

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 9.10.2015.

CORAM

THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR

S.A.No.2134 of 2003
and
C.M.P.No.19859 of 2003

V.S.D.Ramalinga Mudaliar ...Appellant/Plaintiff

vs.

1. The Tamil Nadu State Electricity Board rep by its Superintending Engineer (South) Cuddalore.
2. The Executive Engineer (O&M) Tamil Nadu Electricity Board, Kurinchipadi.
3. The Assistant Executive Engineer, Tamil Nadu Electricity Board, Kurinchipadi. ...Respondents/Defendants

Second Appeal is filed Under Section 100 of CPC as against the judgment and decree dated 26.3.2003 in A.S.No.16 of 2000 on the file of the Sub Court, Cuddalore against the judgment and decree dated 21.12.1999 in O.S.No.655 of 1996 on the file of the Principal District Munsif Court, Cuddalore.

For appellant : Mr.R.Venkatesulu for
M/s.Usha Raman

For Respondents: Mr.V.Viswanathan

JUDGMENT

Plaintiff in the original suit, who suffered a decree dismissing the suit, after having suffered a setback in the lower appellate court as his appeal before the lower appellate was dismissed confirming the decree of the Trial Court, has filed the second appeal.

2. The suit came to be filed for a declaration that the show cause notice bearing letter No.c/bfh/gh-,g-Fgho-Vgp/o/v!;/17-60-

17- dated 17.4.1996 issued by the third respondent is against law, illegal and null and void and for an injunction not to disconnect the electricity service to S.C.No.81. The notice came to be issued on the assumption that the appellant had been sanctioned a load of 35 HP alone and that as against the said sanctioned load, the appellant was using appliances drawing a load of 45 HP. The said notice was challenged by filing the suit contending that it was issued either on a misconception regarding the load factor sanctioned to the appellant or as a vindictive measure for having filed a previous suit, when a similar notice came to be issued.

3. The suit was resisted by the respondents herein contending that the impugned notice being a show cause notice, the appellant could have given a reply whereupon final order would have been passed, as against which a statutory appeal would lie to the appellate authority and that the suit filed in the court straightaway was not maintainable. Apart from the question of maintainability, the suit was resisted on merits also contending that though the appellant had been sanctioned the load of 45 HP, the power load sanctioned to him was reduced to 35 HP; that even after such reduction, the appellant was drawing electricity using appliances to the total power load of 45 HP and that for such unauthorized use of overload, he was liable to penalties including the disconnection of the service connection.

4. The learned Trial Judge, after trial, disbelieved the case of the appellant and accepted the case of the respondents with the result that the suit was dismissed by the Trial Court by a judgment and decree dated 21.12.1999. On appeal, the lower appellate court concurred with the findings of the Trial Court and dismissed the appeal and confirmed the decree of the Trial Court, by a judgment and decree dated 26.3.2003.

5. Now, the appellant has approached this court with the present second appeal challenging the decree of the lower appellate court confirming the decree of the Trial Court dismissing the suit filed by him.

6. The second appeal was admitted on 24.12.2003 on the on the following substantial question of law:-

"Whether the courts below did not err in failing to apply the relevant board's proceedings which made permissible for the electricity board to reduce the sanctioned load if the consumer did not actually use the sanctioned load but used less than the sanctioned load, only after giving one month's notice for such reduction and that admittedly such notice had not been given at all to the

plaintiff?"

7. The arguments advanced by Mr.R.Venkatesulu, learned counsel appearing for the appellant and by Mr.V.Viswanathan, learned counsel appearing for the respondents are heard. The judgments of the courts below and the other materials available on record are also perused.

8. Though the respondents would have contended that the appellant, who had been sanctioned a power load of 45 HP at some point of time prior to the issuance of the impugned notice, the same came to be reduced to 35 HP subsequently. For such reduction, admittedly, no concurrence was obtained from the appellant. The witnesses examined on the side of the respondents also clearly admitted that normally, on such reduction or variation of power load, a new agreement shall be entered into, but, in the case of the service connection concerned in this second appeal, no such new agreement came to be executed between the officials of the Electricity Board and the appellant. The same will go to show that if at all any reduction in the power load sanctioned to the appellant would have been made, it should have been the unilateral act on the part of the respondents, without following the procedure contemplated under the statute and the rules to safeguard the interest of the consumers and at the same time, to safeguard the interest of the service provider viz., Tamil Nadu Electricity Board.

9. There is a clear admission on the part of the respondents that the appellant was sanctioned three separate service connections for the very same business premises viz., rice mill; the first one in 1962, in S.C.No.411 for a power load of 20 HP, the second one in 1967 in S.C.No.744 for a power load of 20 HP and the third one somewhere in 1994 in S.C.No.85 to the power load of 5 HP and that all the three service connections came to be fused together into a single service connection with S.C.No.81 in 1995 with a sanctioned load of 45 HP. It is also an admitted fact that on such conversion of all the three service connections into a single service connection, an agreement was executed for the sanctioned load of 45 HP. That being so, the officials of the Tamil Nadu Electricity Board, on a previous occasion issued a similar notice as if the appellant was using appliances drawing a power load exceeding the power load sanctioned to him, pursuant to which the appellant approached the Civil Court by way of a previous suit in O.S.No.824 of 1984. Rightly or wrongly, the said suit came to be decreed on 23.2.1987 in favour of the appellant as evidenced by Exs.B10 and B11 (decree and judgment). A perusal of the same will make it clear that at that point of time, it was the appellant's contention that the sanctioned load was 35 HP. However, the fact remains that when all the three service

connections were combined together and made into a single service connection with S.C.No.81, the sanctioned load was fixed as 45 HP. This was done in the year 1995. Only thereafter, contending that the appellant was using appliances drawing electricity more than the sanctioned load, the impugned notice marked as Ex.A8 came to be issued.

