

**IN THE COURT OF THE DISTRICT JUDGE, KHURDA AT
BHUBANESWAR.**

Present:

Dr. D.P. Choudhury,
District Judge, Khurda
at Bhubaneswar.

Dated, Bhubaneswar the 27th Dec. '14.

R.F.A. No.131 of 2005.

[Arising out of the judgment dated 27.08.2005 and decree dated 09.09.2005 passed by the learned Addl. Civil Judge (Sr. Division), 1st Court, Bhubaneswar in T.S. No.15/20 of 2004/2001.]

1. The Chief Executive Engineer, Central Electricity Company of Orissa Ltd. (CESCO), At - IDCO Tower, Janpath, Bhubaneswar, Dist. - Khurda.
2. The General Manager (Elect.), Central Electricity Company of Orissa Ltd., 2nd Floor, At - IDCO Tower, Janpath, Bhubaneswar, Dist. - Khurda.
3. Manager (Elect.), B.E.D., Rasulgarh, Bhubaneswar.

... **Appellants.**

-V e r s u s-

1. M/s. Gouri Cottage Private Ltd., Lewis Road, Bhubaneswar - 751 002, P.S. - Lingaraj, Dist. - Khurda, Rep. through its Director Rabindranath Pattnaik, At - Gouri Cottage Premises, Lewis Road, Bhubaneswar - 751 002, Dist. - Khurda.
2. Sri Rabindranath Pattnaik, aged about 58 years, S/o. Late Rama Chandra Pattnaik, Director, Gouri Cottage Private Ltd., At - Lewis Road, Bhubaneswar - 751 002, Dist. - Khurda.

... **Respondents.**

Counsel :

For Appellants -- Shri D. Mohanty & Associates.

For Respondents -- Shri B.P. Das & Associates.

Date of conclusion of arguments : 01.12.2014.

Date of judgment : 27.12.2014.

J U D G M E N T

This appeal is directed against the judgment dated 27.08.2005 and decree dated 09.09.2005 passed by the learned Addl. Civil Judge (Sr. Division), 1st Court, Bhubaneswar in T.S. No.15/20 of 2004/2001, decreeing the suit of the plaintiffs. Appellants were the defendants and respondents were the plaintiffs before the Court below.

2. The parties hereinafter have been referred to as they have been arrayed in the Court below for the sake of convenience and proper appreciation.

FACTS :

3. The succinct of the case of the plaintiffs is that plaintiff No.1 is a Company engaged in hotel trade and plaintiff No.2 is its owner and Director as well. It is averred in the plaint that on 15.01.2001, in the absence of plaintiff No.2, the defendants entered the hotel premises of plaintiff No.2, opened the T.P. Box cover seal and the meter seal and did some mechanical interference with the meter by their tools and

instruments. There was objection on behalf of the staff of the plaintiffs, but defendant No.3 and his staff did not listen to them and handled the meter by removing its outer cover i.e. T.P. Cover seal. At about 2 P.M., plaintiff No.2 arrived at the hotel premises and discovered that there was damage to the T.P. Cover and meter seal. On being questioned, defendant No.3 and his staff admitted that they have opened the original T.P. Cover seal for the purpose of meter reading and, subsequently, defendant No.3 got the meter resealed. It is alleged, inter alia, that such act of defendant No.3 and his staff is not permissible in electricity law because it is mandatory for the Engineer-in-chief to handle such apparatus only after ensuring the presence of the consumer / owner of the establishment. So, such actions of defendant No.3 and his staff are illegal and arbitrary. Again on that day, defendant No.3 and his staff opened the seal and observed that meter terminal cover seal bearing No.31977 dated 13.07.2000 had been opened, reused and fixed in the same position causing “Y” & “B” phase P.T. Link to have been isolated from the meter by putting some red coloured insulated material externally. It is alleged by the defendants that under such condition, the meter was calibrated with respect to accucheck and the meter was found to be 77.14% slow. It was falsely alleged by defendant

