BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **20.08.2024**

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.1320 of 2006
and
M.P(MD)No.2 of 2006

1.The Tamil Nadu Electricity Board,
rep. by its Chief Engineer/Distribution/
Madurai Region, Madurai-7.

2.The Tamil Nadu Electricity Board,
rep. by its Additional Chief Engineer,
Dindigul Electricity Distribution Circle,
Dindigul-2.

3.The Executive Engineer,
Tamil Nadu Electricity Board,
Batlagundu.

4.The Assistant Executive Engineer/East,
Tamil Nadu Electricity Board,
Batlagundu.

5.The Assistant Engineer,
Tamil Nadu Electricity Board,
Sithayankottai. ...Defendant/Appellants/
Appellants

Vs.

M/s.Palmar Mills Private Ltd.,
rep. by its Electrical Engineer,
G.J.Jeyabalan,

Lakshmipuram,
Dindigul Taluk. ... Plaintiff/Respondent/ Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment dated 04.03.2004 made in A.S.No.101/2000 on the file of the Sub-Court, Padmanabhapuram confirming the judgment and decree dated 20.03.1997 made in O.S.No. 983/1995 on the file of the Additional District Munsif, Iranial.

For Appellants : Mr.B.Ramanathan

For Respondent : Mr.V.Muthukamatchi for Mr.C.Muthu Saravanan

JUDGMENT

The appellants are the defendants and the respondent is the plaintiff. The plaintiff filed a suit in O.S.No.570 of 1999, on the file of the Principal District Munsif Court, Dindigul for declaration. The District Munsif Judge, Dindigul has allowed the suit and declared that the assessment order dated 27.02.1995 in respect of electrical connection No.1073 and the hearing notice dated 11.08.1999 in respect of the said electrical connection are illegal. The trial Court ordered that the amount of Rs.8,79,745/- found in the above assessment order and the amount found in the hearing notice of Rs.3,18,905.80/- should be adjusted after deducting the future electricity bill incurred for the electricity connection number 1073 of the plaintiff Mills. Aggrieved against the said judgment and decree, the defendants have filed the first appeal in A.S.No.59 of 2001, on the file of the Additional District and Sessions Court (Fast Track Court), Dindigul. The first appellate Court has dismissed the appeal filed by the defendants by confirming the judgment and decree of the trial Court.

2. Aggrieved against the said judgment and decree, the defendants have filed the present second appeal.

3. The facts of the case:-

(i) The plaintiff is a Private Limited Company duly registered under Indian Companies Act, 1956 having registered office at Pallipalayam, Tiruchengodu Taluk, Namakkal District. The plaintiff company is having a Spinning Mill at Lakshmipuram, Sithayankottai, Dindigul Taluk and they are manufacturing cotton, staple and polyester Yarn and selling the same to their customers. The person, who signed and verified the plaint is the Electrical Engineer working in the Mill and he is well acquainted with the facts of the case. He is authorised by the Board of Directors to file this suit on behalf of the plaintiff company by company's Board Resolution, dated

01.09.1999. The plaintiff's company has obtained Electricity Service Connection for supply of Electricity for their Mill (Unit I) in the year November 1990 and its Service Connection number is HTSC No.01073. The plaintiff established Unit II and they approached the Electricity Board for extension of HT supply to the Unit II vide Lr.No.SE/DAEDC/DGL/AEE/GL/AE-1/TA-3/F.H.T/D 637/94, dated 18/22.03.1994. The Superintending Engineer DAEDC, TNEB, Dindigul the second defendant herein, sanctioned extension of HT Supply to Unit II for a maximum demand of 500 KVA. As per the direction of the second defendant, the plaintiff has sent the readiness report vide their Ref.No.PM/SK/49, dated 17.05.1994 to the second defendant stating that the plaintiff proposed to run the Industry in the middle of June 1994 and requested to effect HT supply for the Unit II. After a long delay of about 6 months, the supply was effected to Unit II on 18.11.1994 and the Service Connection number is HT SC No.01499.

