalf of Mr. M. Shishodia for respondent.

BY THE COURT:

By this appeal under Sec.96 CPC, the defendant-appellant has challenged the judgment and decree dated 04.10.1999 passed by learned Addl. District Judge No.1, Bikaner, in Civil Suit No.41/99, whereby the suit of the

plaintiff-respondent for declaration and permanent injunction was decreed with cost by order dated 04.10.1999 and it was ordered that the defendant-appellant has no right to recover the amount of the disputed bill amounting to Rs.1,58,700.64 as the said amount is not reasonably due against him. The Court also restrained the defendant-appellant from recovering the said amount and directed the defendant-appellant not to disconnect the electric supply of the plaintiff-respondent on the ground of not depositing the said amount by the plaintiff-respondent.

In the suit filed, the plaintiff-respondent averred that the plaintiff is engaged in the manufacture of polythene bags and has taken the electric connection bearing No.151-0036, the defendant has installed meter for measuring the electricity consumed and the defendant is liable to take care and maintain the meter. It was further averred in the plaint that the officers of the defendant unexpectedly

inspected premises of the plaintiff on 08.08.1997 without giving any information and found the seals of meter and the meter itself in good running condition even then the officers of the defendant made illegal demands to which the plaintiff did not agree then the officers told the plaintiff that the meter was running slow to which the plaintiff objected but they did not pay any heed to it. It is also averred that the after a silence of about two months the officers of the defendant sent a letter dated 22.10.1997 and on the basis of so called slow speed of the meter demanded a sum of Rs.1,10,297 to which the plaintiff replied. The plaint further states that after 22.10.1997 the defendant kept mum and sent a bill for the month of March 1998 in which Rs.1,58,700.64 were added on the basis of slow running of the meter and demanded to deposit the amount of the said bill upto 21.03.1998/23.03.1998. It is said that Shri Kiranchand Chordiya, the Manager of the plaintiff on 13.03.1998, after receipt of the said bill met the concerned authority

and asked to deduct the amount of Rs.1,58,700.64 from the said bill then the authority clearly stated to deposit the amount of bill before 23.03.1998 else the electricity would be disconnected. The plaintiff contended that the defendant had no right to recover a sum of Rs.1,58,700.64 from the plaintiff as the demand raised was illegal, against law and void for the following reasons:

1. That by the letter dated 22.10.1997 a demand of Rs.1,10,297 was made while the bill for the month of March 1998 was raised demanding a sum of Rs.1,58,700.64 but how the amount of Rs.1,10,297 became Rs.1,58,700.64 was not accounted and explained.
2. That the meter was installed by the defendant and it was the responsibility of the defendant to maintain and repair it as per needs as the defendant is charging rent for it and according to the provisions of Sec.26 Electricity Act the responsibility of the plaintiff is only for the payment of consumption of electricity according to the meter.
3. That the officers of the defendant of the rank of Junior Engineer have been coming to the premises of the plaintiff for meter reading however they never complained about slow running of the meter.
4. That the officers of the defendant for the first time on 08.08.1997 stated that the meter was running slow but did not disclose the basis for that and the meter remained fixed at the same place. Had

there been any mistake in the meter or it was running slow, the defendant would have changed the same with a new meter. It was stated that even if the meter was running slow and was not showing the correct consumption of electricity, which is not acceptable, then too the defendant had no authority to take a decision about it and to send the bill prepared on the basis of so called slow running of the meter. It was necessary for the defendant to have referred the said question for decision to the Electrical Inspector and to proceed according to his decision but the defendant did not do so.

5. That even if the meter was showing less electricity consumption, the defendant had no authority to charge for it in excess of six months' bills.
6. That the defendant can neither disconnect the electricity without giving separate notice under Sec.26(1) nor can take any action in that connection.
7. That the defendant has not stated the grounds for arriving at the disputed amount.
8. That the plaintiff has full belief and the basis for such belief that the defendant has no authority to make such a demand therefore also Sec.34 of the Electricity Act is not attracted.
9. That to get the electricity is the fundamental right of the plaintiff.
10. That the cause of action arose to the plaintiff on account of sending illegal bill and the threat to recover the amount of bill so also treat to disconnect the electricity by the officers of the defendant.

