
(1985) 12 RAJ CK 0022
In the Rajasthan High Court
Case No : Civil First Appeal No. 178 of 1974

Rajasthan State Electricity Board, Jaipur	APPELLANT
Vs	
Dr. Madan P. Joshi	RESPONDENT

Date of Decision : 19-12-1985

Acts Referred:

Electricity Act, 1910 — Section 24, 24(1), 25, 37
General Conditions of Supply Rules — Rule 24(1), 25

Citation : AIR 1987 Raj 33 : (1986) RLW 63 : (1986) 1 WLN 53

Hon'ble Judges : Jagat Narayan, J

Bench : Single Bench

Advocate : Sudhesh Kumar Gupta, for the Appellant; P.R. Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

Jasraj Chopra, J.—This is an appeal by the Rajasthan State Electricity Board (hereinafter referred to as the Board) against the judgment of the learned Additional District Judge, Sirohi dt. 20-5-1974 whereby the learned lower Court has decreed the suit of the plaintiff respondent against the defendant appellant for a sum of Rs. 515/- with proportionate costs.

2. The facts of the case briefly stated are that plaintiff Dr. Madan P. Joshi filed a suit for the recovery of Rs. 11,000/- as damages on the allegation that the defendant Board wrongfully disconnected his electric supply. The plaintiff has a farm at village Sewadi where he installed electric motor and pumping set. When he applied for the power connection, he gave his residential address of Bali for submission of the bills. However, the bill for the month of June, 1968 was delivered at Sewadi on 18-7-1968 and the due date for payment mentioned therein was 20-7-1968 only. In this bill a sum of Rs. 92.29 was added on account of past arrears. The plaintiff contested that the bill should have been delivered to him at Bali. However, he made no payment and, therefore the respondent disconnected his power connection on 11-8-1968. He came to know about it on

12-8-1968. He protested and demanded reconnection which was restored to him on 31-8-1968. It has been contended by the plaintiff that this disconnection was against the provisions of Section 24(1) of the Electricity Act of 1910 and therefore, the disconnection has resulted in a loss of Rs. 17,300/- to him and, therefore he has submitted that his claim be decreed for that amount.

3. The defendant admitted the plaintiffs case so far as it related to the grant of connection and that the address given in the application form was that of Bali, but since a representative of the plaintiff used to receive the bills at Sewadi, they delivered the bill at Sewadi, and further asserted that the addition of Rs. 92.29 was also rightly made in the bill of June, 1968. It has further submitted that the disconnection was totally legal as it was printed on the top of the bill that if the payment of the bill is not made within seven days, the power line is liable to be disconnected. It has also disputed the loss of plants and the calculation of the value thereof made by the plaintiff. According to the defendant the claim is excessive and prayed for special costs u/s 35 C.P.C. On the basis of the pleadings four issues were framed.

4. Both the parties led evidence. After hearing the parties the learned lower Court held that disconnection made by the defendant appellant was illegal and wrong but it also held that for this disconnection the obstinacy on the part of the plaintiff respondent has also a part to play. According to the learned lower Court the compensation claimed was quite excessive and, therefore, it came to the conclusion that Rs. 500/- should be allowed as nominal damages and the plaintiff was further entitled to recover back Rs. 15/- paid by him as re-connection charges. In this view of the matter the suit of the plaintiff was decreed against the respondent as aforesaid. Aggrieved against this judgment, the Board has come in appeal.

5. I have heard Mr. Sudhesh Gupta for the appellant and Shri P. R. Choudhary for the respondent. The crucial question to be looked into in this case is whether a disconnection could have been ordered by the Board without issuing a notice as required by S, 24(1) of the Electricity Act. It is the admitted case of the parties that no separate notice as envisaged by Section 24(1) of the Electricity Act was served on the plaintiff. It was contended by Mr. Gupta that such a notice is contained in the bill itself. It is printed therein and it is not the requirement of Section 24(1) that a separate notice should have been served. As per Mr. Gupta the learned lower Court erred in holding that provisions of Section 24(1) of the Electricity Act and Rule 25(c) & (i) of the General Conditions of Supply framed by the Board are inconsistent. Actually both these provisions are supplementary to each other and, therefore, a harmonious construction should have been made so far as these two provisions are concerned and if an attempt had been made at that, the Court could not have arrived at the conclusion to which it has presently arrived.

