

IN THE HIGH COURT OF SINDH, KARACHI

Suit No. 642 of 2003

PRESENT:

Mr. Justice Arshad Hussain Khan.

M/s. Silver Flour Mills

vs.

Karachi Electric Supply Corporation

Plaintiff: M/s. Silver Flour Mills
 Defendant: Karachi Electric Supply Corporation
 Date of hearing and judgment: 01.11.2017

JUDGMENT

ARSHAD HUSSAIN KHAN, J. The present suit was filed by the plaintiff against the defendant for Declaration, Permanent Injunction and Damages with the following prayer:-

- A. *To declare that the defendant has no right and authority to issue any supplementary detection or additional bill in respect of the meter which it claim to be faulty tempered and slow and should invoke the jurisdiction of Electric Inspector.*
- B. *To declare that the impugned bill dated 09.5.2003, issued by the defendant to the plaintiff is illegal, unlawful and contrary to law of Electricity Act.*
- C. *Permanent injunction restraining the defendant and/or anybody else claiming or acting through or under it from disconnection the electricity of the plaintiff through meter bearing No.AP-042943, having A/c. No.65233282, which is installed at M/s. Silver Flour Mills built on Plot No.5/C, Commercial Area, Nazimabad No.4, Karachi, on the basis of the alleged supplementary bill or for any other reason until decision of this case.*
- D. *Damages in the sum of Rs.50,00,000/= with interest at the rate of Rs.20% per annum till realization of the amount.*
- E. *Cost of the suit.*
- F. *Any other relief or reliefs that deem fit and under the circumstances of the case.*

2. Brief facts leading to the filing of present suit as averred therein are that the plaintiff is a manufacturer and processor of flour and is engaged in grinding of wheat at premises viz. 5/C, Commercial Area, Nazimabad No.4, Karachi (the said premises). At the said premises besides other, meter bearing No.AP-042943 (subject meter) is installed with the connected load of 226

K.W. The plaintiff has been regularly paying electricity bills issued by the defendant. It is also stated that the defendant somewhere in the month of March 2002, inspected the said premises and checked the meters installed thereat, however, no report and or complain of any nature was issued to the plaintiff. The defendant kept on issuing electricity bills on the basis of meter reading of the same meters. The plaintiff, however, in the month of April, 2003 received a bill of an amount of Rs.11,29,982/-. The plaintiff enquired from the defendant in respect of the said bill and was informed that the bill was issued as the subject meter installed at the said premises was slow, doubtful and not functioning properly, hence such bill was prepared on the basis of inspection carried out by the defendant in the month of February 2002. The plaintiff under compulsion was forced to pay 20% of the said amount as the electricity of the plaintiff was disconnected. The electricity remained disconnected for about one week and during which period the plaintiff suffered heavy losses, however, upon payment of 20% amount of the impugned bill the electricity of the plaintiff was restored. It is also stated that connected load of the plaintiff is 226 K.W. and the maximum demand establish at any time is 164 K.W. It is also stated that it is the jurisdiction and authority of the Electric Inspector to give its findings after inspection of the meter as to whether the meter, maximum demand indicator or other measuring apparatus is or is not correct and thereafter assess the energy consumed during such period when the meter allegedly remain faulty. By issuing supplementary bill, the defendant has become a judge of their own cause. The defendant has violated Section 26(6) of the Electricity Act and did not invoke the jurisdiction of Electric Inspector. It is also stated that the defendant has recovered amount for past 6 months without any justification. It is also stated that during the period when the electric remained disconnected the plaintiff suffered damages as they could not fulfill their obligation in terms of the wheat grinding and as such the plaintiff claims a sum of Rs.50,00,000/- as damages.