No.3 that due to tampering of meter by the plaintiffs, there was difference between actual consumption and the meter recorded consumption. As such, the plaintiffs are liable to pay the differential amount for unauthorised abstraction of energy. So, the plaintiffs were found to have been utilising the meter by availing 34.5 KVA against the required installation of transformer of the capacity of 67.5 KVA in the plaintiff No.1-hotel. The plaintiffs also challenged such allegations of utilising energy beyond the capacity. After obtaining signature of plaintiff No.2 in a written letter of defendant No.3, electricity supply to plaintiff No.1-hotel was disconnected at 3.30 P.M. on 15.01.2001. Such actions of the defendants are illegal, arbitrary and not sustainable in law. Apart from this, the demand amount raised by the defendants by way of professional bill because of differential amount, as alleged by the defendants, are also wrongly calculated and the plaintiffs are not liable to pay such illegal demands. So, the plaintiffs have got cause of action to file the suit. Hence, they prayed to declare the action of defendant No.3 in opening the seal of electricity meter installed in the hotel premises of plaintiff No.1 on 15.01.2001 in the absence of plaintiff No.2 and resealing the same after causing damage to it as illegal and arbitrary and the demand notice in shape of professional bill is also

unenforceable. It is further prayed to declare that disconnection of the electricity to the plaintiff No.1-hotel without complying with the provisions of law as void, illegal and non-est. It is also prayed to pass a decree of mandatory injunction against the defendants to restore electricity supply to the plaintiff No.1-hotel and so as to enable the plaintiff to run its regular business with consequential relief.

4. The defendants filed written statement by averring that the suit is not maintainable and refuting the entire allegations made in the plaint. The case of the defendants is that on 15.01.2001 at 11.45 A.M., the special squad of defendant No.1 duly authorised under clause 51 of the Orissa Electricity Regulatory Commission Supply Code went for testing the electric meter of the plaintiffs and informed the hotel staff of their such intention. Then, the Manager of the hotel and the reception staff accompanied them to the meter room where meter was installed. The outer T.P. Cover seal being maintained by the Jr. Engineer for the purpose of checking the meter reading was found kept open prior to the inspection. When the Jr. Engineer found that the inner seal and terminal seal of the meter had been tampered, defendant No.3 and his men did not want to check the meter in detail in the absence of the owner and sealed it for further checking in

the presence of the owner. At 2 P.M., when the owner of the hotel, who is plaintiff No.2, arrived, the meter was checked thoroughly in his presence and it was found that the inner seal and terminal seal of the meter had been tampered / opened and it was also found that 'Y' & 'B' phases P.T. Link were isolated from the meter by putting some red coloured insulated material externally to block the current flow to the meter for proper recording. As a result, the meter was found 77.14% slow as the meter was not getting sufficient voltage in the respective phases. It is further averred in the written statement that the allegation about tampering of meter by tools and instruments at the instance of the defendants are illegal and imaginary and, as such, electricity bills as per meter reading on the higher side is equally false and misleading because the checking of meter was done in the presence of plaintiff No.2. It is the case of the defendants that the plaintiff No.1-hotel was consuming 34.5 KW unauthorisedly and illegally by tampering the meter for which excess consumption was not recorded in the meter. As per clause 105 of OERC Supply Code, the consumer is liable to pay normal charges and penalty which can be two times of the normal charges in case of unauthorised use of power and dishonest abstraction of energy. In that view of the matter, notice was issued to the

plaintiffs to pay the normal charges for the unmetered consumption of energy and two times of normal charges. When the defendants found that the internal seal of the meter had been broken and 'Y' & 'B' phases Pressure Link were isolated from the meter and some foreign objects had been put inside the meter and the installations had been exposed to hazards and unsafe condition, the defendants were constrained to disconnect the power supply as per clauses 34 & 46 of the Orissa Electricity Regulatory Commission Distribution (Conditions of Supply) Code, 1998 (hereinafter called "OERC Distribution Code"). Interestingly, it is maintained in the written statement that the Jr. Engineer, in the instant case, has opened the cover seal, but the opening of internal seal and paper seal is absolutely meter tampering by the plaintiffs. Moreover, at 2 P.M., in the presence of the owner i.e. plaintiff No.2, it was checked and found that terminal cover seal has been tampered from one side by which the plaintiffs had made access to the P.T. Fuse and tampered them by putting external device, as noted above, for causing theft of energy, which is punishable under section 39 of the Indian Electricity Act, 1910 ("the Act" for short). Thus, there is no cause of action to file the suit and the plaintiffs are not entitled to the reliefs, as prayed for.

