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C.A.No. 4311 OF 1998

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4311 OF 1998

STATE OF WEST BENGAL & ORS.

.....
APPELLANT(S)

:VERSUS:

RUPA ICE FACTORY PVT. LTD. & ORS.

.....
RESPONDENT(S)

O R D E R

A writ petition had been filed before the High Court by the respondents, challenging certain demands raised by the appellants and for restoration of electrical connection. Facts leading to that writ petition are that the officials of the appellants disconnected the electricity supply to the respondent's establishment after the Central Vigilance Squad made a physical verification of the meter/metering installation at the factory and having found that there was a direct tapping line from the transformer secondary site to the L.T. Distribution mains bypassing the meter circuit. Thus there was an unmetered consumption. These facts were recorded in a physical verification sheet which was signed by the officers of the Central Vigilance Squad, certain other persons and the employees of the respondent No.1. In this regard a complaint was also lodged by the Electricity Board with the concerned police station. The writ petition was allowed by holding that there was no power conferred upon the appellants to decide suo motu the extent of electricity pilferage and raise the demand thereof; that, if the consumer had committed any offence he was to be punished in accordance with law by an appropriate prosecution; that the matter should have been decided by the Inspector under Section 26-B of the Electricity Act, 1910; that the claim for amounts in the supplementary bill was barred by limitation; that the service of a notice was a pre-requisite to any disconnection of the electricity.

The appellants carried the matter in appeal before the Division Bench which inter alia specifically focused its attention on the following two questions:

"1. Whether the WBSE has the authority to disconnect the supply on the basis of allegations of pilferage without any notice?

2. Whether WBSE had the authority to determine the quantum of unmetered consumption in cases of pilferage and raise bills on the basis thereof?"

On the first question the High Court concluded that the facts recorded are sufficient to form an opinion or prima facie view that there had been a theft of electricity justifying the disconnection of the line under clause 25 of the agreement without notice. This finding is in favour of the appellant and there is no challenge to this part of the order by respondents and we need not examine this aspect any further. That finding therefore becomes final.

The bill that has been raised by the appellants, covers two periods. Firstly from December 1992 to November 1993 and secondly from December 1993 to December 1995. It appears that the electric meter was found to be defective in the month of December 1993 and the defect was set right on the same day and thereafter, as a result, the energy meter had only recorded 2/3rd of the electrical energy actually consumed. On that basis the claim was made by the appellants. Learned counsel for the appellants does not dispute the view taken by the High Court on this aspect of the matter, pertaining to the period between December 1992 and November 1993 and that aspect also need not detain our attention any further.

As regards the second claim, namely, the claim for the period from December 1993 to December 1

995, the finding of the High Court is that the Vigilance Squad had found that respondent No.1 had tapped the electric energy directly from the transformer to the L.T. Distribution Board by passing the meter circuit. If that is so, we do not know as to why the High Court would go on to advert to Section 26 of the Electricity Act and direct reference to the electric Inspector for decision under Section 26(6). In two decisions of this Court in M.P. Electricity Board vs. Basantibai [1998 (1) SCC 23] and J.M.D. Alloys Ltd. vs. Bihar State Electricity Board and Ors. [2003 (5) SCC 226] it has been held that in cases of tampering or theft or pilferage of electricity, the demand raised falls outside the scope of Section 26 of the Electricity Act. If that is so, neither the limitation period mentioned in Section 26 of the Electricity Act nor the procedure for raising demand for electricity consumed would arise at all. In this view of the matter, that part of the order of Division Bench of the High Court, directing that there should be a reference to the electrical inspector, shall stand set aside. In other respects the order of the High Court shall remain undisturbed. The appeal is allowed accordingly.

.....J
(S. RAJENDRA BABU)

.....J
(Dr. AR. LAKSHMANAN)

.....J
(G.P. MATHUR)
NEW DELHI,
MARCH 16, 2004.

ITEM NO.109 COURT NO.2 SECTION-XVI
S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO.4311 OF 1998

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APPELLANT(S)

:VERSUS:

RUPA ICE FACTORY PVT. LTD. & ORS.

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RESPONDENT(S)

(With Office Report)

Date :16/03/2004 This appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE S. RAJENDRA BABU
HON'BLE DR. JUSTICE AR. LAKSHMANAN
HON'BLE MR. JUSTICE G.P. MATHUR

For Appellant (s)Mr. V.R. Reddy, Sr.Adv.
Mr. H.K. Puri,Adv.

Mr. Ujjwal Banerjee,Adv.
Mr. S.K. Puri,Adv.
Mr. Shiv Gupta,Adv.

For Respondent (s)Mr. Raja Chatterjee,Adv.
Mr. G.S. Chatterjee,Adv.

UPON hearing counsel the Court made the following

O R D E R

Mr. V.R. Reddy, learned senior counsel for the appellants argued the matter for half an hour. Thereafter, Mr. Raja Chatterjee, learned counsel for the respondents argued for about five minutes.

The appeal is allowed in terms of the signed order.

(A.S. BISHT)(OM PRAKASH)

COURT MASTER

COURT MASTER

[Signed order is placed on the file]