(ii) During October 1994, the installation of the New Machineries in Unit II was carried out and on 10.10.1994 completion report was submitted to the Senior Electrical Inspector He has sent a letter dated 25.10.1994 to the plaintiff directing the plaintiff to complete all the installation work and keep it ready for his inspection and he will inspect the unit on 28.10.1994. He visited the place on 29.10.1994 for inspection of the installation and reported that all the necessary safety measures were properly complied with. After the installation and before commencing of the Unit II, it became necessary to test run the machineries. Hence, on 05.11.1994 the newly erected machineries were test run one after another for each from 9.00 to 11.00 a.m., with the help of generator No.2. The testing was completed by 11.00 a.m. On 05.11.1994 in the first shift totally 42 Units was run through the said Generator No.II and the same was recorded in the Electrical Log Book which is being maintained in the regular course. The plaintiff have already sent relevant Xerox copies of Generator Log Book and Electrical Log Book to the defendants' department for ready reference. As per HT Meter connected to HT SC No.01073 the Meter reading recorded by TNEB officials in the month of October 1994 was 920 KVA. The maximum KVA consumed during November recorded as 920 KVA on 28.11.1994. Therefore during October and November at no point of time the meter reading never exceeded 920 KVA. To prove this facts, the plaintiff have already sent Xerox Copies of Meter Reading Note Book and HT Meter Card of Service connection No.HT SC No.01073 to the defendants' department. While so, the third defendant issued a Show Cause Notice to the plaintiff bearing No.EE/BTL/AE/IER.F.D.No.310/95, dated 10.02.1995 informing the plaintiff that on the morning of 05.11.1994 when the Anti Power Theft squad inspected the Mill, the Power supplied to the Unit I was extended to the Unit II and thereby, exceeded the authorised load and called upon the plaintiff to explain as to why compensation should not be collected. In the said notice, no details were given regarding alleged compensation amount payable thereon. The plaintiff have sent a detailed explanation vide their reply, dated 16.02.1995 under reference No.PM/SK/393/94-95. The plaintiff emphatically deny the alleged unauthorised load. Without considering or examining the points submitted by the plaintiff in their reply, dated 16.02.1995, the second defendant has mechanically passed an order in his Letter No.SE/DAEDC/DGL/AEE/GL/F.APTS/D.No.385/95, dated 27.02.1995. As against the order passed by the second defendant on 27.02.1995, the plaintiff have preferred a Writ Petition before the High Court of Judicature at Madras in W.P.No.3291 of 1995. The High Court granted interim stay on condition that the plaintiff pay a sum of Rs.2,19,940/- on or before 30.03.1995. Accordingly, the plaintiff paid a sum of Rs.2,19,940/- on 28.03.1995 to the defendants' department under Receipt No.631236, dated 28.03.1995. In the said letter, the plaintiff has categorically stated that the said amount was paid only "Under Protest" and with the liberty to get back the amount in future. Pending the above writ petition, the plaintiff have applied to the High Court, Madras in W.M.P.No. 4476 of 1996 for withdrawal of the Writ Petition by making a provision for Appeal to the first defendant. Accordingly, the High Court directed the plaintiff to prefer an appeal before the first defendant within a period of two weeks from the date of order. Accordingly, the plaintiff have filed an appeal on 02.01.1997 vide appeal petition dated PM/SK/702/96-97, dated 02.01.1997. The first defendant had fixed personal hearing for the said Appeal on 03.03.1997 and the Managing Director of the Plaintiff Company namely P.Marichettiyar Participated in the proceedings of the Appeal and enquiry has been conducted by the first defendant at his office. The first defendant examined the Managing Director of the Plaintiff company and recorded his statement. That apart one Sundaramahalingam, who was the Executive Engineer, M.R.T.Salem (then Assistant Executive Engineer, APTS, Dindigul) was also examined on the side of the defendants' department. The said Appeal was argued by the plaintiff's counsel. But the 1st defendant has failed to consider the factual and legal aspects pertaining to the above case.