3. Upon notice of the present suit, the defendant department filed their written statement wherein while denying the allegations levelled in the plaint, it has been stated that no inspection was conducted during the month of March, 2002, however, the Field Engineer of the defendant reported in February, 2002, with respect to the change of the needle type meter for Meter Consumer No.AP-042943 and in this regard an FMR was issued and subsequently the meter was changed on 04.3.2002. The removed meter was tested in meter test laboratory and it was reported as under:-

- i) C.T's seals found missing.
- ii) Blue pressure ire found head-up.

iii) Red pressure wire found cut and tape

4. It is also stated in the written statement that the consumer's meter was changed on 04.03.2002 and thereafter bill was issued on new meter-consumption for meter bearing No.AP-042943. It has also been stated that bill for the month of March, 2003 was issued for 13598 units amounting to Rs.102322.41/- (Net) and Rs.111124.84/- (Gross). The bill for the month of April, 2003 was issued in the sum of Rs.148220/- (Net), Rs.161070.17/- (Gross) with arrears of Rs.640946/- (including the detection bill). It is further stated that the test report of the removed meter was communicated to the plaintiff/consumer along with a legal notice under Sections 39, 39-A, 44 and 26-A of Electricity Act, 1910 on 13.8.2002, which was subsequently replied by the plaintiff, however, the said reply was found unsatisfactory as the plaintiff did not produce any documentary evidence against the charges on him levied by the defendant. The detection bill was raised on the basis of new meter consumption for the period of 6 months from the October, 2001 to March, 2002. It has also been stated that the management of the defendant upon the request of the plaintiff had allowed the plaintiff to pay 20% of the detection bill as adhoc payment and remaining amount into installments. Furthermore, if the plaintiff was aggrieved with the action and decision of the defendant, he should have approached Electric Inspector to get the dispute decided but the plaintiff instead of invoking jurisdiction of electric inspector preferred to file present suit before this Court, hence the present suit is liable to be dismissed being frivolous.

5. On pleadings of the parties, on 14.12.2006 this Court framed following issues:-

1. *Whether the defendant has a right or authority under the law to issue supplementary bill/detection bill in respect of the faulty and tempered meter?*
2. *Whether the impugned bill dated 9.5.2003 is illegal and unlawful and is liable to be cancelled?*
3. *Whether the plaintiff is entitled for the decree as prayed?*
4. *What should the decree be?*

6. Thereafter, the Commissioner for recording of evidence was appointed who after completing the commission furnished his report dated 05.05.2008. From perusal of Commissioner's report, it appears that the plaintiff and the defendant in support of their respective stances in the case, examined one witness each. The order sheet reveals that this matter has been coming up for arguments since 2008, and after 2013 nobody appeared

on behalf of the plaintiff except one Mr. Imtiaz Agha advocate, who though had filed his Vakalatnama on 12.02.2013, however, subsequently he filed application bearing CMA No.17076/2016 for discharge of his Vakalatnama on the ground that despite his best efforts he could not contact with plaintiff. Upon such application this Court issued direct intimation notices to the plaintiff, which though served, however, nobody appeared on behalf of the plaintiff and the position is remained same till to-date.

7. Keeping in view the fact that this matter pertains to 2003, and the evidence has already been recorded, therefore, this matter is taken up for judgment on the basis of material available on record and my findings on the aforesaid issues are as under:

Issue No.1 From perusal of the record, it appears that the plaintiff through instant proceedings has sought declaration that the defendant has no authority to issue detection bills in respect of alleged faulty, tempered and slow meter without invoking jurisdiction of Electric Inspector. Precisely, the case of the plaintiff is that the matter relating to the examination of meter and metering apparatus would need determination by the Electric Inspector and that fixing of the additional liability of the plaintiff by issuing the detection bill by the defendant itself was without lawful authority. Whereas the stance of the defendant in the case is that the detection bill was issued on the basis of new meter consumption as the earlier meter was removed upon observance of low consumption of electricity for considerable period. The removed meter was subsequently tested in the Meter Testing Laboratory and certain discrepancies were found in the meter installed at the premises of the plaintiff and due to the discrepancies found in the said meter, the case of the plaintiff falls within the ambit of consumption of energy through dishonest obstruction, therefore, the licensee is authorized to determine the liability of consumer without the interference of Electric Inspector or any other authority and the matter was not referable to any other authority, however, if the plaintiff is aggrieved with the detection bills, he should have approached the Electric Inspector instead of filing the present case.

