IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.03.2018

PRONOUNCED ON : 09.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.2171 of 2003

S.Subramaniam ... Appellant

Vs.

1. The Assistant Executive Engineer,
   Tamil Nadu Electricity Board,
   Operation and Maintenance,
   Dhasappangoundenpudur, Nall Road,
   Gobi Electricity Distribution Circle,
   Sathyamangalam Taluk,
   Erode District.

2. The Assistant Engineer,
   Tamil Nadu Electricity Board,
   Operation and Maintenance,
   Dhasappangoundenpudur, Nall Road,
   Gobi Electricity Distribution Circle,
   Sathyamangalam Taluk,
   Erode District.

3. The Superintending Engineer,
   Tamil Nadu Electricity Board,
   Gobichettipalayam, Erode District.... Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 23.09.2003 passed in A.S.No.8 of 2003 on the file of the Principal Subordinate Court, Gobichettipalayam, reversing the Judgment and Decree dated 08.01.2003 passed in O.S.No.471 of 1999 on the file of the District Munsif Court, Gobichettipalayam.

For Appellant : Mr.N.Manokaran

For Respondents : Mr.V.Viswanathan

JUDGMENT

This second appeal is directed against the Judgement and Decree dated 23.09.2003 passed in A.S.No.8 of 2003 on the file of the Principal Subordinate Court, Gobichettipalayam, reversing the Judgment and Decree dated 08.01.2003 passed in O.S.No.471 of 1999 on the file of the District Munsif Court, Gobichettipalayam.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for declaration and permanent injunction.

4. The case of the plaintiff, in brief, is that he is running a small Ice company under the name and style of Murugan Ice Factory for the past 20 years and the said unit is only a small scale /tiny unit and obtained the necessary permanent registration certificate from the Government of Tamil Nadu and the plaintiff is also paying the necessary professional taxes and also electricity consumption charges and at the time of starting the abovesaid unit, service connection was obtained under the Tariff - IV and accordingly, paid the charges in respect of the same to the defendants and thereafter, Tariff was changed from Tariff – IV to Tariff – III(A) from July 1998 and accordingly, the plaintiff is paying the consumption charges under Tariff – III(A). While so, the second defendant, on 23.11.1999 issued a notice informing about the change of Tariff for the plaintiff's service connection from III(A) to III(B) and despite the representation of the plaintiff about his service connection

would not fall under Tariff III(B), the defendants issued another notice on 03.12.1999 directing that the plaintiff should pay the differential amount of Rs.15,410/- within 7 days, failing which, the service connection will be disconnected and another notice has been issued on 15.12.1999 that the service connection will be disconnected, failing the payment of the charges, within three days and the final notice has been issued on 16.12.1999 and left with no other alternative and inasmuch as the plaintiff's company fall only under the category of Tariff-III(A) and not Tariff – III(B) being a small scale industry/tiny unit, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. The plaintiff's service connection No.463 was granted for running Ice Factory and at the time of the billing, the Tariff was made under III(A) based on the circular dated 23.08.1995 and the plaintiff's service connection has been inspected by the Anti power theft squad, Erode, on 29.05.1999 and intimated the defendants that the service connection should have been billed under Tariff-III(B) vide G.O.Ms.No.115 Energy (A2) Department dated 19.07.1998. Hence, as per the abovesaid G.O., the service connection of the plaintiff was revised from Tariff – III(A) to Tariff – III (B) for the period from 8/98 to 10/99 and notice has been issued directing the plaintiff to pay the differential amount to avoid disconnection and the plaintiff having received the notice, visited the defendants' office and agreed to pay the amount and requested the defendants not to

disconnect the service connection and permit him to pay the amount in instalments and in this connection, also given a consent letter. As per G.O.Ms.No.17 Energy (Dept) dated 14.07.1997 and G.O.Ms.No.115 dated 19.07.1998, the plaintiff's Ice factory should be charged only under Tariff – III (B) and accordingly, the defendants by oversight made wrong billing in respect of the plaintiff's service connection under Tariff – III (A) and if the charges are not collected under the Tariff – III (B), the defendants would be put to heavy loss and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PW1 was examined and Exs.A1 to A17 were marked. On the side of the defendants, DW1 was examined and Exs.B1 to B9 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to decree the suit as prayed for. On appeal, the first appellate Court, on a consideration of the materials placed on record, was pleased to set aside the judgment and decree of the trial Court and by way of allowing the appeal preferred by the defendants, dismissed the suit laid by the plaintiffs. Impugning the same, the present second appeal has been laid.

8. At the time of the admission of the second appeal, the following substantial questions of law were formulated for consideration:

" (i). Whether the process of manufacturing "ice candy" by the plaintiffs unit will come under the category of a Tiny and Cottage Industry, so as to avail the benefit of supply of electricity under Low Tension Tariff IIIA of the Tamil Nadu Revision of Tariff on supply of Electrical Energy Act, 1978?