The plaintiff prayed for a declaration to the effect that the defendant has no right

to recover the disputed amount of Rs.1,58,700.64 from the plaintiff and this sum is not reasonably due to the plaintiff. It was further prayed that by permanent injunction the defendant be restrained from recovering the amount of Rs.1,58,700.64 from plaintiff and from disconnecting the electricity on the basis of non-payment of the said amount. Prayer was also made for allowing costs and other suitable reliefs in favour of plaintiff.

The defendant filed the written statement and raised preliminary objections to the maintainability of the suit and referred to a decision of Hon'ble Supreme Court in the case of Punjab Electricity Board Vs. Ashwini Kumar and stated that in that case it was decided that such matters are not maintainable in the Civil Courts and *prima facie* are liable to be rejected. The defendant denied the averments of the plaintiff and the stand taken by the plaintiff in *toto* and in special statement stated that the suit was not filed by a competent person.

It was also stated that the plaintiff firm has neither been lawfully registered under the provisions of the Partnership Act nor any certificate showing the names of the partners was produced. It was further stated that the Rajasthan State Electricity Board is a body corporate and as per the provisions of Order 29 of the Civil Procedure Code on behalf of corporation, the Secretary, Director or other principal officers are competent to sign the statements and verify which is undisputed. It was stated that as per the provisions of Order 29 none of the officers was made a party. It was submitted that the Junior Engineer is neither the Secretary to the RSEB nor Director nor a principal officer and the suit not being filed against competent person was *prima facie* liable to be dismissed. It was also stated that during checking it was found that the meter recorded 60% less consumption and for the difference amount notice was given on 22.10.1997 and the bill was prepared on that basis. At the time of checking the

representative of the plaintiff was present and he put his signatures on the checking report in token of acceptance. It was also stated that after testing and repairing the meter, the meter showed 60% more consumption than the earlier consumption whereas there was no change in the firm and the work. The details about due amount was given and the amount of difference arrived at emphasizing that the demand was valid and correct. The fraction of amount for the units was also mentioned. It was further stated that the electric connection to the plaintiff was given under the General Conditions of Supply and the plaintiff and the defendant were governed by it. It was also stated that as per under Condition No.31 of the Conditions if there is a dispute between the Board and the consumer about the amount mentioned in the notice then such cases can be represented before the Settlement Committed but the plaintiff did not do so. It was submitted that it is a well settled principle that where equally efficacious remedy is available,

injunctions should not be granted and as such the suit of the plaintiff deserves dismissal. It was also stated that as a competent person has not presented the suit, only on this basis, *prima facie*, the suit was liable to be dismissed.

The learned trial Court on the basis of pleadings of the parties, framed issues to the following effect:

1. Whether the officers of the defendant on 08.08.1997 unexpectedly without any information checked the premises of the plaintiff firm, found the meter seals and meter in proper condition even then made illegal demands stating that the meter was running in slow speed, and did not pay heed to the plaintiff's objection?
2. Whether after the silence of about two months on 22.10.1997 the defendant by sending a letter to the plaintiff made an illegal demand of Rs.1,10,297 on the basis of slow running of the meter?
3. Whether by sending bill for the month of March 1998 on the basis of slow running of the meter the defendant demanded payment of Rs.1,58,700.64, for recovery whereof the defendant had no right?
4. Whether by letter dated 22.10.1997 a sum of Rs.1,10,297 was demanded and demand of Rs.1,58,700.64 was made in the bill for the month of March 1998 but how the amount of Rs.1,10,297 became 1,58,700.64

no account or explanation was given?

