

(1992) 09 MAD CK 0059
In the Madras High Court
Case No : C.S. No. 256 of 1983

Dr. N. Rangabashyam

APPELLANT

Vs

The Tamil Nadu Electricity Board and two others

RESPONDENT

Date of Decision : 09-09-1992

Acts Referred:

Contract Act, 1872 — Section 20, 22
Electricity Act, 1910 — Section 24, 24(1)

Citation : (1992) 09 MAD CK 0059

Hon'ble Judges : Pratap Singh, J

Bench : Single Bench

Advocate : V.S. Subramaniam, for the Appellant; C. Neelamegham, for the Respondent

Judgement

Pratap Singh, J.—Suit for declaration that the action of the defendants in revising the Bills from March, 1974 upto date claiming a sum of Rs. 2,76,485/- is illegal and consequential injunction and for an order directing the defendants to refund Rs. 5,856-82. The plaintiff's case is briefly as follows: The plaintiff applied for high tension supply of electricity energy in or about March, 1974. The high tension supply was given by the defendants in March, 1974. The rate fixed for the high tension supply throughout the years from March, 1974 to October, 1981 was with multiplication factor $\frac{4}{3}$. The plaintiff had been paying the bills. While so, suddenly the second defendant sent a letter dated 8.4.83/13.4.83 to the plaintiff in which the second defendant has stated that with regard to the bills rendered in respect of high tension supply to the plaintiff, instead of applying correct multiplying factor of $\frac{8}{3}$ to arrive at the actual MT and energy consumption, the multiplied factor applied was only $\frac{4}{3}$ and that this mistake was detected at the time of inspection on 26.11.81. From November, 1981, the bills have been rendered applying the correct multiplying factor viz., $\frac{8}{3}$ and the same has also been paid by the plaintiff. The bills for the period from March, 1974 to October 1981 was revised, applying the correct multiplying factor of both MT and energy consumption and due to the revision of bills, Rs.

2,69,934-73 was sought to be debited to the account of the plaintiff. The bills for December, 1981 to January 1982 were also revised based on the average consumption of 12 months which worked out higher than the recorded MD during the above months. This change in the average of 12 months in the MD was stated to be due to revision of MD from March, 1974 to October 1981. The worked out statement also accompanied the said letter regarding 92 bills. The plaintiff stated that payment by him at the increased rate applying multiplying factor of $8/3$ was only under protest and to prevent disconnection of supply. It was not in acceptance of the right of the defendants to collect the revised rate at the increased rate with multiplying factor $8/3$. Subsequently, the first defendant sent a communication to the plaintiff requiring payment of Rs. 2,76,485/-. It was accepted by the defendant that carelessness and negligence of their own employees resulted in not rendering the bills at the correct rate.

2. No opportunity had been given to the plaintiff to reduce the current consumption of high tension to bring it within the load of the working factor $4/3$. The plaintiff could have recovered from the patients, if bills had been rendered from the beginning. The meter is under the control of the defendants. The plaintiff could not claim rebate from the income tax Department. The plaintiff could not recover from the patients. For no fault of his the plaintiff is threatened with disconnection of both high tension and energy consumption. The Tamil Nadu Electricity Board has no right to proceed for recovery under Land Revenue Recovery Act. The defendants have not till now stated as to how the higher multiplying factor of $8/3$ will apply and not $4/3$. Even if the defendants want to recover the amount they are bound by law of limitation. The electricity, being movable goods, the period of limitation is three years. In the instant case, the revision has been made in April 1983, claiming Rs. 2,76,485/- from March, 1974 till October 1981 in utter disregard of law of limitation. The defendants cannot be allowed to take advantage of their wrong acts. They are estopped from claiming the above sum. The plaintiff sent a cheque for Rs. 5,856-82 being the consumption charges upto 29.4.83 as per the bill at the higher rate, under protest. The plaintiff is unable to determine the exact amount over-paid, the excess amount collected is refundable to the plaintiff. Hence the suit for the aforesaid reliefs.

