

BELWAL SPINNING MILLS LTD. ETC. ETC.

A

v.

U.P. STATE ELECTRICITY BOARD AND ANR. ETC. ETC.

JULY 10, 1997

[G.N. RAY AND G.B. PATTANAİK, JJ.]

B

Electricity Law :

Electricity Act, 1910—Section 26(6) as substituted by Act 32 of (1959)—Correctness of electricity meter in dispute—Reference of dispute to Electrical Inspector—Meter found to have ceased to be correct—Held, it was Electrical inspector's duty to estimate amount of energy supplied or electrical quantity consumed in supply to consumer "during such time, not exceeding six months"—Legislative amendment suggested.

C

Section 26 (7) and 20—Checking of meter—Held, meter can be installed by the licensee in addition to the meter installed in the premises of the consumer to check and ascertain the proper functioning of the installed meter—However this power would be independent of reference of any dispute as to correctness of the installed meter whereupon the Electrical Inspector will be the sole adjudicator of the dispute.

D

Section 26(4), 26(6) and 20—Maintenance of correct meter in the premises of consumer—Licensee's duty—Held, it includes alteration of the meter under S. 20—Also held, this power does not depend upon adjudication of correctness of meter by Electrical Inspector on reference of dispute under section 26(6)—However, power of removing the meter under Section 20 is circumscribed by the proviso to Section 26(4) only when dispute as to correctness of the meter has been referred to the Inspector under Section 26(6).

E

F

Words and Phrases :

Expression "not exceeding six months"—Meaning of in the Context of Section 26(6) of the Electricity Act.

G

Respondent Board installed a meter in the factory of the Appellant and raised the bills on the basis of the installed meter and the appellant used to pay each bill. Notice was issued by the respondent raising doubt about the correctness of the meter the contents of which was controverted

H

A by the appellant. Thereafter, respondent installed a check-meter the testing fee for which was deposited by the appellant with a request to the respondent to check the said check-meter. The respondent thereafter wrote to appellant that bills could be revised for the period check-meter was installed and raised demand and threatened to disconnect the electricity supply if the payments were not made. The said action of the respondent
B was challenged by the appellant before the High Court. In the meantime, appellant made application to the Electrical Inspector to check the correctness of the original as well as the check-meter, and submitted his report under section 26(6) of the Act holding that both the original as well as the check-meter were incorrect. The Electrical Inspector made an
C estimate of energy supplied to the appellant and authorised the respondent to raise demand for a period of six months and directed to install the original as well as the check-meter under section 26(1) of the Act.

The High Court quashed various demand notices issued to the appellant on the basis of the check-meter and directed payment on the
D basis of estimate of the Electrical Inspector. By another order on an another writ petition filed by the appellant challenging the action of the respondent in respect of another bill and disconnecting the supply of electricity in the factory of the appellant, the High Court directed the appellant to deposit huge sum of money and on such deposit the respondent was to restore the connection. The High Court further directed the
E respondent to issue fresh bill for a particular period and directed the appellant to pay such bill within one month. Hence this appeal.

It was contended by the appellant that in the eye of law there can be
F only one "correct meter" in the case of any consumer. If the meter so installed registers the amount of energy, the Board has no choice but to accept it as correct and once it is a correct meter it must be deemed to be correct all along unless it is doubted and dispute is raised and thereafter such meter is dispensed with on being decided that it is incorrect by the Electrical Inspector under Section 26(6) of the Act.

G
The Respondent Board that it had the power to instal a check-meter for the purpose of checking the installed meter and to regularise the bill on the basis of the check meter. It was also submitted that distinction must be drawn between the estimating or quantifying amount of energy and the
H duration of the correctness of the meter and that the former did not affect

the latter.

Allowing the appeal, this Court

HELD : 1. On a conjoint reading of the sub-sections of section 26 of the Electricity Act, it is evident that consumption of electricity or electrical quantity in the supply, shall be ascertained by means of a correct meter and the meter and the other apparatus for recording the consumption of electricity by a consumer will be deemed to be correct if the recording is within the permissible limit of error as prescribed. 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 it found defective on checking or testing by the licensee, but if the dispute as to 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 or 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). Both the licensee and the consumer have to accept the estimate of supply of electricity to the consumer as may be determined by the Electrical Inspector for the statutory period referred to in sub-section (6) of Section 26. [226-C-H; 227-G-H]

2. After the amendment of sub-section (6) of section 26, on a finding that the meter in question has ceased to be correct, the Electricity Inspector has been relieved of the statutory duty to estimate the total quantity of energy supplied to the consumer for the entire period during which the meter, in the opinion of the Inspector, shall not have been correct. But the Inspector has a statutory duty to estimate the supply of energy for a limited period referred to in sub-section (6), namely, "during such time not exceeding six months". The point of time with reference to which the

A electricity consumed by the consumer is to be estimated by the Electrical Inspector for such period not exceeding six months has not been specifically indicated in sub-section (6). Unless the adjudication as to the proper functioning of the meter is made, the question of estimating the supply of electricity for the statutory period during which such meter shall not have
B been correct, will not arise. Taking into consideration the time-lag inherent between raising of dispute and adjudication of such dispute, the expression “during such time” in sub-section (6) only means the time during which the dispute is raised for reference and the dispute is finally adjudicated. Hence, the estimate of supply of energy by the Inspector is to be made for
C a period not exceeding six months prior to the date of raising the dispute for reference to the Electrical Inspector. The expression “*not exceeding six months*” indicates that the Electrical Inspector even when comes to the finding that the meter in question has ceased to be correct, is not required in all cases to make an estimate of consumption of electricity for a period up to six months prior to the date of raising of the dispute for reference
D to the Electrical Inspector. In a given case, the Electrical Inspector may come to the finding that the meter ceased to be correct from a particular date which is not up to six months earlier to the date raising the dispute for reference. In such case, the estimate to be prepared by the Electrical Inspector will only cover the period prior to raising the dispute during
E which, according to the Electrical Inspector, the meter had ceased to be correct. [223-CF; 224-B-F]

3.1 But for any other period anterior to the statutory period, the legislature, in no uncertain terms, has indicated in the latter part of
F sub-section (6) of Section 26 that the 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 practiced by the consumer. By the amendment in sub-section (6) the Electrical Inspector has been purposely absolved from the duty to determine as to
G 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), 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
H 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 other anterior period the consumer is required to pay according to the consumption of electricity registered in the disputed meter provided there is no fraud practiced by the consumer because dispute of such anterior period remains unresolved by the change introduced by the amendment. [227-A-H]

3.2 Such legislative change by the amendment of sub-section (6) of Section 26 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 practiced by the consumer for all other periods 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. Simply on the finding that the 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 has 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 and by replacing it if necessary has failed to take the appropriate step. [228-A-C; F]

4. 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 the meters of a 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 the electricity consumed where even though no fraud was practised by the consumer, the defect in the meter escaped the 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, a proper legislative amendment is desirable so as to protect the large number of licensee including the Electricity Board from suffering huge loss of revenue. [230-C-F]

A *Sanjeev Coke Manufacturing Company v. Bharat Coking Coal Ltd.*, [1983] 1 SCC 147; *J.K. Cotton Spg. and Wvg. Mills Co. Ltd. v. State of U.P.*, [1961] 3 SCR 193; *State of U.P. v. Radhey Shyam*, [1989] 1 SCC 591 and *Punjab Land Development Corporation Ltd. v. Presiding Officer*, [1990] 3 SCC 682, referred to.

