

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA**

In the matter of an Application for orders in
the nature of writs of Certiorari &
Prohibition under Article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

Rodsons Private Limited,
No. 64 , Earnest Place,
Lakshapathiya,
Moratuwa.

Petitioner

C.A. Writ Application No: 275/2008

Vs

Ceylon Electricity Board,
Chittapalam A Gardiner Mawatha,
Colombo 2.
And Six (06) others.

Respondents

BEFORE : **S. SRISKANDARAJAH, J.**

COUNSEL : J.C.Weliamuna with Santha Jayawardana
for the Petitioner.

: Yuresha de Silva SC
for the Respondents.

Argued on : 05.10.2010 & 25.10.2010

Decided on : 21.03.2011

S.Sriskandarajah, J,

The Petitioner is a private company manufacturing plastic items using plastic raw materials. The Petitioner submitted that on 25.01.2008 it received a letter dated 14.01.2008 signed by the 4th Respondent the Accountant Revenue Officer of the Ceylon Electricity Board stating that due to an incorrect meter reading the Petitioner's electricity bills for the period of 2006 January to 2007 January have been revised as the Petitioner has been under charged in a sum of Rs. 5,006,743.20 and this sum is added to the Petitioner's January 2008 electricity bill. Thereafter the Electrical Engineer by his letter of 07.02.2008 issued a notice of disconnection of Electricity Supply to the Petitioner informing him that if the said sum is not paid within 7 days the supply will be disconnected. The Petitioner company made representations and protested the said charge. The 4th Respondent on 09.08.2008 issued a letter informing the Petitioner by rectifying the sum charged as under charged by giving credit to an amount of Rs. 368,684.00. The Petitioner contended that the Respondents have increased the number of units consumed by the Petitioner by three -fold without any rational basis.

The Respondents submitted that pursuant to a routine check, it was discovered that faulty wiring of the meter has contributed to incorrect meter readings from January 2006 to January 2007 pursuant to which the aforementioned error was rectified on 29th March 2007 based on the past pattern of consumption of energy with regard to the year 2005, the Electricity bills issued for the period January 2006 to January 2007 were revised.

There is no allegation against the Petitioner that the Petitioner has tampered with the meter or the Petitioner has anything to do with the faulty wiring. The Respondents admitted that the electricity meters bearing serial No. 90-2840(KVA) and 90-7868(KWH) were installed in the Petitioner's premises in an enclosure which was under lock and key. As per the Bulk Supply Meter Test Report obtained on

31.07.2001 the aforementioned meters were in proper working condition. The Respondents submitted that the said meters were replaced in 2004, with the meters bearing No. 90227 (KVA) and 863532(KWH).

In this premiss there would not have been any wiring to the said meters after 2004. If there was a faulty wiring to the meter it would have occurred while installing the meters in 2004. Therefore there is no logic in calculating the actual consumption of electricity for the year 2006 January to 2007 January based on the past pattern of consumption of energy with regard to the year 2005. Further the Petitioner submitted that its factory has 10 Injection Moulding Machines which are used to manufacture plastic items. The number of machines operated at a given time depends on the market factors. From 2005 for several years there was a drastic drop of sales of the Petitioner's plastic products and this resulted in decrease in production and this intern resulted in a reduction of the Petitioner's consumption of electricity energy supplied by the 1st Respondent. The Petitioner also submitted that the Petitioner in August 2005 had installed a diesel electricity generator which has a capacity of 500 KVA at the Petitioner's factory and it was used time to time to obtain electricity energy. The Petitioner's contention is that even if there is an error in the meter reading the calculation of the correct energy consumption has to be done only after taking into consideration of the aforesaid factors which has a direct bearing on the energy consumption and it cannot be calculated on the basis of the pattern of energy consumption on the previous year. The Petitioner has also challenged the said decision to charge additional sum of Rs. 5006,743.20 on the basis that the decision was taken without giving a hearing to the Petitioner.

Section 41 of the Electricity Act provides:

41.(1) In the absence of an agreement to the contrary, the amount of energy supplied to a consumer shall be ascertained by means of a correct meter.

(2) -----

(3)-----

(4)

(a) Where any difference or dispute arises between a consumer and a licensee as to the correctness of a meter fixed by the licensee under subsection (1), the matter shall be decided by an electrical inspector, upon the application of either the consumer or the licensee and on payment of the prescribed fee in the prescribed manner.

(b) Where the meter has, in the opinion of the inspector, ceased to be correct, the inspector shall estimate the amount of the energy supplied to the consumer, during such time as the meter may not, in the opinion of the inspector, have been correct.

(c) Except in the circumstances referred to in paragraph (b), the register of the meter shall, in the absence of fraud, be conclusive proof of the amount of energy supplied to a consumer.

(d) An application by either a licensee or a consumer to an electrical inspector under this subsection shall not be deemed to have been duly made unless the applicant has given to the other party not less than seven days' notice of his intention to make the application.

According to the above section the energy supplied to a consumer has to be ascertained by means of correct meter. The above section has specifically provides for the licensee or a consumer to apply to an electrical inspector in relation to the correctness of a meter fixed by the licensee but before making such an application the applicant has to give not less than seven days' notice to the other party of his intention to make the application. But in this instant case even though the licensee alleges that there is a wrong meter reading it has not followed the procedure laid down by Section 41(4)(d) and has not given notice to the Petitioner. If the application is properly made, the electrical inspector could make a determination on the correctness of the meter. In his opinion if the meter is not showing a correct reading, Section 41(4)(b) authorizes the electrical inspector to estimate the amount of the energy supplied to the consumer, during such time the meter was not correctly showing the electrical consumption.

If there is a dispute or dissatisfaction of the decision of the electrical inspector an appeal can be lodged against that decision or report and it should be referred to the Chief Electrical Inspector for determination as provided by Section 58 of the said Act it provides:

“58. If a licensee or any interested person is dissatisfied with any decision or report of an electrical inspector, the matter shall be referred to and decided by the Chief Electrical Inspector and his decision shall be final.”

The above provisions clearly indicate that the scheme of the Act has laid down a procedure in the circumstances where a wrong meter reading is suspected. In that event the party complaining has to give not less than 7 days notice to the other party before complaining to the electrical inspector. The electrical inspector has to arrive at a determination as to the correctness of the meter and if he is of the opinion that the meter is not correctly reading the electricity consumption he should estimate the amount of the energy supplied to the consumer, during such time the meter was not correctly reading. The requirement of 7 days notice to the other party under the above section implies a hearing of that party before making a final order or decision on the correctness of the meter and the electricity consumption of the consumer. Section 58 of the Electricity Act has provided an appeal from this order or report to the Chief Electrical Inspector. This provision implies that the order or the report of the electrical inspector has to be served on the parties affected and the order or report has to contain reasons for the aggrieved party to appeal against that order or report to the Chief Electrical Inspector.

The above procedural steps have not been followed by the Respondents before issuing the letter dated 14.01.2005. By this letter the Petitioner was requested to pay a sum of Rs.5, 006,743.20 as the Petitioner has been under charged due to incorrect meter reading. As there is a procedural irregularity in arriving at the said decision reflected in the letter dated 14.01.2005 marked P5 this court issues a writ of certiorari

to quash the decision to charge an additional sum of Rs.5,006,743.20 reflected in the letter marked P5.

The application of the Petitioner is allowed as prayed for in prier (b) and (c) of the Petition without costs.

Judge of the Court of Appeal