(iii) The first defendant sent a final order dated 29.03.1997 in the said above Appeal Petition under Ref.No.Lr.No.CE/D/MDU/EE/E1/T1/APTS/M/S.Palmer Mills/D 150/97 dated 29.03.1997. The said order was acknowledged by the plaintiff on 01.04.1997. In the said order, the first defendant confirmed the Assessment Order, dated 27.02.1995 passed by the second defendant and dismissed the Appeal filed by the plaintiff. The first defendant has grossly erred in rejecting the Appeal petition without any reasonable basis or grounds. The first defendant has not passed any speaking order in the order dated 23.09.1997 and it is vague. The first defendant has totally failed to consider the factual and legal aspects as contemplated under the Indian Electricity Act, 1910 and Indian Electricity Rules framed thereunder. The first defendant has grossly erred by coming to a conclusion that the fact of having Tapped L.T.Power supply from the L.T.Panel of the existing HT SC No.01073 of Unit I to the Unit II of near Mills by an underground cable was accepted by the plaintiff. This finding is erroneous, unsustainable and without any basis. The first defendant directed the plaintiff to pay the balance amount of Rs.6,59,805/- within 30 days from the receipt of the said order failing which, the suit service connection will be liable for disconnection without any further notice.

(iv) As per G.O., the plaintiff Mill is entitle for the Power Tariff concession granted by the Tamil Nadu Government and the Mill has been planned and the Project report has been prepared by taking into account of the above said Tariff Concession. The Tariff concession was announced by the Government for encouraging and development of the industry as well as the Employment opportunity. That apart the plaintiff has been requesting the defendants department for Tariff change from Tariff VII to Tariff I for new Unit HT SC.No.01499. Even though, the plaintiff is entitled for the Tariff concession and Tariff change. The plaintiff was deprived of the Tariff concession and Tariff change due to the pendency of the writ proceedings and Appeal proceedings. The plaintiff has remitted a sum of Rs.6,59,905/- by way of LVB Ltd., Dindigul cheque bearing No.CC/95-361332,dated 07.04.1997 being the disputed amount vide Appeal order dated 29.03.1997, since the plaintiff was under dire necessity of Tariff concession and Tariff change. The said payment was made only "Under Protest" and with liberty to get back the said amount. The said payment was made to avoid disconnection of Service connection as threatened in the Appeal Order dated 29.03.1997. The said cheque was sent though plaintiff's covering letter dated 07.04.1997. The defendant department issued a Receipt for Rs.6,59,805/- under Receipt No.703823, dated 07.04.1997. The plaintiff further states that they have been demanding the defendants department for the return of the disputed amount though several letters. But instead of refunding the disputed amount of Rs.8,79,745/- to the surprise of the plaintiff, the second defendant sent a letter under Ref.No.Lr.No.ACE/DEDC/DGL/RCS/A.4/D.No.950/99 dated 11.08.1999by claiming a sum of Rs.3,18,905.80 from the plaintiff as surcharge for belated payment. It is also stated in the said letter that the said amount of Rs. 3,18,906/- will be included in the regular monthly bill for the month of 8/99 CC Bill. It is not fair on the part of the defendants department to claim a huge sum of Rs.3,18,906/- in the regular monthly consumption bills, even though the Assessment amount of Rs.8,79,745/- was already is dispute and pending before the High Court. If the plaintiff has failed to remit the said amount of Rs.3,18,906/- along with the regular monthly consumption charges, the service connection would have been disconnected without any further Notice. The said amount was included in Bill No.107 dated 31.08.1999. Hence to avoid the proposed threatened disconnection, the plaintiff was forced to remit the said amount of Rs.3,18906/- to the defendants department along with Regular monthly Bill for Rs.14,63,052/-. The said disputed amount was made only "under Protest" and with liberty to get back the said amount. This fact was clearly mentioned in the plaintiff's letter dated 03.09.1999 addressed to the second defendant. The impugned Assessment Order dated 27.02.1995 and Demand Notice dated 11.08.1999 passed by the second defendant are illegal and arbitrary and without any basis the first defendant has fixed the compensation amount at a huge sum of Rs.8,79,745/-. Therefore, the plaintiff has filed a suit for declaration that the Assessment Order dated 27.02.1995 and Demand Notice dated 11.08.1999 passed by the second defendant have to be declared as null and void and the defendants have to be directed to adjust the sum of Rs. 8,79,745/- and Rs.3,18,906/- in future monthly consumption bills.