B 5. A licensee is authorised under sub-section (7) of Section 26, in addition to the meter installed in the premises of consumer as referred to in sub-section (1) of Section 26, other meter or apparatus as the licensee may deem fit for the purpose of recording or regulating the amount of energy supplied to the consumer. Such power also does not depend on the existence of any dispute as to the correctness of the meter installed. The expression "check meter" has no special significance or legal incidence for which there is a bar that check meter cannot be treated as an altered meter if the licensee intends to replace the defective meter by the check meter. Such power of installing the meter, replacing it by another meter is also independent of existence of any dispute between the consumer and the licensee. It will be open to the Electrical Inspector to ascertain the correctness of the check meter along with the disputed meter when dispute is referred for adjudication by the Electrical Inspector and the licensee found its case with reference to check meter. Prior to the amendment of Section 26(6) of the Electricity Act, the Electrical Inspector or the competent person specially appointed by the State Government in this behalf, had a statutory duty to first determine whether the meter in question was defective and thereafter to estimate the quantity of the electricity consumed during such time as the meter in the opinion of the Electricity Inspector or the competent person "shall not have been correct". After the amendment in Sub-section (6) of Section 26, the Electrical Inspector is the only statutory authority to decide the dispute about the correctness of the meter, if such dispute is raised by either of the parties. [222-C-H; 223-A-B]

G 6. Section 20 of the Electricity Act authorises the licensee to enter the premises of the consumer for inspecting, testing, repairing or altering the supply lines, meters, fittings and apparatus for the supply of energy belonging to the licensee. Such power under Section 20 does not depend on the adjudication of correctness of the meter and other apparatus by the Electrical Inspector on a reference under Section 26(6) of the Electricity Act. But such power flows from the statutory duties and functions of the licensee to maintain the correct meter for recording the quantum of electricity supplied to the consumer. [221-G-H; 222-A-B]

H

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4401-03 A
of 1997 Etc.

From the Judgment and Order dated 19.2.92/10.3.92 of the Allahabad High Court in C.M.W.P. No. 10379, 16723/88 and 16325/90 and W. No. Nil/1992. B

T.R. Andharujina, Solicitor General, B. Sen, Ms. Sunita Sharma, Subrat Birla, S.A. Gadkar, P.H. Parekh, Sunil Gupta, K.J. John, Pradeep Misra, T. Mahipal, D.M. Mahajan, Ms. Bina Gupta, Ms. Rakhi Ray and Ms. T. Sudha for the appearing parties. C

The Judgment of the Court was delivered by

G.N. RAY, J. (1) The appeals arising out of Special leave Petition Nos. 5262-64 of 1992 are directed against order dated February 19, 1992 passed by the Division Bench of the Allahabad High Court disposing of Writ Petition No. 10379 of 1988 challenging the notice dated April 26, 1988 and the demand dated May 17, 1988 of the U.P. State Electricity Board and Writ Petition Nos. 16723/88 and 16325/90 challenging the validity of the bills for the months of June and July, 1988 issued by the U.P. State Electricity Board and also the demand dated June 14, 1990 made by the said Board. By the impugned judgment dated February 19, 1992, the High Court quashed various demand notices issued to the appellant on the basis of check meters installed by the respondent U.P. State Electricity Board and directing that payment for six months would be made on the basis of estimate of Electrical Inspector dated October 10, 1990 and further directing that the fresh bills for the period 7.9.87 to 10.10.90 be issued on the basis of new meter. By the order dated March 10, 1992, the Division Bench of the Allahabad High Court passed an interim order on another Writ Petition filed by the appellant on March 9, 1992 challenging the action of the U.P. State Electricity Board in respect of the bill dated January, 1992 and disconnecting the supply of electricity in the factory of the appellant. By the order dated March 10, 1992, the High Court directed the appellant to deposit Rs. 10 lacs and on such deposit, the U.P. State Electricity Board was to restore the connection within 24 hours and also directing the U.P. State Electricity Board to prepare the bills for the period subsequent to 10.10.90 within a months with a further direction to the appellant to pay such bill within a month thereafter. H

A The relevant facts leading to the controversy as to the raising demands for the bills and the consequential direction passed by the High Court on February 19, 1992 and March 10, 1992 are stated hereunder.

B On February 7, 1986 U.P. State Electricity Board installed a meter bearing No. 5850497 in the factory of the appellant. The Board carried out periodical inspection and tests and had raised the bills on the basis of the said installed meter and the appellant had also paid such bills. On September 7, 1987, the U.P. State Electricity Board issued a notice raising doubt about the correctness of the said meter No. 5850497. On October 25, 1987, the appellant controverted the contents of the said notice of the Electricity Board and asserted that the meter was correct. No reference to the Electrical Inspector was made under Section 26 of the Electricity Act, 1910 by the Board. The Board installed a check meter on November 30, 1987. The appellant, however, deposited the testing fee and requested the Electricity Board to check the said test meter. The Board, however, continued to raise the bills on the basis of the said check meter for the period December, 1987 to May, 1988. On April 26, 1988, the Electricity Board wrote to the appellant that the Bills for May, 1987 to November, 1987 could be revised on the basis of check meter and sought information for the purpose of revising of the bills prior to 1987. On May 17, 1987, the Electricity Board raised a demand of Rs. 10,70,886.82 for the period May, 1987 to November, 1987 on the basis of reading in the check meter and threatened the appellant that the electricity connection would be discontinued if the payment was not made. It was at this stage that the appellant moved a Writ Petition No. 10379 of 1988 challenging the said notice dated April 26, 1988 and the demand dated May 17, 1988. During the pendency of the said Writ Petition, the Electricity Board again raised bills for the months of June and July, 1988 on the basis of check meter and also threatened the appellant that disconnection would be resorted to if the payment was not made. The appellant then moved another Writ Petition No. 16723/88 in the Allahabad High Court challenging the said bills for June and July, 1988. By an interim order, the High Court restrained the disconnection of the electric supply subject to the payment of electricity dues by the appellant on the basis of original meter reading and furnishing security and bank guarantee for Rs. 1 lakh every month. The Electricity Board raised additional demand of Rs. 5,54,963.64 ending July 1988 on the basis of check meter. The appellant moved the third Writ Petition on June 21, 1990 being writ petition No. 16325/90 challenging the demand dated June 4, 1990 for the said sum of Rs. 5,54,963.64. The High Court passed

an interim order staying the operation of the demand and directed the appellant to deposit a sum of Rs. 1,50,000/-. It may be stated that on July 9, 1988 the appellant made an application for reference to the Electrical Inspector to check the correctness of the original meter and also the check meter. Between 26th June, 1990 and 28th June, 1990, the work of inspection was carried out and on October 10, 1990 the Electrical Inspector submitted a report containing his decision under Section 26(6) of the Electricity Act, 1910. In the said report, the Electrical Inspector held that the original meter as well as the check meter were incorrect. The Electrical Inspector made an estimate of the energy supplied to the appellant during the period of six months from December, 1989 to May, 1990 and authorised the Board to raise a demand accordingly for a period of six months and the Electrical Inspector also directed that the original meter as well as the check meter should be installed under Section 26(1) of the Electricity Act.

