
(1986) 04 BOM CK 0001

In the Bombay High Court

Case No : Second Appeal No. 26 of 1985

Maharashtra State Electricity Board

APPELLANT

Vs

Trimbakrao Narayan Phulari and Others

RESPONDENT

Date of Decision : 03-04-1986

Acts Referred:

Electricity Act, 1910 — Section 24

Citation : (1986) 3 BomCR 295 : (1987) MhLj 237

Hon'ble Judges : G.G. Loney, J

Bench : Single Bench

Advocate : S.N. Naik, for H.T. Joshi, for the Appellant; M.V. Deshpande, for the Respondent

Final Decision : Allowed

Judgement

G.G. Loney, J.—A very interesting but important question of interpretation of section 24 of the Indian Electricity Act, 1910 is mainly the subject matter of this appeal. The trial Court has given a finding that the notice u/s 24(1) of the aforesaid act printed on the energy bill by the M.S.E.B. appellant is illegal, null and void. With this finding the trial Court restrained the appellant board perpetually from serving a notice u/s 24(1) of the Indian electricity Act on the energy bills to the consumers in the Maharashtra State. Both these finding are inter-related and based on the interpretation of section 24 of the Indian Electricity Act.

2. A dispute arose on account of the disconnection of electric supply through two meters installed in the house of respondent No. 1 Trimbakrao, who is dead. Respondent No. 2 Sheshrao More is said to be the tenant residing in the house of Trimbak and was using the electric supply to the portion of his house through Electric Meter No. 9828. Late Trimbak had applied on 30th December, 1972. For grant of electric connection to his premises. On 28th October, 1973 he was sanctioned the electric connection by the appellant Board. For the arrears of the month of December, 1977, two bills were issued by the appellant Board to

deceased Trimbek. The bills were dated 3rd January, 1979. The amount of the bill was specified in both the bills and it was mentioned thereon that the amount of the energy bills should be paid or before 23rd January, 1979. It is in evidence that the necessary payment mentioned in the two bill were paid in the account of the appellant in the Bank on 23rd January, 1979. The bank also passed receipt about the payment. However, it appear that inadvertently amount of both the bills credited was in one account and the bill in respect of Meter No. 9829 remained to be endorsed showing no-payment. Naturally it showed default in respect of that bill. In due process of time when the employees of the appellant Board found that the bill in respect of Meter No. 9828 has not been paid, a disconnection was effected by the Lineman of the appellant Board on 15th January, 1979. It appears that on behalf of the respondents. It was brought to the notice of the linemen that they are not in arrears of energy bill charges since they have paid the entire payment of the energy charges and the disconnection should not be made. But all the requests of the respondents were turned down by the lineman and he proceeded to disconnect the electric supply to the respondents. He appears to have removed the kit-cat, a device which connects the supply of energy to the premise. The respondents particularly respondent No. 2 was more agitated in the matter since according to him it was illegal act on the part of the appellant Board to disconnect his electric supply even though the necessary payment was made, therefore, contacted the local officers of the M.S.E.B. at Nanded and also made correspondence with the Board. Thereafter on 12th March, 1979, his electric supply was restored. The respondents and the consumers were still agitated on account of that act of disconnection and again Indulged in representations and correspondence with the appellant Board. Ultimately on 18th April, 1979, a legal notice was served on the appellant Board through an Advocate and the suit came to be filed before the trial Court at Nanded.

3. Initially late Trimbak, the house-owner and Sheshrao Bapurao Morey, a tenant in the house of Trimbak were the plaintiffs. Later on they made an application under Order I, Rule 8 of the CPC to convert the suit into a representative suit since they felt that similar actions of disconnection may arise in cases of other consumers and they also may be facing same harassment and difficulties. With this plausible object they proceeded to convert the suit into a representative suit. The necessary permission was granted by the trial Court and suit was converted with the permission of the Court as a representative suit. A public notice was issued of the suit under Order 1, Rule 8 of the C.P.C. and thereafter the plaintiff No. 3 Dagadu Jadhav was impleaded as plaintiff No. 3.

4. It may be mentioned here that in his notice dated 18-4-1979, which is at Exh. 116 the plaintiff had claimed Rs. 200/- as damages and Rs. 8/- as the amount of payment made at the time of the restoration of the connection to the appellant Board. Thus the plaintiffs had claimed in the aforesaid notice total amount of Rs. 208/- towards compensation. But when the suit was converted as a representative suit, the claim of compensation was given up by the plaintiffs and

the suit proceeded further in absence of the claim of compensation. The suit was, therefore, for declaration to the effect that the notice printed on the front gape of energy bills presented by the appellant Board to its consumers is illegal, null and void. It was also claimed that the board should be restrained from preventing such printed notices of disconnection on the energy bills. Thus the claim in the representative suit was restricted for the limited relief mentioned above. Even in the prayer clause, the plaintiffs claimed declaration that the notice on the enlarger bills being printed by the Board to its consumers is illegal, null and void and consequently claimed perpetual injunction against the appellant Board.

