

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 24.09.2020
CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

S.A.No.540 of 2010
and
M.P.No.1 of 2010

The Tamil Nadu Electricity Board, represented by its

- 1.The Superintending Engineer,
having office at Tirupattur.
 - 2.The Executive Engineer (O&M),
having office at Vaniyar Street, Gudiyatham.
 - 3.The Junior Engineer (Rural/East),
having office at Kamatchiamman Garden,
R.S.Road, Gudiyatham.
- ...Appellants

/versus/

N.Srinivasan ...Respondent

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, praying against the Judgment and decree dated 22.12.2009 made in A.S.No.30 of 2008 on the file of the Subordinate Judge, Gudiyatham, Vellore District reversing the Judgment and Decree dated 07.03.2008 made in O.S.No.312 of 2000 on the file of the District Munsif at Gudiyatham.

For Appellants : Mr.V.Viswanathan

For Respondent : Mr.E.Durai Vaiyapuri
for Mr.N.Manokaran

J U D G M E N T

(The case has been heard through video conference)

Against the reversal judgment, the present Second Appeal is filed by the Electricity board, who are the defendants in the suit filed by the consumer.

2. The short facts of the case is that the respondent herein obtained service connection for his Mini Flour Mill with 5 H.P motor. Based on the certificate issued by the District Industries center (DIC), Vellore, concession tariff was fixed for the respondent flour mill under tariff III (a) provided for

mini/small industries. Subsequently the Government of Tamil Nadu has passed G.O. Ms.29 Energy (A2) dated 31.01.1995 which is marked as Ex.B-2, reclassifying the tariff for mini flour mill from tariff III (a) to III (b) resulting the concession so far provided for mini flour mill with less than 10 H.P was withdrawn. Despite the Government Order, the respondent flour mill was continue to enjoy electricity at the concessional charge under tariff III (a) till the audit section of the Electricity Department found non implementation of G.O. Thereafter, the 3rd appellant herein has issued a demand notice dated 28.04.1999 (Ex.A-2) which is the subject matter of the suit.

3. Aggrieved by the notice, without affording opportunity demanding a sum of Rs.9,928/- arrears incurred due to change of tariff, the suit has been filed seeking declaration that the impugned notice dated 28.04.1999 (Ex.A2) converted tariff from III (a) to III (b) as illegal, void and inoperative and allow the plaintiff to enjoy the tariff under III (a) of the suit mentioned service connection and consequential injunction restraining the defendants and his men and agent for enforcing the impugned notice.

4. The trial Court after considering the exhibits and the oral evidence has held that there is no error or illegality on the part of the Electricity board converted the tariff for the plaintiff industries from III (a) to III (b).

5. For the said purpose, the trial Court has relied upon the judgment of this Court reported in [2007 (6) M.L.J 42 (MAD)] Tamil Nadu Electricity Board by its Junior Engineer, O & M, Melpatti Section, Gudiyatham Taluk Vs. Mohideen Sahib and another.

6. On appeal filed by the plaintiff, the appellate Court reversed the finding of the trial Court and has allowed the suit on the ground that there is a violation of natural justice principle in issuing the demand notice Ex.A-2 without affording opportunity to show cause why the plaintiff has to pay the difference of Rs.9,928/- due to change of tariff. The lower appellate Court has observed that the defendant has not produced evidence regarding change of tariff from III (a) to III (b). The defendants are liable to issue show cause notice to the plaintiff before issuing the demand notice. Non issuance of show cause notice is in violation of natural justice. Having held so, the lower appellate Court has set aside the decree and judgment of the trial Court and allow the suit in toto.

7. On hearing the learned counsels, the following substantial questions of law are framed:

"a. Whether the Lower Appellate Court erred in not following the Hon'ble High Court judgment dated 29.08.2007 made in S.A.No.1271 of 2006 and dismissed the first appeal?

b. Whether non-issuance of notice regarding change of tariff is not a violation of natural justice as laid down in the judgment of our Hon'ble High Court dated 29.08.2007 made in S.A.No.1271 of 2006?

c. Whether the suit not maintainable and is liable to be dismissed without exhausting the appeal remedy provided under the Rules and Regulations of Appellants/TNEB?

d. Whether the first appellate Court erred in not considering the case of the appellants/TNEB about the exercise of powers of the Government under Section 4 of the Tamil Nadu Revision of Tariff on Supply of Electrical Energy Act 1978, various statutory orders of Government published in the Tamil Nadu Government Gazette?"