6. Mr. Choudhary however, contended that the learned lower Court has quoted all the relevant provisions of the General Conditions of Supply framed by the Board

and it has actually tried to arrive at a harmonious construction taking into consideration the provisions of Section 24(1) of the Electricity Act.

7. I have given my most earnest consideration to the submissions made by the parties. Section 24(1) of the Electricity Act provides that 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. The learned lower Court took the view that when a bill is given to the consumer it cannot be presumed that he will neglect to pay it. It is only when the bill is not paid that the Board can conclude that he is not in a mood to pay the bill and, thereafter a notice of disconnection should be issued. With the supply of the bill it should not be presumed that the consumer has no intention to pay the amount of the bill. I entirely agree with the reasoning of the learned lower Court that supply of the bill to a consumer cannot be treated as a notice for disconnection. It is actually a notice to make payment and when it is found that the amount is not paid within a prescribed time, then only the notice has to be given as required by Section 24(1) of the Act. This view is further supported by Rule 24 of the General Conditions of Supply framed by the Board. This rule provides that the notice shall be served in writing addressed to the consumer, delivered by hand or pasted at his premises or sent by registered post to the address specified in the consumer's application.

8. Rule 25(i) of General Condition of Supply provides that a bill will normally be sent by post or delivered by hand. It further lays down that the Board takes no responsibility for loss of the bill in transit and it casts a duty on the consumer to notify to the local office of the Board if no bill is received within seven days from the date of reading of the meter.

9. The bill can therefore, be sent by ordinary post and the Board accepts no responsibility for the loss of the bill in transit. Such a notice is not envisaged by Section 24(1) of the Act.

10. It is true that Rule 25(c) of the General Conditions of Supply says that if the consumer fails to pay the bill the Board shall be at liberty to cut off the supply without giving any other notice u/s 24(1) of the Act of 1910 but this rule is definitely against the express provisions of Section 24(1) of the Act of 1910 which provides that where any person neglects to pay any charge for energy to a licensee his power connection can be cut after serving on him a notice in writing addressed to the consumer, delivered by hand or pasted at his premises or sent by registered post. Such an eventuality can arise only when payment is not made on the due date. At the cost of repetition it may be stated that such a contingency cannot be envisaged as soon as a bill is delivered. Thus the intention of the legislature has been to use the provisions of Section 24(1) of the Act of

1910 as a last resort, Rule 25(c) is against the spirit of the section of the Act of 1910 and so when there is a conflict between a rule and the section of an Act the settled rule of interpretation is that the language of the section should be given effect. The bill may even be lost in transit. There are no fixed dales for meter reading. In certain houses electric meters are installed in the outer portion of the house and so a reading of the meter can be taken even in absence of the owner of the premises. If the bill is lost in transit or even not sent or the consumer is unable to know the exact date of the meter reading, then it could never have been the intention of the legislature that even under such circumstances his power connection may be cut without even affording him an opportunity to submit his side of the case. Section 24(1) of the Act of 1910 therefore clearly envisages a separate notice in writing after the default.

11. This bill admittedly was given to the labourer of the plaintiff at Sewadi farm. It was not delivered to the plaintiff personally nor it was pasted on his residential building at the address given in his application nor it was sent by registered post. When these three things are not complied with and the time for payment given in the notice was only two days, not 7 days, then it should be presumed that the disconnection was made without due notice and, therefore, in my opinion the learned lower Court was very much justified in arriving at the conclusion that the disconnection was illegal. I, therefore, uphold the finding of the learned lower Court and that issue No. 1 stands decided in favour of the plaintiff.

12. So far as damages are concerned, the learned lower Court has only awarded nominal damages. The plaintiff has claimed a loss of Rs. 17,300/-. However, on the basis of the evidence of Hadiya who was working on the farm of the plaintiff at the relevant time it was revealed that only 20 trees of "Anar", 10-12 trees of oranges were completely destroyed and some "papaya" trees were totally damaged in the absence of required watering of the plants. Under these circumstances if Rs. 500/- are awarded as damages it cannot be said to be exhorbitant in the facts and circumstances of the case. The learned lower Court was also justified in awarding Rs. 15/-paid by the plaintiff as re-connection charges. Thus the decision of issue No. 2 in favour of the plaintiff is upheld.

13. In this view of the matter I find no force in this appeal and it is hereby dismissed with costs.