5. The trial Court examined plaintiff No. 2 and one witness viz. Suryaprakash. The applicant Board did not examine any witnesses. However, the plaintiffs have filed on record number of documents and the energy bills for various persons. Similarly the appellant Board also filed on record several energy bills to show that they have been following a similar system of printing the notice of disconnection at the energy bills. The main point for consideration of the lower Court was whether it is proved that the notice printed on the front page of the energy bill is illegal, null and void. On the basis of the evidence before the Court, the trial Court decided that such a notice of disconnection printed on the energy bills by the appellant Board is illegal, null and void. The trial Court, therefore, decreed the suit of the plaintiffs on main issue. Appeal filed by the appellant Board was dismissed since the Appellate Court concurred entirely with the judgment and decree of the trial Court. The appellant Board, therefore, has come in appeal before this court to challenge the findings of the courts below.

6. As stated earlier by me, since the plaintiffs have given up their claim of damages, a short point for decision before this court now is whether the Board can print a notice of disconnection u/s 24 on the energy bill. Shri S.N. Naik, for the appellant submitted before this court that it is not legal to print a notice of disconnection of the energy bill. It has been the case of the appellant Board that similar practice has been followed by the Board in past and it is being followed by other boards of other States and, therefore, it was tried to canvass that it has become a practice and, therefore, not illegal. Similarly simply because a practice has been followed in other States cannot by itself make the act of the Board of printing the said notice of disconnection on the energy bill a legal one.

7. In order to find out the legality of printing such a notice, a careful reading of section 24 of the India Electricity Act is necessary. Section 24 of the Electricity Act has been specifically introduced for empowering the Board-licensee to disconnect the electric supply of the consumer if he neglects to pay the charges of electric consumption. Obviously this provision is penal provision and gives a right to the licensee i.e. the Board to disconnect electric supply in the event of a consumer neglecting to pay the charges. But this action of disconnection is subject to a condition that 7 days notice in writing to a person who neglects to pay is a must. The term licensee is defined in clause (h) of section of the said Act. The appellant Board is, therefore, a licensee in this case. On behalf of the

respondents, it was seriously argued that a person cannot be said to be neglecting to pay unless he fails to pay the charges when they become due. According to the respondents, a notice for disconnection has to be separately issued after a consumer fails to pay the charges before due date. According to them unless and until a person fails to pay charges, he cannot be clothed with the character of a defaulter and therefore, in anticipating his dilute an notice of disconnection sent to him is not property. They have further argues that proper to 1975, the appellant Board used to send a separate notice u/s 24 and it was not promoted or described on the bill. It has been further argued that is causes hardship to a consumer since even before he becomes a defaulter, a notice is given to him. It was also argued that printing of a notice on the energy bill is merely a knowledge about the penal provision made known to consumers. But that is not enough. According to the respondents, as a matter of fact, a person who becomes defaulter has to be made known to him by the separate notice which is contemplated u/s 24 of the Indian Electricity Act, 1910.

8. There is no quarrel between the parties as to the facts in this case that the notice was printed on the bills. Most of the facts about disconnection also are not in dispute. Therefore, it has to be seen whether a notice of disconnection printed on the energy bill is illegal, null and void.

9. As stated above, the purpose of this provisions is essentially for enabling the licensee to take penal action against the consumer if he fails to make the payment of the charges before the due date. According to Shri Naik, a notice printed on the bill is entirely in confirming with the provisions of section 24 since the requirement of section is that a consumer must get 7 days clear notice. Now 7 days period, according to him, starts after the due date and, therefore, if the disconnection is made before the expiry of 7 days then it will not result into illegality but it such a warning is given to the consumer and if the disconnection is effected, after 7 days of the due date of payment, there is no illegality in intimating the intention of the Board to follow a particular procedure in case of the disconnection. Section 24 appears to be a set contained section describing the right of the Board licensee to disconnect and also the procedure to be followed in case of a disconnection after giving 7 days clear notice in writing. Sub-section (2) of section 24 prescribe reference of a dispute to the Electrical Inspector in case of any dispute between the consumer and the licensee. In the instant case, we are not concerned with sub-section (2) of section 24 at all since a reference was make to the Electrical Inspector in the instant case and after the recreation of the electric connection.

10. Shri Naik, In support of his contentions has placed reliance on the decision of the supreme court in the matter of III Third Income Tax Officer, Mangalore Vs. M. Damodar Bhat, It has been held that where a notice u/s 226(3) in respect of a penalty for assessment year 1962-63 and tax for assessment Year 1983-64 was issued on 23-4-1965 but before the notice of demand u/s 156 was served on the assessed for payment of these sums, it has been held in the facts of that case

that although the amount of tax and penalty was not due by the assess when the impugned notice u/s 226(3) was issued to the assessed, the liability to pay the income tax was a personal liability thought the tax become payable after it is quantified in accordance with the assert enable date. A notice issued in anticipation of due date in that case was not held to be illegal.

