

THE HON'BLE SRI JUSTICE M.LAXMAN

APPEAL SUIT No.1779 of 2000

JUDGMENT:

1. This appeal has been directed against the judgment and decree dated 17.12.1999, in O.S.No.68 of 1998, on the file of the learned I Additional District Judge, Warangal, wherein and whereby, the suit filed by the respondent herein to declare the proceedings No.CEW/FBB/WL-1/98, D.No.158/98, dated 01.05.1998 passed by the second appellant herein by exercising appellant powers as null and void and perpetual injunction, was decreed. Aggrieved by the same, present appeal has been preferred at the instance of the defendants.

2. The appellants herein are the defendants and the respondent herein is the plaintiff in the suit. For the sake of convenience, the parties herein after are referred to as they are arrayed in the suit.

3. The sum and substance of the case of the plaintiff is that the plaintiff is the power consumer of the defendants with consumer No.18008 and the meter was installed in the year 1992. The plaintiff has been regularly paying the power consumption charges as per the bills issued by defendant No.1. However, on 01.10.1997, the defendants have issued a show cause notice to the plaintiff raising

demand of Rs.5,46,231/- towards back billing of power consumption charges for a period from 01.10.1992 to 01.07.1997, which according to the plaintiff barred by limitation and illegal.

4. The plaintiff also pleaded that in response to the show cause notice, they have submitted a representation dated 31.10.1997 for cancellation of the said power consumption charges. But the defendant No.1 without looking into the grounds raised by the plaintiff has confirmed the assessment and demand notice. Aggrieved by the same, the plaintiff preferred an appeal before defendant No.2 and it has also been rejected and such orders suffer irregularity. The plaintiff further pleaded that their power consumption capacity was only 1600 remote line units whereas Hanumakonda exchange was having 16000 remote line units and the back billing was done excessively and there is no proper inspection over three months. The defendants placing all such assessment years tried to disturb the functioning of the plaintiff, as such the present suit has been filed.

5. The case of the defendants is that on 29.07.1997, an inspection was conducted on the service connections of the plaintiff, which is located at Siddartha Nagar, Kazipet, and such inspection was conducted in the presence of SDO, Telephones, Kazipet, by the Assistant Divisional Engineer (ADE), Detection of Pilferage of Energy-II

(DPE), Warangal. At the time of inspection of B.Kishan, Assistant Engineer (D), Kazipet, O.Kariprasad Rao, Assistant Engineer, DPE-II, Warangal and P.Kamal Manohar Rao, Additional Assistant Engineer DP – II Warangal were also present. At the time of inspection meter reading was noted as 04413.8 units and on test, above said officers found that 'R' phase was slow, 'Y' phase was forwarded and 'B' phase was reversed. Thereafter, immediately ADE Warangal has prepared inspection report by noting down the mal functioning of the meters in the presence of SDO, Telephones, Kazipet and such inspection report was endorsed by said SDO. Again on 30.07.1997, further inspection was conducted on the same service connection by the Deputy Engineer, Warangal, Assistant Engineer/DPE-II, Warangal, Assistant Engineer/Dist, Kazipet and Assistant Engineer/CT meters /MRT, Warangal, in the presence of SDPT, Kazipet. At that time meter reading was noted as 04414.6 and the connected loads were noted as follows:

1. Tube lights 59 x 40 w = 2360 watts.
2. Fans 12 x 60 = 720 watts.
3. Air conditioners 6 x 2.7kw = 16200 watts.
4. Vaccum cleaner 1 x 1000 = 1000 watts
5. Water motors 1 x 3 HP = 2200 watts.
6. Bulbs 4 x 250 w.
 1 x 500 w.
 10 x 100 w.

24980 watts or 25 KW

6. At the time of inspection, the meter was tested with Accu-check meter in the presence of the aforesaid officials and they found that meter was recording 10% less consumption. Thereafter, they opened the meter and found that 'R' phase was carbonized and 'Y' phase was fixed in reverse direction and thereafter, they have rectified the meter. These observations were noted in the inspection report. On the basis of the above inspection report, officials have calculated the loss of amounts for the defective period and they have also sent an estimated report to the Superintendent Engineer, Operations, Warangal. The Superintendent Engineer has issued a show cause notice to the plaintiff informing about the said loss viz., Rs.5,46,321/-. Aggrieved by the same, the plaintiff has preferred an appeal to the Chief Engineer and the same was dismissed. The pleadings also show that after rectification and replacement of meter, the consumption of energy was recorded and they found that average consumption of units were 5300 per month. After such average units plus what is recorded in the meter, the impugned orders, which according to the defendants is in tune with the loss estimated by the officials and they prayed to dismissed the suit.