5. Basing on the aforesaid pleadings of the parties, the following issues were framed :

- (i) Is the suit maintainable ?
- (ii) Has the plaintiff cause of action to bring this suit ?
- (iii) Have the defendants inspected the meter of the plaintiff on 15.01.2001 at about 12 Noon and illegally removed the outer cover (T.P. Cover) seal ?
- (iv) Have the defendants disconnected the electric supply to the Hotel of the plaintiffs illegally and opened the T.P. Box cover seal and meter seal without complying the provisions of law ?
- (v) Is the plaintiff entitled to mandatory injunction ?
- (vi) To what other relief, the plaintiff is entitled ?

6. The learned trial Court while taking up issue Nos.(iii) & (iv) together gave findings that the defendants have illegally entered the premises and tampered the meter in the absence of plaintiff No.2 and the penal bill submitted by the defendants is not sustainable in law for which the same is also illegal and inoperative. On the other hand, he answered the issues in favour of the plaintiffs. While deciding issue No.(v), the learned trial Court declined to give the relief of mandatory injunction on the ground that by virtue of the Court's order,

disconnection of electricity supply has already been reconnected. So far as issue Nos.(i) & (ii) are concerned, the learned Court below observed that there is cause of action to file the suit and in the event of inaction of the Authorities, the plaintiffs have rightly come to the Civil Court and, as such, the suit is maintainable. Both the issues are answered in favour of the plaintiffs. Equally, issue No.(vi) is answered in favour of the plaintiffs. Finally, the suit is decreed on contest against the defendants.

CONTENTIONS :

7. Learned counsel appearing for the appellants submitted that the judgment and decree passed by the learned Court below are against the evidence on record. The learned trial Court has erred in law by not appreciating the provisions of law, the provisions of the Act read with rules 51, 52 & 56 of the OERC Distribution Code. According to learned counsel for the appellants, sections 20 & 26 of the Act and Rule 56 of the OERC Distribution Code are not relevant in this case because the same are applicable in case of defective meter. But, in the case of tampering of meter by plaintiff No.2, such provisions are not relevant. The learned Court below has erred in law by applying Rule 56 of the OERC Distribution Code on the observation that checking of meter by defendant No.3 in

the absence of plaintiff No.2 without giving any notice is bad in law, Rule 51 of the said Code is applicable as it speaks that simple information to check unauthorised misappropriation of electricity energy by alteration of equipment is enough. He further submitted that the learned Court below has erred in law by observing that no document is forthcoming to prove that actual red coloured insulated material was used, but the learned trial Court has failed to consider the observation maintained in Ext.8. According to learned counsel for the appellants, Exts.4 & 8 are enough to show the tampering of meter and load was very much taken beyond the capacity of the transformer. The learned trial Court has also erred in law by observing that acquacheck will not be required to check up meter reading and to find out the real energy consumed. The learned Court below has committed error by observing that non-examination of Jr. Engineer is fatal to the case of the defendants when the team leader has been examined as D.W.1. It was further submitted by learned counsel for the appellants that the learned Court below ought to have held that the suit is not maintainable because the forums are already available under the OERC Distribution Code to approach the Orissa Electricity Regulatory Commission (in short, "OERC") and in the event of failure there to approach the Hon'ble High Court.

On the whole, it was submitted by learned counsel for the appellants that the learned Court below has erred in law by not appreciating the facts and law in proper perspective and, as such, the impugned judgment and decree should be set aside having observed the same to be illegal.

8. On the other hand, learned counsel appearing for the respondents submitted that the learned Court below has taken into consideration all the evidence on record and since there is a provision in the Act to inform the consumer while inspecting the meter and in his presence the meter has to be checked, deviation of such principle has been rightly observed by the learned Court below as illegal and any sort of meter reading after causing damage to the meter by defendant No.3 is correctly observed as defective one. He further submitted that the learned Court below has rightly gone into the details and observed that the action taken by the defendants are illegal, for which demand of electricity dues is not sustainable in law. On the whole, he supported the judgment and decree passed by the learned Court below and submitted to dismiss the appeal.

DISCUSSION :

9. Being the Appellate Court, this Court has to go through the entire materials on record, including the evidence,

as the first appeal is in continuation of the suit in the appeal and there the procedural aspect has to be gone through. The First Appellate Court has got its duty to see whether justice has been meted out with proper perspective by the learned Court below. Accordingly, this Court has got enormous duty to award even justice.