5. Whether it was required for the defendant to have referred the dispute relating to slow running of the meter to the Electrical Inspector under Sec.26(6) of the Indian Electricity Act and to proceed as per his decision because even if the meter was showing less electricity consumption then too the defendant could not recover the amount for more than six months' period?
6. Whether the suit of the plaintiff is not liable to be heard by the Civil Court?
7. Whether a competent person has not presented the suit?
8. Whether the plaintiff firm is not registered under the provisions of the Partnership Act and no certificate was produced showing the names of the partners with the documents produced by the plaintiff firm?
9. Whether the Rajasthan State Electricity Board which is a body corporate has not been made party through Secretary, Director or other Principal Officer, therefore, the suit not being a competent person is liable to be dismissed?
10. Whether in the inspection on 08.08.1997 it was found that during the period from September 1996 to July 1997 the meter recorded 60% less consumption of electricity and for difference payment of which notice was given on 22.10.1997 and after computing the consumption for the period from September 1996 to July 1997, bill was sent for the difference amount of Rs.1,10,297?
11. Relief?

In support of its case, the plaintiff-

respondent examined PW1 Vimal Singh and the defendant-appellant examined DW1 Rajendra Kumar Assistant Engineer, DW2 Sudhish Chandra, Assistant and DW3 Neerava Gupta, Junior Engineer. In rebuttal, PW1 Vimal Singh has been examined. In documentary evidence, the parties produced some documents. The learned trial Judge, after hearing both sides, vide his judgment dated 04.10.1999 decreed the suit. Hence, the present first appeal has been filed.

Heard learned counsel for the parties and perused the material on record.

Learned counsel appearing for the appellant in support of his submissions has placed reliance on the following authorities:

(1) 1997 (suppl.) Civil Court Cases 1 (SC) -
Punjab State Electricity Board & Anr. Vs.
Ashwani Kumar

(2) 1996(1) Civil Court Cases 71 (Kerala) -
Southern India Marine Products Col. Vs.
Kerala State Electricity Board & Anr.

(3) AIR 1987 Allahabad 115 - Shree Lakshmi Ice Mills Vs. Executive Engineer, Electricity Maintenance Division, Muzaffarnagar

(4) AIR 1981 M.P. 170 - M.P. Electricity Board, Jabalpur Vs. Chhaganlal.

The points which require consideration in the instant case, are as follows: -

- (1) Whether the matter required adjudication by the Electrical Inspector under Sec.26 (6) of the Indian Electricity Act when it was complained by the plaintiff that the meter was not functioning properly and for that matter for the change of the meter a sum of Rs.300 was deposited on 05.08.1997?
- (2) Whether after making complaint of incorrect recording of electricity consumption, it was proper on the part of the defendant to have given letter dated 22.10.1997 making demand of Rs.1,10,297 and further after just three

months in March 1998 raising demand of Rs.1,58,700.64?

- (3) Whether the plaintiff firm is a partnership firm and an authorized person has filed the suit?
- (4) Whether in view of Condition No.31 of the General Conditions of Supply and Scale of Misc. Charges relating to supply of electricity, the suit was not maintainable?
- (5) Whether the judgment and decree awarded by the trial Court now requires to be set aside.

Points No. 1 & 2 are inter-related as such the same are being disposed of together.

Points No.1 & 2:

It is to be seen that the plaintiff filed a suit against defendant appellant stating that when it was revealed that the electric meter installed at their premises was not recording correct consumption, as such it

was made known to the defendant and a sum of Rs.300 was paid for replacing the meter. The grievance of the plaintiff was that meter was running fast. This has happened on 05.08.1997. It appears that on 08.08.1997 the defendant's officials reached at the premises of the plaintiff without informing them and inspected the meter and prepared the inspection report Ex.2/A.

The pith and substance of the report Ex.2/A is that BQCT current was not available to the meter hence it was not recording correct consumption. After two months of the inspection, a letter EX.1 was sent to the plaintiff on 22.10.1997 stating inter-alia that from September 1996 to June 1997 for nearly twelve months the meter reading ought to have been 85,607 units whereas it was only 49,600 units, therefore, there was deficit of 36,007 units and it was required to be made good in the account, therefore it was demanded through letter Ex.1 for payment of Rs.1,10,297. The