7. Basing on the above pleadings, the Trial Court has framed the following issues:

- “1. Whether the plaintiff’s electrical service connection recorded less consumption?*
- 2. Whether the calculation of loss of energy made by the defendant is true and correct?*
- 3. Whether the suit is maintainable?*
- 4. Whether there is cause of action for the plaintiff?*
- 5. Whether the suit is in time?*
- 6. Whether the plaintiff is entitled to declaration?*
- 7. Whether the plaintiff is entitled to injunction?*
- 8. To what relief?”*

8. The plaintiff, to support his case, examined PW1 and PW2 and relied upon Exs.A1 to A3. The defendants, to support their case examined DW1 and DW2 and relied upon Exs.B1 to B8.

9. The Trial Court after appreciating the evidence on record found that the meter recordings were recorded by incompetent persons and assessment order suffer from lack of jurisdiction and consequently, decreed the suit. Aggrieved by the same, present appeal has been preferred at the instance of the defendants.

10. Heard the learned counsel on either side and perused the materials placed on record.

11. In the light of the above submissions, the points emerging for consideration in this appeal are as follows:

1. Whether the order of assessment as confirmed by the appellate Authority suffer incompetency and lack of jurisdiction?

2. Whether the defendants are entitled for charge on the back billing beyond six months for defective period?

3. Whether the loss estimated by the defendants is in tune with the established procedure?

4. Whether the suit before the Civil Court is barred?

Points 1 to 4:

12. The Trial Court by relying upon Section 26(6) of Indian Electricity Act, 1910 [herein after referred as Act 1910], found that the only electrical inspector, who has been designated by the appropriate Government, alone can give opinion on the correctness of the meter and the inspections, which were done by the officers of the defendants, have no competency. Therefore, the assessment proceedings, which culminated into form any appeal, is devoid of competency. Therefore, the entire assessment proceedings were held to be void.

13. As seen from the entire pleadings of the plaintiff, there are no pleadings to the effect that the officers, who inspected the premises of the consumer connection of the plaintiff, have no competency to inspect and determine the defectiveness of the meter inspected.

14. The learned standing counsel for the defendants contended that the powers of electrical inspectors were delegated to the engineers of the board by virtue of G.O.Ms.No.4, dated 18.01.1997. The officers, who inspected the meters of the plaintiffs have a competency but the trial Court without framing any issue on the said aspect, has concluded the findings. Thereby, defendants have lost their fair chance to contest the claim of the plaintiff that the officers have no competency.

15. The learned counsel for the plaintiff contended that the competency is the question of law, which can be raised at any time and such pleadings need not be there in the plaint.

16. A plain reading of the plaint, it is seen that absolutely there is no challenge to the appeal proceedings on the ground of lack of competency to enquire and determine the correctness of the meter. Had the plaintiff has taken specific pleadings, the defendants would

have opportunity to place on record the delegated powers under the said GO? When such a plea is not raised and no issue is framed in this regard, the defendants have lost the chance to produce sufficient evidence to show that there is delegation of power to the officers who inspected the premises. Therefore, the Trial Court, without framing the issue on this and without looking into pleadings from the plaintiff, ought not to have held that officers have no competency, which tantamount depriving the fair chance to the defendants to place the evidence on record. Therefore, such finding is unsustainable.

17. The learned counsel for the plaintiff contended that the load capacity of the exchange was only 1600 remote line units but the authorities have calculated 5300 as the average loss of units per month, which is excessive and not based on the true reflection of the connected load.

18. The defendants case is that after installation of rectified meter, they found that the average meter reading was 5300 units per month. Second inspection report demonstrated that they have noted down the connected load of various apparatus installed to the consumer connection and basing on such load capacity, the average load was assessed to be 25 KW per month.

19. The learned counsel for the plaintiff contended that the inspection report has contained with regard to the connected load, which is not binding on the plaintiff since the signature of SDPT on the inspection report was under force by threat of disconnection and in fact, there is no such connected load and exchange was only having connected load of 1600 units, not more than that. On the contrary, the learned counsel for the defendants has contended that there is no withdrawal of the statement contained in the inspection report to which SDPT was signatory, to the effect that the connected load mentioned there under was incorrect.

20. As rightly contended by the learned counsel for the defendants, in the presence of SDPT, inspections were conducted and all the inspection notes were brought to his notice and after satisfied with the contentions there under only, he has signed on the reports. Further, the specific findings are also there narrating entire inspection process by SDPT before he signed on the second inspection report. This evidence clearly established that capacity load is what is reflected in the inspection report. The SDO, who is the signatory to the inspection reports entered into witness box and admitted that the endorsement is in his own handwriting and he claimed that he has no technical competency and has not spoken about anything with regard to

connected load as noted down in the inspection report. The connected load is determined basing on the apparatus installed to the connection like tube lights, fans, ACs and other electrical motors, which a normal man can only give the details of such apparatus. There is no retraction of such statement as contended by the learned counsel for the plaintiff.

