

(2002) 09 MAD CK 0154

In the Madras High Court

Case No : Second Appeal No. 281 of 1991

S. Arulraj, S. Rathnasamy and S. Xavier

APPELLANT

Vs

The Superintending Engineer, Tamil Nadu Electricity Board,
Madurai Electricity System, The Assistant Divisional Engineer,
TNEB. and The Assistant Engineer, TNEB.

RESPONDENT

Date of Decision : 30-09-2002

Acts Referred:

Electricity Act, 1910 — Section 39

Citation : (2002) 09 MAD CK 0154

Hon'ble Judges : A. Ramamurthi, J

Bench : Single Bench

Advocate : S. Krishnasamy, for the Appellant; S. Rajeswaran, for the Respondent

Final Decision : Dismissed

Judgement

A. Ramamurthi, J.—The plaintiffs, who lost in both the courts below, are the appellants.

2. The case in brief is as follows:- The plaintiffs filed a suit for declaration that the disconnection of the suit service connections by the defendants are illegal, improper, arbitrary and against the principles of natural justice and consequential relief of permanent injunction and restoring the electricity supply to the service connections. The plaintiffs are having service connection No.238 for the house and service connections No.594 and 595 for the electric motor and pumpset in the well. They have raised valuable crops in their lands. The defendants without any prior notice disconnected the service connections on 26.06.1982 at about 10.00 am in their presence. They are not in arrears of electricity charges and they have not violated any of the terms agreed to by them. The 2nd plaintiff is one of the prominent leaders of the Tamil Nadu Agriculturists Association and made representations to the Electricity Board on behalf of the members. They are prepared to deposit any amount legally due to the defendants. They have not restored the electricity supply. Hence the suit.

The defendants resisted the suit contending that a single suit in respect of 3 separate service connections is not maintainable under law. On 25.06.1982, the 2nd defendant inspected the service connections and advised the wireman to check up and give report. On the information given by the wireman of Rayappanpatti, the 2nd defendant along with the Assistant Engineer inspected these service connections on 26.06.1982. It was found out that the plaintiffs tampered the service connections by providing holes in electric meters so as to introduce metal rods and thereby made the dials at a stand still position. The plaintiffs arranged the meters in such a condition to stop or to minimise the rotation as and when necessary at the time of consuming the electric supply. The defendants took photos and in order to get clear picture, the Assistant Engineer put the rods in holes after giving the facts in writing to the plaintiffs. The plaintiffs have indulged in malpractice with reference to supply of electricity with an intention to commit theft of energy. The service connections were disconnected on 26.06.1982. The 2nd defendant sent a police complaint through the Assistant Engineer and they took necessary action after seizing the meters. Criminal cases were also filed against the plaintiffs. The 2nd defendant sent initial assessment notice dated 30.06.1982 to the plaintiffs as per the provisions of law and contract. Since the defendants have reason to believe that the plaintiffs have indulged in theft of energy, they disconnected the service connections without any notice and in fact, no notice is necessary in such kind of cases. The plaintiffs have to pay 50% of the initial assessment. After that, the defendants have to send show cause notice to the consumer so as to send their representation, if any; but the plaintiffs have not paid 50% of the initial assessment. If the plaintiffs are not satisfied with the order of the assessment authority, they are entitled to prefer an appeal to Superintending Engineer and the order of Superintending Engineer is final. The procedures are mandatory and the plaintiffs have not complied with the same. In fact, the 1st plaintiff committed the same kind of offence in 1976 and a criminal case was laid against him and he was charged in Crime No.380 of 1976 u/s 379 IPC and also u/s 39 of Indian Electricity Act. The 1st plaintiff was convicted and sentenced to pay a fine of Rs.50/= by Judicial II Class Magistrate, Uthamapalayam in C.C.No.1445 of 1976 dated 03.06.1976.

The trial court framed 4 issues and on behalf of the plaintiffs, P.W.1 was examined and Exs.A-1 to A-38 were marked and on the side of the defendants, D.W.1 was examined and Exs.B-1 to B-12 were marked. The trial court dismissed the suit and aggrieved against this, the plaintiffs preferred A.S. No. 30 of 1986 on the file of Sub Court, Periyakulam and the learned Judge after hearing the parties, dismissed the appeal. Aggrieved against this, the plaintiffs have come forward with the present second appeal.