4. (i) The fourth defendant filed a written statement denying all the averments made in the plaint and stated that the plaintiff has applied for HT supply for a demand of 500 KVA to his newly erected second unit in the same compound. The same has been approved and they have expressed their readyness with the Motor and electrical equipment details on 17.5.1994. The same was verified by the Executive Engineer/Batlagundu on 22.06.1994 and found that the machineries were erected and wired and the unit was ready to avail supply. After verification of the readyness by the Executive Engineer, Batlagundu on 22.06.1994, the HIT line and structure works were taken up and completed. The matering set was erected

subsequently and tested by MRT and Special maintenance wing Dindigul subsequently. After completingall the formalities, the supply was effected on 18.11.1994. The Senior Electrical Inspector of the Government issued permission to commissioning the equipments on 8.11.1994 as stated by the plaintiff. Hence, there is no inordinate delay for effecting the service as stated by the plaintiff. As per the terms and conditions the installation of new generator set as stand by him to be approved by the Tamil Nadu Electricity Board. The Generator set of 380 KVA to the new Unit II HTSC No.01499 has been approved only on 10.1.1995. The inspection by Senior Electrical Inspector issuing of the certificate is routine for getting New HT service. There is no any base between the CEIG inspection and APTS inspection of the service. The Generator approval of 380 KVA to the second unit was approved only on 10.1.1995. The plaintiff stated that they had consumed totally 42 units for testing of all motors one by one with the help of Generator No.2. The Generator No.2 is approved only for the stand by unit to the Palmar Mills (P) Ltd., Unit I and not for utilising the same to the newly constructed Unit II for testing purpose.

4(ii). The consumption of 42 units for testing all motors is not true. Power load available at Unit II Load=132.61 KW. All equipments for the above load was kept ready for operation and also certified by the Chief Electrical Inspector of Government on 29.10.1994 as per the statement by plaintiff. The Unit II was ready to avail supply. But service connection was not effected. During the surprise Inspection of APTS on 05.11.1994, LT supply was tapped from the LT panel of the HT SC.No.01073 Unit I and connection to LT panel of M/s.Palmar Mills Unit II Ht SC No.1499 by a 200 sqmm 3 core Under Ground Cable laid underneath the ground and a load of 170.5 HP in Unit II was operated with extended LT supply. The Tong tester reading taken on the cable was 110 AMPS in all the 3 phases at the time of inspection. Thiru.P.Ananthakrishnan, Electrical Supervisor of Unit I was present during the inspection of APTS wing. He has also signed in the observation report of the APTS and accepted on 05.11.1994 at that time of Inspection of Anti Power Theft Squad the Generator 1,2 & 3 of Unit I was not running. Generally, the meter readings are taken in the HT services on fixed dated on 28th of each month as 1 energy consumption and 2 demand. The plaintiff stated the maximum demand reached only, but he has not furnished the energy consumption during the above period. There is a possible way to keep the maximum demand within the sanctioned quantity and increasing the energy consumption by increasing the load connection. hence, the demand reached only cannot be taken as record for this purpose.

The observation report at the time of inspection as stated in the para 8 has proved the violation made by the plaintiff.