10. It is the cardinal principles of *onus probandi* that if neither of the parties will adduce evidence, the suit of the plaintiff will fail. On the other hand, it is always the duty of the plaintiff to discharge onus by leading evidence.

11. Let me first of all take up issue Nos.(iii) & (iv) together for discussions as they are related to each other and decisive to the other issues. When the plaintiffs have averred that the actions taken by the defendants are illegal, void and not in accordance with law and on the other hand the defendants have refuted the allegations of the plaintiffs, it is the plaintiffs to prove the facts alleged by them because as per section 101 of the Evidence Act, the party who asserts certain act to be not legal and proper, the burden of proof lies on the said party. The plaintiffs in order to discharge the onus have examined two witnesses, out of whom P.W.1 is plaintiff No.2 and P.W.2 is his employee. P.W.1 has also adduced documentary evidence.

12. According to P.W.1, he is a regular consumer of electricity ever since he has taken the power connection by an Agreement executed on 14.10.1996 and has been paying electricity dues regularly. He proved the Agreement vide Ext.1. He also stated in his affidavit examination-in-chief that on 15.01.2001 at 12 A.M., defendant No.3 and his staff had straight gone inside the electric meter room and started handling the T.P. Cover Box. When the staff of plaintiff No.1-hotel protested not to do so in the absence of their owner, the defendants paid a deaf ear to it. On being informed, he came at 2 P.M. and found that defendant No.3 and his staff have already resorted to overt act by damaging to the original T.P. Cover seal and meter seal. Defendant No.3 claimed that he subsequently resealed it. He further revealed that they again opened the meter and claimed that they have observed the meter terminal cover seal bearing No.31977 dated 13.07.2000 had been opened, reused and fixed in the same position causing 'Y' & 'B' phase P.T. Link to have been isolated from the meter by putting some red coloured insulated material externally. In cross-examination, he revealed that he is the owner of plaintiff No.1-hotel. In para-26 of cross-examination, he stated that he had no personal knowledge till 1.30 P.M. about the occurrence and he reached the spot at about 2 P.M. His hotel has got

three phases and they have been entered into the meter. In cross-examination in para-28, he stated that the meter was not checked in his presence at 2 P.M. and in his presence they had not handled the meter in any manner. Thus, the statement of P.W.1 is self-contradictory because in examination-in-chief he revealed that at 2 P.M., defendant No.3 and his staff admitted interference with the meter and again defendant No.3 opened the meter and claimed that Y' & 'B' phase P.T. Link have been isolated from the meter by putting some red coloured insulated material externally. In cross-examination, he totally expressed his ignorance as to handling of meter by the defendants. At the same time, he has proved the copy of inspection report vide Ext.8 in which it has been clearly mentioned that at 2 P.M., the meter was checked in the presence of P.W.1 and their observations have been given to the effect that in presence of the representatives, they have sealed the T.P. Cover seal by plastic seal without consumer's representatives' signatures as they refused to sign. Again they were opened in the presence of P.W.1 and other members of the squad and found that Y' & 'B' phase P.T. Link have been isolated from the meter by putting some red coloured insulated material externally and in this situation of the meter, the equipment was in unsafe condition. It is found that the

signature of P.W.1 has been taken thereon. So, the statement of P.W.1 is also not in conformity with Ext.8, which is produced from the side of the plaintiffs inasmuch as he denied his presence at 2 P.M. in cross-examination; but it is found from Ext.8 that he was present and in his presence terminal seal cover was opened and all these features of tampering with the meter were already checked. There is nothing found from Ext.8 that this document is false and fabricated and if there was any objection to such document, he would have at least raised objection in the document itself so that it would be prudent to judge that the action has been taken by the defendants without any acknowledgement of P.W.1.