(ii). Whether the principal of Promissory Estoppel applies to the facts of the present case especially when the plaintiff /promisee has acted on and altered his position only due to the statutory amendment in the revised tariff rate made in G.O.(M.S).No.115 dated 19.07.1998?

(iii). Whether the process of manufacturing ice candy unit has a connected load not exceeding 10 Horse Power is a Tinny or Cottage Industry, if not whether the plaintiff's unit will come under the definition of a "Factory" within the provisions of the Indian Factories Act, 1948 so as to deprive the concessional Tariff permissible for Cottage Industries?".

9. It is noted that the plaintiff is running Sri Murugan Ice Factory, for which, the service connection No.463 was effected by the defendants.

Originally, it is noted that the abovesaid service connection was billed under Tariff – IV, subsequently, on coming to know that the abovesaid Tariff is erroneous, the defendants had changed to the Tariff-III(A) and accordingly, it is found that the plaintiff has been paying the necessary charges to the defendants. From the materials placed on record, particularly, on the side of the defendants, it is seen that the plaintiff's service connection had been inspected by the Anti Power theft Squad and accordingly, the Anti Power Theft Squad had informed the defendants that the plaintiff's service connection should be billed only under Tariff III(B) and not under Tariff III(A), as per G.O.Ms.No.115 dated 19.07.1998 and based on the same and as per the abovesaid G.O., it is found that the defendants had issued notices to the plaintiff calling upon him to pay the charges under Tariff III(B) for the period from 8/98 to 10/99 and accordingly, directed him to pay the differential amount and impugning the same, the civil suit and on the dismissal of the same by the first appellate Court, the present second appeal has come to be laid.

10. It is found that even prior to G.O.Ms.No.115 dated 19.07.1998, there is already another G.O.Ms.No.17, Energy (Dept) dated 14.07.1997, from which, it could be seen that for the Ice Factory, billing should be done only under Tariff III(B) and not under Tariff III(A). Similarly, under G.O.Ms.No.115, dated 19.07.1998, the said position has been reiterated and it is thus found that as the plaintiff is running only a ice company under the name and style of Sri Murugan Ice Factory, the service connection effected in that unit should be billed only under Tariff III(B)

and not under Tariff III(A). As per the abovesaid G.Os., which had come to be marked as Exs.B4 & B5, accordingly, it is noted that the defendants had called upon the plaintiff to pay the differential charges and warned the plaintiff, on his failure to pay the amount demanded in the final notice, the service connection would be disconnected.

11. Though it is contended by the plaintiff that the original Tariff IV had been converted to Tariff III(A) at the instance of the defendants, however, the materials placed on record would go to show that only as per the request of the plaintiff, Tariff IV had been converted to Tariff III(A) and accordingly, it is found that the plaintiff had been paying the charges under Tariff III(A). However, on the inspection of the plaintiff's unit, it has come to the knowledge of the defendants that they had wrongly billed the service connection under Tariff III(A) and as per the abovesaid G.Os marked as Exs.B4 & B5, they should have billed only under Tariff III(B) and accordingly, the impugned notice has come to be issued by the defendants .

12. It is mainly argued by the plaintiff's counsel, he is running only a small scale industry/tiny unit and accordingly, has also been granted the permanent registration certificate marked as Ex.A1 and in such view of the matter, when his unit does not consume electricity exceeding 10 HP, it is contended that the Tariff revised from III(A) to III(B) is arbitrary and hence, according to the plaintiff, the same should be struck down. However, on the materials placed on record, it is found that the consumer

is bound by the terms and conditions of the supply of electricity that may be supplied as revised from time to time and as may be decided by the board and in this connection, the relevant terms and conditions has come to be marked as Ex.B7. A perusal of Ex.B7 would go to show that the consumer will be deemed to have full knowledge of the provisions of Indian Electricity Act, 1910 and other allied acts and the rules and regulations and notifications made thereunder as well as all the laws relating to the supply of electricity and it is further noted that the consumer shall act in due conformity with all the laws as above stated and if he does not so act, his supply may be discontinued without prejudice to any other action that may be taken by the Board. Similarly, it is also found that the board is entitled to change from time to time the terms and conditions of supply of electricity by special or general proceedings and the board will have the right to relax, modify or waive any of the clauses of terms and conditions of supply of electricity in respect of any consumer or any class of consumers and further, it is also seen that where any arrears arise due to revision of past bills/assessments for various reasons viz., defective meter, defective metering arrangement, incorrect application of tariff, wrong billing, revision of tariff etc., payments should be made by the consumer and the board is also given the power to permit the consumer to pay the said amount in instalment as prescribed under the terms and conditions. It is thus found that the board has got all the power to collect any arrears due to it, even in the event of incorrect application of Tariff and so, it has to be seen whether the board is justified in changing the tariff to III(B) from

III(A) as regards the service connection of the plaintiff.