4(iii). As per the terms and conditions of supply the show cause notice has been issued vide EE/BTL/AE/IER/F/D.No.340/95, dated 10.02.1995. The show cause notice informed only what kind of violation he had made and ask him to remove the same within the stipulated time. If the consumer does not remove the unauthorised load, hence, the service connection should be liable for disconnection from the supply. The details of unauthorised load made by him also mentioned in the show cause notice as well as in the observation report already served to the consumer at the time of Inspection. In this case, Unit 1 SC No.01073 and Unit II 01499 are different separate Unit. The plaintiff has applied for Power supply to the newly constructed second unit not as an additional load for the unit I.

4(iv). The points submitted by the plaintiff on the reply dated 16.02.1995 for the show cause notice was examined thoroughly and decided that it is not acceptable one and hence, assessment order was issued by Superintending Engineer, Dindigul on 27.02.1995 for the violation made. As per the High Court direction the plaintiff has paid the 1/4 of the

Assessment amount on 28.03.1995. And also subsequently he has withdraw the W.P., from the High Court and subsequently the Board has admitted his appeal petition for the assessment amount of Rs.8,79,745/-. The plaintiff has filed appeal on 02.01.1997 to the Chief Engineer, Madurai. The plaintiff has sent his appeal Memorandum to the Chief Engineer, Madurai and same was also examined by Chief Engineer, Distribution, Madurai. The first defendant is Chief Engineer, Madurai has called upon an enquiry for his appeal and gave a chance to give their remarks against the violation made by them. But they had failed to prove it. Because they are not having any correct records to disprove the above violation.

4(v). On enquiry made by the Chief Engineer, Distribution, Madurai he had rejected the appeal petition and confirmed the assessment amount assessed by the Superintending Engineer, Dindigul on 29.03.1997 for the violation made by him. As per Section 28 of I.E., Act, 1910, states that no person, other than a licensee shall supply energy to the Public except with the previous sanction of the State Government. Whoever in contravertion of the provisions of Section 28, engages in the business of supplying energy, shall be permissible with fine, which may extend to Rs.3000/- as per Section 41 of the Indian Electricity Act. Thus unauthorised supply of energy is an offence and hence, the substance of relevant provision of IE Act 1910 has been assumilated in the Boards Terms and conditions of supply and incorporated in clause 30.01, which says as follows.

"The consumer shall not supply part 2 of whole of the energy supplied to him by the Board to any other person unlead he gets the approval of the Board and also holds a suitable sanction or Licence for distribution and sale of energy granted by the State Government. It has also been categorically specified in clause 30.02 that if a consumer is deducted to be supplying energy unauthorisedly at any time, be shall be liable to pay compensation charges and supply shall be disconnected without 24 hours. This clause exempts only tenants, lessies and employees of the owner of service connection. Hence, as per the above clause, the Chief Engineer, Distribution, Madurai on his detailed enquiry made, he confirm the assessment.

4(vi). There is no assurance has made by the Board for refund of the same. The above said amount was paid by him for the violation made by him and assessed as per the Terms and conditions of supply 30(i) (Tariff Change VII to I) reply to be enclosed. With a view to avail Tariff concession to their industry, the plaintiff has withdrawn the case filed in the High Court, Chennai and paid the penalty for violation charges. Hence, the tariff concession and tariff change has been allowed to the plaintiff for a period of three years.

4(vii). As per the AG audit remark the belated payment charge was claimed for his delayed payment of Assessed amount of Rs.8,79,745/-. As per clause 20.05 of Terms and conditions of supply any amount permitted to be paid in instalments will attract, surcharge for belated payment of instalments. The plaintiff has settled the instalments permitted for the violation charges beyond the scheduled due dates, the BPSC amounting to Rs.3,18,906/- has been levied as per the clause 20.05 and terms and conditions of supply which is in order. It is submitted that the assessment order 27.02.1995 and demand notice dated 11.08.1999 passed by the second defendant are legal and genuine one as per the terms and conditions of supply. As defended in para 8 & 17 the compensation amount a sum of Rs. 879745/- has been fixed as per the Terms and conditions of supply Act. The every orders were issued as per the Indian Electricity Act of Terms and Conditions of power supply and prayed for dismissal of the suit.