8. In the circumstances, the pivotal question for determination would be 'whether the dispute would fall under section 26(6) of Electricity Act, 1910 and was referable to Electric Inspector appointed under section 36 of the Act. Or whether the matter is covered by section 26-A of Electricity Act, 1910 and the licensee has the exclusive jurisdiction to fix the liability of consumer. In order to ascertain the correct legal position the examination of sections 26 and 26-A of the Electricity Act, 1910 is necessary.

Before going into further discussion, it would be appropriate to reproduce the section 26 and 26-A of the Act as under..

"Section 26. Meters.--- 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, [maximum demand indicator and other measuring apparatus].

Provided that the licensee may require the consumer to give him security of the price of a meter, maximum demand indicator and other measuring apparatus and enter, into an agreement for the hire thereof, unless the consumer elects to purchase a meter, maximum demand indicator and other measuring apparatus.

(2) Where the consumer so enters into an agreement for the hire of a meter, maximum demand indicator and other measuring apparatus, the licensee shall keep the meter, maximum demand indicator and other measuring apparatus 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, maximum demand indicator and other measuring apparatus.

(3) Where the meter, maximum demand indicator and other measuring apparatus, is the property of the consumer, he shall keep the meter, maximum demand indicator and other measuring apparatus, correct, and in default of his doing so the licensee may, after giving him even days' notice, for so long as the default continues, cease to supply energy through the meter, maximum demand indicator and other measuring apparatus

(4) The licensee or any person duly authorized 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, maximum demand indicator and other measuring apparatus referred to in subsection (1); except where the meter, maximum demand indicator and other measuring apparatus is so hired as aforesaid, at reasonable expenses of and incidental to, such inspecting, testing, taking off and removing shall, if the meter, maximum demand indicator and other measuring apparatus 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 Electric 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, maximum demand indicator and other measuring apparatus if any difference or dispute of the nature described in subsection (6) has arisen until the matter has been determined as therein provided.

(5) A consumer shall not connect any meter, maximum demand indicator and other measuring apparatus referred to in

subsection (1) with any electric supply-line through which energy is supplied by a licensee, or disconnect the same from any such electric supply-line, without obtaining the consent of the licensee in writing which shall not be unreasonably withheld by the licensee.

(5-A) A consumer shall not injure any meter, maximum demand indicator and other measuring apparatus, or alter their indexes or prevent them from duly registering the amount of energy supplied or the electrical quantity contained in the supply.”

(6) Where any difference or dispute arises between a licensee and a consumer as to whether any meter, maximum demand indicator or other measuring apparatus is or is not correct the meter shall be decided, upon the application of either party, by an Electric Inspector, within a period of ninety days from the date of receipt of such application, after affording the parties an opportunity of being heard, and where the meter, maximum demand indicator or other measuring apparatus has, in the opinion of the Electric Inspector, ceased to be correct, the Electric Inspector shall estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply, during such time as the meter indicator or apparatus has not, in the opinion of the Electric Inspector, been correct, and, where the Electric Inspector fails to decide the matter of difference or dispute within the said period or where either the licensee or the consumer decline to accept the decision of the Electric Inspector, the matter shall be referred to be Provincial Government whose decision shall be final:

Provided that, before either a licensee or a consumer applied to the Electric Inspector under this subsection he shall give to the other party not less than seven days’ notice of this intention so to do.

(7) In addition to any meter, maximum demand indicator or other measuring apparatus which may be placed upon the premises of a consumer to pursuance of the provisions of subsection (1), the licensee may place upon such premises other meter maximum demand indicator or other apparatus as he may think 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 subsection (1):

Provided also, that, where the charges for the supply of energy depend wholly or partly upon the reading or indication of am such meter, indicator or apparatus as aforesaid, the licensee shall, in the absence or in agreement to the contrary, keep the meter, indicator, or apparatus correct; and the provisions of subsections (4)(5), [5-A] and (6) shall in that case apply as though the meter, indicator or apparatus were a

meter referred to in subsection (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 **[...] 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. "

Section 26-A.

