

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.02.2015

CORAM :

THE HON'BLE MS. JUSTICE K.B.K.VASUKI

Second Appeal No.1508 of 1998

- 1.Junior Engineer
Tamil Nadu Electricity Board
Periyar Electricity System, Erode.
- 2.Superintending Engineer,
Tamil Nadu Electricity Board
Periyar Electricity System, Erode. ... Appellants/Defendants 2 to 3
- Vs
- 1.M.V.Deivasigamani
2.K.Subramaniam ... Respondents/Plaintiff/1st Defendant

Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 13.12.1993 made in A.S.No.100 of 1993 on the file of the II Additional Sub Judge, Erode reversing the Judgment and Decree dated 25.01.1993 made in O.S.No.93 of 1987 on the file of the II Additional District Munsif, Erode.

For Appellants : M/s.V.Viswanathan
for Mr.S.R.Shanmugadoss.
For Respondents : M/s.Niranjan for R1.
M/s.V.J.Latha for R2.

J U D G M E N T

The defendants 2 and 3/officials of the Tamil Nadu Electricity Board are the appellants herein.

2.The present second appeal arises out of reversing judgment of the lower appellate court in AS.No.100 of 1993 filed against the judgment and decree made in OS.No.93 of 1987 filed by the first respondent/plaintiff for the relief of permanent and mandatory injunction.

3.The parties are referred to herein as per their rank in the suit in OS.No.93 of 1987.

4. The plaintiff filed the suit for the relief of permanent injunction restraining the defendants 2 and 3, their men agents from disconnecting or interfering in any other manner with the continuous supply of energy in Service Connection Nos.372 and 314 of Erode town

either in pursuance of the alleged charge of theft energy to the extent of Rs.60,924/- or in any other manner whatsoever. Pending suit the official defendants 2 and 3/Tamil Nadu Electricity Board (herein after refereed to as "TNEB") disconnected the supply of energy to the Service Connection No.372, as such, the plaintiff amended the suit by including the relief of mandatory injunction and by directing the defendants 2 and 3 to restore the service connection No.372.

5.The few facts which are relevant for consideration herein are as follows : The plaintiff is the consumer of electricity under service connection Nos.269, 372 and 314. The plaintiff leased out a portion of his building to the first defendant for running a milk chilling unit having service connection No.269. The TNEB officials made a surprise visit to the first defendant's building and inspected SC.No.269 on 02.06.1984. The officials having found the first defendant to have committed an irregularity in the meter, arrived at a provisional assessment for the extra energy allegedly used and claimed a sum of Rs.5,629/- towards 50% of the amount provisionally assessed. Though the plaintiff was not issued any show cause notice or was not given any opportunity to have his say he paid the amount as claimed in order to avoid any disconnection. While so, the plaintiff was again called upon to pay a sum of Rs.60,990/- which amount was included in meter consumption card maintained with regard to service connection No.372, the same being the charge of theft of energy. The plaintiff was insisted to comply with the demand failing which to disconnect his service connection bearing SC.No.372, which compelled the plaintiff to come forward with the present suit for the relief of permanent injunction.

6.The official defendants have come forward with the written statement stating that the SC.No.269 was inspected by Anti Power Theft Squad, Erode on 28.08.1983 and 26.05.1984 and the Inspecting team on both the occasion discovered unauthorised and illegal abstraction of energy through artificial means amounting to theft of energy under the terms and conditions of supply of TNEB and a provisional assessment notice was addressed to the plaintiff for the unauthorised use of 4HP over and above the sanctioned load as found out on 28.08.1983 and the loss was calculated at Rs.11,258/- and 50% of the same was claimed from the plaintiff and the same was realised in four installments. It is their further case that the loss sustained by the Board by illegal abstraction of the energy as found out on the second occasion was provisionally assessed to Rs.60,874/- and the same was claimed from the plaintiff by including the same in the meter card in S.C.No.372 belonging to the same consumer and the same is included in other service connection as per terms and conditions and on his failure to pay the amount and on his failure to challenge such demand SC.No.372 was disconnected. It is also their case that TNEB also lodged a criminal complaint against the first defendant and the plaintiff in his capacity as owner of the service connection for such malpractice.

