

(1999) 02 MAD CK 0057

In the Madras High Court

Case No : S.A. No. 1180 of 1987 and C.M.P. No. 5174 of 1988

Raniammal and 2 others

APPELLANT

Vs

Divisional Electrical Engineer Tamil Nadu Electricity Board,
Kumbakonam and another

RESPONDENT

Date of Decision : 18-02-1999

Acts Referred:

Electricity Act, 1910 — Section 20
Limitation Act, 1963 — Section 5

Citation : (2000) 1 CTC 181

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : Mr. Chandrasekaran, for the Appellant; Mr. V. Rangapashyam, learned counsel Advocate, for the Respondent

Judgement

1. The plaintiffs 2 to 4 who are unsuccessful before the two courts below are the appellants in this second appeal. At the time of admission, the

following substantial question of law were framed:-

1. Whether the lower appellate court was right in thinking that the vesting under the Tamil Nadu Electric Supply under taking acquisition Act 29 of

1954 would give a fresh starting point for limitation?

2. Whether electricity supply can be disconnected even though the arrears are not with regard to the particular sought to be disconnected?

3. Whether the right of disconnection for non-payment of arrears can be exercised in respect of time barred arrears also?

2. Admittedly the plaintiffs owned a factory at Kumbakonam as well as a house and they had secured electricity connection for the Kumbakonam

Electric Supply Corporation, which was an electricity undertaking and the said

undertaking was acquired by the state of Tamil Nadu and transferred to Tamil Nadu Electricity Board. The acquisition was under the Tamil Nadu Electricity Board. The acquisition was under the Tamil Nadu Electricity Supply (Acquisition of Undertakings) Act, 1954. After the completion of acquisition and vesting, the electricity board served notice on the plaintiffs calling upon them to pay the arrears of consumption charges in respect of plaintiff's factory service connection No.38/41. As the charges were not paid, despite the demands under Exs. A-1 and A-2, the defendants threatened to disconnect the house service connection No.14 of 1991 which belonged to the plaintiffs. At that stage the suit had been instituted. Various pleas were put forward by the plaintiffs. The trial court dismissed the suit. On appeal, the appellate court confirmed the judgment of the trial court. The two courts below held that arrears of consumption charges, even if they are barred by limitation, then defendants could recover by exercising the powers disconnection in respect of other service connection belonging to the same consumer. It was further held by the two courts below that the plaintiffs have not established the transfer of factory service connection to a third party as according to the books of account, the service connection remained right through in the name of the plaintiffs and no transfer had been effected at all material time as pleaded by the plaintiffs.

3. Mr. Chandrasekaran, learned counsel appearing for the appellants contented that the consumption charges demanded is barred by limitation and even as one date of Exs. A-1 and A-2 and as such the defendants- Electricity Board cannot seek to recover barred arrears by disconnecting the supply of some other service connection, though it stands in the name of the plaintiffs. This question is no longer res integra. It has already been decided by the Apex Court. In *M/s. Swastic Industries Vs. Maharashtra State Electricity Board*, the Apex Court held as follows:-

It would, thus, be clear that the right to recover the charges is one part of it and right to discontinue supply of electrical energy to the consumer who neglects to pay charges is another part of it. The right to file a suit is a matter of option given to the licensee, the Electricity Board. Therefore, the mere fact that there is a right given to the Board to file the suit and the limitation has been prescribed to file the suit, it does not take away the

right conferred on the Board u/s 24 to make demand for payment of the charges and on neglecting to pay the same. They have the power to

discontinue the supply or cut-off the supply, as the case may be, when the consumer neglects to pay the charges.

4. This Court in *Asmath Begum Vs. The Superintending Engineer, Tamil Nadu Electricity Board and Others*, held that the bar of limitation

prescribed in the Limitation Act will not deter the Electricity Board from exercising its power of disconnection under sections 20 of the Act and the

Board could disconnect the very connection of the consumer or any other services connection of the same consumer. Hence, the contention raised

by the learned counsel appearing for the appellants deserves to be rejected.

5. Mr. Chandrasekaran, learned counsel appearing for the Appellants further contented that in respect of "A" services connection of a consumer,

the defendant-board cannot ask disconnect "B1 service connection of the same consumer. This contention also cannot be sustained as the vary

terms and conditions of supply framed by Tamil Nadu Electricity Board as agreed by the appellants provides for such disconnection. Condition

No.40 (C), enables the respondents to disconnect the supply to any other service connection of the same consumer, in case of default by the

consumer. Hence, the second contention raised by the learned counsel for the appellants also fails.

6. Learned Counsel appearing for the appellants further contented that the arrears, if any is payable to Kumbakonam Electric Supply under taking

and not to the Tamil Nadu Electricity Board and therefore, the defendants that is, Tamil Nadu Electricity Board cannot seek to recover the arrears

by invoking powers of disconnection. It is to be pointed out that the Kumbakonam Electric Supply undertaking was acquired by the State

Government and vested with the State Government with all rights, privileges and obligations as provided under the Tamil Nadu Electricity Supply

(Acquisition of undertakings) Act, 1954. On a consideration of the statutory provisions, it follows automatically that all the arrears due to the

Kumbakonam Electric Supply Corporation-undertaking could very well be recovered by the State Government. So also the state Electricity

Board, to whom the right has been transferred in terms of the provisions of the said Act and notification issued thereafter. The third contention

raised by the learned counsel appearing for the appellants also fails.

8. In the foregoing circumstances, the second appeal fails and the questions of law framed in this second appeal are answered against the

appellants. The second appeal is dismissed with costs. Consequently, CMP. No.5174 of 1998 is also dismissed.