3. The first defendant has filed written statement denying the allegations made in the plaint and has adopted the written statement filed by the second defendant.

4. The second defendant has filed written statement putting forth the following pleas:

It is true that on the application of the plaintiff, electricity supply for HT was effected to the plaintiffs nursing home on 12.3.74 under the then Tariff II and now Tariff VII (General purpose) for a contracted load of 100 KVA. It is also true that from 12.3.74 to October 1981, the multiplying factor to arrive at the actual consumption and MD adopted was treated as $4/3$. Adopting the multiplying factor

4/3, bills were rendered throughout the above period. Though the plaintiff was intimated of the amount payable by him, due to revision of bills of this office letter dated 8.4.83/13.4.83, the fact of application of wrong multiplying factor of 4/3 was intimated to the plaintiff personally on 26.11.81. The Divisional Engineer also informed that from the next bill, viz., (from November 1981) the correct multiplying factor of 8/3 will be applied. Bills from November 1981 onwards have been rendered to the plaintiff adopting the revised multiplying factor 8/3 and the plaintiff was also paying the bills without any protest.

5. Rs. 2,76,485/- being the amount to be paid by the plaintiff due to revision, was included in the bill for April 1983 amounting to Rs. 5,856-82 totaling in all Rs. 2,76,485/-. But the plaintiff paid only regular bill for April 1983 amounting to Rs. 5,856-82 as a protest for having adopted the multiplying factor 8/3. This denial of acceptance or correct multiplying factor of 8/3 is only an after thought. The sum of Rs. 2,70,628-35 was claimed and included in the bill for April 1983. It represents the charges for the difference between the units and MD already charged and to be charged consequent on adopting the multiplying factor 8/3 from the date of supply to October 1981. The time of payment of HT bills is only 8 days as per general condition 3 of the conditions and rates for supply of energy. This stipulation is effective from 25.5.79. Inasmuch as the defendant has not proceeded against the plaintiff for recovery of the amount under Revenue Recovery Act, the plaintiff has no reason to raise this issue in this case. The Divisional Engineer had explained to the plaintiff as to how the mistake has happened and as to why the multiplying factor should be 8/3 and not 4/3. The limitation starts from the date of detection of mistake viz., from 26.11.81, and the claim is within the period of limitation. Hence dismissal of the suit is prayed for.

6. The third defendant has filed written statement adopting the written statement filed by the second defendant. The plaintiff has filed a reply statement refuting the allegations made in the written statement of the second defendant.

7. The following issues were framed for trial:

- (1) Whether the revision of tariff rates on the basis of multiplying factor adopted subsequently by the defendants is valid and enforceable?
- (2) Whether the tariff rates sought to be collected are barred by limitation?
- (3) To what relief, is the plaintiff entitled?

8. Issue No. 1: The plaintiff started a clinic called "Sree Ramana Clinic" at No. 38, Venkatanarayana Road, T. Nagar, Madras-17. He applied for high tension supply of electric energy in March 1974. On his application as aforesaid, electricity supply for high tension was effected to the plaintiffs clinic on 12.3.74, under the then tariff II and now tariff VII (General Purpose) for contracted load of 100 KVA. From March 1974 to October 1981, the rate fixed for high tension supply was with the multiplying factor 4/3. Bills were rendered adopting the

multiplying factor $4/3$ throughout period. The plaintiff had been paying the bills. While so, the second defendant has written to the plaintiff by letter dated 8.4.83/13.4.83 letter No. RA/RT/245/Building/D 2018-Account No. 245 in which the second defendant has stated that with regard to the bills rendered in respect of high tension supply to the plaintiff, instead of applying correct multiplying factor of $8/3$ to arrive at the actual MT and energy consumption, the multiplying factor applied from the very commencement of supply was only $4/3$. Thus the second defendant wants tariff rate on the basis of multiplying factor $8/3$. According to the defendants, $8/3$ is the correct multiplying factor and instead of it, wrong multiplying factor viz., $4/3$ was adopted from the beginning and this mistake was detected at the time of inspection on 26.11.81. I shall first examine the evidence with reference to the defendant's contention that correct multiplying factor is $8/3$ and by mistake, from the beginning, the wrong multiplying factor of $4/3$ was applied.