7.The trial court dismissed the suit, on the ground that the suit is premature without exhausting the appeal remedy. It is contended that TNEB having discovered the malpractice and having provisionally made the provisional assessment of the loss sustained by the Board and having issued due notice to the parties by including the same in the other service connection of the plaintiff and the plaintiff having not challenged the same by way of statutory remedy is disentitled to the suit reliefs. Aggrieved against the same, the plaintiff preferred AS.No.100 of 1993.

8.In the meanwhile, the criminal prosecution initiated against the plaintiff and the first defendant ended in an order of acquittal of the plaintiff and conviction of the first defendant by the trial court and the order of conviction of the first defendant by the trial court was subsequently set aside by the revisional courts, thereby, both the plaintiff and the first defendant were acquitted from the criminal charges. The lower appellate court having taken note of the order of acquittal of both the plaintiff and the first defendant on the ground that the prosecution failed to prove the act of theft of energy and having taken note of failure of TNEB to issue due notice to the petitioner regarding the alleged irregularity and regarding disconnection was of the view that the plaintiff who had no knowledge of the proceedings, was unable to resort to the statutory remedy and under such circumstances, the demand of TNEB to make payment failing which to disconnect the service connection is against law and is in violation of principals of natural justice. The lower appellate court by observing so, disagreed with the findings of the trial court and set aside the judgment and decree of the Trial Court and held the plaintiff to be entitled to the suit relief and decreed the suit as prayed for. Hence this second appeal by the defendants 2 and 3/officials before this court.

9.The second appeal is admitted on the following substantial questions of law :

(i)Whether the first appellate court erred in law in granting the relief of permanent injunction as prayed for in the plaint?

(ii)Whether the first appellate court failed to consider the materials on record by granting the relief of permanent injunction as prayed for in the plaint?

(iii)Whether the suit is not maintainable in view of the judgment of the Supreme Court reported in (1997) 5 SCC 120?

10.Heard the rival submissions made on both sides and perused the records.

11. Though the plaintiff is the owner of the three service connection Nos. 269, 372, 314 and under 2(C) of TNEB Act, the first defendant is the person who found to have committed an act of use of unauthorised load of 4HP over and above the sanctioned load and unauthorised and illegal abstract by tampering with the meter. The irregularity so discovered was in the course of inspection by the Anti Power Theft squad of TNEB Erode on 28.09.1983 and 26.05.1984. The provisional assessment of the loss sustained by the Board was calculated at Rs.11,258/- and Rs.60,874/- for the extra energy consumed by the first defendant through SC.No.269. The TNEB demanded 50% of the provisional assessment made on the first occasion and entire amount calculated on the second occasion by including the same in the meter consumption card relating to SC.No.372. The learned standing counsel for TNEB has drawn the attention of this court to Clause 19.18 of terms and conditions of supply of electricity by TNEB, relating to the steps to be taken for any unauthorised consumption of energy. The same say that where any consumer having more than one service connection, defaults in payment of dues relating to any one of the service connections, the Board may cause other service connections in the name of the consumer to be disconnected till all the arrears due for and all the service connections are paid, notwithstanding the fact that the service connections are covered by separate agreements. It is contended by the learned standing counsel for TNEB that Clause 19.18 authorises the TNEB to demand the arrears of one of the service connections by including the same in the meter consumption card in respect of the other service connection standing in the name of the same consumer and in the event of the failure to pay the arrears in respect of one of the service connections the other service connection in the name of the consumer may be disconnected till all the arrears due for all the service connections are paid.

12. The learned Standing counsel for the TNEB also by relying on the judgment of this court reported in 1995 AIHC 2917 MHC GFC. Alsthan India Ltd V. Tamil Nadu Electricity Board, Madras and others argued that recovery of arrears of Electricity charges by including the same in the current consumption bills is sufficient compliance of principals of natural justice by issuing seven days notice before disconnection of electricity supply.