plaintiff furnished a reply to this Ex.1. After four months of letter Ex.1, a bill was sent of Rs.1,58,700.64 in the month of March 1998 adding the amount of Ex.1. It was also intimated to the plaintiff that in case the amount found due on account of less recording of electric consumption is not deposited, the electric connection would be disconnected. It is further case of the plaintiff that they contacted the defendant's authorities and tried to convince them to deduct the amount shown in Ex.1 and subsequent electricity bill but they did not agree to it and were bent upon to disconnect the electric connection. It was also stated that under the provisions of the Indian Electricity Act particularly under Sec.26, it was essential for the authorities concerned to have referred the matter to the Electrical Inspector to investigate/check the meter but the authorities did not adhere to the requirements of law. It was also stated in the plaint that the basis for calculating the amount was not disclosed to the plaintiff and

even if the matter was found to be defective then under the provisions of the Indian Electricity Act, the recovery for more consumption shown less in the meter could not be for more than 6 months. It was prayed that the suit be decreed as no extra electricity was consumed and the meter of the plaintiff was found in perfect order when the authorities of the defendant checked it.

In the written statement filed, it was stated that it was not obligatory on the part of the defendant authorities to have referred the matter to the Electrical Inspector because the meter was not defective. It was also stated that on opening the seal, the meter was found sealed and intact and at the time of inspection it was revealed that one phase was not giving supply to the meter, therefore it recorded less consumption as its speed was slow. Other objections were raised in relation to the maintainability of the suit etc.

The trial Court after considering the entire matter recorded its finding on the issues in favour of the plaintiff and decreed the suit.

The contention of the appellant is that the trial Court has not properly appreciated the matter and the provisions of Sec.26 of the Electricity Act were not applicable. It was also contended that in the Inspection Report it was found that the meter installed at the premises of the plaintiff-respondent was recording 60% less consumption. According to the learned counsel, since the dust, rust and moisture was found in one of wires on opening the meter and that was removed, it was not necessary for the department in those circumstances to have sent the meter to the Electric Inspector for checking the same and to decide as to what should have been the recording of consumption in the meter. The learned counsel submits that

the trial Court has not properly considered the matter.

On the other hand, the learned counsel for the plaintiff-respondent has contended that it was the plaintiff who made the report regarding fault in the meter as it was running fast. According to the learned counsel, when the defendant's authorities were contacted, they made illegal demand and when the demand was not fulfilled, suddenly inspection was done without informing the plaintiff and a case has been made out without there being any reason and purposely the matter was not referred to the Electric Inspector as required under the Electricity Act. It has been submitted that the civil suit filed before the trial Court was maintainable as the plaintiff is a partnership firm and in rebuttal evidence all documents in relation to the firm have been filed showing it to be a partnership firm and further copies of fax etc. were also filed in the trial Court. The learned counsel submits that the findings

recorded after appreciation of evidence require no interference as the same are based on proper evidence and reasonings.

I have considered the submissions made before me.

To resolve the controversy involved in the matter, it shall be useful to reproduce the relevant provisions of Indian Electricity Act, which require consideration in the present matter. Sec.26 (1) of the Electricity Act reads as under:

"26. Meters.- (1) In 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.

- (1) xxx xxx xxx
- (2) xxx xxx xxx
- (3) xxx xxx xxx
- (4) xxx xxx xxx
- (5) xxx xxx xxx

(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."

A perusal of above provision would indicate that in matters where dispute is with regard to actual or correct recording of electric consumption in the meter is involved then the matter is required to be checked and matter is required to be investigated by the Inspector. As per Sec.26(6) of the Act, once the meter is referred to the Electric Inspector then a bill is not required to be sent to the consumer on the basis of assessment made by the departmental authorities as it can be done only after the report received from the Electrical Inspector.

It is not in dispute before me that it is the duty of the defendant to supervise the maintenance of the meter and for that they charge money. The witnesses produced on behalf of the defendant have stated this fact.

In Southern India Marine Products Co. Vs. Kerala State Electricity Board & Anr. [1996 (1) Civil Court Cases 71 (Kerala)], the

Karnataka High Court in relation to the facts that due to defect in wiring and there was possibility of a wrong connection, arrived at a conclusion that the dispute cannot be referred to Electrical Inspector. The court referred to the decision rendered by Hon'ble Apex Court in M.P.E.B. & Ors. Vs. Basantibai (AIR 1988 SC 71) and observed that the jurisdiction of the Electrical Inspector is limited to decide as to whether the meter is mechanically defective or faulty and the manipulated supply lines, by which more energy than what was consumed, which were allowed to pass through the meter would not render the meter defective which was otherwise correct. In the present case, the facts are different as there is no allegation to the effect that plaintiff-respondent made any manipulation rather it has been the admitted case of the appellant that the seals of the meter were found intact and after opening the meter dust, junk etc. were removed.