9. D.W. 1 A.M. Veerappan, was Assistant Engineer in Madras Electricity System (South) in 1981, in charge of T. Nagar division in which the plaintiff's clinic (Sree Ramana Clinic) is situated. He has stated that in the Pre-Commission Report dated 22/3/74, by mistake multiplying factor is given as $4/3$. (I shall refer to multiplying factor as "MF" hereafter). It is his evidence that correct MF is $8/3$ and because in the Pre-Commission Report the MF is given as $4/3$, the bills were prepared accordingly instead of $8/3$. It is his evidence that the multiplying factor of the current transformer was taken as 20 instead of 40. He would add that in the name plate of the current transformer, it was written as 100/5 Amps, and it was painted as "to be used with 1 loop". He would further state that one loop means two turns and if two turns are used, the multiplying factor is only 20 and in this case only one turn was used and therefore the multiplying factor should be 40. He has also stated that only one turn was provided. Ex. D7 is the Pre-Commission Report dated 23.2.74. This witness explains as how this mistake has occurred. He would say that in this case the multiplying factor should be 200/5 Amps., the whole divided by 150/5 and the whole thing multiplied by 2 and it works out as $8/3$. He has also reiterated by stating that the same current transformer is still functioning from the date of service connection and that if it is one turn, the multiplying factor must be only $8/3$ and it is one turn from the beginning itself and for two turns it will be $4/3$. and the adoption of $8/3$ is correct. He has also stated that this mistake was found out in 1981. P.W. 1 has explained as how the mistake has occurred and how it was found out in 1981. His evidence would clearly go to show that the correct MF is $8/3$ and not $4/3$ and that this mistake was found out in 1981.

10. There is no contra evidence on the side of the plaintiff. P.W. 1 Chitralekha is the wife of the plaintiff. The following question was put to her:

According to them, instead of applying the multiplying factor as $8/3$, they have applied $4/3$ during the very beginning, by mistake.

The reply was "I do not know". Thus, as against the positive evidence tendered

by D.W. 1 as how the mistake had occurred, there is no contra evidence. He has very clearly stated that the loop was not provided and only one turn was provided and in this case only one turn was used and therefore the multiplying factor should be 40 and it works out at 8/3. He has also explained it and that the mistake was found out on 26.11.81 when the plaintiffs service connection was inspected by the then Divisional Engineer A.P. Ramasamy with whom he had accompanied. The correct multiplying factor is 8/3 but my mistake 4/3 was adopted as multiplying factor from the beginning.

10A. Mr. V.S. Subramaniam, the Learned Counsel for the plaintiff, would submit that the mistake was on the part of the Electricity Board that it was an unilateral mistake and as such S. 22 of the Contract Act is applicable and as per the same contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact. As per S. 20 of the Indian Contract Act, where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void. We have to see whether one of the parties was under a mistake as to a matter of fact or both parties to the agreement are under a mistake as a matter of fact essential to the agreement. In this case there was a mistake with regard to the multiplying factor. To the question to D.W. 1, that in view of the fact that the unit is sealed, at any point of time, can the consumer like the plaintiff find out the number of turns or as to whether the multiplying factor is one or the other, he had replied that the plaintiff cannot do it. He has also stated that periodical tests are made once in a year and this meter was installed in 1974 and till 1981 for about seven years there has been periodical tests by the Engineering Department of the Electricity Board to find out whether the meter is correct and whether the denominational factor is correct etc... He has also admitted that according to the name plate found on the meter, the officials of the Electricity Board had checked the meter all these seven years and found out that the reading given and arrived at by the Electricity Board was correct. In the instant case, the plaintiff is a consumer of high tension supply. D.W. 1 has stated that high tension consumer is different from ordinary L.T. consumer that TNEB is giving supply at higher voltage i.e., 11,000 Volts and so the consumer is having H.T. equipments and they should employ proper technical knowing persons. P.W. 1 was questioned as to whether they have employed any technical knowing person, she has replied as follows:

I have got an Electrician and a Supervisor according to H.T. conditions. To the further question as to whether the supervisor is one who is qualified according to conditions of the Electricity Board, she has answered in the affirmative. Thus it is a matter of admission that plaintiff is having an Electrical and a Supervisor, properly qualified according to conditions of the Electricity Board. She has also admitted that her Supervisor knows about the technical side.