"2.6-A. Dishonest abstraction or consumption of energy.-
-Notwithstanding anything contained in section 23, the licensee may charge the consumer on the basis of one or more of the following considerations for the amount of energy deemed to have been dishonestly abstracted, consumed or used for the period during which the meter, maximum demand indicator or other measuring apparatus had, in the opinion of the licensee, remained disconnected, injured, altered or prevented from registering the amount of energy supplied or the electrical quantity contained in the supply---

- (a) consumer's connected load or maximum demand in kilowatt during any period;
- (b) consumer`s maximum consumption of energy in kilowatt hours during any period;
- (c) consumer's load factor;
- (d) the power factor of consumer's load;
- (e) the hours and the time for which the-energy is deemed to have been abstracted, consumed or used by the consumer; and
- (f) the purpose for which the energy is deemed to have been abstracted, consumed or used by the consumer.

From the perusal the difference of above statutory provisions, it is obvious that the jurisdiction of the Electric Inspector is confined to the disputes relating to the matters falling under section 26(6) of the Act, and the matter relating to the charges on account of dishonest obstruction of energy would not be referable to the Electric Inspector. If the matter relates to the correctness of meter, maximum demand indicator, or other measuring apparatus, the dispute for consumption of electricity is referable to the Electric Inspector and in case for dishonest obstruction and consumption of energy, the licensee under section 26-A of the Act, may charge the consumer on the basis of considerations mentioned therein. The distinction is that, in case of defect in the metering equipment or any fault if caused by the consumer with the intention to prevent the meter from registering the consumption of energy, the assessment made by the licensee of the charges through detection bill can be subject to scrutiny by way of reference made to Electric Inspector by the consumer but if the metering equipment was completely bypassed through a device energy was being supplied by dishonest obstruction of electricity and the question relating to the correctness of metering equipment or the measuring apparatus was not

involved, the charge made under section 26-A is, not a dispute referable to the Electric Inspector to terms of section 26(6) or any other provision of the Act. It is clear that section 26 (6) is not attracted in the cases in which the dispute related to the dishonest obstruction or consumption of energy but if the dispute between the licensee and the consumer is based on account of any defect in meter, the maximum demand indicator or other measuring apparatus is or is not correct, the matter shall necessarily be decided by the Electric Inspector on an application moved by either the licensee or the consumer. The scope of the subsection (6) of section 26 is limited to the extent of defect in the meter or the metering apparatus which cannot be enlarged to a case of dishonest obstruction or consumption of energy for the purpose of conferring the jurisdiction to the Electric Inspector to scrutinize the demand made by the licensee under section 26-A of the Act. In the nutshell, section 26(6) is confined to the cases in which due to any technical fault or defect the meter is not in order and is not registering a energy correctly. Reliance in this regard is placed on the case of *COLONY TEXTILE MILLS LTD., MULTAN through Factory Manager v. CHIEF EXECUTIVE, MULTAN ELECTRICITY POWER COMPANY LTD. (MEPCO) MULTAN and 2 others (2004 SCMR 1679)*

9. Reverting to the case in hand, it appears from the perusal of the evidence that the case of the plaintiff is not that of dishonest obstruction or consumption of energy but the case of a defect in meter, the maximum demand indicator was not correct. For the sake of ready reference, the cross examination of the defendant witness is reproduced as under:

“I am employed in KESC since September 2000. I was posted at Civic Center dealing with Industrial Zone of Federal “B” Area Karachi. It is correct that I am not personally aware about the facts of this case. There are two power meters and three light meters.

It is correct to suggest that in February / March 2000 the premises of the plaintiff were inspected. I see the photocopies of the inspection reports and say that these are the same Ex.D/2 & D/3. The inspection was conducted by the combing Operation Department of KESC. I see the comments on the report given by the Engineer. I cannot say that these comments are correct or not. It is correct that the Engineer in his comments had written that the testing results of the meters of the consumer are found correct.

