

(2011) 05 GAU CK 0046

In the Gauhati High Court

Case No : Regular Second Appeal No. 102 of 2011

Nemichand Gangwall

APPELLANT

Vs

Assam State Electricity Board & Anr.

RESPONDENT

Date of Decision : 18-05-2011

Acts Referred:

Electricity Act, 1979 — Section 24(1), 24(1)

Citation : (2011) 5 GLT 63

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : Mr. O.P. Bhati, Mr. T.C. Das & Mr. H.K. Bora., Advocate appeared for the Respondents: Mr. D. Nath, S.C. ASEB., Advocates appearing for Parties

Judgement

Amitava Roy, J.—The present appeal is directed against the judgment and order dated 28.2.2011 passed by the learned Additional District Judge, Kamrup, Guwahati in Title Appeal No. 4/2006 affirming the judgment and decree dated 23.12.2005 rendered by the learned Civil Judge (Senior Division) No. 3, Kamrup, Guwahati in Title Suit No. 174/2003 dismissing the suit instituted by the present appellant.

2. I have heard Mr. O. P. Bhati, learned counsel for the appellant and Mr. D. Nath, learned Standing counsel for the Assam State Electricity Board (for short, hereafter referred to as the "Board") representing the respondents.

3. The appellant/plaintiff instituted the aforementioned suit praying for a decree inter alia for a declaration that he is not liable to make payment of the bill of Rs.45,671/demanded by the respondent Board by way of electricity charges being time barred and also that the disconnection notice dated 26.3.98 is illegal and void ab initio. According to the appellant/plaintiff, he was a tenant under one Sri Mishrilal Bakliwal and in view of his differences with the landlord, the latter was instrumental in getting electricity to the tenanted premises disconnected by the Board on 17.7.1981. The supply was restored in terms of the order dated 18.7.1981 passed in Case No. 816 in of 1981 by the Executive Magistrate,

Kamrup, Guwahati on furnishing an indemnity bond by him to the Board thereby undertaking to make payment of all monthly bills to be issued by it for the consumption of energy as per reading of the meter to be installed in the premises. As a consequence, a new connection was provided to the appellantplaintiff and the supply of electricity was resumed.

4. The respondent Board accordingly raised bills from the date of the connection till March, 1986 which were duly paid by the appellantplaintiff. It was thereafter that the Board sent bills for the period 24.7.81 to 10.9.86 @5/ per day for 63 months amounting to Rs.9,604.99. Though the appellant by his letter dated 9.5.87 addressed to the Board sought correction of the bills, it was not done and instead the impugned bill dated 2.7.86 was issued for Rs.45,671/ for the period 29.7.81 to 30.3.87. The appellantplaintiff did not pay the bill as he perceived the same to be lacking in authority and not based on the meter reading. As a fall out thereof, the respondent Board issued notice dated 23.6.1998 under Section 24(1) of the Indian Electricity Act, 1970 (for short, hereafter referred to as the "Act") notifying proposed disconnection of the supply if the amount of the bill was not paid within 7 days from the service thereof. Situated thus, the appellantplaintiff instituted the suit contending inter alia that the notice dated 23.6.98 was barred under Articles 14 and 15 of the Limitation Act, 1963 read with Section 60A of the Indian Electricity (Supply) Act, 1948. According to him, the demand of Rs.45,671/being barred by time, such a notice was clearly nonest in law.

5. The respondent Board in its written statement while questioning the maintainability of the suit on the ground of non exhaustion of the alternative remedy available under the terms and conditions of supply, 1988 pleaded that, electricity was supplied to the appellantplaintiff on a purely temporary basis as per the order of the learned Executive Magistrate, Kamrup, Guwahati and fixed charge was levied and as such there was no illegality in the impugned bill dated 2.7.86. While asserting that all consumers under it are required to enter into an agreement before commencement of supply of electricity as per terms and conditions of supply framed under Section 49 of the Electricity (Supply) Act, 1948 (for short, hereafter referred to as the "Act"), the Board contended that if any dispute is raised with regard to the accuracy of bill, in terms of Clause 18 of the terms and conditions of supply, he has to pay the amount charged under protest and comply with the procedure in connection therewith as laid down. Referring to the order dated 1.12.99 passed by the learned Civil Judge (Junior Division) No. 1, Guwahati in Misc. (J) case No. 186m/1991 arising out of Title Suit No. 183/98 also filed by the appellantplaintiff challenging the same disconnection notice dated 23.6.1998, the respondent Board pleaded res judicata. According to it, electricity was supplied to the appellantplaintiff on a purely temporary basis in deference to the order of the learned Executive Magistrate, Guwahati as per the existing terms and conditions of supply and that therefore, he was a commercial consumer and not category2 commercial consumer. It also endorsed the notice of disconnection for the admitted failure of

the appellant/plaintiff to pay the amount of the bill lying outstanding against him. The Board underlined that having regard to the nature of the dispute raised in the suit, the appellant/plaintiff ought to have preferred an appeal before the Assistant Chief Engineer (Commercial), ASEB as contemplated under the terms and conditions of supply and that he not having done so, the suit was not maintainable in law. On the pleadings of the parties, the following issues were framed by the learned trial court.

- 1) Whether the suit is properly valued and proper Court fees has been paid thereon ?
- 2) Whether the suit is barred by resjudicata?
- 3) Whether the notice of disconnection dated 23.6.98 is illegal and void abinitio ?
- 4) Whether the plaintiff is liable to pay the bill amount of Rs.45,679/ ?
- 5) Whether the plaintiff is entitled to any relief as prayed for ?
- 6) What other relief/reliefs the parties are entitled to ?