11. To D.W. 1, the following question was put.

Assuming whether there is a qualified Supervisor or not, the tests that you make

to give in the name plate the denomination factor cannot be verified or counter checked by the Supervisor?

He has answered as follows:

They can check. It is possible for them to check.

To the further question "It is a sealed unit. How do you expect these people to check up?" he has answered "They have got meters and their panel. They can check up and compare the consumption." He was further questioned "The mistake if at all it exists was within the exclusive knowledge and checking facility of the Electricity Board?" D.W. 1 has answered as follows:

The Tamil Nadu Electricity Board as well as the H.T. Consumer can also find out the multiplying factor.

As against the positive evidence of D.W. 1 that the qualified Supervisor can also find out the multiplying factor, there is no contra evidence. The qualified Supervisor employed by the plaintiff was not examined by them. From the above pieces of evidence, it transpires that the Supervisor employed by the HT consumer, in this case the plaintiff, can find out the multiplying factor. But yet the Supervisor of the plaintiff has not found it out. The inference is clear that plaintiff is also under a mistake with regard to the correct multiplying factor.

12. D.W. 1 was questioned as follows:

So far the consumer is concerned, he does not know whether there is one turn or one loop, the whole thing will be in the sealed unit?

The answer was "As such he cannot know." To a further question "Actually the consumer does not also know while you give connection whether one turn is used or half turn is used?" The answer was "He would not know." The above answers would further demonstrate that the consumer also does not know what is the correct multiplying factor. Thus there is a mistake on the part of both the parties as to matter of fact essential to the agreement. So S. 20 of the Indian Contract Act is applicable to this case and not S. 22 of the said Act. At this juncture itself, I would like to mention that the mistake as above and the calculation of electricity charges on the basis of a wrong multiplying factor viz., $\frac{4}{3}$ was solely the making of the staff of the defendants 1 and 2. Even in the beginning they made a mistake. Despite periodical checks every year, they continued to adopt the same multiplying factor $\frac{4}{3}$ till the mistake was ultimately detected on 26.11.81. The plaintiff is in no way responsible for this application of a wrong multiplying factor by the staff of the defendants 1 and 2.

13. Mr. V.S. Subramaniam, would rely upon a catena of decisions in support of his contention that there was only unilateral mistake in this contract. In *Haji Abdul Rahman Alla Rakhia and another v. The Bombay and Persia Steam Navigation Company* (ILR 16 561), in the agreement, the date was a matter materially inducing the agreement and with regard to that date both parties were

under a mistake and so it was held that there could be no rectification, but only cancellation. In *Khuda Bux v. Fateh Chand* (10 IC 343) it was held that a contract entered into under a mistake of fact is only voidable and is binding until it is avoided. In *Tamplin v. James* (AER 1874 80 560) the facts were, the description of property was accurate and free from ambiguity and the vendor's agents had said nothing to mislead the defendant and the defendant had acted under a mistake caused only by his own failure to ascertain what he was buying and therefore it was held that he must abide by the consequences of such failure. The facts of the case before me are that the plaintiff as well the defendants were under a mistaken impression with regard to the correct multiplying factor. It is not as if the plaintiff was knowing the correct multiplying factor. The facts available in the instant case are totally different from the facts available in these reported cases, and they are not applicable to the instant case. In *Riverlate Properties Ltd., v. Paul* (All England Reports (1974) 2 AER 656) it was held that unilateral mistake in a lease was not a ground for rescission. In *Mallikarjunian and others v. Sundaraiya* (AIR 1955 NUC 1840), it was held that a mistake made by a party to a contract or by his counsel would not be sufficient under S. 20 to enable that party to resile from the contract and that such a mistake would be unilateral and would fall under S. 22 and cannot be used to avoid the contract. The Learned Counsel for the plaintiff also relied upon *State of Jammu and Kashmir v. Sanna Ullah Mir* (A.I.R. 1966 J & K 45), *Namayya v. Union of India* (A.I.R.1958 AP 533) and *U.P. Government Vs. Lala Nanhoo Mal Gupta*, . They are of cases where there was unilateral mistake on the part of one of the parties and so it was held that the contract cannot be avoided by one of the parties. The facts of the case before me, being different, these rulings are not applicable.