11. In another case in N.T. Veluswami Thevar Vs. G. Raja Nainar and Others, , it has been held that it is a sound rule of construction that the procedural enactment should be construed liberally and in such manner as to render the enforcement of substantive rights effectively. Shri Naik, therefore, submitted that section 24 of the Electricity Act provides a substantive right to the appellant Board of disconnection. Giving of 7 days notice is a procedural part and, therefore, merely because separate notice is not given, on account of this procedure, the substantive right of the board to disconnect cannot be frustrated. In the said case, the Supreme Court has further held as under:---

"It is no doubt true that it on its true construction, a statute leads to anomalous results, the courts have no option but to give effect to it and leave it to the legislature to amend and after the law. But when on a construction of a stature, two view are possible, one which results in an anomaly and the other not, it is the duty of a court to adopt the latter and not the former, seeking consolation in the thought that the law bursitis with anomalies."

In other words, the aforesaid proposition of law states that although is may be anomalous but the Legislature has to take care of the anomaly, But the Court has to construe a statute in such a case to make it more harmonious for its affective application. On the basis of this proposition. It has been canvassed by the learned Counsel of the appellant Board that in order to avail the appellant Board effectively his right of disconnection the anomaly, if any, appearing in the procedural part, section 24 has to be construed in such a way so as to make it effective and available to the Board. In the same Volume In Sri Ram Ram Narain Medhi Vs. The State of Bombay, on which a reliance has been placed by the appellant Board. It had been held by the Supreme Court that if the language of the enactment is clear and unambiguously, it would not be legitimate for the Court to add any word thereto and evolve therefore some sense which may be said to carry out the supposed intention of the legislature. The intention of the legislature is to be gathered only from the words used by it and no such liberty can be taken by the court for effectiveness the supposed in intention of the legislature.

On the basis of the aforesaid proposition. The learned Counsel for the appellant has pointed out that the trial Court exceeded its jurisdiction inasmuch as in para 28 of its judgment, it has been observed that the would "separates" is not shown in section 24 but a clear meaning of the said section is nothing but there must be separated notice. Again the trial Court in para 27 of the judgment has observed that the first part of sub-section clearly goes to show that the consumer is to be proved that he has wilfully neglected to make the payment of the bill. In the

same paragraph it is also observe by the trial Court that if the payment is made within dated then no action is taken, Only in the case of the dues are not paid within the permitted time, then the grace period of 7 days at least is allowed and then the supply is disconnected, Shri Naik, demonstrated from the additional words used viz. "Wilful" and "grace" used by the trial Court to come to the conclusion was not proper to interpret correctly by the provision of section 24. It appears that the trial Court was swayed by the flight of imagination to add his own words to in interpret the provision of section 24 of the aforesaid Act.

12. In order to emphasise the same point. Another authority of the Supreme Court appearing British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others, was pointed out. In this case, the Supreme Court has held that the court cannot add words at a section unless the section as it stands is meaningless or of doubtful meaning. In my view, section 24 does not appear to be a meaningless or doubtful at all. As discussed above, the said section is in two parts. Part I has given a right to the licensee to discontinue the supply of electricity if the consumer fails to pay the dues after the due date and the second part is that in case of such disconnection, a clear seven days notice has to be given to consumer. Thus there is no difficulty of the interpretation of this section 24.

13. Further controversy about the interpretation of this section 24 is that according to the respondents on the interpretation of this section 24, the licensee has to give a separate notice of disconnection and it cannot be printed on the energy bill, On the plain reading of the section, there appears to be no prohibition for the issue of a notice of disconnection either alongwith the bill or on the bill. Respondent No. 2 Mr. Morey, argued in person. According to him, it was a system of the Board of sending the separate notice of disconnection along with the bill indicating the outstanding arrears against him and that was the sufficient notice of his default. I can appreciate his anxiety for the simple reason that it should not cause any hardship to the consumer, it is pertinent to note that although he had personally suffered the injury in this case and also claimed damages of Rs. 208\-, he gave up that claim to the interest of the consumers at large and in the interest of various consumers and get the suit converted into a representative suit to derive the benefit to the interest of the community of consumers. It appears that he had generously perused this litigation at his own costs, having regard to the interest of the public. In my opinion, in view of the clear cut provision of section 24, the submissions of Shri Morey are in the nature of a form and procedure. As has been pointed by the learned Counsel for the appellant that the construction of procedural enactment should be constructed in such a way as not to frustrate the substantiates right accrued to a party. In the instant case, the binding of the trial Court is based on the technicalities.