8. The learned counsel appearing for the Electricity Board on appeal would submit that the respondent herein obtained service connection for mini flour mill based on the certificate given by the DIC. On the date of application based on the prevailing rules of the Electricity Board, service connection was provided under tariff III (a) at concessional rate. Low tension agreement was executed between the consumer/plaintiff and the Electricity Board/defendant on 03.09.1994, vide Ex.B-1. Later, the Government took a policy decision to withdraw the concessional tariff for flour mill. Accordingly, based on the audit objection, demand notice was issued to the plaintiff on 28.04.1999 (Ex.A-2). While the trial Court has rightly dismissed the suit, the lower appellate Court has erroneously allowed the suit granting relief tantamount to restraining the Electricity board from re-fixing the tariff and calculating the appropriate electricity charge from the consumer/plaintiff. Pointing, because of the erroneous decree passed by the lower appellate Court, the electricity board is now restrained from calculating charge under tariff III (b) even for the present consumption. Hence the lower appellate Court decree is to be set aside.

9. The learned counsel appearing for the respondent would submit that the service connection was provided to the plaintiff flour mill from 1992. The low tension agreement was entered much later in the year 1994. The demand notice alleging arrears from the period starting from 1992 was made. Hence the lower appellate Court has rightly found that the said notice is illegal and not unsustainable. Before changing the tariff and making any demand for arrears, natural justice principle requires hearing. There was patent violation of natural justice

principle in this case. Hence, the lower appellate Court has rightly allowed the suit.

10. On hearing the learned counsels on either side and perusal of the records, this Court finds that the change of tariff is clearly the prerogative right of the electricity board and if there is any consumer is aggrieved, the remedy is available not before the civil Court, but before the Redressal forum under the Act. This issue has been settled in Mohideen Sahib case cited above. The relevant portion of the said judgment is extracted below:

"16..... Admittedly, no separate notice has been issued to the respondents by the appellant before effecting change in tariff and it may amount to violation of the principles of natural justice. Mere violation of the principles of natural justice in the absence or any prejudice being caused to the respondents will not invalidate the change in tariff effected by the appellant. Even if a notice has been issued prior to effecting change in the tariff, since admittedly the plaintiffs are running a flour mill, the plaintiffs could not have given any acceptable explanation to bring their service connection within tariff III-A. Even if an opportunity is given to the respondents that also will not serve any useful purpose. Since they will be putting forth the very same contentions that are being urged before this Court. As pointed out above the only contention of the respondents is that since the plaintiffs units have been certified as tiny unit by the District Industries Centeras evidenced from Exs.A1 to A2 they should be included only in tariff III-A and not under tariff III-B."

11. While the trial Court has rightly understood the spirit of the judgment, the lower appellate Court has misapplied the audi alteram partem principle and has struck down the demand notice. However this Court finds the demand notice (Ex.A2) is unsustainable for other reasons. The notice is bereft of details, it refers only the audit objection and no working sheet enclosed. The audit objection, the calculation how they arrived at Rs.9,928/- is not made known to the consumer. Whether the tariff arrears have been assessed from the date of providing service connection i.e., 1992 or from the date of L.T. agreement i.e., 03.09.1994 or from the date of G.O. Ex.B-2 dated 31.01.1995 and whether the demand was within a period of three years limitation prescribed are not made known either to the consumer or to the Court.

12. Therefore to that extent, the demand notice Ex.A-2 is not sustainable. However, to decide the legality regarding the change of tariff from III (a) to III (b), civil Court is not the appropriate authority. Therefore while upholding the

declaration that impugned notice dated 28.04.1999 as void. The observation of the lower appellate Court for granting permanent injunction against the electricity board from converting the tariff to III (a) to III (b) is erroneous and beyond jurisdiction. Accordingly, the Lower Appellate Court judgment and decree partly set aside. Relief (a) in the suit namely declaring the notice dated 28.04.1999 issued by the 3rd defendant demanding a sum of Rs.9,928/- alone is allowed.

13. Rest of the prayers are disallowed. The substantial questions of law framed, are answered accordingly.

14. In the result, this Second Appeal is partly allowed to the effect stated above by partly allowing the suit and declaring the impugned notice as null and void and dismissing the other relief. Consequently, connected miscellaneous petition is also closed. No cost.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To,

1. The Subordinate Judge, Gudiyatham, Vellore District
2. The District Munsif, Gudiyatham.

Copy to:

The Section Officer, VR Section, High Court, Madras.

+lcc to Mr.V.Viswanathan , Advocate SR.No. 31357

+lcc to Mr.N.Manokaran , Advocate SR.No. 31344

S.A.No.540 of 2010
and M.P.No.1 of 2010

A.SK(25.02.2021)

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