It is correct that the meter No.AP-042943 was changed on 4.3.2002 by KESC. The meter was sent for testing. It is correct that no intimation notice was given to the consumer before sending the meter for testing. The meter was sent for testing to meter department of KESC. The consumer was informed by our letter dated 13.8.2002 (X-15). I have no knowledge about this letter. It is correct to suggest that the Electric Inspector has not submitted his report. The basis of issuing the bill for Rs.6,65,872.60 is the meter charge advice result Ex.D/1. The bill is now marked as Ex.D/5. I see the photocopy of the

bill April 2003 and say that it was issued by the KESC. It is now marked Ex.D/6. It is correct that no instruction was given by the Electric Inspector for issuing the supplementary bill. The bills were issued under the instruction of our head of department. I see para 5 of my affidavit in evidence and say that my statement regarding issuance of electric bill is relied upon on our letter dated 13.8.2002 (X-15) (Ex.P/16 & Ex.D/5)."

[Emphasis supplied]

10. In the present case, there is nothing available on record, which could show that the plaintiff bypassed and dishonestly obstructed the meter installed at its premises and consumed the electricity through illegal device and as such the provisions of section 26-A are not attracted. Furthermore, the record reveals that no notice before removing the meter from the premises of plaintiff was served upon him, nor any respectable person of the locality was associated with the proceedings of removing and checking of disputed meter. The defendant unilaterally tested the removed meter of the plaintiff and the person who checked/tested the meter was not produced as witness by defendant to verify the alleged Laboratory results. The defendant also failed to produce any law or legal basis for believing that the report of laboratory test is a conclusive proof and can be relied upon. Reference in this regard can be placed on the case of *WAPDA through Chairman WAPDA v. ANJUM TARIQ (2009 YLR 628)* wherein it is held:--

"This is the cardinal principle of law that before taking any action against any person, a notice must be given to him as envisaged under Section 20 of the Electricity Act and any action taken at the back of the consumer and without notice to him, will be violative of the principle of natural justice."

In the same judgment it was further held:

"The issuance of a notice is the vested right of a person or at least at the time of removing the meter, respectable from the locality ought to be associated with the proceedings. Checking of the meter without notice to the consumer is violative of the principle of natural justice and is illegal."

Reliance can further be placed on the case of *WATER AND POWER DEVELOPMENT AUTHORITY through Chairman and 2 others v. Mian SHAUKAT HAYAT (2003 CLC 1574)*, wherein it is held under:

"7. The petitioners have not been able to establish that before checking the meter or issuance of electricity disputed bill, any notice was issued to the consumer/plaintiff. There is no proof on the record that any of the officer of the WAPDA or WAPDA team has checked the meter by associating the plaintiff. The determination of the period for charging of slowness of the meter is arbitrary. The issuance of notice before charging the detection bill is mandatory requirement of law. The meter was not sent to the Electric Inspector to find out defect and penalized the respondent without getting the meter determined as tempered. WAPDA could not ignore or violate law and become judges in their own cause to deprive consumer of his rights. In this context reliance can be placed to the case of *Mian Muhammad Munir v. WAPDA and others 1983 CLC 211*. The consumer-plaintiff

respondent had not received any complaint or intimation from the licensee about the slowness or tampering of his meter.”

In the circumstances, I am of the view that the licensee is not entitled to assess the consumption under section 26-A of the Act. The dispute would fall under section 26(6) for adjudication by the Electric Inspector. This issue is answered accordingly.

11. Issue No.2: In view of the findings of the above issue, this issue is also answered in affirmative.

12. **Issues No.3 and 4:** In view of the findings of above issues, I am of the considered view that the present case is of defective meter and issuance of incorrect bills, therefore, the case would fall within the ambit of Section 26(6) of the Act and remedy would be available before the Electric Inspector and the impugned bill issued by the defendant is not sustainable in law. In circumstances, the present suit is decreed to the extent that impugned bill is cancelled and the defendant is directed to place its case before the Electric Inspector who shall decide the case preferably within a period of six (06) months after providing opportunity to the other party of being heard strictly in accordance with law. No order as to cost.

JUDGE

*Jamil***