3. At the time of admission of the second appeal, this Court framed the following substantial question of law for consideration:

Whether tampering the meter amounts to violation so as to entitle the plaintiffs a

notice as provided under clause 6.01 of Terms and Conditions of Electricity Supply ?

4. Heard the learned counsel for the parties.

5. There is no dispute that the plaintiffs are having 3 service connections No.238, 594 and 595. All the 3 service connections were disconnected on 26.06.1982 by the officials of the Electricity Department on the ground that the plaintiffs have violated the terms and conditions and there was also holes in the electric meters and if a rod is put up, the rotation of the disc will be stopped. Now, the plaintiffs have filed the suit for a declaration that the disconnection of the service connections is illegal with a consequential relief of permanent injunction and also to direct the defendants to restore the electricity supply.

6. Per contra, the defendants contended that a single suit filed by the plaintiffs in respect of the three service connections is not maintainable under law. On 25.06.1982, the 2nd defendant inspected the service connections and advised the wireman to check up and give report. On the information of the wireman only, the 2nd defendant along with the Assistant Engineer inspected the said three service connections on 26.06.1982 and found out that the plaintiffs have tampered the service connections by providing holes in electric meters so as to introduce metal rods and thereby made the dials at a stand still position. Police complaint was also given and criminal cases were also filed against them. The service connections were, no doubt, disconnected on 26.06.1982. The plaintiffs have to pay 50% of the initial assessment as claimed in the notice and thereafter only, the defendants have to send show cause notice to the consumer and they can send representation if any. The plaintiffs have not paid the 50% of the initial assessment.

7. The trial court as well as the lower appellate court rejected the contentions of the appellants / plaintiffs. The learned counsel for the appellants contended that the courts below ought to have seen that the electricity was cut off without notice and so it violated the principles of natural justice. The plaintiffs did not commit theft and their services were illegally cut off by the defendants as the 2nd plaintiff was actively involved in the Tamil Nadu Agriculturists Association. The criminal cases filed against them for the very same allegations of theft have ended in acquittal and as such, the initial assessment order became a nullity. The plaintiffs were very regularly paying the electricity charges and they never committed any default. The photos together with negatives would not finally prove the alleged theft unless the photographer is examined as a witness. There was no explanation as to why these 3 meters alone were directed to have a check up. The courts below erred in holding that the plaintiffs did not deny the existence of holes in the meter boxes and there were devices to stop the disc inside the meters. The meter boxes are under the lock and key of the defendants and the plaintiffs could do nothing in the same. The defendants have not filed any document to show that there was vast differences of meter readings in different months and that there was steep shortfall in the particular months

which could presume the fact of theft. No initial assessment notices were sent to them.

8. The learned counsel for the appellants brought to the notice of the Court the provisions under Order I Rule 1 of Civil Procedure Code, whereby it is made clear that a single suit is maintainable. No doubt, there are three service connections in the name of the plaintiffs and the terms and conditions under Ex.B-2 are more or less same whether it is for domestic use or for the electric motor and pumpset in the well. On 26.06.1982, surprise inspection has been made in respect of these three service connections and the authorities have noted that there were holes in the electric meters and by introducing metal rods, the rotation of the disc will be stopped. The learned counsel for the appellants contended that the electric meters are under the custody of the defendants and there is no possibility for the plaintiffs to put any hole or tamper the same. I am unable to agree with the contention of the appellants. These service connections are only in the place of the appellants and they are under the exclusive control of the plaintiffs. It is only for them to explain as to how the holes were made to the electric meters. It is not the case of the appellants that there were holes in the electric meters even at the time of supplying the same. Apart from that, the Assistant Engineer had put a rod inside the holes, only to demonstrate as to how and in what manner the rotation of the disc can be prevented, so that it will not show the actual consumption. It is not necessary that the authorities should have caught red handed the plaintiffs while the actual offence is committed. When holes have been noted in the electric meters and if the rod is put up, the rotation of the disc is prevented, is amply demonstrated by the authorities. Apart from that, it is not necessary for the authorities that they should give any information or notice prior to surprise inspection. They have got every power to inspect the service connection in order to find out whether any theft of electric energy was committed.