In Shree Lakshmi Ice Mills Vs. Executive Engineer, Electricity Maintenance Division, Muzaffarnagar (AIR 1987 Allahabad 115), the Executive Engineer, Electricity Maintenance Division made a demand on the basis of readings which were reflected in the check meter installed, therefore, there was no occasion for referring the dispute for the adjudication to the Inspector. In this case, the facts are that the consumer received the bills and it was complained that the bills were excessive, as such a check meter was installed and after putting it for some time, the amounts of bills were raised on the basis of the reading which was found in the check meter installed. The present case is different one. Here, despite the plaintiff depositing the amount required for change of meter, new meter was not installed rather the defendant demanded the disputed amount alleging slow running of the meter without referring the meter to the Electrical Inspector.

In M.P. Electricity Board, Jabalpur Vs. Chhaganlal (AIR 1981 M.P. 170) it has been observed that where an electrical meter is not registering correct consumption of energy not because there is any defect in the meter but because the wiring is defective, Sec.26(6) will not be attracted and the meter not being defective the question of arbitration by Electrical Inspected will also not arise. The facts of the present case are different than the said case. Here, the case is that it is the plaintiff-respondent who made a complaint to the effect that meter was required to be changed as it was running fast. The meter was checked without intimation to the plaintiff-respondent. The seals of the meter were found intact and junk etc. were found on wire. It was also found that the current was not passing through the wire fixed between CTPT which was going through the machine TTB and it did not supply current further. This fact could only be known on opening the meter, therefore, it

cannot be said that it was a simplicitor case where only a wire was defective.

In the case of M.P.E.B. & Ors. Vs. Basantibai (AIR 1988 SC 71), similar type of matter came up for consideration before the Hon'ble Apex Court and the Hon'ble Court in Para 9 of the judgment held as under:

"It is evident from the provisions of this section that a dispute as to whether any meter referred to in sub-sec.(1) is or is not correct has to be decided by the Electrical Inspector upon application made by either of the parties. **It is for the Inspector to determine whether the meter is correct or not and in case the Inspector is of the opinion that the meter is not correct he shall estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply during a period not exceeding six months and direct the consumer to pay the same.** If there is an allegation of fraud committed by the consumer in tampering with the meter or manipulating the supply line or breaking the body seal of the meter resulting in not registering the amount of energy supplied to the consumer or the electrical quantity contained in the supply, such a dispute does not fall within the purview of sub-sec.(6)

of S.26. Such a dispute regarding the commission of fraud in tampering with the meter and breaking the body seal is outside the ambit of S.26(6) of the said Act. An Electrical Inspector has, therefore, no jurisdiction to decide such cases of fraud. It is only the dispute as to whether the meter is not correct or it is inherently defective or faulty not recording correctly the electricity consumed, can be decided by the Electrical Inspector under the provisions of the said Act".

In Para 13, it has further been observed by the Court:

"We are, however, unable to accept this contrary view as it is obvious from the provisions of S.26, sub-sec.(6) of the said Act that dispute whether the meter is correct or faulty would come under the said provisions and not the dispute regarding tampering of meter. In our view, the view taken about scope of S.26(6) in the decisions cited above are correct. **In the instant case the dispute relates to whether the meter is correct one or it is faulty not recording the actual energy consumed in running the oil mill of the respondent.** So this dispute squarely falls within the provisions of the said Act and as such it has been rightly found by the High Court that it is the Electrical Inspector who alone is

empowered to decide the dispute. If the Electrical Inspector comes to the finding that the meter is faulty and due to some defect it has not registered the actual consumption of electrical energy, then the Inspector will estimate the amount to be paid in respect of such energy consumed and will fix the amount to be paid in respect of such energy consumed within a period not exceeding six months. The appellant No.1 is not competent pending the determination of this dispute by the Electrical Inspector to issue the impugned notice threatening disconnection of supply of electricity for non-payment of supplementary bill prepared and sent by it. The Board is also not competent to prepare and send a supplementary bill in respect of energy consumed by the respondent from the one phase which stopped functioning and did not record any consumption of energy. For the reasons, aforesaid we affirm the order of High Court and dismiss the appeal without costs".