5. Before the trial Court, on the side of the plaintiffs, the plaintiff was examined as P.W.1 and Exs.A1 to A38 were marked. On the side of the defendants, two witnesses were examined as D.W.1 & D.W.2 and Ex.B.1 to Ex.B.4 were marked.

6. On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both oral and documentary evidence, decreed the suit in favour of the plaintiff declaring that the Assessment Order, dated 27.02.1995 relating to S.C.No.1073 and the demand notice, dated 11.08.1999 are illegal and unsustainable and further, directed to adjust the sum of Rs.8,79,745/- as per the Assessment Order and a sum of Rs.3,18,905.80 as per the demand notice, with regard to the future electricity consumption charges for the plaintiff Mill.

7. Aggrieved by the said Judgment and decree passed by the Principal District Munsif, Dindigul, the defendants in the suit have filed an Appeal Suit in A.S.No.59/2001 before the Additional District and Sessions Judge (Fast Tract), Dindigul. The first appellate Court, after hearing both sides and upon re-appreciating the evidence available on record dismissed the appeal by confirming the judgment and decree of the trial Court.

8. Challenging the said concurrent judgments and decrees passed by the first appellate Court and the trial Court, the present Second Appeal has been preferred by the defendants.

9. At the time of admitting the present second appeal, this Court had framed the following substantial questions of law for consideration:

> "1) Whether the judgments passed by the Courts below are vitiated by non-consideration of Clause 31.02, First Proviso, of Tamil Nadu Electricity Board Terms and Conditions of Supply of Electricity?

10. The learned counsel appearing for the appellants would submit that the learned District Judge in holding that the procedures envisaged under the Electricity Supply Act, 1910 has not been followed. The learned District Judge ought to have held that the assessment and demand for belated payment of surcharge are in accordance with the terms and conditions. The appellate Court erred in upholding the judgment of the trial Court on the ground that the action of the appellant was belated and absence of proof of damages to the appellants herein. The appellate Court has erred in not appreciating the documentary evidence in its proper perspective. The appellate Court erred in holding that had the appellant had it as unauthorized

supply of energy the department would have disconnected the supply without considering the fact. The learned appellate Court failed to note that such unauthorized extension of energy was contrary to the terms and conditions and hence, the assessment was made. The learned appellate Court in holding that taking supply from Unit 1 to Unit-II to operate the machine in Unit-II is not contrary to the terms and conditions. The learned appellate Court has not correctly followed the relevant clause namely, 31.02 which deals with unauthorized supply of energy. The learned appellate Court failed to note that testing the new plant without approval of the Board is also considered as violation of terms and conditions which are statutory in nature. Accordingly, the Chief Engineer/Distribution, Madurai Region, Madurai has decided the appeal petition and confirmed the payment of balance amount of Rs.6,59,805/- to be paid as per Section 53 of I.E.Act, 1910 and prayed for allowing the appeal.

11. The learned counsel for the respondent would submit that respondent Mill is duly registered under Indian Companies Act, 1956. They have obtained Electricity Service Connection for supply of Electricity for their Mill (Unit I) in the year November, 1990 and its Service Connection No.is HTSC No.01073. Originally, it was granted for Unit-I and then the