As aforesaid, on February 19, 1992, by common judgment the High Court disposed of all the said Writ Petitions by quashing various demand notices issued on the basis of the check meter and directing that the payment be made on the basis of estimate of Electrical Inspector dated October 10, 1990 in respect of the said period of six months and also directed that fresh bills for the period September 7, 1987 to October 10, 1990 be issued on the basis of new meter. Thereafter, the fourth Writ Petition not numbered as yet was moved by the appellant on March 9, 1992 in respect of bill for January, 1992 in which an interim order was passed on March 10, 1992. Such interim order is also impugned in one of these appeals.

Mr. Sunil Gupta the learned counsel appearing for the appellant in these appeals has contended that under Section 20 of the India Electricity Act, 1910, the State Electricity Board being the licensee has power to enter the premises of the appellant and to remove fitting where a supply of energy is no longer required. The licensee has also the power of inspecting testing repairing or altering the electric supply-lines, meters, fittings, and apparatus for the supply of energy belonging to the licensee. The Board is also empowered to ascertain the amount of energy supplied or the electrical quantity contained in the supply.

Mr. Gupta has drawn the attention of the Court to Section 26(6) of the Indian Electricity Act, 1910 as it stood before the amendment to the following effect :

A Section 26(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, or a competent person specially appointed by the State Government in this behalf; and where the meter has, in the opinion of such Inspector or person, ceased to be correct, such Inspector or person shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time as the meter shall not in the opinion of such Inspector or person have been correct, and where the matter has been decided by any person other than the Electrical Inspector, an appeal shall lie to the Inspector, whose decision shall in every case be final ; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount of quantity :

B
C
D 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.

E Mr. Gupta has also drawn the attention of the Court to the provisions of Section 26 of the Indian Electricity Act as it stands amended by Act No. 32 of 1959 :-

F 26. Meters : (1) In the absense 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 :

G 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.

H (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. A

(4) The licensee on 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 of and removing 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 : B C D

(5)

(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 absense of fraud, be conclusive proof of such amount or quantity : E F G

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. H

- A (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 :

B
C Provided that the meter, indicator or apparatus shall not, in the absense 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) :

D 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 absense 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).

E 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."

F
G Mr. Gupta has also drawn the attention of the Court to Rule 57 of the Indian Electricity Rules, 1956 Rule 57 runs to the following effect :

H Rule 57 - Meter, maximum demand indicators and other apparatus on consumers' premises.

(1) Any meter or maximum demand indicator or other apparatus placed upon a consumer's premises in accordance with Section 26 shall be of appropriate capacity and shall be deemed

to be correct if its limits of error are within the limits specified in the relevant Indian Standard Specification and where no such specification exists, the limits of error do not exceed 3 per cent above or below absolute accuracy at all loads in excess of one tenth of full load and upto full load. A

(2) No meter shall register at no load. B

(3) Every supplier shall provide and maintain in proper condition such suitable apparatus as may be prescribed or approved by the Inspector for the examination, testing and regulation of meters used or intended to be used in connection with the supply of energy : C

Provided that the supplier may with the approval of the Inspector and shall, if required by the Inspector, enter into a joint arrangement with any other supplier for the purpose aforesaid.

(4) Every supplier shall examine, test and regulate all meters, maximum demand indicators and other apparatus for ascertaining the amount of energy supplied before first installation at the consumer's premises and at such other intervals as may be directed by the State Government in this behalf. D

(5) Every supplier shall maintain a register of meters showing the date last test, the error recorded at the time of the test, limit of accuracy after adjustment and final test, the date of installation, withdrawal, reinstallation etc., for the examination of the Inspector or his authorised representative. E

(6) Where the supplier has failed to examine, test and regulate the meters keep records thereof as aforesaid, the Inspector may cause such meters to be tested and sealed at the cost of the owners of the meters in case it is found defective." F

Mr. Gupta has contended that on a correct reading of Section 26 as a whole along with all important deeming clauses in the Explanation containing the definition of correct meter as also along with reading of Section 26(1) of the Indian Electricity Act, it would be evident that there can be in the eye of law only one 'correct meter' in the case of any consumer. The deeming clause in the explanation statutorily determines H

- A** and declares the correctness of the meter if only it registers the amount of energy supplied within the prescribed limits of error and leaves the same to nobody's liking or imagination. If the meter so installed registers the amount of energy, the Board has no choice but to accept it as correct and once a correct meter it must be deemed to be correct all along unless it is
- B** doubted and dispute is raised and thereafter such meter is dispensed with on being decided that it is incorrect by the Electrical Inspector in accordance with the procedure prescribed by Section 26(6) of the Indian Electricity Act Mr. Gupta has submitted that so long meter on being adjudicated as defective is not discarded by replacing correct meter, the consumer treats the said meter as the correct and can raising the bill on
- C** the basis of any other meter.

- Mr. Gupta has submitted that in the instant case, the Board has not taken any step to refer the dispute to Electrical Inspector to correct the meter even when it had doubted about the correctness of the installed
- D** meter. The appellant also did not raise any doubt about the correctness of the said meter. But during the pendency of the Writ Petition, the appellant even though not required to raise dispute took steps to get the dispute as to the correctness of the meter referred to the Electrical Inspector. Mr. Gupta has submitted that the check meter installed by the Board cannot be treated as a correct meter or replacement of original meter. The check
- E** meter was installed by the Board for the purpose of checking the correctness of the original meter installed earlier. Therefore, the very purpose of the check meter was to take the reading of the check meter for the purpose of verifying the reading in the original meter installed by the Board Mr. Gupta has submitted that until and unless any doubt raised about the
- F** correctness of the meter is finally scrutinised and decided by the Electrical Inspector on a reference made to such authority, the Board should not be permitted to install another meter simply by doubting the correctness of the earlier meter installed by it Any such liberty to be given to the Board will amount to permitting the Board to short circuit and avoid the fair and impartial mechanism provided under Section 26 of the Indian Electricity
- G** Act. Mr. Gupta has contended that any proposal of correctness of one meter by another meter should not be permitted until the correctness of the earlier meter installed is finally decided by Electrical Inspector as incorrect. Mr. Gupta has contended that any liberty granted to the Board to continue to dislodge and dislocate one meter after another meter
- H** arbitrarily, whimsically and without any reason and without the concur-

rence of the consumer will be loaded with the potentiality of grave mischief and high handedness at the hands of the Electricity Board and such action is bound to seriously impair the rule of law between the parties which is so delicately maintained by the different parts of Section 26 of the Indian Electricity Act. A