14. Shri Morey has conceded that if a separate notice of disconnecting an account of past arrears is pasted or tagged or alighted with the energy bill, there will be no violation of the principles laid down in section 24. In my view it does

not make any difference whether the notice of disconnection is separately attached or printed on the energy bill. The requirements of section 24 is that 7 days clear cut notice should be given to a consumer stating that in case of the non-payment of energy bill before due date and after the expiry of 7 days from the due date, his electric supply is liable to be discontinued by the licensee. I find that printing of the disconnection notice in the electric bill in question is substantial compliance of section 24 and it cannot be said that it is contrary to the provisions of section 24. Absence of 7 days clear notice certainly is contrary to the provisions of section 24. But when it is made known to the consumers along with the energy bills, in my opinion, it does not violate the provisions of section 24.

15. It has been further argued on behalf of the respondent that the act of disconnection is a drastic action and for this purpose a reliance has been placed on a decision of this court in *Bharat Barrel and Drum Mfg. Co. Ltd. Vs. Municipal Corporation of Greater Bombay and Others*, I am also of the same opinion that it is really a drastic action but when such action is provided by law if the consumer neglects to pay the electric duties of his electric consumptions it cannot be said that it should not be involved in an appropriate case. This action is available to a licensee only if the default is committed by the consumer. I find in this case that there was no default on the part of the respondents 1 and 2. They had made the payment on the due date i.e. on 23rd January, 1979 and, therefore, the notice of disconnection was redundant and inoperative. Similarly the action on the part of the Board to disconnect the electric supply on 15th February, 1979, cannot be justified. Although it has been pointed out by the appellant that the mistake of not endorsing payment on the billing respect of Motor No. 9828 has been occurred, Yet it has come in evidence that the fact of payment was brought to the notice of the licensee who had come to disconnect the electric supply. The respondents really had a good cause claim damages but unfortunately they have given up the claim of damages and restricted the claim to a declaration that the notice of disconnection cannot be printed on the energy bill. The respondents were satisfied with the claim of declaration and injunction against the respondent Board not to print a notice of disconnection on the energy bill. Nothing can be done now since there is no claim of the respondents for damages before this Court.

16. Shri Morey, respondent No. 2 pointed out during the course of his arguments, two decisions in support of his claim. He relied on the decision reported at page 75, 1980 Mh.L. Reporter. The said decision is arising in a tenancy case. The point involved in that case was about the issue of a notice in case of a default by a tenant. In my view, the notice and the issues involved in that case are quite different and the principle laid down in that case cannot be made applicable to the facts of this case.

17. Another decision on which reliance has been placed by Shri Morey. Is in the case of *Andhra Pradesh Carbides Ltd. and Another Vs. Andhra Pradesh State*

Electricity board, Hyderabad and Others, . The facts in that case were in regard to a Regulation 32.3 under the Andhra Pradesh Electricity Board. It has been held that on the interpretation of section 24 that 7 days further notice to consumer is statutory requirement and therefore, the Regulation 32.3 dispensing with such a notice has no overriding effect, In my view, the decision of the Andhra Pradesh High Court is in a different context and further notice of days as has been laid down in that case cannot be applied in the instant case.

18. As discussed above, I am, therefore, of the view that the interpretation of provision of section 24 made by the trial Court as well as the Appellate Court with reference to printing of discontinuation notice on the energy bill is no correct, much less it cannot be said to be illegal, null and void. Consequently, the Board cannot be restrained from serving the noticed of discontinuation on the energy bill to the consumers.

19. In view of the peculiar facts of this case and the representative character of the suit, it has to be seen that the efforts made by the respondents particularly by the respondent No. 2 Shri Morey has to be appreciated. He fought for the cause of the consumers giving up his own claim of compensation. Since the suit was converted into a suit of representative character, the appellant Board did not challenge the order of the trial Court and, therefore, the suit remained in the representative character although Shri Naik, had tried to point out to this Court at the time of his argument that the permission granted by the trial Court was not correct and the suit could not be said to be a suit of representative character. The submissions of Shri Naik, in this behalf do not, therefore, survive for consideration at this stage since the order of the trial Court granting permission to convert the suit in representative character was not challenged by the appellate Board. It is for the appellant Board under the circumstances to think of making suitable changes in issuing the notice of discontinuation if there are genuine grievance of the consumers. After all the approach of the Board has to be to see the convenience of the consumers who are now reached to the nooks and corners of the Maharashtra. The electricity has reached to the remotest places in the country and therefore, the procedure in case of penal action contemplated by section 24 should be simplified and convenient to understand and follow even by a villager.

20. With these observations the appeal is allowed. The judgment and decree passed by both the courts below is set aside.

21. Under the circumstances, no cost is awarded to the appellant-Boards.