13. P.W.2 revealed that while he was Receptionist, at 12 Noon on 15.01.2001, defendant No.3 along with his staff came to their hotel and went to the meter room where the Jr. Engineer opened the meter box and also the meter and after noticing their activities, he protested and asked them not to do anything without the presence of the owner. At about 2 P.M., P.W.1 came. In cross-examination, he stated that Samantaray Babu, Jr. Engineer of the CESCO, used to take meter reading for which he knew him. He further revealed that he did not like to accompany the Jr. Engineer to the meter room and two other staff of CESCO accompanied the Jr. Engineer. He

further stated that he himself and P.W.1 were in-charge of hotel management. The meter room was not under lock and key and electric department people had access to it. It appears from the cross-examination that with his knowledge, defendant No.3 and his staff had gone to meter room and checked up the meter on 15.01.2001 at about 12 Noon. So, the question of asking for permission of the owner is not required as the evidence of P.W.2 shows that electricity department people had free access to the meter room of the plaintiffs. P.W.2 has never stated that after the arrival of the defendants, he protested the action of the defendants. So, the statement of P.W.1 that his staff protested the action of the defendants is concocted one being not corroborated. Moreover, Ext.4 shows that the physical verification form was supplied to P.W.1 after duly filled in on 15.01.2001. It appears from said Ext.4 that 34.5 KW load has been used. Not only this, but also Ext.3 shows that the CESCO people entered the premises of the plaintiffs on 15.01.2001 and found that the meter was opened earlier from right side and reused and after opening the terminal cover, they found that Y' & 'B' phase P.T. Link have been isolated from the meter by putting some red coloured insulated material externally and the meter was not getting sufficient voltage in respective phases being exposed. So, Ext.3

lends sufficient corroboration to Exts.4 & 8. When these documents are coming from the side of the plaintiffs and the plaintiffs denied about tampering of the meter, the evidence adduced by the plaintiffs are not consistent and positive to prove that in the absence of plaintiff No.2 or his staff, the inspection was made by the defendants and they had tampered the seal; rather it is clearly evident from the evidence of P.Ws. read with the documents that on 15.01.2001 in the presence of staff i.e. P.W.2, the meter was checked by the defendants after opening the cover seal of the meter and again at 2 P.M. in presence of P.W.1, they found that Y' & 'B' phase P.T. Link have been taken out from the meter by putting some insulated red coloured substance and the same has been tampered for using electricity over the load agreed between the parties. Thus, the plaintiffs have failed to prove by consistent, cogent and positive oral and documentary evidence that in the absence of P.W.1 or any of his staff, the verification of the electricity meter in the premises of the plaintiffs was conducted by the defendants and their reading was not upto the mark. Of course, the learned trial Court has ignored Ext.8 and has taken into consideration the oral evidence of P.W.1 without assessing the same in proper manner to give findings in support of the plaintiffs.

14. It is revealed from the evidence of D.W.1 that he being the Deputy Manager, Commerce, CESCO, was the team leader in the verification team. It is further revealed from his evidence that one Mr. Sangram Khuntia was working as the team leader of Bhubaneswar Electrical Division, but he was deputed on that day to check the meter of the plaintiffs as electricity bills of the said hotel were found far less for some months. From the cross-examination of D.W.1, it is revealed that he reported the purpose of his visit to the Receptionist, who is P.W.2, and the said Receptionist accompanied him to the meter. In the presence of the Receptionist, checking was made. He admitted that he has not served notice on the Receptionist regarding their visit. When he orally asked the Receptionist to check the meter, that is the sufficient notice even if no written notice was served on them as per the submission of learned counsel for the respondents. He further stated in para-16 of cross-examination that they saw that T.P. Box seal was open. The T.P. Box, inside which the meter was installed, was kept open and it was ascertained that the same was opened by the Jr. Engineer by the time of his last visit during meter reading and it was left unsealed and such box is only opened by the departmental authority for the purpose of meter reading and checking and nobody can tamper with the

meter without opening the terminal cover seal. There is no cross-examination about tampering of inner seal and terminal cover seal of the meter and at 2 P.M., again they checked the same in the presence of plaintiff No.2 and found that Y' & 'B' phase P.T. Link have been isolated from the meter by putting some red coloured insulated material externally so as to block the current flow to the meter resulting meter reading to be 77.14% slow, as stated in his examination-in-chief. As there is no serious cross-examination, the fact of drawing electricity by tampering the meter is well proved by D.W.1. Be that as it may, the evidence of D.W.1 is clear to show that they have made visit after serving oral notice on the staff of the plaintiffs and found the tampering of the meter by virtue of which there was 77.14% less meter reading giving benefit to the plaintiffs. So far as acknowledgement of the report is concerned, the plaintiffs have produced document vide Ext.8, which discloses that plaintiff No.2 was present and the meter equipment was in unsafe condition and the meter was calibrated in such condition. Apart from the above, the statement of D.W.1 finds corroboration from the letter of P.W.1 addressed to the Managing Director, CESCO, dated 19.01.2001 where he has revealed that in his presence at 2 P.M., verification of the meter was made. So, the question of meter reading in the

absence of the owner of the hotel does not arise.