sanctioned demand for the said service connection was gradually increased to 1500 KVA. Subsequently, in July 1994 they have requested the TNEB to reduce and refix the sanctioned demand to 1000 KVA. Thereafter, the respondent approached the E.B for extension of HT supply to the Unit II. After a long delay of about 6(six) months the supply was effected to Unit II on 18.11.1994 and the Service Connection No.HT SC No.01499 and thereafter, generator has ben installed with the permission of the Electricity Board. On 08.11.1994 the Senior Electrical Inspector issued permission to commission the equipments. As per HT Meter connected to HT SC No. 01073, the Meter reading recorded by TNEB officials in the month of October 1994 was 920 KVA. The maximum KVA consumed during November recorded as 920 KVA on 28.11.1994. Therefore, during October and November at no point of time the meter reading never exceeded 920 KVA. The third defendant issued a show cause notice to the plaintiff on 10.02.1995 informing the plaintiff that on the morning of 05.11.1994 when the Anti Power Theft Squad inspected the Mill, the Power supplied to the Unit I was extended to the Unit II and thereby exceeded the authorised load and called upon the plaintiff to explain as to why compensation should not be collected. The plaintiff has sent a detailed explanation vide their reply dated 16.02.1995. Without considering or examining the points submitted by the plaintiff their reply dated 16.02.1995, the second defendant has mechanically passed an order dated 27.02.1995. Aggrieved against the said order, the plaintiff has filed a writ petition in W.P.No.3291 of 1995 before the Principal Seat of this Court and in that application, an interim stay was granted on condition that the plaintiff pay a sum of Rs.2,19,940/- on or before 30.03.1995. Accordingly, the plaintiff paid a sum of Rs.2,19,940/- on 28.03.1995 to the defendants department. Pending the above writ petition, the plaintiff have filed a petition in W.M.P.No.4476 of 1996 for withdrawal of the writ petition by making a provision for appeal to the first defendant. Accordingly, the High Court directed the plaintiff to prefer an appeal before the first defendant within a period of two weeks from the date of order. As per the order of this Court, the plaintiff have filed an appeal on 02.01.1997. The plaintiff has sent an appeal memorandum, dated 13.01.1997 as an additional grounds for appeal in continuation of appeal petition dated 02.01.1997.

12. He further submitted that the first defendant had fixed personal hearing for the said Appeal on 03.03.1997. The first defendant examined the Managing Director of the Plaintiff company and recorded his statement. The first defendant sent a final order dated 29.03.1997 in the said above

Appeal Petition under Ref.No.Lr.No.CE/D/MDU/EE/E1/T1/APTS/M/S.Palmer Mills/D 150/97 dated 29.03.1997. The said order was acknowledged by the plaintiff on 01.04.1997. In the said order, the first defendant confirmed the Assessment Order, dated 27.02.1995 passed by the second defendant and dismissed the Appeal filed by the plaintiff and directed the plaintiff to pay the balance amount of Rs.6,59,805/- within 30 days from the receipt of the said order failing which, the suit service connection will be liable for disconnection without any further notice. The plaintiff has remitted a sum of Rs.6,59,905/- by way of LVB Ltd., Dindigul cheque bearing No.CC/95-361332,dated 07.04.1997 being the disputed amount vide Appeal order dated 29.03.1997, since the plaintiff was under dire necessity of Tariff concession and Tariff change. The said payment was made only "Under Protest" and with liberty to get back the said amount. The said payment was made to avoid disconnection of Service connection as threatened in the Appeal Order dated 29.03.1997. The said cheque was sent through plaintiff's covering letter dated 07.04.1997. Instead of refunding the disputed amount of Rs.8,79,745/- to the surprise of the plaintiff, the second defendant sent a letter under Ref.No.Lr.No.ACE/DEDC/DGL/RCS/A.4/D.No.950/99 dated 11.08.1999 by claiming a sum of Rs.3,18,905.80 from the plaintiff as surcharge for belated payment. It is also stated in the said letter that the said amount of Rs.3,18,906/- will be included in the regular monthly bill for the month of 8/99 CC Bill. It is not fair on the part of the defendants department to claim a huge sum of Rs.3,18,906/- in the regular monthly consumption bills, even though the Assessment amount of Rs.8,79,745/- was already is dispute and pending before the High Court. If the plaintiff has failed to remit the said amount of Rs.3,18,906/- along with the regular monthly consumption charges, the service connection would have been disconnected without any further Notice. The said amount was included in Bill No.107 dated 31.08.1999. Hence to avoid the proposed threatened disconnection, the plaintiff was forced to remit the said amount of Rs.3,18,906/- to the defendants department along with Regular monthly Bill for Rs.14,63,052/-. Therefore, the plaintiff has filed a suit for declaration that the Assessment Order dated 27.02.1995 and Demand Notice dated 11.08.1999 passed by the second defendant have to be declared as null and void and the defendants have to be directed to adjust the sum of Rs.8,79,745/- and Rs.3,18,906/- in future monthly consumption bills.