According to Mr. Gupta the different parts of Section 26 of the Act only manifest that the original correct meter once duly installed with the concurrence of concerned parties, acquires a sacrosanct status. After the installation, neither party has the right to take off or remove or replace the meter. Sub-section (4) of Section 26 permits the originally installed correct meter to be taken off and removed by the Electricity Board, if at all for the purpose of inspecting and testing such removal is necessary. There is no unlimited liberty granted to the Electricity Board or the licensee to take off and remove the originally installed meter and replace the same by another meter by treating such other meter as correct. Sub-section (6) of Section 26 of the Electricity Act requires that save as estimated by the Electrical Inspector for a period not exceeding six months, the register of the meter shall be conclusive proof of the amount of energy supplied to the consumer. This limit of six months, according to Mr. Gupta, is to be correlated with the primary rule contained in sub-section (1) of Section 26 of the Act, which requires that the amount of energy supplied shall be ascertained by means of a correct meter. B
C
D
E

Mr. Gupta has submitted that Section 21 of the Indian Electricity Act bars and disentitles the Board from prescribing any special form of appliance and it also indicates that the original correct meter cannot be tinkered with. Regulation 21 (ii) of the Electricity (Supply) Regulations 1984 also provides for a check meter only for checking the accuracy of the original meter. Sub-section (7) of Section 26 permits any other meter to be placed upon the consumer's premises only in addition to and not in lieu of or in replacement of the meter already placed upon the said premises in pursuance of the provisions of sub-section (1) of Section 26 of the Act. If the Board places in the consumer's premises a check meter and thereafter finalises or regularises it so as to bid farewell to the original meter installed under sub-section (1) for purposes of ascertaining the amount of energy supplied to the consumer, it must be held to be a breach of sub-section (7) inasmuch as such placement is in lieu of and not in place of the original meter. Mr. Gupta has submitted that the check meter has only been placed to check the original meter and such meter cannot directly dislodge and H
F
G

A replace the said original meter and not indirectly allow to do so by means of any process or formality of finalisation or regularisation or some other such paper ritual.

B Mr. Gupta has further contended that the law courts in India have decided that a check meter can only be used for checking and not for the purposes of regular reading, billing etc. Even the impugned judgment had disapproved of such action and quashed the check meter bills inter alia on the finding that as the power to decide the dispute about the correctness of the meter installed at the consumer's premises vests in Electrical Inspector under sub-section (6) of Section 26, it is not open to the Board to assign C that power to itself. It may be open to the Board to install the check meter to find out the correctness of the meter originally installed at the consumer's premises but it is not open to it to send bills on that basis for the period of dispute. The Board's decision about the correctness of meter is not binding on the consumer and what is binding on him is the decision D of the Electrical Inspector under Sub-section (6) of Section 26. Under these circumstances, if the Board issues any additional bills for the disputed period, it is not liable to be paid by the consumer. The consumer is required to make payment provisionally, during the period of dispute, on the same basis on which payment was being made before the dispute has arisen.

E

Mr. Gupta has contended that not only a new correct meter cannot be brought in but truly speaking, the old correct meter cannot be taken off or removed or abandoned except under the provisions of Section 26(6) of the Electricity Act. Mr. Gupta has also contended that although sub-section F (7) of Section 26 permits the Board to use, in addition to the meter installed under sub-section (1), such other apparatus as it thinks fit for the purpose of ascertaining the amount of energy supplied, under the second proviso of the said sub-section, the Board has an obligation to keep also such apparatus correct. Mr. Gupta has further contended that second G proviso to sub-section (7) of Section 26 also requires that the provisions of sub-section (4), (5) and (6) shall mutatis mutandis also apply to the said additional apparatus as though it was the meter referred to under sub-section (1). In other words, if the Board has any doubt about the correctness of such other apparatus then it becomes the duty of the Board to make a formal reference of the dispute to the Electrical Inspector after giving the H consumer not less than seven days' notice of its intention to do so. Any

correctness undertaken otherwise would not be a reference under Sub-section (6) of Section 26 of the Act and in that event, as declared by the saving clause in sub-section (6) of Section 26 of the Electricity Act, the register of the meter shall alone be conclusive proof of the amount of energy supplied to the consumer. A

Mr. Gupta has also contended that the Electricity Board cannot also unilaterally and without notice add any further complaint with regard to any other apparatus by merely making some mention of it in a letter forming part of the correspondence taking place in connection with a validly referred dispute relating to the meter. Much less can it do so by resorting to such methods in the course of a correspondence taking place under a reference made by the consumer. B C

It has also been contended by Mr. Gupta that any attempt at inviting the Electrical Inspector who is in seisin of the original dispute relating to the meter, to also decide the question of correctness of an additional apparatus midstream and that too without any notice and the copy of the complaint being given to the consumer would be ab initio illegal and void and the Electrical Inspector's decision upon the matter, once again without ensuring that notice and copy of the complaint has been furnished to the consumer, would only further compound the breach of principles of natural justice and fair play. D E

According to Mr. Gupta any controversy, correspondence, opinion, adjudication etc. appearing on the record of the Board or of the Electrical Inspector at any point of time with regard to the correctness either of the meter or of any other apparatus shall deserve to be disregarded and ignored by a court of law if the same has not taken place and transpired in accordance with the procedural requirements of sub-section (6) of Section 26 of the Electricity Act. F

Mr. Gupta has very seriously contended that after the amendment of Section 26, the legal position is that when a dispute is raised either by consumer or by licensee about the correctness of the meter installed at the premises of the consumer, such dispute is got to be resolved by making a reference to the Electrical Inspector. The Electrical Inspector after the amendment of Section 26 of the Electricity, Act, has been authorised to make estimate of the electricity consumed by the consumer upon a finding that the installed meter was defective only for a period of six months prior G H

- A** to the date of reference of the dispute to the Electrical Inspector. For any other period beyond that period of six months, the reading on the basis of the installed meter must form the basis of raising the bills. It is neither permissible under the scheme of Section 26 of the Electricity Act nor it can be presumed that from any particular point of time, the original installed correct meter had gone wrong so that revised bills can be drawn
- B** from such point of time. Since it was the duty of the licensee namely the Electricity Board to keep the meter installed at the consumer's premises in a correct position for which the licensee had the right of access in the premises of the consumer, on the failure of the licensee to check the meter installed at the premises of the consumer and to make reference to the
- C** Electrical Inspector whenever any doubt arises about the correctness of the meter installed and getting appropriate adjudication by the Electrical Inspector, the licensee cannot be permitted to raise any revised bills beyond a period of six months from the date of reference of the dispute to the Electrical Inspector on the basis of any meter subsequently installed at the premises of the consumer after the finding of the Electrical Inspector
- D** that the earlier meter installed was defective.