In the case of Rajasthan State Electricity Board vs. Somprakash [1995 DNJ (Raj.) 36], this Court while deciding Civil Regular Second Appeal in Para 4 of its judgment has observed as under:

"There is no substance in the second appeal. It is not in dispute that the said Condition No.19(d) (vii) of the Conditions is applicable when the meter is out of order for any reason during any month/months and Sec.26(6) of the Act is applicable when the meter is not correct. In other words, the Condition No.19(d) (vii) is applicable when the meter has not functioned at all during a month/months and **Sec.26(6) of the Act is applicable when the meter was functioning but did not correctly record the consumption of electricity.** In Para No.2 of the Memorandum of Appeal, it is stated that at the time of vigilance checking of the plaintiff's premises, it was found that the meter had gone out of order and it was not recording correct consumption, otherwise meter was correct. It is mentioned in the judgment of the learned Additional District Judge No.2, Hanumangarh that the defendant has averred in its written statement that the meter stopped when it was hammered. Assistant Engineers, Somprakash and Ghanshyamdas Mehta disclosed in their statements that on checking the meter, they found that it stopped working and it again started on re-hammering. On the basis of such pleading and evidence of the defendant itself, it cannot be said that the meter was out of order as contemplated under Condition No.19(d) (vii) of the Conditions. It was properly functioning. On the application of some force, it stopped

recording reading and again started recording consumption on re-application, of force. The learned Additional District Judge No.2, Hanumangarh has rightly held that the provisions of section 26 (6) of the Act were applicable. Reference of M.P. Electricity Board Vs. Smt. Basanti Bai, AIR 1988 SC 71 may be here. No substantial question of law arises in this appeal".

The Hon'ble Apex Court in the case of Bombay Electric Supply & Transport Undertaking Vs. Laffans (India) Pvt. Ltd. & Anr. [Appeal (Civil) 3615 of 1996, decided on 21.04.2005], which squarely covers the present case, discussed:

"What is a correct meter? The language of sub-section (6) of Section 26 starts with "where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct". The dictionary meaning of the word "correct" is: Adhering or conforming to an approved or conventional standard; Conforming to or agreeing with fact; Accurate.

As to what would be a "correct" meter, there is sufficient indication in the Act and the Indian Electricity Rules, 1956 in the

explanation given at the end of sub-section (7) of Section 26 of the Act and sub-rules (1) and (2) of Rule 57, quoted hereinabove. Where the meter is completely non-functional on account of any fault or having been burnt, it will not register the supply of energy at all. Since a burnt meter does not record any supply of energy, it virtually means "no meter".

What is contemplated by Section 26(6) is a running meter, but which on account of some technical defect registers the amount of energy supplied or the electrical quantity contained in the supply beyond the prescribed limits of error. It contemplates a meter which is either running slow or fast with the result that it does not register the correct amount of energy supplied. There is an additional reason for coming to such a conclusion. Section 26(6) confers power upon the Electrical Inspector to estimate the amount of 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. Where the meter is running slow or fast, it will be possible for the Electrical Inspector to estimate the amount of energy

supplied to the consumer by determining the extent or percentage of error in recording the supply, whether plus or minus. However, where the meter is burnt or is completely non-functional, such an exercise is not at all possible. Therefore, Section 26(6) can have no application in a case where a meter has become completely non-functional on account of any reason whatsoever."

The Hon'ble Apex Court observed:

"It has never been the case of the appellant at any stage that the meter was not correctly recording the consumption of electricity on account of being non-functional due to any fraud committed or device or trick adopted by the consumer-respondent No. 1 or that the body seal of the meter was found broken or tampered with. The respondent No. 1 was accepting and honouring the demands raised by the appellant and, therefore, respondent No. 1 cannot be expected to have raised a dispute and sought for a reference for determination by Electrical Inspector. The appellant could not have, therefore, revised the demand for such period based on average consumption during the previous year."