13. However, the same is not helpful to TNEB to justify the demand made for the collection of arrears of electricity charges and the disconnection of one of the service connections for non compliance of such demand for the following reasons : Part-I of Schedule 37 of Terms and Conditions of TNEB deals with violation and theft of energy. While Sub Clauses 1 to 7 deal with violations and assessment of compensation charges and procedure for collecting consumption and other charges and for taking other action in respect of violation so deducted, Sub Clause 8 deals with theft of energy and the assessment of extra levy for theft of energy. The combined appreciation of Sub Clauses 1 to 8 of Schedule 37 would reveal that

it provides for the procedure to be followed on deduction of violation and on deduction for theft of energy, Sub Clause 6.01 of Schedule 37 says that on deduction of violation, the officer authorised to issue show cause notice as per Clause 10 of this Schedule will issue a notice to the consumer asking him to remove the violation within specified time and to show cause why the compensation charges should not be levied for having committed the violation. As per Clause 6.02 if the consumer fails to send the explanation within the stipulated time or if the explanation is not satisfactory, the officer authorised to issue Show cause notice will send a report to the Assessing Officer. The Officer authorised to make assessment, if convinced that there has been a violation after conducting a detailed enquiry within fifteen days from the date of issue of show cause notice by giving a reasonable opportunity to the consumer to represent and after examining the materials available in the case will assess the compensation charges payable and issue speaking order to the consumer directing him to pay the charges in equal monthly instalments. Clause 6.03 provides for an appeal to be preferred within 60 days from the date of the receipt of the assessment notice by the consumer. Similar procedure is laid down in respect of theft of energy under Sub Clause 8.05.

14. In the present case, admittedly no show cause notice was issued to the plaintiff and no enquiry was conducted by the authorised officer under Clause 10 to make assessment, by giving opportunity to the plaintiff/consumer to have his say. Here is the case wherein the evidence available would show that one such notice was given only to the first defendant under Ex.B2 and Ex.B3. The learned standing counsel for the TNEB would fairly concede that no show cause notice was sent to the plaintiff/consumer either for removing the violation for use of unauthorised additional load as contemplated or regarding levy of compensation charges under Clause 6.01. Likewise, no show cause notice was issued as per Clause 8.05 and no enquiry was also conducted in respect of violation on both the occasions. On the failure of the TNEB to comply with such terms and conditions, as stated above, the demand for payment of arrears of electricity charges by including the same in the meter consumption card relating to different service connection would amount to violation of the procedure and against the principles of natural justice. In that event, any demand made by the TNEB for clearing the arrears of electricity charges and disconnection of service connection for non payment of the arrears is arbitrary and illegal.

15. It is but relevant to note at this juncture that the criminal court having acquitted both the plaintiff and the first defendant from the charges for act of theft of energy, the action taken by TNEB for collecting extra levy for the illegal abstraction of extra energy and disconnection of service connection for non payment of the same appears to be illegal. The lower appellate court after due analysis of entire facts and circumstances adduced before the same, rightly negatived the stand taken by TNEB in this regard

and rightly arrived at the conclusion that the action taken by TNEB in demanding the arrears and in disconnecting the service connection of the plaintiff as illegal and such finding rendered by the appellate court warrants no interference by this Court and the substantial questions of law are hence answered against the defendants/appellants.

16. In the result, the second appeal is dismissed. No costs.

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s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The II Additional Sub Judge, Erode.
2. The II Additional District Munsif, Erode.

Copy to:

The Section Officer,
V.R.Section,
High Court, Madras.

+ 1 cc Mr.V.Viswanathan, Advocate SR 6573

+ 1 cc to Mr.V.J.Latha, Advocate SR 6787

+ 1 cc to Mr.G.Rajagopalan, Advocate SR 7148

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