
(2007) 03 OHC CK 0007
In the Orissa High Court
Case No : First Appeal No. 186 of 1995

Orient Paper Mills

APPELLANT

Vs

Orissa State Electricity Board

RESPONDENT

Date of Decision : 16-03-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (2007) 03 OHC CK 0007

Hon'ble Judges : P.K. Tripathy, J;A.K. Samantaray, J

Bench : Division Bench

Advocate : S.P. Mishra, S.S. Das and S. Mishra, for the Appellant; P. Sinha, P.K. Sahoo and R.K. Nayak, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Samantaray, J.—The unsuccessful Plaintiff who filed Title Suit No. 63 of 1989 before the Civil Judge (Senior Divn.), Sambalpur is the Appellant before us and has assailed the judgment and decree dated 17.2.1995 and 8.3.1995 in this First Appeal.

2. The Plaintiff-Appellant filed the aforementioned Title Suit on the following premises. The Plaintiff is a Company carries on business of manufacturing of paper and paper board for which it has a factory at Brajarajnagar. Electricity power is necessary for the purpose of running the factory. The Plaintiff has got a captive power plant to generate electricity to meet the requirement of the factory. Apart from the self generation from the captive power plant, the Company also requires additional electric energy and buys the same from the State Electricity Board (Defendant/Respondent). Plaintiff-Company entered into agreement with the Defendant on 4.4.1969 and the agreement was substituted by Anr. agreement on 17.6.1982. While the said agreement was subsisting and was in force, on 12.5.1978 the Central Government Finance Act came into force and some provision of the Central Excise and Salt Act, 1944 were amended. As per the amendment electrical energy became leviable of Central Excise Duty.

Defendant in such situation intimated the Plaintiff to collect the Central Excise Duty on the electrical energy consumed by the Plaintiff. Thereafter, by Notification dated 1.3.1979 of the Central Government, the Central Government exempted the levy of the Central Excise Duty on the electrical energy on the Industries which were generating their own power for self consumption. As such, the electricity produced by the Plaintiff-Company from its own captive power plant was not subject to the levy of Central Excise Duty. But in spite of the exemption the Defendant submitted bills showing Central Excise Duty on the electric energy produced by the Plaintiff-Company. The bills submitted by the Defendant showed the Central Excise Duty as a separate item of the charge in addition to the electricity tariff. It is the specific case of the Plaintiff that the Defendant Board was not entitled to collect Central Excise Duty either under the subsisting agreement between them or by any law of the land. It is also the case of the Plaintiff that if the Central Excise Duty became additional burden on the Defendant, it was not entitled to shift the said burden to the shoulder of the Plaintiff-Company without taking into consideration the various provisions under the Electricity Supply Act. It is also the case of the Plaintiff that so long the Defendant was making a demand from the Plaintiff for Central Excise Duty as a separate entity, the rate of tariff for consumption of electrical energy remained the same and this additional charge of Central Excise Duty is illegal. The Plaintiff earlier challenged the legality of imposition of Central Excise Duty in this Court and this Court in OJC No. 133/81 directed stay of collection of Central Excise Duty by order dated 2.2.1981. In spite of this, the Defendant sent a demand notice to the Plaintiff imposing Central Excise Duty from January, 1981 to September, 1984. The Plaintiff thus filed the suit challenging the illegal imposition of Central Excise Duty from January, 1981 to May, 1982 and for the rest period he filed Anr. suit. In the instant suit the Plaintiff prayed for declaration that the demand raised by the Defendant was unjustified.

3. The Defendant entered appearance in the suit and filed written statement contending that after exemption of the Central Excise Duty from the Plaintiff, the Defendant raised the tariff and fixed the tariff at a higher rate considering the electricity duty payable on it. When the Defendant sent notices demanding higher tariff to the Plaintiff, the Plaintiff filed OJC before this Court challenging the said demand and after hearing to OJC was dismissed on 15.10.1987. It is specifically pleaded in the written statement that the dispute raised by the Plaintiff having been finally decided in the OJC the instant suit is barred by res judicata and the Plaintiff could not have raised the same point again in the suit.

4. On the basis of the aforementioned pleadings of the parties the trial Court below formulated the following

Issues

- (i) Whether the demand raised by the Defendant is genuine and legal?
- (ii) Whether the suit is barred by res judicata as the matter has already been

decided in OJC Nos. 133/81 and 134/81 by the Hon''ble High Court of Orissa?

(iii) Whether the suit is barred by limitation?

(iv) If the Plaintiff is entitled to the relief claimed?

It was contended by the learned Counsel appearing for the Respondent that while answering issue No. 2 against the Plaintiff the Court below in paragraph-5 of the impugned judgment has observed as follows:

In view of the evidence of both the parties, it is pertinent to see the decision of the Hon''ble Court in OJC No. 133/81 and 134/81, it is found that this matter was agitated in the Hon''ble Court and the Hon''ble Court held that the Defendant can revise the tariff from time to time as per the Electricity Supply Act and the raising the tariff in this particular case is justified. So the writ was dismissed. The subject matter of this suit was the subject matter of the writ applications. Hence, the suit is barred by res judicata. So it is held that the raising of tariff by the Defendant and demand of the Defendant is legal and the suit is barred by res judicata. Accordingly these issues are decided against the Plaintiff.

5. From the aforementioned finding of the Court below it is crystal clear that this Appellant as Petitioner had filed before this Court OJC Nos. 133/81 and 134/81 on the self same cause of action and on a perusal of the prayer made in the both the writ petitions, it is found that the self same prayer was one of the prayers in both the OJCs which were dismissed on merit. The learned Counsel for the Appellant did not controvert this factual position, rather fairly conceded that in view of the judgment passed in the OJCs preferred by this Appellant earlier before this Court seeking self same relief and the same being dismissed on merit the subsequent suit of the Plaintiff is clearly barred by res judicata.

6. In this connection we think it appropriate to quote the decision of the Hon''ble Apex Court reported in AIR 98 SC 2046 Ashok Kumar Srivastav v. National Insurance Col. Ltd. and Ors. The Hon''ble Apex Court in paragraph-11 have observed as follows:

11. It is well neigh settled that a decision on an issue raised in a writ petition under Article 226 or Article 32 of the Constitution would also operate as res judicata between the same parties in subsequent judicial proceedings. The only exception is that the rule of res judicata would not operate to the detriment or impairment of a fundamental right. A Constitution Bench of this Court has considered the applicability of rule of res judicata in writ proceedings under Article 32 of the Constitution in, Daryao and Others Vs. The State of U.P. and Others, and it was held that the basis on which the rule rests is founded on consideration of public policy and it is in the interest of public at large that a finality should attach to the binding decision pronounced by a Court of competent jurisdiction and it is also in the public interest that individuals should not be vexed twice over in the same kind of litigation.

7. The Court below has dismissed the suit of the Plaintiff on the ground that the

suit is barred by res judicata in view of the fact that the matter has already been decided by this Court in OJC Nos. 133/81 and 134/81. We find no reason to differ from the finding arrived at by the Court below and we also find that the suit was rightly dismissed by the trial Court as it is hit by law of res judicata.

8. The Appeal is, therefore bereft of any force and is therefore dismissed. However, under the circumstances of the case without cost.

P.K. Tripathy, J.

9. I agree.