21. Therefore, determination of monthly average units were based on the connected load as well as the determination of units of consumption after the rectified meter was installed. Basing on that, average monthly units were determined to 5300 and the consumed recorded units were deducted from such units. Ultimately authorities for defective period i.e., 01.10.1992 to 01.07.1997 assessed loss of unbilled units to 2,11,307 and basing on the above back billing, Rs.5,46,231 was determined.

22. The learned counsel for the board has brought to the notice of this Court that the mode of assessment of back billing has given under the general terms and conditions framed by exercising statutory powers under Act, 1910, particularly the term No.22.3.3.3., which reads as under:

“Where it is not possible to select a set of three months as indicated in sub-clause 22.3.3.1 or 22.3.3.2 or if meter is not at all installed, quantity of electricity supply shall be assessed by the Assistant Divisional

Engineer/Divisional Engineer of the area on the basis of connected load and hours of usage of electricity by the consumers. However in the case of industrial consumers due regard shall be given to the production figures and conditions of working in the period under question.

The concerned Asst.Divisional Engineer (Operation), of the area shall issue the assessment notice to the consumer (Appendix-XII) within a week from the date of receipt of the inspection report from the Inspecting officer. The Assistant Divisional Engineer operation shall indicate the details based on which the assessment was made, in the said notice. The consumer shall be advised to file his representation if any to the concerned Divisional Engineer (operation) in the case of LT services and Superintending Engineer (operation) in the case of HT services within fifteen days from the date of receipt of the notice. The Divisional Engineer (operation)/Superintending (operation) as the case may be, shall permit the consumer to represent his case in person, if the consumer so desires.

After due consideration of the material furnished in the reply to the Assessment notice, representation made available if nay, during personal hearing and the facts and material of the case on record, the Divisional Engineer (operation)/Superintending Engineer (operation) as the case may be, shall then pass an order in the case which shall be a speaking order. The amount payable by the consumer towards short billing on account of defect in meter, pursuant to the said order of the Divisional Engineer (operation)/Superintending Engineer(operation), shall be payable by the consumer within 30 days from the date of issue of the order, by cash or by D.D.drawn in favour of the concerned AAO (ERO) in case of LT services and SAO of circle office in case of HT services

23. A reading of the above procedure would clearly demonstrate that in a case the assessment is not possible with reference to three average months prior to the notice of the defective meter, Assistant Divisional Officer shall calculate loss based on the connected load, hours of usage of electricity of the consumer and also a different yardstick was to be adopted for commercial consumers with reference to production figures.

24. In the present case, the loss of non billing was done basing on the connected load only such procedure is in tune with the general terms and conditions framed by the board by exercising statutory powers. Therefore, the procedure adopted cannot be found fault.

25. The next contention is that whether the Board is entitled to recover the arrears assessed basing on the back billing beyond six months? In this regard it is relevant to refer Section 26(6) of the Indian Electricity Act, 1910, which read as under:

“Where any difference or dispute arises as to whether any meter referred to in subsection (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of Such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during Such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity:

Provided that before either a licensee or a consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven days I notice of his intention so to do.”

26. A reading of the above provisions would clearly show that the assessment of the amount on account of defective meter is to be calculated not beyond six months. In the present case, the calculation was done for 57 months, which is contrary to the statutory provisions. This was rightly taken note by the Trial Court. In the determination

even they found that meter is defective, it has no power to assess the amount beyond six months. Therefore, the claim of demand for the assessment year as confirmed by the appellate authority beyond six months suffers from lack of jurisdiction and hit by the prohibition contained under Section 26(6) of Indian Electricity Act. To this extent, the findings of the trial Court require confirmation.

27. As seen from the assessment order, after giving deduction to the recorded units, authorities assessed 211307 units for 57 months and for each month back billing units comes to 3707 which to be payable towards back billing. For six months, it comes to 22,242.

28. The tariff at that time was Rs.3.75/- per unit and average units per six months to be taken as 22,242 and six months total amount comes to Rs.83,407/-.

29. In the result, appeal is allowed in part. The judgment and decree dated 17.12.1999, in O.S.No.68 of 1998, on the file of the learned I Additional District Judge, Warangal, is partly set aside and the following relief is granted to the respondent herein/plaintiff:

The respondent herein/plaintiff is directed to pay an amount of Rs.83,407/- towards defective period, which is confined to maximum period of six months. The said amount is to be deposited within two

months from the date of this order, failing which (i) the appellants herein/defendants are entitled to take appropriate measures as permitted under the law and (ii) the amount carries interest at the rate of 6% per annum for default period till the amount is deposited. No costs. Miscellaneous petitions pending, if any, shall stand closed.

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