10. During the course of hearing in the second appeal, the learned counsel for the parties admit across the Bar that the son of the appellant applied for a service connection to his business establishment and the Electricity Board refused to give service connection to him on the premise that the appellant, being his father, is having a litigation pending before this court in this second appeal challenging the show cause notice issued levying penalty for the alleged drawl of overload. The order refusing service connection was challenged before this court in W.P.No.13601 of 2006. Based on the submission made by the writ petitioner therein that he was prepared to deposit the penalty levied under the notice impugned in the suit concerned in the second appeal, without prejudice to the appellant's contentions in the second appeal, so as to enable him to get the service connection for which he had applied, which was accepted by the Electricity Board, the writ petition was disposed of by an order dated 30.8.2006 by directing the Tamil Nadu Electricity Board to give service connection to the son of the appellant provided he would pay a sum of Rs.23,332/- within the time fixed in that order. It is also admitted across the Bar that the son of the appellant paid that amount and got service connection to his business establishment.

11. The learned counsel for the respondents would submit that even though the appellant failed in both the courts below, perhaps pursuant to the interim order passed by this court, the appellant was permitted to draw electricity to the power load of 45 HP. Both the courts below chose to non-suit the appellant for the reliefs sought for in the plaint, solely on the ground that he had taken a plea in the previous suit that the power load sanctioned to him was only 35 HP and that hence, his contention that he had been sanctioned a power load of 45 HP could not be accepted. The total power load of 45 HP was not sanctioned to the appellant at one and the same time. In three spells, different service connections for different power loads came to be given to the appellant. The previous suit came to be instituted in the year 1984. At that point of time, there were only two service connections viz., S.C.Nos.411 and 744 each for a power load of 20 HP. Splitting up the same to one part as power load for lighting and the other part for machineries, the appellant seems to have taken a plea that the power load that had been sanctioned at that point of time was 35 HP, meaning that 35 HP was for the machineries. The said averment in the earlier suit lost its importance when an additional load of 5

HP came to be sanctioned by providing a third service connection in S.C.No.85 in the year 1994. Within a year and thereafter, all the service connections were combined into a single service connection in S.C.No.81 and the sanctioned load for the said service connection was admittedly 45 HP. In view of the said developments, the respondents can no longer rely on the averment made in the plaint in the previous suit. Though the appellant had been sanctioned only a power load of 35 HP before 1984, the plea made in the former suit cannot also be pleaded as an estoppel because of the subsequent developments.

12. Be that as it may, the fact remains that the appellant had been sanctioned a power load of 45 HP, admittedly, in the year 1995. The impugned notice came to be issued on 17.4.1996. The respondents, who claimed that the sanctioned power load was reduced from 45 HP to 35 HP, have not adduced reliable evidence to prove such reduction. Even if it could have been done by the respondents, in the absence of the concurrence of the appellant and mutation of a new agreement, the same can be said to be unilateral and arbitrary. When such arbitrary actions are taken by a State Electricity Board, and such notices are issued in flagrant violation of the statute under which they function, they cannot contend that the civil court's jurisdiction will stand ousted. It is not necessary to elaborate the abovesaid point and cite any judgment as it is, now, an established principle that if a statutory authority deriving power under a statute flouts the statutory provisions and issues any order or show cause notice as an act of vindictiveness, then the civil court will not hesitate to exercise its jurisdiction, despite the availability of the remedy of the statutory appeal or the scope of submitting an explanation to the very same official and getting an order. Moreover, this is a case in which it has been clearly admitted by the respondents that there is no proof for the reduction of the power load from 45 HP to 35 HP, except the reliance being made on the plea made in the previous suit which came to be instituted even prior to the sanction of the total load of 45 HP. That itself shall be sufficient to hold that the impugned show cause notice is mala fide, vindictive, illegal and liable to be declared null and void. It is also an admitted fact that no notice prior to the reduction, setting out the proposed reduction in power load, came to be issued to the appellant. The reduction of the power load, if any, made by the respondents and the consequential show cause notice issued under the impugned notice, will suffer from failure to adhere to the principles of natural justice requiring opportunity being given to the consumer before reducing the power load. When the reduction of the power load can be held to be invalid as violative of the principles of natural justice, the show cause notice issued, based on such reduction will also be classified in the same category.

13. For the reasons stated above, it goes without saying that the reasons stated above will provide an answer to the substantial question of law formulated at the time of admission of the second appeal and such answer shall be in favour of the appellant and against the respondents. Nothing more needs to be added to hold that the second appeal shall succeed, with the result that the decree of the Trial Court dismissing the suit, which was confirmed by the lower appellate court, shall be set aside and the suit filed by the appellant shall be decreed as prayed for in respect of both the reliefs. The amount collected from the son of the appellant towards penal assessment shall be kept by the respondents treating the same to have been paid by the appellant, to be adjusted towards any amount that may become due in future in respect of the service connection availed by the appellant.

In the result, the second appeal is allowed. The decree of the Trial Court dated 21.12.1999 and the decree of the lower appellate court dated 26.3.2003 are set aside. The suit filed by the appellant shall stand decreed as prayed for in respect of the prayer for declaration and injunction. However, there shall be no order as to costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Sub Judge,
Cuddalore.
2. The Principal District Munsif,
Cuddalore.
3. The Record Keeper,
VR Section, High Court,
Madras.

+1cc to Mr.Usha Ramman, Advocate sr.55683

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srg 22/12/2015