The Court held:

"So far as the period for which the meter is said to be incorrect, the demand has not been revised by basing it on the finding arrived at by the Electrical Inspector and hence is not available to be revised. The meter is alleged by the appellant to be not correct and yet the appellant has not made a reference to the Electrical Inspector under Section 26(6). The appellant cannot now be allowed to raise an additional demand over and above the demand raised through the bills which were issued for that period and paid by the first respondent. The right to raise additional bills stands lost by the appellant for its failure to proceed in accordance with Section 26(6) of the Electricity Act, 1910.

The decisions rendered by the Hon'ble Apex Court and this Court clearly indicate that when an electric meter does not record correct reading then the meter is required to be inspected by the Electrical Inspector.

The learned counsel for the appellant has tried to make a distinction and submitted that in cases where some dust or moisture is found in the meter and that is removed then those matters will not fall under Sec. 26(6) and the Electrical Inspector is not required to investigate in such matters. I do not agree with the submission made by the learned counsel in view of Sec.26(6) of the Act and also in view of the decision rendered by the Hon'ble Apex Court in which it has been specifically mentioned that actual correct recording if not made then the matters are required to be considered in the light of Sec.26(6) of the Act. DW1 Rajendra Kumar as well as DW2 Sudhish Chandra, both have admitted this aspect of the matter that when the meter was inspected on 05.08.1997 the seals of the meter were found intact and after opening when it was tested, it was found that current was not passing through the wire fixed in between CTPT which was going through the machine TTB and it did not supply current further. It is stated that the wire

was found containing junk and dust so the electricity was not passing through it, which resulted in less supply in the meter, therefore the meter was recording 60% less against the actual consumption. In the report, there is no mention of moisture. Further both the witnesses have also admitted in their cross examination that in case of less consumption of electricity the reading would be recorded less in the electric meter. DW3 is a witness, who has been produced to show what was the monthwise reading of the plaintiff's meter recorded in the binder book. In the cross examination of this witness it has come that the book maintained by him was a loose book having some paper empty in the beginning and there were cuttings in relation to the readings of the plaintiff's meter. This witness was not considered to be reliable by the learned trial Court.

It has not come on record as to how the period from September 1996 to July 1997 was

taken into consideration because DW2 in his cross examination has stated that the checking of the meters is done once in a year. He has further stated that probably in the month of April or May the plaintiff's meter was checked. Subsequently, he stated that he does not know as to when the meter was checked. If this part of his statement is considered then upto April and May, 1997 there was nothing wrong in the meter. Both the witnesses have also stated that reading of the meter is taken by a person of the rank of Junior Engineer. Nothing was found incorrect in the meter till it was complained by the plaintiff on 05.08.1997.

Sec.26(6) of the Indian Electricity Act provides that while making calculation for payment in such matters, demand cannot be raised for more than 6 months. Here, in this case the matter has been considered from September 1996 to July 1997. As stated earlier, on the basis of inspection made on 08.08.1997, a conclusion was drawn that the

meter was recording 60% less than the actual consumption. There appears no material on record for reaching such a conclusion. In this case, letter Ex.1 was sent making demand of Rs.1,10,297 but just after three months thereof the demand was enhanced to Rs.1,58,700.64. Though certain details and calculation sheets were filed and tendered in evidence, however, the reasons given by the defendant in view of statement of DW3, do not inspire confidence. The plaintiff was able to prove its case. Thus, the answer to point No.1 & 2 is that the matter required adjudication by the Electrical Inspector under Sec.26(6) of the Indian Electricity Act and it was not proper on the part of the defendant to have issued letter dated 22.10.1997 making demand of Rs.1,10,297 and thereafter raising demand of Rs.1,58,700.64.