- Mr. Gupta has submitted that in the instant case, attempt has been made by the Electricity Board to raise revised bills on the basis of the check meter exceeding the period of six months from the date of reference of the
- E** dispute. Mr. Gupta has contended that once on a reference, the Electrical Inspector comes to the finding that the meter installed at the premises of the consumer is defective, the legislature, in its wisdom, has given the Inspector to make an estimate of the amount of electricity consumed for a period of only six months prior to the date of reference. The estimate made
- F** by the Electrical Inspector would be held to be correct index of consumption of the electricity for the said statutory period of six months because of the statutory presumption of incorrectness of the meter upto that period. But beyond the said period of six months, the licensee is not permitted to raise any dispute about the incorrectness of the bills raised and the licensee can only raise bills on the basis of the installed meter for all earlier period
- G** beyond the said statutory period of six months.

- Mr. Gupta has submitted that unfortunately, the High Court has failed to appreciate the provisions of Section 26 of the Electricity Act and by the impugned order the High Court has allowed the respondent
- H** Electricity Board to raise bills for the period exceeding the said six months

for which estimated amount of electricity consumed was determined by the Electrical Inspector on the basis of reading of the meters installed at the premises of the appellatant. Such order of the High Court is clearly illegal and against the provisions of Section 26 of the Electricity Act and thus it cannot be sustained. A

So for as the interim order passed on March 10, 1992 since assailed in one of the appeals is concerned, the High Court according to Mr. Gupta, has passed the said order without appreciating that such order was without jurisdiction and outside the scope and ambit of the last Writ Petition filed by the appellatant challenging the validity of the bill for the month of January 1992 only. Mr. Gupta has submitted that the impugned interim order of March 10, 1992 passed on the last Writ Petition of the appellatant is manifestly unjust, improper and illegal. B C

Mr. B. Sen, learned senior counsel appearing for the U.P. State Electricity Board has, however, submitted that the Board has the power to install a check meter for the purpose of checking the functioning of the installed meter and to regularise the bills on the basis of check meter. He has also submitted that since the licensee has the power to alter the meter if the installed meter is found defective, there is no difficulty in treating the check meter as the regular meter installed in lieu of the original meter. Therefore, the bills drawn on the basis of the check meter cannot be held to be illegal. On the question of true construction of Section 26 (6) of the Electricity Act, Mr. Sen has submitted that sub-section (6) of Section 26 should be read in the light of amended sub-section and when so read, it would be seen that the words 'not exceeding six months' have been added by amending Act 32 of 1959. The result of the amendment is not that any claim of the licensee in respect of correct meter is restricted only to the amount of energy supplied to the consumer during a period not exceeding six months. Mr. Sen has submitted that the words save as aforesaid the register of the meter shall in the absence of fraud be conclusive proof of such amount or quantity means that except in cases where there is a determination by the Electrical Inspector that the meter is not correct, the register of the meter is conclusive proof of the amount or quantity. After the amendment, the Electrical Inspector's jurisdiction to estimate the amount of energy supplied to the consumer from the incorrect meter is restricted to a period not exceeding six months. In other words, the Electrical Inspector's jurisdiction to estimate the amount of energy is D E F G H

A restricted upto a time period. This does not mean that the meter is approved as correct for any period anterior to six months.

B Mr. Sen has also submitted that the distinction must be drawn between the estimating or quantifying the amount of energy and the duration of the incorrectness of the meter. The former does not affect the latter. Section 26(6) is not a section which bars the latter claim either by limitation or otherwise. Consequently, it is open to the licensee to make a claim on the basis of the value of incorrectness found by the Electrical Inspector in respect of a period anterior to the maximum six months period for which the Electrical Inspector can estimate the amount of supply.

C Mr. Sen has, however, submitted that the claim of the licensee about the quantum of electricity consumed is not statutorily conclusive and therefore, such claim may be subject to contest if any to be made by the consumer.

D Mr. Sen has submitted that the above interpretation is only fair and just and the said interpretation harmonises the lessening of the burden on the Electrical Inspector for which the amendment was effected in sub-section (6) of Section 26 and also preserves the claim of the licensee which is a public undertaking and just claim should not be allowed to be abandoned or defeated. Mr. Sen has submitted that it was open to the licensee to make revised bills for the quantum of electricity consumed by the consumer by correcting the bills to the extent of error in recording as indicated by the Electrical Inspector. Therefore, the impugned decision of the High Court must be sustained.

F Mr. Sen has also submitted that although the last Writ Petition was moved for assailing the bills raised for a particular month but the contention raised in the Writ Petition is the same, namely, excepting the 'six months period' for which the estimate was prepared by the Electrical Inspector, for all other periods prior to such estimation, must be covered by the readings in the installed meter even if the installed meter has been found to be defective and no revised bill can be drawn and payment can be claimed on the basis of revised bills for any period exceeding six months. Since such contention cannot be accepted and the High Court has already answered against the appellant in disposing of the earlier three writ petitions, the impugned interim direction given by the High Court appears to be just and proper and no interference is called for against the judgment

of the High Court under Article 136 of the Constitution. Mr. Sen has, A
therefore, submitted that these appeals should be dismissed.

Mr. T.R. Andherujina, learned Solicitor General, has appeared for
the Municipal Corporation of Greater Bombay, the appellant in Civil B
Appeal Nos. 2538 of 1985 and Civil Appeal No. 1571 of 1987. Civil Appeal
No. 2538 of 1985 is directed against the judgment dated April 4, 1985
passed by the Division Bench of the Bombay High Court allowing Appeal
No. 173 of 1979 preferred by the respondent Bharat Barrel Drum Manufac-
turing Company Limited assailing the order of dismissal of the Writ
Petition of the said respondent by a Single Judge of the High Court, Civil C
Appeal No. 1571 of 1987 is directed against Order dated July 1, 1987
passed by the Division Bench of the Bombay High Court in O.S. Appeal
No. 890 of 1983 arising from Misc. Petition No. 1662 of 1979. The im-
pugned judgment of the Bombay High Court in O.S. Appeal No. 890 of
1983 has been passed following the decision of the Division Bench of the
Bombay High Court dated April 4, 1985 in Bharat Barrel Drum Manufac- D
turing Company's case.