14. To sum up, the defendants have proved that the revision of tariff rates on the basis of multiplying factor adopted subsequently is correct. The plaintiffs case that there was a unilateral mistake and so defendants cannot avoid the contract is not accepted by me since the evidence would show that mistake was on the part of both the parties. So it follows a provision of tariff rates on the basis of multiplying factor adopted subsequently by the defendants is valid and enforceable. I answer this issue in the affirmative.

15. Issue No.2: The defendants want to collect electricity charges by adopting the multiplying factor 8/3 from the very date of giving up HT electricity supply to the plaintiff from March 1974 up to October 1981 which claim comes to Rs. 2,76,485/-. Mr. V.S. Subramaniam, would submit that the claim cannot be made for a period of more than three years and the claim beyond that period is barred by time. In *Srinivasa Ginning Factory, Srivilliputtur Vs. The Madras State Electricity Board*, it was held that limitation for filing suit to recover electricity charges for period subsequent to the State Electricity Board coming into existence is governed by Art. 14 or 15 of the Limitation Act. In this case, the learned Judge has laid as follows:

It cannot be disputed that electricity is "goods" and that the suit by the Board

will be governed by Art. 14 or 15 of the Indian Limitation Act, 1963.

Period of limitation for Art. 14 is three years from the date of delivery of goods. Period of limitation for Art. 15 is as well three years from the time when the period of credit expires. So it is clear that period of limitation for claiming charges for supply of electric energy is three years.

16. Mr. C. Neelamegham, the Learned Counsel appearing for the defendants, would submit that though the period of limitation for claiming the charges for supply of electric energy is three years, Electricity Board has got another right viz., to disconnect electric supply if the amount due to be paid to the Electricity Board was not paid by the consumer. His further contention is that while exercising this right, the Electricity Board can do it even if the amounts due are for a period beyond the period of limitation viz. three years. He relied upon S. 24(1) of the Indian Electricity Act, 1910 which reads as follows:

24. Discontinuance of supply to consumer neglecting to pay charge- (1) where any person neglects to pay any charge for energy or any sum, other than a charge for energy, due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days' notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer.

(emphasis supplied)

His contention is that the word "due" includes neglect to pay time barred claim also. It is his further contention that in view of S. 24(1) of the Act, the defendants are within their rights to disconnect supply of electric energy to the plaintiff if the entire amount due arrived on the revised basis of multiplying factor 8/3 was not paid by the plaintiff. Mr. Neelamegham further relied upon ruling in *Bharat Barrel and Drum Manufacturing Co. Pvt. Ltd. Vs. The Municipal Corporation of Greater Bombay and Another*,

In the above ruling, it has been laid as follows: in para 13 of the judgment:

It has been provided that the right to discontinue the supply of electricity is without prejudice to the licensee's right to file a suit to recover the amounts, since by reason of disconnection of the supply the licensee will not necessarily obtain the amounts due from the consumer. It became necessary therefore to protect the licensee's right to recover such amounts by ordinary civil action and merely because in such an action the defendant to the suit i.e., the consumer may have the defence of limitation open to any portion of the claim would not warrant such considerations being applied to the licensee's right of discontinuance of supply for non-payment of the amounts owed to the licensee.

