



SA.No.740 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2023

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.No.740 of 2005

1. Tamil Nadu Electricity Board,
rep. by the Superintending Engineer,
Villupuram.
2. The Assistant Executive Engineer,
Tamil Nadu Electricity Board (Town),
Tindivanam.
3. The Junior Engineer,
Tamil Nadu Electricity Board (Town),
Tindivanam.

... Appellants

- Vs -

Askar Ali

... Respondent

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 20.02.2003 of learned Sub-Judge made in A.S.No.147/2002 confirming the judgment and decree dated 30.03.1999 made in O.S.No.860/1994 of the learned District Munsif, Tindivanam.

For Appellants : M/s.Hemalatha Gajapathy

For Respondent : Mr.P.Dinesh Kumar
for Mr.T.R.Rajaram



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regard, the plaintiff sought for the relief of declaration and also for the relief of injunction restraining the defendant not to disconnect the service connection.

4. The Written statement in brief:-

The defendants have disputed the contentions made by the plaintiff. According to the defendants, there was a power theft, and also there was a tampering of meter. Hence, a criminal complaint was lodged in Crime No.349 of 1994. Since there was a theft of energy, in pursuance of the terms and conditions of supply, a show cause notice was issued on 27.04.1994. It is the submission of the defendants that, since the plaintiff has not given any satisfactory reply, they were constrained to pass a final order imposing an extra levy of Rs.2,91,835/-. They have also further stated that, if the plaintiff is aggrieved by the order, he shall file an appeal within 60 days from the date of receipt of the order before the first defendant. Therefore, contended that there is a bar of jurisdiction, therefore, the very suit is liable to be dismissed.

5. Evidence and Documents:-

Before the Court below, on behalf of the plaintiff one witness was examined as PW1, and 10 documents have been marked as Exs.A1 to A10.



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On behalf of the defendants, 3 witnesses were examined as DW1 to DW3 and 5 documents have been marked as Exs.B1 to B5.

6. Findings of both the Courts below:

After considering either side submissions, the Trial Court has come to a finding that there was no proof of energy theft and decreed the suit as prayed by the plaintiff. Aggrieved with the said finding, the defendants have preferred an appeal before the First Appellate Court. The First Appellate Court has also confirmed the findings of the Trial Court. Aggrieved with the said order, the defendants are before this Court.

7. Substantial Question of Law:-

When the Second Appeals have been admitted before this Court, this Court has framed the following substantial questions of law:-

“(i) Whether in the light of evidence on record theft of energy is not established and if so whether the appellant is not entitled to demand the compensation as provided under terms and conditions of supply?”

“(ii) Whether the suit itself is maintainable for the failure on the part of the plaintiff to have not exhausted the alternative remedy available before the appellate authority in the department?”



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8. Submissions of the either side counsel:

The learned counsel for the appellants/defendants would submit that a very suit is not maintainable under Clause 8.04 of the terms and conditions of Tamil Nadu Electricity Board. It is the further submission of the learned counsel for the appellants/defendants that the instant suit is liable to be dismissed as the plaintiff did not avail an alternative remedy. It is the further submissions of the learned counsel for the appellants/defendants that in view of the peculiar circumstances of this case, the Trial Court ought to have accepted the circumstantial evidence and would ultimately held that there was an energy theft. The learned counsel for the appellants/defendants has relied the following judgments:-

1. *Punjab State Electricity Board and Ors. Vs. Ashwani Kumar* reported in *MANU/SC/1170/1997*;

2. *M.Prem Selvi Vs. The Executive Engineer, (Distribution) and Ors* reported in *MANU/TN/1882/2007*;

3. *Tamil Nadu Electricity Board Vs. M/s.Krishna Mines* reported in *Indian Kanoon/172946*;

4. *The Superintending Engineer-Distribution, Tamil Nadu Electricity Board and Ors. Vs. S.Sheik Dawood* reported in *MANU/TN/0366/2009*;



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5. *Thirumangalam Agricultural Producers Co-op. Marketing Society Ltd., Vs. The Superintending Engineer, Madurai Electricity Distribution Circle, Tamil Nadu Electricity Board* reported in *MANU/TN/5268/2011*;

6. *Emkay Alloys (P) Ltd., Vs. The Executive Engineer, Tamil Nadu Electricity Board (O & M) and Ors.* Reported in *MANU/TN/1727/2019*.

9. Per contra, the learned counsel for the plaintiff would vehemently submit that there was no energy theft at all, and that the case of energy theft was falsely foisted on account of the wordy quarrel between the employee of the plaintiff and the officials of the defendants. It is the submission of the learned counsel for the plaintiff that the very suit is maintainable in view of the fact that the statutory provisions have not been duly complied with, in conformity with the relevant terms and conditions of the Tamil Nadu Electricity Board. The learned counsel for the plaintiff would also submit that the theft has not at all been established in the manner known to law. Therefore, contended that the question of imposing an extra levy is contrary to law.