Mr. Solicitor General has submitted that in Bharat Barrel's case, the
appellant checked the correctness of all meters of multiplying the constant
and of actual connections of CT operated meters and an additional check E
meter was installed and no comparison of the two meters, it was revealed
that due to defective connections, the original meter was registering 76.6%
less than of its actual use. Therefore, the revised bills of 76.6% of energy
consumed from June 1, 1963 amounting to Rs. 2,28,750.70 was served on
the respondent company. The respondent disputed the revised bills and
referred the dispute to the Electrical Inspector under Section 26(6) of the F
Electricity Act. The respondent company moved a Misc Petition No. 376
of 1973 in the Bombay High Court, on June 20, 1973, and a consent order
was passed in the said petition where the appellant agreed not to discon-
nect the electric supply for non-payment of the amount demanded during
the pendency of the reference. On July 10, 1973, the Electrical Inspector G
found that the meter in question was recording 71.9% slow reading and
such error was beyond the prescribed limit. The appellant thereafter
revised its bills in the light of the decision of the Electrical Inspector and
reduced the claim and sent the corrected revised Bills for a sum of Rs.
1,68,402.90 to the respondent-Company. Such revised bill was also assailed H
by the respondent-Company before the Bombay High Court in Misc,

A Petition No.1148 of 1973. The learned Single Judge dismissed the said petition by upholding the claim of the respondent-appellant. Thereafter, the respondent preferred the said Appeal No. 173 of 1979 and such appeals has been allowed by the impugned judgment dated April 4, 1985.

B By the impugned judgment, the High Court has held that once the dispute is referred under Section 26(6) of the Electricity Act, the licensee is entitled to pay only the charges payable as per recording by the meter installed and such further amount as may be held due for a period of six months by the Electrical Inspector. The High Court has also held that any amount demanded by the licensee on the ground that the meter ceased to be correct for a period for more than six months cannot be said to be 'due' for the purpose of Section 24(1) of the Act and that the power to disconnect vested in the licensee under Section 24 cannot be exercised for non-payment of such amount. The High Court has also held that the licensee cannot revise its bills for more than six months immediately proceeding the demand. Similar claim by presenting revised bills on account of error due to incorrect meter reading has also been rejected in the case of M/s Eagle Theatre by relying on the judgment passed in Bharat Barrel Drum Manufacturing Company's case.

E The learned Solicitor General has submitted that that Section 24(1) of the Electricity Act empowers the licensee to cut the supply where a consumer neglects to pay charge of Electricity due from him after giving seven days' notice to the consumer in writing. Where there is a dispute as to the correctness of the meter, sub-section (2) of Section 24 requires that licensee shall not exercise powers of disconnection until the Inspector has given his decision. Where the Inspector has given his decision estimating the amount of energy supplied to the consumer under Section 26(6) during such time not exceeding six months and if consumer does not pay after such a determination, it will be open for the licensee to issue a notice of disconnection under Section 24(1) of the Act. Mr. Solicitor General has also submitted that in respect of the period exceeding six months, the licensee may make a demand from the consumer on the basis of value of incorrectness of the meter determined by the Electrical Inspector. The licensee may issue such a notice without prejudice to his right to recover such charge by suit. Mr. Solicitor General has submitted that it is, therefore, not correct that a licensee can under no circumstances avail of the powers of disconnection under Section 24(1) on the score of non-payment

of the revised bills relating to a period exceeding six months as referred to in Section 26(6). Since the appellant can raise the revised bill on account of incorrect reading in the installed meter for some defects either in the meter or in connection to the meter, the impugned decision of the Bombay High Court can not be sustained and the same should be set aside by allowing the appeals. A

Mr. Gupta in reply has, however, disputed the submissions made by Mr. Sen and by the learned Solicitor General. Mr. Gupta has contended that there is no scope for any assumption that there is in the licensee a right to make claims for the amount of energy supplied to a consumer even outside the provisions of Section 26(1) and Section 26(6) of the Act. Mr. Gupta has submitted that the assumption of claims outside Section 26(1) and (6) is patently wrong and incorrect. According to Mr. Gupta, such assumption and consequential claim do not reflect true and correct intention of the legislature but tends to destroy and defeat the same because the real purpose and scheme of the legislature have been to put an end of such claims. Mr. Gupta has submitted that the interpretation of Section 26(6) as suggested by Mr. Sen and the learned Solicitor General will lead to serious conflicts and difficulties and anomalies of interpretation and it also leads to protected litigations and vexatious proceedings resulting in grave hardship and misery to all concerned. Mr. Gupta has submitted that the Court will keep in mind that the Parliament could not have intended such harsh and unsettling consequences. For such contention, Mr. Gupta has referred to a decision of this Court in *Sanjeev Coke Manufacturing Company v. Bharat Coking Coal Ltd.*, [1983] 1 SCC 147. B C D E

Mr. Gupta has also submitted that it is well settled in law that express language is necessary whenever any charges or dues are required to be paid or any new rights or obligations are created between parties. For such contention, reference has been made to Craies on Statute Law, (7th Edition, PP. 112 to 117). Mr. Gupta has also contended that 'conclusive proof clause in Section 26(6) is designed to govern only such period during which the meter has been 'de jure' to be presumed to be correct. Mr. Gupta has submitted that such provision has been made to govern a case where the Inspector holds the meter to be incorrect but is not able to identify the entire period of incorrectness or not able for some other reason to estimate the energy supplied for the entire period of incorrectness. The conclusive F G H

A proof clause was meant to legislatively resolve and settle the claims of the licensee during such an uncovered or unestimated period of adjudicated incorrectness.

Mr. Gupta has submitted that the said conclusive proof clause was provided by the legislature purposely as a matter of legislative policy to facilitate administrative expediency and public convenience. Mr. Gupta has also contended that the Court will accept that interpretation which assigns a special role and significance to the 'conclusive proof' clause in the scheme of Section 26(6) and reject any interpretation which would render it otiose, superfluous and redundant. In support of the this contention, Mr. Gupta has relied on the decision of this Court in *J.K. Cotton* [1961] 3 SCR 193 and *Radhey Shyam* [1989] 1 SCC 591. The Electrical Inspector on a reference raising dispute about the correctness of the meter, is the chosen Judge and the best Judge appointed by the Legislature to resolve the dispute. Mr. Gupta has submitted that the true object of amendment of Sub-section (6) of Section 26 of the Electricity Act was to eliminate retrospective demand. Mr. Gupta has submitted that six months' ceiling was imposed by the Parliament on the power of the Inspector to form an estimate of the amount of energy supplied for various reasons and not merely because of the fact that he may not be able to decide the period of incorrectness. According to Mr. Gupta, the true object and purpose of the six months' ceiling was to ensure that the consumer was not vexed with retrospective demands for past periods and that too on a rough and ready estimate basis.

