

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.03.2018

PRONOUNCED ON : 21.03.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No. 2175 of 2003

P.Subramanian

...

Appellant

Vs.

The Tamil Nadu electricity Board,
rep.by its Assistant Engineer (O & M)
Hasthampatti, Salem.

...

Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 28.08.2003 passed in A.S.No.60 of 2003 on the file of the District Court, Salem, allowing the appeal and set aside the Judgment and Decree dated 04.04.2002 passed in O.S.No.81 of 2000 on the file of the Principal district Munsiff Court, Salem.

For Appellant : Ms.P.Sharmila
for Mr.V.Rajesh

For Respondent : Mr.V.Viswanathan
Standing Counsel for TNEB

JUDGMENT

This second appeal is directed against the Judgement and Decree dated 28.08.2003 passed in A.S.No.60 of 2003 on the file of the District Court, Salem, reversing the Judgment and Decree dated 04.04.2002 passed in O.S.No.81 of 2000 on the file of the Principal district Munsiff Court, Salem.

2. The second appeal has been admitted and the following substantial question of law was formulated for consideration:

" Assuming that a prior show-cause notice is not contemplated in law before changing the service connection from one tariff to another tariff (the latter one being a higher tariff rate) yet on the principles of natural justice, should not such a personal hearing be read into the provision of law relating to imposing tariff on consumers of electricity."

3. The plaintiff has levied the suit for declaration and permanent injunction, challenging the change of Tariff to the service connection effected in his S.M.T Service Station from Tariff III-A to Tariff-V with effect from October, 1998 directing him to pay a sum of Rs.16,448/- being the differential consumption charges. Apprehending that the defendant would disconnect the service connection if the amount as claimed is not paid, according to the plaintiff, he has been constrained to lay the suit against the defendant contending that the change of Tariff is arbitrary, illegal as no show cause notice has been issued to the plaintiff to set forth his case before effecting the change of Tariff.

4. The defendant has resisted the plaintiff's suit contending that as per the memo dated 30.08.1999, the Tariff for all the automobile service stations had been revised and accordingly, the Tariff for the plaintiff's service station was also changed from Tariff III-A to Tariff-V and thereby, a direction had been given to the plaintiff to remit the differential consumption charges amounting to Rs.16,448/- and therefore, it is contended by the defendant that the above said notice was issued for changing the Tariff and demanding the differential charges as determined as per the instructions of the higher authorities and in accordance with the rules and therefore, the suit laid by the plaintiff is not maintainable and liable to be dismissed.

5. In support of the plaintiff's case, PW1 has been examined and Exs.A1 & A2 were marked. On the side of the defendant, DW1 was examined and Exs.B1 to B6 were marked.

6. On an appreciation of the materials placed on record and the submissions made, the trial Court was pleased to decree the suit as prayed for. However, on appeal, the first appellate Court, on an appreciation of the materials placed on record, reversed the judgment and decree of the trial Court and thereby, dismissed the suit laid by the plaintiff. Impugning the same, the present second appal has been laid.

7. It is found that as per the memo issued by the higher authorities concerned, the Tariff for the plaintiff's service station was changed from Tariff III-A to Tariff -V. It is not the case of the plaintiff that the defendant is not entitled to change the Tariff as such. The grievance of the plaintiff seems to be that before effecting the change of Tariff, he should have been given sufficient opportunity to present his views and the defendant having failed to issue any show cause notice prior to the change of tariff, it is contended that the notice issued as regards the change of tariff by the defendant is liable to be set aside and hence, according to the plaintiff, the suit has come to be laid for the relief of permanent injunction.

8. As seen from the arguments projected, according to the plaintiff, there is a violation of the principles of natural justice with reference to the impugned notice marked as Ex.A2. Per contra, the defendant has contended that only in accordance with the rules, the tariff has been changed and there is no scope of any interference as regards the same and only to avoid the payment demanded, the plaintiff has levied the false suit.

9. The only point that arises for consideration is whether the plaintiff should be heard in advance or the plaintiff's view should be ascertained before effecting the change of tariff. It is not the case of the

plaintiff that his service station is not liable to be charged under Tariff -V, all that he would state is that he was not heard before effecting the change of Tariff. In such view of the matter, there is no need for issuing any prior notice to the consumer concerned and the failure on the part of the department to issue prior notice to the consumer would not in any manner vitiate the notice issued by them with reference to the change of Tariff and as rightly determined by the first appellate Court, the Tariff fixation and the price fixation thereof is to be left to the wisdom of the authorities concerned as per the terms and conditions of supply of energy and as there is no any allegation of hostile discrimination on the part of the plaintiff, it is found that the impugned notice marked as Ex.A2 is not tainted with any illegality or not been shown to be issued in violation of the principles of natural justice. In this connection, the first appellate Court has relied upon the full bench decision of Andra Pradesh, High Court, reported in ***A.I.R 2001 Andra Pradesh Page-1 (VBC Ferro Alloys limited, Vs. The A.P.S.E.B.Vidyut Soundha, Hyderabad and others)*** and as rightly found by the first appellate Court, in the light of the above said full bench decision of the Andra Pradesh, which had taken into account the various decisions of the apex Court, accordingly, it is noted that qua the Tariff fixation/price fixation, there is no need for issuing any prior notice as regards the same and the same falls within the wisdom and jurisdiction of the authorities concerned and hence, the procedural aspects of the Tariff fixation/ price fixation has to be accepted

in the generality of cases as valid. Accordingly, it is found that the first appellate Court has rightly negated the reliefs sought for by the plaintiff by setting aside the judgement and decree of the trial Court. I do not find any reason to interfere with the same.

10. For the reasons aforesaid, there is no breach of the principles of natural justice qua the issuance of Ex.A2 notice and there is no necessity for providing an opportunity to the plaintiff to present his view before effecting the change of Tariff, in the light of the decision of the full bench of the Andhra Pradesh, High Court as supra referred to. The substantial question of law formulated in this second appeal is accordingly, answered against the plaintiff and in favour of the defendant.

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

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Index : Yes / No
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21.03.2018

To

- 1.The District Court, Salem.
- 2.The Principal District Munsiff Court, Salem.
- 3.The Section Officer, V.R.Section, High Court, Madras.

T.RAVINDRAN, J.

sms



**Pre-Delivery Judgment made
in S.A.No. 2175 of 2003**

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