10. The learned counsel for the plaintiff relied the judgment of the Hon'ble Supreme Court reported in **(1968) 3 SCR 662** in the case of



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Dhulabhai ETC vs. State of Madhya Pradesh and another and the Hon'ble Punjab and Haryana High Court judgment reported in ***2004 (1) ILR P & H 303*** in the case of ***M/s.Ranbaxy Laboratories Ltd., vs. Punjab State Electricity Board and another***, and the judgments of this Court held in ***S.A.No.1648 of 1999 dated 25.04.2016***, in the case of ***Tamil Nadu Electricity Board and another vs. Alli Ammal***, and in ***S.A.No.2197 of 2004 dated 19.11.2012***, in the case of ***Tamil Nadu Electricity Board and others vs. Shri Iyyan Textiles Mills Pvt. Ltd.***, and in ***S.A.No.1419 of 2003 dated 07.06.2022***, in the case of ***Ramanathasamy Devasthanam vs. the Assistant Engineer, Tamil Nadu Electricity Board and others***. From these judgments, the learned counsel for the respondent/plaintiff impress upon this Court that the suit is maintainable before this Court. Hence, the plaintiff prayed for dismissing this second appeal.

11. I have given my anxious consideration on either side submissions.

12. Coming to the maintainability of the suit, admittedly, the core issue, according to the defendant is theft of energy. But, while perusing the notice issued to the plaintiff, it was issued by the Assistant Divisional Engineer. At this juncture, the learned counsel for the appellants/defendants



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would invite the attention of this Court in respect of the terms and conditions of the Tamil Nadu Electricity Board, Schedule 37, part 1, which deals about the violation and theft of energy. According to the above terms and conditions, the clause 8.00 deals about theft of energy and extra levy. As per the above clause, whenever the theft of energy came to the knowledge of the Board, the Board is entitled to pass an order for extra levy with an appropriate formula under Clause 8.04. While doing so, if consumer having any grievance over such extra levy, they can move an appeal before the appellate authority as defined under Clause 10.01.

13. For ready reference, Clause 10.01 is extra as follows:

<i>S.No.</i>	<i>Type of Service Connection</i>	<i>Officers Authorised</i>	<i>Officers Authorised</i>	<i>Officers Authorised</i>	<i>Officers Authorised</i>
		<i>To inspect</i>	<i>To issue show-cause notice</i>	<i>To make assessment</i>	<i>As appellate Authority</i>
(1)	(2)	(3)	(4)	(5)	(6)
1.	Low Tension Service connection including temporary service connection	Any officer not below the rank of Junior Engineer Grade II	Assistant Executive Engineer	Executive Engineer	Superintending Engineer
2.	High Tension service connection including temporary service connection	Any officer not below the rank of Junior Engineer Grade II	Executive Engineer	superintending Engineer	Chief Engineer



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14. As per the above Clause, in respect of the high tension service connection, the Executive Engineer is the competent Authority to issue Show Cause Notice. For low tension service connection, Show Cause Notice is to be issued by the Assistant Executive Engineer. Apart from that after such Show Cause Notice/ assessment order has to be made by the Executive Engineer in respect of low tension service connection, and for high tension service connection, assessment order has to be made by the Superintending Engineer. The appeal remedy has been provided under Clause 8.4, only in respect of assessment notice.

15. Here, though the pleadings do not disclose, whether the service connection is high tension or low tension, admittedly, the notice was issued by the Assistant Divisional Engineer and not by the Assistant Executive Engineer or Executive Engineer. Apart from that, there was no assessment order to compel the plaintiff to move an appeal before the appropriate authority. Therefore, in view of absence of any assessment order and the notice itself is contrary to law, the remedy under the common law cannot be denied.



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16. At this juncture, it is relevant to refer the judgment of this Court rendered by Single Judge in ***S.A.No.1648 of 1999*** (cited supra), wherein after referring Section 26(6) of the Indian Electricity Act, 1910, this Court held that when there was a faulty meter, in the absence of any proof as to whether the meter was examined by the appropriate authority qua the Electrical Inspector, as provided under Section 26(6) of the Indian Electricity Act, 1910, the defence of faulty meter is unsustainable. Here the allegation of theft of energy is centered around the faulty meter. But by virtue of Section 26(1) of Indian Electricity Act, the ground of faulty meter pales into insignificance, due to non examination of meter by the Electrical Inspector.

17. Therefore, in view of the above peculiar circumstances, this Court could not find any infirmity in filing this suit before the Civil Court as a common law remedy, and the recording of finding of fact that there is no proof in respect of theft of energy.

18. Therefore, this Court is of the firm view that, there is no ground or point to deviate from the finding recorded by both the Courts below. Hence, the same is liable to be confirmed. As a result of which, the substantial questions of law has to be answered in favour of the respondent.



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19. In the result, this Second Appeal is dismissed. There shall be no order as to costs.

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kmi/apd

To

1. The Subordinate Judge,
Tindivanam.
2. The District Munsif,
Tindivanam.



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C.KUMARAPPAN,J

kmi

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