Mr. Gupta has also submitted that under Section 26 (6), the Parliament has deliberately chosen to deny and disallow the alleged claims of the licensee beyond a period of six months and it is not a case of a gap or 'casus omissus'. Mr. Gupta has submitted that if the Court in the present case decides to acknowledge the existence of the alleged claims of licensee outside the six months' limit, it would amount not only to legislating but legislating in the teeth of the provision made by the Parliament in Section 26. Mr. Gupta has submitted that the licensee does not have any extra claim over and above the maximum period of six months provided under Section 26(6). Such position has been accepted in various judgments by several High Courts. Therefore, it must be held that the consistent and widely accepted judicial interpretation of Section 26(6) does not permit any claim beyond the said period of six months. The Parliament has never made any

attempt of amending Section 26(6) so as to resolve it of the judicial interpretation. The silence on the part of the Parliament, therefore, indicates that the interpretation of Section 26(6) by High Courts over long stretch of period has rightly reflected the true intention of the Parliament which therefore, deserves to be accepted by this Court. A

Mr. Gupta has lastly submitted that sub-section (6) of Section 26 is capable of being interpreted differently and should be interpreted differently for the licensee and consumer who are not similarly circumstanced. The consumer is, at all times, at the mercy of the licensee on the point that consumer has no option in the matter of inspection of meters and checking and repairing the same. Mr. Gupta has further submitted that sub-section (6) of Section 26 has to be interpreted in the light of all other connected limbs of the statute and with reference to specific context in question. If it appears to the Court that on account of short sightedness of the legislative draftsman who drafted the six months' rule in the 1959 amendment, unmerited prejudice and hardship have been caused to the consumers, the judicial wing may have to depend on its own creativity so that hardship is not meted out to the consumers. In this connection, Mr. Gupta has relied on the decision of this Court in *Punjab Land Development and Reconstruction Coperation Ltd. v. P.O.*, [1990] 3 SCC 682 para 70. B C D

Mr. Gupta has, therefore, submitted that the impugned decision of the Allahabad High Court should be set aside and the said three writ petitions should be allowed and the impugned interim direction passed in the last Writ Petition pending before the Allahabad High Court should be set aside. Similarly the decisions of the Bombay High Court impugned in the other appeals should be upheld by dismissing the appeals. E

After giving our careful consideration to the facts and circumstances of the cases in these appeals and the submissions made by Mr. Gupta, Mr. Sen and Mr. Andherujina, the learned Solicitor General, it appears to us that Section 20 of the Electricity Act authorises the licensee to enter the premises of the consumer to remove fittings and other apparatus installed by the licensee. Clause (a) of sub-section (1) of Section 20 authorises the licensee to enter the premises of the consumer for 'inspecting, testing, repairing or altering the supply lines, meters, fittings and apparatus for the supply of energy belonging to the licensee. The licensee, therefore, can not only enter the premises of the consumer for inspecting, testing, etc. but the licensee also can alter the meter whenever such *altercation* is needed. Such power under Section 20 does not depend on the adjudication of correctness F G H

A of the meter and other apparatus by the Electrical Inspector on a reference under Section 26(6) of the Electricity Act. But such power flows from the statutory duties and functions of the licensee to maintain the correct meter for recording the quantum of electricity supplied to the consumer. Such duty to ensure maintenance of correct meter in the premises of the consumer has been indicated in sub-section (1) and sub-section (2) of Section

B 26. The power of removing the meter under Section 20, however, is circumscribed by the proviso to sub-section (4) of Section 26 only when the dispute as to the functioning of the meter has been referred to the Electrical Inspector under Sub section (6) of Section 26. A licensee is authorised under sub-section (7) of Section 26 to place, in addition to the

C meter installed in the premises of consumer as referred to in Sub-Section (1) of Section 26, other meter or apparatus as the licensee deem fit for the purpose of recording or regulating the amount of energy supplied to the consumer. Such power also does not depend on the existence of any dispute as to the correctness of the meter installed.

D Check meter is usually installed for the purpose of checking and ascertaining the proper functioning of the installed meter but there is no legal bar for treating the check meter as an altered meter in place of the meter installed earlier when on checking the meter the licensee has found it to be defective. Such power of installing the meter, replacing it by

E another meter is also independent of existence of any dispute between the consumer and the licensee.

The expression 'check meter' has no special significance or legal incidence for which there is a bar that check meter cannot be treated as an altered meter if the licensee intends to replace the defective meter by

F the check meter. It will be open to the Electrical Inspector to ascertain the correctness of the check meter along with the disputed meter when dispute is referred for adjudication by the Electrical Inspector and the licensee finds its case with reference to check meter. Prior to the amendment of Section 26(6) of Electricity Act, the Electrical Inspector or the competent

G person specially appointed by the State Government in this behalf, had a statutory duty to first determine whether the meter in question was defective and thereafter to estimate the quantity of the electricity consumed during such time as the meter in the opinion of the Electrical Inspector or the competent person 'shall not have been correct'. After the

H amendment of sub-section (6) of Section 26, the Electrical Inspector is the

only statutory authority to decide the dispute about the correctness of the meter, if such dispute is raised by either of the parties. If the Electrical Inspector on a reference comes to the finding that the meter has ceased to be correct, the said Inspector has a statutory duty to estimate the amount of energy supplied to the consumer or electrical energy 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.' A B

(emphasis added)

From the legislative change effected in sub-section (6) of Section 26, it is evident that prior to the amendment of sub-section (6), upon a determination that the meter in question was defective, the Electrical Inspector or the competent person had a statutory duty to also estimate the amount of energy supplied for the entire period during which in the opinion of the said Inspector or the competent person, the installed meter 'shall not have been correct'. But after the amendment, on a finding that the meter in question has ceased to be correct, the Electrical Inspector has been relieved of the statutory duty to estimate the total quantity of energy supplied to the consumer for the entire period during which the meter in the opinion of the Inspector shall not have been correct. But the Inspector has the statutory duty to estimate the supply of energy for a limited period referred to under Sub-section (6), namely, 'during such time not exceeding six months'. C D E

The point of time with reference to which the electricity consumed by the consumer is to be estimated by the Electrical Inspector for such period not exceeding six months' has not been specifically indicated in sub-section (6) of Section 26. The expression 'during such time' appearing in sub-section (6) of Section 26 is capable of different construction, namely, period between. F

(i) date of dispute and date of reference

(ii) date of dispute and date of inspection G

(iii) date of reference and date of adjudication

(iv) date of dispute and date of adjudication

It does not require any imagination to hold that the dispute when H

- A raised either by the consumer or by the licensee and reference to Electrical Inspector is made, the Inspector is expected to consume some time for entering the reference of dispute, making inspection of the meter in question and after taking such technical test may be necessary to finally adjudicate the dispute as to the correctness of the meter. Unless the
- B adjudication as to the proper functioning of the meter is made, the question of estimating the supply of electricity for the statutory period during which such meter shall not have been correct, will not arise. In our view, taking into consideration the time lag inherent between raising of dispute and adjudication of such dispute, the expression 'during such time' in sub-section (6) of Section 26 only means the time during which the dispute is
- C raised for reference and the dispute is finally adjudicated. Hence, the estimate of supply of energy by the Inspector is to be made for a period not exceeding six months prior to the date of raising the dispute for reference to the Electrical Inspector. The expression '*not exceeding six months*' indicates that the Electrical Inspector even when comes to the
- D finding that the meter in question has ceased to be correct, is not required in all cases to make estimate of consumption of electricity for a period upto six months prior to the raising of the dispute for reference to the Electrical Inspector. In a given case, it may so happen that the Electrical Inspector may come to the finding that the meter ceased to be correct from
- E a particular date which is not upto six months earlier to the the date of raising the dispute for reference. In such case, the estimate to be prepared by the Electrical Inspector may not go upto six months prior to the date of raising the dispute for reference but such estimate will only cover the period prior to raising the dispute during which, according to the Electrical
- F Inspector, the meter had ceased to be correct.