15. From the aforesaid discussions, it is very clear that on 15.01.2001, D.W.1 along with other team members visited the plaintiff No.1-hotel and found meter tampering in the presence of plaintiff No.2 and when there is evidence of D.W.1 that the departmental staff can open the outer T.P. Cover seal to check the meter, there is nothing illegal in removing the outer cover seal by the Jr. Engineer. Since the occurrence took place in 2001 and by the time the Electricity Act, 2003 had not come, the law prevalent at that time will apply. It is clear from section 26(4) of the Act that inspection has been made by the defendants to the premises of the plaintiffs on giving information and in the presence of the staff and the plaintiffs, they have verified the same for which it cannot be said that the inspection was illegal and the T.P. Cover seal was removed unlawfully. The learned Court below has not appreciated the evidence on record in proper perspective to reach such conclusion so far as issue No.(iii) is concerned and, as such, I am in complete disagreement with the findings rendered by the learned trial Court on this issue.

16. With respect to issue No.(iv), I have gone through the evidence of P.W.1, which requires to prove that the defendants have disconnected electric supply to the hotel of

plaintiff No.1 illegally and opened the T.P. Cover seal without complying with the provisions of law. In this regard, P.W.1 has admitted that in the presence of his staff, the verification was made and he reached the site subsequently at 2 P.M. and in his presence defendant No.3 and his staff again opened the meter and found that 'Y' & 'B' phase P.T. Link have been isolated from the meter by putting some red coloured insulated material externally. Not only this, but also they calculated the actual KW load and prepared the report vide Ext.4. He further revealed that there was calculation of electricity dues which became Rs.6,70,587.40p.. They immediately disconnected the power supply, but due to the Court's order, they reconnected the same. He has stated in his evidence that the actions of the defendants in opening the T.P. Cover seal and opening of meter is illegal; but he could not prove the same how it is illegal when he and his staff were present at the time of verification. He stated that the allegation that their meter was recording low by 77.14% is vague and illegal, but he could not prove the same how it becomes illegal. On the other hand, the evidence of D.W.1 shows that due to safety measures, the disconnection was made and bills have been prepared as per the calculation made in Ext.8. He admitted that the actual KW used by the plaintiffs could be 34.5 KW, but the agreed load

was 20 KW. It has been brought out in cross-examination of D.W.1 that if there is consumption of 34.5 KW energy at a time, the transformer used for supply of electricity would be ruptured. When there is evidence of D.W.1 that plaintiff No.1-hotel was consuming more electricity and there is no evidence that at a time they are consuming such 34.5 KW energy, it cannot be said that the evidence of D.W.1 that the plaintiff No.1-hotel was using 34.5 KW electricity is a lie. Be that as it may, the evidence of D.W.1 is clear to show that due to tampering of meter, there was slow meter reading giving benefit to the plaintiffs, as observed earlier. Thus, the evidence of D.W.1 is very clear and consistent to show that when they found that there was meter tampering and it was not safe for plaintiff No.1-hotel, they disconnected the electricity supply immediately. On the other hand, there is nothing wrong with the defendants to take such actions against the plaintiffs.

17. The learned Court below has vividly examined the evidence on record, but failed to appreciate the same on the ground that it undertook the exercise of calculating the units of electricity energy to find out whether correct or not the demand of electricity dues. It is germane in this context to note here that no such issue has been framed to discuss on all these matters. Moreover, the Court cannot replace the

position of an expert on the subject. Although P.W.1 and D.W.1 are both Mechanical Engineers, but neither of them has got expertise in the matter of calculation of energy as per tariff; rather the latter being the Deputy Manager, Commerce, has got bare idea of computation of bills. Apart from this, the learned Court below has mentioned that the electronic meter of the plaintiffs needs be sent to the Electrical Inspector, as provided under section 26(6) of the Indian Electricity Act, 1910, when his finding is about the fact that the meter has been tampered by the Jr. Engineer and there is no involvement on the part of the plaintiffs. It has already been held in the above paragraphs that tampering of the meter has been made by the plaintiffs by using some devices showing consumption of electricity exceeding its load that was agreed upon. In such case, the decision reported in **AIR 2003 S.C. 1354 (J.M.D. Alloys Ltd. Vs. Bihar State Electricity Board and others)** should be followed for guidance. In the said decision, the Hon'ble Supreme Court have been pleased to observe that :

“Thus, where it has been found that the seal on the CT/PT terminal box had been tampered with and the natural working of the meter had been affected by taking recourse to external devices, a dispute of this kind cannot be referred to an Electrical Inspector”.