9. It is also seen from the records that initial show cause notices were also sent to the plaintiffs, but they were returned unserved. There is also nothing on record to show that 50% of the amount has been deposited and they have not sent any representation. No doubt, after filing of the suit, it appears that for each service connection Rs.2,000/= was deposited and thereafter, electricity supply was restored. Ex.B-2 contains the terms and conditions of the supply of electricity by the Board. It is seen from section 3 that any consumer who dishonestly abstracts, consumes or uses energy shall be deemed to have committed theft within the meaning of the Indian Penal Code, and the existence of artificial means for such abstraction shall be prima facie evidence of such dishonest abstraction. In fact, photos have been taken and the photographs with negatives have also been filed into the Court to establish as to how and in what manner the theft of electric energy is possible.

10. The appellants next contended that the 2nd plaintiff was taking active role in the Tamil Nadu Agriculturists Association and that is why the case has been filed.

There is absolutely no basis to consider this objection. The appellants further stated that the criminal cases laid against them have ended in acquittal and therefore, it can be safely concluded that they could not have committed theft of electric energy. This contention also cannot be accepted. Schedule 16 clearly indicates that neither failure to launch criminal proceedings nor the acquittal of the consumer in any such proceedings on a ground other than that the charge is false, shall bar the proceedings under the provisions stipulated therein. Hence, simply because criminal cases ended in acquittal, it will not be a bar for the departmental authorities to initiate proceedings against the consumers and take further action for the loss sustained. Moreover, according to schedule 6 under Rule 43 of the Terms and Conditions, disconnection of supply where the Board has reason to believe that a consumer has indulged in malpractice with reference to supply of electricity to any service which is disconnected by the Board or theft of energy, the Officer, authorised in this behalf by the Board, may without prejudice to its other rights, cause the supply of electricity to such consumer to be forthwith disconnected without any notice. So far as this case is concerned, there was a hole in the meter boxes and that there was a device to stop the disc inside the meter will amply establish the act committed by the plaintiffs. The terms and conditions are duly signed by the plaintiffs as well as the officials of the Electricity Department and they are binding on them.

11. The learned counsel for the appellants relied on the decision reported in *S. Seetha ..vs.. The Assistant Executive Engineer, etc.* 1997 W.L.R. 147, wherein it is stated that "Acquittal in criminal proceedings and writ petition alleging that the demand of charges by the respondent for reconnection is illegal. Allegation of violation of Principles of Natural Justice accepted and directions issued". There is no dispute about this principle, but it has no application to the case on hand. In the case cited, it was observed as follows:-

"The Board had conducted the criminal proceedings which went against the Board, and even after the criminal proceedings, no further enquiry and proceedings were taken to quantify the loss that arose on account of the alleged theft of electrical energy. It is also not proved that there was actually a theft of electrical energy in any enquiry. In the absence of any enquiry or finding as regards the theft of electrical energy or the actual quantum of loss which arose on account of the alleged theft of electrical energy, the disconnection of the supply on the basis of estimated figure is not sustainable in law".

12. The learned counsel for the appellants attempted to throw doubt even about the inspection made by the officials. As adverted to, no notice is necessary prior to inspection by the officials of the Electricity Department. There is absolutely no necessity for them to foist a case against the plaintiffs. It was also stated that the evidence of D.W. 1 did not state the manner of theft. D.W. 1 is not an eye witness to the theft of energy; but the inspection disclosed the holes in the electric meters and the possibility of theft by inserting a rod has been demonstrated and photographs were also taken. It is further stated that what

was the reading some years back and what was the reading prior to the inspection have not been disclosed so as to infer that by tampering the meter, there was theft of energy. It is only for the purpose of ascertaining the quantum of amount such a reading may be a relevant one. So far as the present case is concerned, disconnection was made because of the holes found in all the three electric meters and the possibility of theft of energy was also demonstrated by the officials. The defendants had positively established that there was tampering of meters through artificial means. Apart from that, for the initial show cause notice, no reply was also sent by the plaintiffs. There is a concurrent finding by the courts below based on legal evidence and there is no question of law, much less any substantial question of law, calling for interference.

13. For the reasons stated above, the Second Appeal fails and is dismissed. No costs. However, if and when the plaintiffs pay the entire amount as claimed in the initial show cause notice, the Department is directed not to disconnect the service connections already effected.