- The question which, however, arises for decision in these appeals is that although estimation by the Inspector may be limited to the statutory period under Sub-section (6) of Section 26, but if on the basis of the finding of the Electrical Inspector it is possible to hold that the meter in question
- G had ceased to be correct from the date even prior to six months from the date of raising the dispute, whether the licensee is competent to raise revised bills for consumption of Electricity by the consumer for such earlier period and consequentially cut the supply of electricity for non payment of revised bills. Mr. Gupta has contended that within the integrated scheme
- H of the Electricity Act, the licensee being burdened with the duty to main-

tain the correct meter installed by it and coupled with the power to inspect and check the functioning of such meter from time to time cannot be permitted to raise any revised bill contrary to the reading by the installed meter beyond the period of 'six months' as referred to in sub-section (6) of Section 26 i.e. maximum period of six months prior to the date of raising the dispute. If the licensee has failed to properly check the functioning of the installed meter and has not changed the alleged faulty meter or has not raised dispute for reference to the Electrical Inspector, the licensee cannot but suffer for its inaction under the scheme of the Indian Electricity Act.

Both Mr. Sen and Mr. Andherujina, the learned Solicitor General, have disputed such contention of Mr. Gupta. According to Mr. Sen and Mr. Andherujina, sub-section (6) of Section 26 does not deny the licensee to claim payment on account of consumption of electricity beyond the statutory period for which no estimation by the Electrical Inspector has to be made, if it is established that the meter ceased to be correct even prior to the said statutory period of six months.

Sub-Section (1) of Section 26 provides that in the absence of any agreement to the contrary, the amount of energy supplied to a consumer or the electric quantity contained in the supply, shall be ascertained by means of a correct meter. Sub-sections (2), (3) and (4) of Section 26 provide for the inter se rights and duties of the consumer and the licensee to keep the meter and other apparatus necessary for recording the consumption of electricity by the consumer in good condition and for such purpose the licensee has been clothed with the power to enter the premises of the consumer for testing, checking, maintaining etc. the meter and other apparatus and for repairing and altering the same if needed. Explanation to sub-section (7) of Section 26 provides that "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 indicator or other apparatus."

Sub-section (6) of Section 26 provides that in case of any difference or dispute 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 Electrical Inspector. It also provides that on a finding that meter ceased

- A to be correct, the Electrical Inspector has to make an estimate of consumption of electricity during the statutory period as referred to in sub-section (6) of Section 26. What is the statutory period for which estimation is to be made by the Electrical Inspector has already been indicated. Sub-section (6) of Section 26 also provides that save as aforesaid,
- B namely, estimation of consumption of electricity by the Electrical Inspector for the statutory period, *“the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity.”*

(emphasis added)

- C On a conjoint reading of various sub-sections of Section 26 of the Electricity Act, it is evident that consumption of electricity or electrical quantity, in the supply, shall be ascertained by means of a correct meter and the meter and other apparatus for recording the consumption of electricity by a consumer will be deemed to be correct if the recording is
- D within the permissible limit of error as prescribed. If a dispute as to the correctness of the meter is raised by any party for reference, such dispute can be decided only by the Electrical Inspector and both the licensee and the consumer has to accept the estimate of supply of electricity to the consumer as may be determined by the Electrical Inspector for the
- E statutory period referred to in sub-section (6) of Section 26.

- 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 or
- F testing by 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
- G 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 determined 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
- H 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 had 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 other anterior 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.

A
B
C
D
E
F
G
H

- A 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.
- B 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 installed and such correct meter is to be maintained by the licensee in the premises of the consumer so that
- C 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
- D 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 that even though dispute is raised about the mal functioning of the meter such dispute will be treated as statutory resolved for a limited period in accordance with the amended sub-section (6) of Section 26 but for other
- E 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
- F the licensee, despite its statutory duty to maintain the correct meter by repairing or rectifying the defective meter and 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
- G 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
- H 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. A

As in none of these appeals, there is any allegation that the concerned consumer, had practised fraud or had tampered with the meter or other electrical apparatus provided for recording the supply of electricity to the consumer, the consumer will be entitled to the statutory protection of correctness of the recording of the consumption or supply of electricity consumed in the meter/check meter as conclusive proof of such amount of quantity of electricity consumed for all the period anterior to statutory period of estimation under Section 26(6) of the Act because admittedly there is dispute as to the proper functioning of the meter and check meter installed at the premises of the consumer. B C

In the result, Civil Appeal Nos. 2538 of 1985 and 1571 of 1987 preferred by the Municipal Corporation of Greater Bombay and Civil Appeal No. 1255 of 1986 are dismissed without any order as to cost. Civil Appeal Nos. arising out of S.L.P. Nos. 5262-64 of 1992 are allowed by setting aside the common judgment dated February 19, 1992 passed by the Allahabad High Court in three Writ Petitions, namely, Writ Petition No. 10379 of 1988, 16723 of 1988 and 16325 of 1990 and also the interim order dated March 10, 1992 passed in the Writ Petition No. nil filed by the appellant M/s Belwal Spinning Mills Ltd. in the Allahabad High Court on March 9, 1992. As both the original meter and the check meter installed by the U.P. State Electricity Board in the premises of the appellant M/s Belwal Spinning Mills Ltd. were found to be defective by the Electrical Inspector the appellant has the liability to pay for the estimated amount as determined by the Electrical Inspector under Section 26(6) of the Electricity Act for the statutory period under Section 26(6) but for the earlier period, the appellant has the liability only to pay on the basis of reading in the installed meter/check meter in view of the statutory protection of conclusive proof of consumption of electricity for such period on the basis of reading in the meter. The respondent-U.P. State Electricity Board will be precluded from raising any demand contrary to the aforesaid liability of the appellant and consequently will not be entitled to disconnect the electricity in the premises of the appellant for H

- A** non-payment for the consumption of electricity for any period earlier than the statutory period beyond the quantity registered by the installed meter. It is, however, made clear that it will be open for the U.P. State Electricity Board to raise bills and demand payment for the period subsequent to the statutory period and to take consequential action for non payment of bills
- B** for such period on the basis of correct reading in the meter or meters in the light of the finding of the Electrical Inspector until any new meter is installed. Civil Appeals arising from SLP Nos. 5262-64 of 1992 are accordingly disposed of without any order as to costs.

- C** 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
- D** in many cases, the licensee may suffer serious prejudice in not being able to realise from the consumers the revenue for the electricity 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
- E** 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
- F** protect the large number of licensees including the Electricity Board from suffering huge loss of revenue.

R.K.S.

CA. 4401-03/97 allowed.
 C.A. No. 1571/87,
 CA. No. 2538/85,
 CA No. 1255/86 dismissed