13. The defendants, in this connection, placed reliance upon the G.O.Ms.Nos.17 & 115 marked as Ex.B4 & B5. In this connection, circulars have come to be issued by the board and from Ex.B8, it is found that in respect of ice factory, the service connection effected to the same should be classified only under Tariff III(B) as per the abovesaid G.Os and the Tariff III (B) alone should be the relevant Tariff irrespective of whether the connected load is within 10 HP or not and the said position is also reiterated in the other circular marked as Ex.B9, whereunder also it has been reiterated that Tariff III (B) shall be applied to the services, relating to the units, irrespective of whether the connected load is within 10 HP or not and even on the production of SSI/Tiny industries certificate by the concerned unit. It is thus found that the board has classified the point involved in this matter by way of Exs.B8 & B9 and when the abovesaid documents are read in toto and cumulatively seen merely because, the plaintiff has been issued the certificate marked as Ex.A1 as a small scale unit or tiny unit as the case may be, that by itself would not in any manner entitle the plaintiff to insist that his service connection should be billed only under III (A), as done in the past and further contending that the service connection of the plaintiff is within 10 HP load. When it is found that the plaintiff's ice factory falls within G.O.Ms.Nos.17 & 115 marked as Exs.B4 & B5 and accordingly, it is seen that the defendants have rightly revised the tariff of the service connection of the plaintiff from III(A) to III(B) in accordance with the

above said GOs and as per the circulars, Exs.B8 & B9 the tariff clarification has been issued by the board now and than and when it is found that the defendants are entitled to revise the bill at any point of time and demand the payment of the arrears due to wrong billing and when it is further found that the consumers like the plaintiff are bound by such revision, as above noted, it is seen that the plaintiff cannot complain that he is entitled to be billed only under Tariff III(A) and not under III(B). When the plaintiff's ice factory squarely falls under the abovesaid GOs and when the clarification issued by way of Exs.B8 & B9 also cover the plaintiff's factory, it is found that even though the plaintiff's unit would have been registered by way of Ex.A1 as a tiny or cottage industry that by itself would not entitle to insist that his service connection should be classified only under Tariff III(A) and not Tariff III(B) and in such view of the matter, merely because, the plaintiff's service connection had been earlier billed under Tariff III(A), it cannot be contended that the defendants, on coming to know of the abovesaid wrong billing, are not entitled to revise the same later. In such view of the matter, I do not find any infirmity in the action of the defendants in revising the plaintiff's service connection from Tariff III(A) to Tariff III(B) and accordingly, calling upon the plaintiff to pay the arrears of charges determined by them within the specified time. In such view of the matter, as rightly determined by the first appellate Court, when the action of the defendants, falls within the parameters of law and the terms and conditions of the supply of electricity, which is binding on the plaintiff squarely in all aspects, as above noted and hence the revised Tariff effected by the defendants are found to be inconsonance with various the relevant G.Os. The mere fact that the plaintiff's unit has been certified as a tiny or cottage industry and the plaintiff's unit does not exceed a load of 10 HP that by itself would not entitle the plaintiff to seek the classification under Tariff III(A) and in such view of the matter, the substantial questions of law formulated in this second appeal are answered against the plaintiff and in favour of the defendants.

14. The counsel for the plaintiff, in support of his contentions, placed reliance upon the decisions reported in ***(2011) 4 Supreme Court Cases 240 (H.Siddiqui (Dead) By LRs. Vs. A.Ramalingam) and (1973) 88ITR330(All) (District Co-operative Development Federation Ltd., Vs. Commissioner of Income Tax).***

15.The contention is projected that the first appellate Court has not given proper reasonings for setting aside the judgement and decree of the trial Court and therefore, the judgement and decree of the first appellate Court is vitiated under Order 41 Rule 31 CPC, however, considering the reasonings of the first appellate Court, in connection with the materials placed on record as discussed above, it is found that the first appellate Court has rightly come to the conclusion that the defendants are well within the law to revise the plaintiff's service connection to III (B) from III(A) and in such view of the matter, it is found that there is no infirmity as such in the judgement of the first appellate Court for reversing the judgement and decree of the trial Court.

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

Resultantly, the second appeal fails and is, accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

09.04.2018

Index : Yes / No

Internet : Yes / No

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To

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   Gobichettipalayam, Erode District

4. The Principal Subordinate Court,
   Gobichettipalayam.

5. The District Munsif Court, Gobichettipalayam.

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

T.RAVINDRAN, J.

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Pre-Delivery Judgment made in S.A.No.2171 of 2003

09.04.2018