The appellant/plaintiff adduced evidence on affidavit and was cross-examined on behalf of the respondent Board. It however, did not adduce any evidence. The learned trial Court on a consideration of the pleadings and the evidence on record dismissed the suit.

6. The judgment and order passed by it discloses that on receipt of the impugned bill dated 2.7.86, Ext.3, the appellant/plaintiff had addressed a letter to the jurisdictional Assistant Executive Engineer, Ext. 8 demanding a correct bill and installation of a new meter in his premises. The learned trial Court noticed that the respondent Board at the relevant time had been supplying electricity to the appellant/plaintiff's premises on purely temporary basis as per the order of the learned Executive Magistrate, Guwahati and thus fixed charge was being realized as per the terms and conditions of supply in force. It held that under the terms and conditions of supply any dispute with regard to the correctness of the meter reading was to be decided by the Senior Electrical Inspector. It also took note of the admission on the part of the appellant/plaintiff that he did not exhaust the remedy of appeal available to him under the terms and conditions of supply. That he did not pay the amount of the bill was also recorded. It held that for the omission on the part of the appellant/plaintiff to exhaust the remedy available under the terms and conditions of supply, the suit was not maintainable. Placing reliance on the decision of the Apex Court in Punjab State Electricity Board Vs. Ashwani Kumar (1997) 5 SCC120, it also dismissed his plea of want of authority of the bills Ext. 2 and Ext.3 holding that those were genuine. The notice of disconnection was also upheld. In coming to this conclusion, the learned trial Court inter alia recorded that the appellant/plaintiff had not stated that the bills were not prepared on the basis of the meter reading. Consequently, the suit was dismissed. The learned lower appellate Court endorsed this determination.

7. Mr. Bhati has argued that having regard to the date of the impugned bill, the notice of disconnection apparently is barred by time under Articles 14 and 15 of the Limitation Act, 1963. According to him, the appellantplaintiff was liable to pay the charges for the electricity consumption raised on the basis of the meter reading and as the demand raised by the impugned bill is not so, it is patently illegal and arbitrary. The learned counsel argued that having regard to the nature of the dispute, no remedy under the terms and conditions of supply was contemplated and therefore, the dismissal of the suit for not filing an appeal thereunder is apparently flawed.

8. Mr. Nath in reply has argued that the temporary connection to the appellant plaintiff's premises being on the order of a Court for which the energy chargers were realizable at a fixed rate, the challenge to the bill and disconnection notice is untenable and rightly rejected by the learned Courts below.

9. That the supply of electricity was restored to the premises of the appellantplaintiff temporarily on the strength of the order dated 18.7.81 of the learned Executive Magistrate, Guwahati is a matter of record and rightly not denied by the appellantplaintiff. It is his pleaded case that such supply was conditional on furnishing of an indemnity bond by him to the Board undertaking to make payment of every monthly bill in respect of the charges for consumption of electricity. Though, according to him, the charges were realizable on the basis of the meter reading installed in his premises, according to the Board, fixed charge was levied, the connection being on a purely temporary basis in deference to the order of the learned Executive Magistrate, Guwahati and sanctioned by the terms and conditions of supply. The Board is categorical as well to contend that, in view of the nature of the connection, the appellantplaintiff was included within the definition of temporary commercial consumer and not category2 commercial consumer.

The finding of the learned trial Court that the appellantplaintiff had not stated that the bills were prepared on the basis of meter reading has remained uncontroverted. Admittedly, the appellantplaintiff had not paid the amount of the bill demanded by the impugned notice Ext.3. Noticeably, he has not disowned his liability to pay the charges for the electricity supply consumed by him and disputed only the amount of the bill asserting that the same is not based on meter reading. As per Clause 18 of the terms and conditions of supply, any complaint with regard to the accuracy of bill has to be made in writing to the Board and the amount of such bill is to be I paid under protest within the period prescribed. The officers of the Board authorized under the terms and conditions of supply to examine various kinds of complaints there under, have also been provided in AppendixA thereto. The appellantplaintiff in view of the nature of the dispute raised by him, certainly had a remedy under the terms and conditions of supply which he admittedly did not avail. The plea of Mr. Bhati that as the controversy does not relate to any act of malpractice, no appeal is conceivable under the terms and conditions of supply, lacks persuasion.

10. As the appellantplaintiff in terms of the order of the learned Executive Magistrate, Guwahati was liable to pay the electricity charges as demanded by the Board subject to the terms and conditions of supply framed by it, the demand made by the impugned notice dated 23.6.98 cannot be held to be barred by time on the expiry of three years, he being in continuous default on day to day basis in making payment thereof or taking steps under the terms and conditions of supply. The impugned notice dated 23.8.98 for disconnection of the electric supply which is evidently under Clause 23 of the terms and conditions of supply, for the analogy of reasons, cannot also be adjudged to be nonest being barred by time. The terms and conditions of supply having been framed in exercise of powers under Section 49 of the Electricity (Supply) Act, 1948, the decision of the Apex Court in the Punjab State Electricity Board Vs. Ashwini Kumar (supra) in the opinion of this Court has application in the facts and circumstances of the case.

11. On a totality of the considerations as hereinabove, the concurrent findings of the learned Courts below do not warrant interference in the instant appeal. Apart from the fact that the appellantplaintiff had instituted the suit without exhausting his remedies under the terms and conditions of supply, his case on merit as well is not sustainable in law and on facts. The appeal therefore lacks in merit is dismissed. No costs.