13. Heard the learned counsel appearing for the appellants and the respondent.

14. It is seen from the records that both the Courts below have concurrently held and allowed the claim made by the plaintiff. It is to be seen that as per the show cause notice dated 10.02.1995 the third defendant informed the plaintiff that on 05.11.1994 when the Anti Power Theft Squad inspected the Mill, the Power supplied to the Unit I was extended to the Unit II and thereby exceeded the authorised load and called upon the plaintiff to explain as to why compensation should not be collected. After three months of the inspection, the third defendant has issued the show cause notice dated 10.02.1995 and no prior notice was given. The plaintiff has remitted a sum of Rs.6,59,905/- by way of LVB Ltd., Dindigul, dated 07.04.1997 being the disputed amount vide appeal order dated 29.03.1997. The first defendant sent a final order dated 29.03.1997 in the said above Appeal Petition under Ref.No.Lr.No.CE/D/MDU/EE/E1/T1/APTS/M/S.Palmer Mills/D 150/97 dated 29.03.1997. The said order was acknowledged by the plaintiff on 01.04.1997. In the said order, the first defendant confirmed the Assessment Order, dated 27.02.1995 passed by the second defendant and dismissed the Appeal filed by the plaintiff and directed the plaintiff to pay the balance amount of Rs.6,59,805/- within 30 days from the receipt of the said order failing which, the suit service connection will be liable for disconnection without any further notice. The plaintiff has remitted a sum of Rs.6,59,905/-

by way of LVB Ltd., Dindigul cheque bearing No.CC/95-361332,dated 07.04.1997 being the disputed amount vide Appeal order dated 29.03.1997, since the plaintiff was under dire necessity of Tariff concession and Tariff change. The said payment was made only "Under Protest" and with liberty to get back the said amount. The said payment was made to avoid disconnection of Service connection as threatened in the Appeal Order dated 29.03.1997. The said cheque was sent through plaintiff's covering letter dated 07.04.1997. Instead of refunding the disputed amount of Rs.8,79,745/- to the surprise of the plaintiff, the second defendant sent a letter under Ref.No.Lr.No.ACE/DEDC/DGL/RCS/A.4/D.No.950/99 dated 11.08.1999 by claiming a sum of Rs.3,18,905.80/- from the plaintiff as surcharge for belated payment. It is not fair on the part of the defendants department to claim a huge sum of Rs.3,18,906/- in the regular monthly consumption bills, even though, the Assessment amount of Rs.8,79,745/- was already paid.

15.The learned counsel for the appellants would submit that the plaintiff has already paid the assessment amount of Rs.8,79,745/- and therefore, a sum of Rs.3,18,905.80/- as surcharge amount, which was already paid by the plaintiff may be adjusted through the upcoming monthly consumption charges.

15. Therefore, the amount paid by the plaintiff for a sum of Rs.8,79,745/- to be sustained and the order, dated 11.08.1999 claiming a sum of Rs.3,18,905.80/- as surcharge amount is set aside. The appellants/Electricity Board is directed to adjust the surcharge amount of Rs.3,18,905.80/-, already deposited, through the upcoming monthly consumption charges.

16. Accordingly, the second appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

20.08.2024

Index : Yes/No
Internet : Yes/No
am

To

1.The Sub-Court,
Padmanabhapuram.

2.The Additional District Munsif,
Iranial.

3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

V.BHAVANI SUBBAROYAN, J.

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Judgment made in

S.A(MD)No.1320 of 2006

20.08.2024