18. With due respect to the above decision, I find that

in the instant case, the learned Court below has misdirected itself and sat upon the matter of calculating the energy used by the plaintiffs. Be that as it may, as per the discussions made above, I am not in agreement with the finding of the learned trial Court that disconnection of electricity supply to plaintiff No.1-hotel is illegal and opening of T.P. Box cover seal and meter box is made without complying with the provisions of law. As such, I do not agree with the finding of the learned Court below on issue No.(iv).

19. So far as issue Nos.(i) & (ii) are concerned, the learned Court below has made observation that the suit is maintainable because the plaintiffs have already approached the authorities concerned and as no action was taken, the suit was filed. When it has been already held in the above paragraphs that there is no illegality in checking the meter of the plaintiffs, which was found tampered on verification, and for safety measures disconnection was made, there lies no cause of action to file the suit. Apart from this, section 9 of the C.P.C. states that no suit can be brought to the Civil Court for institution if the same is expressly or impliedly barred under the respective law. In the case at hand, there is evidence of P.W.1 that he has made representation vide letter dated 19.01.2001 but could not be successful. He has admitted in cross-examination

that the provisions of the O.E.R.C. Act and the Indian Electricity Act have been violated and he has made complaint before the CESCO Authority about the discrepancies in the meter reading and power supply. The Electricity Regulatory Commission Act, 1998 establishes the State Electricity Regulatory Commission under section 17 of the said Act and this Commission is called Orissa Electricity Regulatory Commission. Under section 22 of the Electricity Regulatory Commission Act, 1998, the Commission has got the power to adjudicate upon the disputes and differences between the licensees and utilities and to refer the matter for arbitration. In the instant case, as admitted by P.W.1, the entire provisions are covered under the Orissa Electricity Regulatory Commission Act, 1998 and when the matter is not heard by the concerned authority of the CESCO, it was for P.W.1 to make grievance before the OERC under the said Act for adjudication. I also take the liberty to refer to Ext.1, which shows that all the disputes between the plaintiffs and the defendants are subject to arbitration as per clause 8 of the Agreement. Under section 22(n) of the Orissa Electricity Regulatory Commission Act, 1998, OERC can adjudicate or refer for arbitration any dispute and against such order of the OERC, appeal will lie to the Hon'ble High Court of Orissa

under section 27 of the said Act. Hence, the disputes, as raised in this suit, are impliedly barred as per section 9 of the C.P.C. It must be, therefore, held that the suit is not maintainable in its present form. Thus, I am in complete disagreement with the findings of the learned trial Court so far as issue Nos.(i) & (ii) are concerned.

20. As regards issue No.(v), the learned Court below has taken the view that since supply of electricity has been reconnected by the order of the Court, there is no necessity for issuance of mandatory injunction. In view of the findings on issue Nos.(i), (ii), (iii) & (iv), as discussed above, the prayer for mandatory injunction is disallowed. Issue No.(v) is answered accordingly and the learned Court below has also rejected the same.

21. When the suit is not maintainable and there is no illegality in meter checking as well as detection of meter tampering, no relief can be granted to the plaintiffs. So, the finding of the learned trial Court on issue No.(vi) giving relief to the plaintiffs, as prayed for, is unsustainable in the eye of law and thus this Court has the least hesitation in setting it aside. Hence ordered :

O R D E R

The appeal is allowed on contest against the

respondents, but in the circumstances without cost. The judgment dated 27.08.2005 and decree dated 09.09.2005 passed by the learned Addl. Civil Judge (Sr. Division), 1st Court, Bhubaneswar in T.S. No.15/20 of 2004/2001 are hereby set aside.

**District Judge, Khurda
at Bhubaneswar.**

27.12.2014.

Dictated, corrected by me and pronounced in the open Court this day the 27th December, 2014.

**District Judge, Khurda
at Bhubaneswar.**

27.12.2014.