Points No.3 & 4:

It is correct that some objections have been raised in relation to the

maintainability of the suit. In the rebuttal evidence, PW1 has proved the certificate of registration of the firm and other documents and the trial Court has considered this aspect of the matter in detail, so I am not inclined to go into the technicalities so deeply in view of the facts and circumstances of the present case that the plaintiff, who made a complaint regarding the meter that it was not giving correct reading, was subsequently saddled with heavy penalty in an arbitrary manner. In the interest of justice and also taking into consideration the rebuttal evidence of plaintiff and documents filed subsequently, the suit cannot be held to be non-maintainable in civil court.

In relation to submissions made regarding alternative remedy, the learned trial Court while deciding Issue No.6, 7, 8 & 9 has considered the matter in detail has found that Condition No.31 states that where both the side agrees then the matter can be placed before the

Settlement Committee. The learned counsel has showed me a photostat copy of Condition No.31 and submitted that there is no mention of the fact that matters are required to be kept only when both parties intends to place the matter before the Settlement Committee. In the photocopy placed before me, Condition No.31 reads as under:

"31. Dispute:

In the event of any difference or dispute arising between the Board and the consumer in respect of any matter connected with the supply which can not be determined by these conditions, or by the terms of any agreement between the Board and the consumer, and in the event of any difference or dispute arising as to the interpretation of these conditions or of the terms of any agreement between Board and the consumer, the matter shall be determined in accordance with the provisions of the Act or by reference to Electrical Inspector, Govt. of Rajasthan, and in the event of any difference or dispute arising that cannot be determined as aforesaid the provisions of the Indian Arbitration Act as amended from time to time shall apply."

A perusal of above Condition No.31 indicates that this condition relates to the matters of dispute between the Board and the consumer in respect of supply of electricity which cannot be determined under the Conditions of 1964 and when there exists further dispute in relation to interpretation of the conditions or the terms of agreement between the board and the consumer then the matter shall be determined in accordance with the provisions of the Act or by reference to the Electrical Inspector, Govt. of Rajasthan. Thus, a complete reading of Condition No.31 nowhere suggest that a matter like the present one was required to be placed before the Settlement Committee. In the present case, meter was not correctly recording the readings and was required to be changed as per the complaint and the plaintiff deposited a sum of Rs.300 for the change of meter and instead of changing the meter, the defendant sent letter Ex.1 demanding huge amount of money, then in those circumstances the civil suit was filed. Ordinarily, the civil courts

have jurisdiction almost in all matters until and unless there is specific bar in that behalf.

In Rajasthan State Electricity Board Vs. M/s. N.K. Enterprises (1988 DNJ (Raj.) 538, despite information of the plaintiff to the defendant Board about its not functioning praying for replacement of the meter, the defendant sent the bill on the basis of average consumption. Injunction was refused by the trial Court however the appellate issued injunction. This Court, after considering the facts and circumstances of the case, held that the appellate Court was justified in issuing injunction and the civil Court was competent to adjudicate such matters as there existed a series of dispute between the Board and the consumer.

The authorities relied on by the learned counsel for the appellant are clearly distinguishable and of no help to him.

In Punjab State Electricity Board & Anr. Vs. Ashwani Kumar [1997 (suppl.) Civil Court Cases 1 (SC)], the Hon'ble Apex Court, while considering various circulars issued by Electricity Board upto the year 1980, reached to the conclusion that in view of instructions issued by the Board from time to time regarding hearing of disputed matters alternative remedy was available. In the present case here is no such circular available issued by the Electricity Board.

In view of foregoing discussions, the answer to Point No.3 & 4 is that the plaintiff firm is a partnership firm and the suit which has been filed against the Electricity Board is maintainable as has been filed by the authorized person. A detail discussion has been given in the trial Court's judgment and the suit is not liable to be dismissed in view of Condition No.31 of the General Conditions of Supply and Scale of Misc. Charges relating to the supply of electricity, 1964.

Point No.5:

In view of findings recorded on Point No.1 to 4, there appears no reason to set aside the judgment and decree awarded by the learned trial Court, which is based on proper appreciation of evidence and with reasonings. It is settled position of law that the appellate Court should be slow in disturbing the findings of the trial Court unless it is found that the trial Court has misread the evidence or the conclusions drawn are absolutely against record and arbitrary in nature.

Resultantly, the appeal being devoid of any force is dismissed.

(**SATYA PRAKASH PATHAK**) J.

/jpa