The provision contained in S. 24(1)) which enables the licensee to discontinue electric supply to, a particular consumer is mainly by way of relieving of the licensee of the obligation on him to be found contained in S. 22 viz., to make supply of electricity on application to all consumers within the area of supply. Once the proper position is perceived, then there is no warrant for obliging the licensee to go on supplying electricity to a consumer who has not paid the amounts in respect of the supplies made to him in the past on the ground that if the licensee were to file a suit, the claim on part thereof would be barred by the law of limitation. The provision in our opinion, would clearly warrant the wider meaning to be given to the word "due" rather than the narrower meaning, as the wider meaning would be more in accord with the scheme of the statutory provisions under consideration as also with commercial honesty.

17. Per contra, Mr. V.S. Subramaniam, would submit that the three year period of limitation is applicable even with regard to this claim on paid disconnection of supply of electric energy. He would further submit that defendants are estopped from claiming Rs. 2,76,485/- as they have allowed to change the position detriment to the plaintiff who charged only as administrative charges the electricity consumption at the rate of 4/3 and that plaintiff could not claim recovery of amount from income tax Department or from his patients from whom he had only claim current consumption charges at the multiplying factor 4/3. In my opinion, the word "due" occurring in S. 24(1) should be construed as the amount lawfully due. Otherwise it would lead to hardships to the consumer who has been lulled into a silence for so many years on the assumption that the multiplying factor was only 4/3 and suddenly asked to pay a huge sum of nearly Rs. 3 lakhs being the excess amount payable by the plaintiff if the multiplying factor is adopted as 8/3 For more than about seven years. As I have already pointed out, this mistake is one for which the plaintiff cannot be blamed. It was due to the wrong calculation made by the staff of the defendants 1 and 2. Though there were periodical checks for these seven years, they have not corrected it. The blame is squarely on the part of the staff of defendants 1 and 2. They cannot take advantage of their own negligence and mistake and saddle liability all of a sudden on the plaintiff. If the plaintiff had known the correct multiplying factor of 8/3, he would not have consumed so much electric energy. The hardship pointed out by the Learned Counsel for the plaintiff which I have referred to supra would not have occurred. Having allowed the plaintiff to act on the assumption that the correct multiplying factor was 4/3, it is equally not open to the defendants 1 and 2 to suddenly turn round and say that correct multiplying factor is 8/3 and plaintiff should pay the excess amount for these seven years. They are within their rights to claim the amounts due within the period of limitation for the amount due towards electric charges arrived at by applying the correct multiplying factor 8/3. In view of the above reasons, I am not able to accept the view held in *Bharat Barrel and Drum Manufacturing Co. Pvt. Ltd. Vs. The Municipal Corporation of Greater Bombay and Another*,

18. In view of the above, under issue No. 2, I hold that the tariff rates sought to

be collected are barred by limitation except to the extent of three years from the date of demand made under letter Ex. P2.

19. Issue No. 3: In view of my finding under issue No. 1, it follows that the payment of Rs. 5,856-82 made by the plaintiff at the increased multiplying factor 8/3 for consumption charges up to 29.4.83 is in order and the plaintiff cannot claim refund of the same.

20. In view of the above, the plaintiff is entitled to declaration that the action of the defendants in revising the bills from March 1974 upto date claiming Rs. 2,76,485/- is illegal excepting with regard to three year period prior to the date of j Ex. P2 dated 8.4.83 and for grant of injunction restraining the defendant from recovering the amount as mentioned supra. The claim for refund of Rs. 5,856-82 has to be dismissed. I answer this issue accordingly. In the result, the suit is decreed for declaration that the action of the defendants in revising the bills from March 1974 up to date claiming Rs. 2,76,485/- is illegal, excepting with regard to three year period prior to the date of Ex. P2 dated 8.4.83 and for grant of injunction restraining the defendants from recovering the amount to the extent mentioned supra. The claim for refund of Rs. 5,856-82 is dismissed. Since the parties have succeeded in part, they shall bear their respective costs.