(2000) 07 MAD CK 0008

In the Madras High Court

Case No : S.A. No. 243 of 1989

S.A. Ahamed and Another APPELLANT

Vs

The Tamil Nadu Electricity Board RESPONDENT

Date of Decision : 24-07-2000

Acts Referred:
Electricity Act, 1910 — Section 30B, 33

Citation : AIR 2001 Mad 117 : (2002) 2 CivCC 112 : (2002) 2 RCR(Civil) 181

Hon'ble Judges : A. Raman, J

Bench : Single Bench

Advocate : M.K. Kabir, for the Appellant; V. Rangabashyam, for the Respondent

Final Decision : Allowed

Judgement

A. Raman, J.—The plaintiffs are the appellants.

2. At the time when the Second Appeal was admitted, the following questions of law were formulated for consideration :--

(i) Whether the Court below is wrong in holding that the law of limitation is not applicable to the recovery of dues by the Department of Electricity

in view of specific Ruling of this Court reported in Srinivasa Ginning Factory, Srivilliputtur Vs. The Madras State Electricity Board,

(ii) Whether the Court below ought to have held that the supply of electrical energy being sale of ""movable"" goods, the recovery of charges beyond

the period of three years is barred by the law of limitation under Articles 14 and 15 of the Limitation Act ?

(iii) u/s 30 of the Electricity Act, the law of Limitation is specifically made applicable to the recovery of charges even on a billing made under a

wrong tariff due to clerical error or mistake and consequently the consumer cannot be made liable for no fault of his. In the said circumstances, whether the decision of the Court below is without jurisdiction, illegal and arbitrary?

3. Though the suit was decreed by the trial Court, on appeal, the same was set aside and the suit was dismissed. The lower appellate Court held

that the question of limitation is not applicable and therefore, he dismissed the suit.

4. The short facts necessary for the disposal of this appeal runs as follows :--

The plaintiffs are running a clinic at Door No. 10, Kutchery Road, Periakulam. There are two service connections for the same in Service

Connection Nos. 2651 and 3381. A demand was made by the defendant/Board, stating that a sum of Rs. 4,350-20 is payable by them, stating

that there was a wrong assessment made. They revised the charges due and payable from 20-9-1971 to April 1979 and issued a demand notice

for Rs. 4,350-20. Therefore, the suit was filed.

5. According to the defendant, at the time of inspection, on 20-9-1971, it was found that there was a wrong charge of the tariff and therefore,

there was no necessity to send any fresh notice. At the time of inspection, it was found that the Horse Power for service connection No. 3381

exceeded 3 HP. and therefore, the tariff was revised, since it was wrongly calculated that the tariff applicable was only tariff-2.

6. The service connection relating to 3381 was affected on 20-9-1971. During inspection in the year 1979, the Junior Engineer sent a report under

Ex. B4 stating that there is a mistake in billing, as the proper tariff applicable is tariff-5 and not 2. Therefore, on the basis of the report, a notice

was issued to the plaintiff under Ex. A1, requiring the plaintiffs to pay the charges due from 20-9-1971 to April 1979 as revised, and further

informing that otherwise, service connection will be disrupted. The plaintiffs objected to the notice and the revision of tariff and wrote to the

Electricity Board. But in spite of it, a letter was sent under Ex. A4, stating that unless the amount as called upon is not paid; both the connections

will be disconnected.

7. The trial Court has observed that from 1971 to 1979, there was no report of any error in the connection. It is also stated that the plaintiffs never

asked for the service connection under tariff-2. Therefore, from 1971 to 1979, there was no change of tariff and both the connections remained as they were originally energized. If on account of a mistake by the Department there was any wrong billing or in bringing it under particular tariff, the

plaintiffs cannot be made responsible.

8. Section 30B of the Electricity Act reads as follows :--

In the event of any clerical errors or mistakes In the amount levied, demanded or charged by the Board then in the case of under charging, the

Board shall have a right to demand an additional amount and in the case of over charges, the consumer shall have the right to get refund of the

excess amount provided at that time such claims were not barred by limitation under the law then in force.

9. Section 33 provides that where a consumer has been classified under a particular category and is billed accordingly and It is subsequently

observed that the classification is not correct, the Board may alter the classification and suitably revise the bills if necessary even retrospectively.

10. Both Sections 30 and 33 have to be read together. When a claim is made to recover the amount is barred by Limitation and Section 30-B

provides that only were claims were not barred by limitation under the law then in force, the Board shall have a right to demand the additional

amount in the case of undercharging, then it follows that the right of the Board to get the amount is barred by Limitation. In other words, if the

Board is to file a suit for recovery of the amount, the suit will be definitely barred. At best, the Board may claim the amount only for a period of

three years from prior to the date of inspection. They can never claim the same from the year 1971 onwards, as now claimed by them.

11. In this case, the learned counsel for the respondents relied upon the judgment of this Court Asmath Begum Vs. The Superintending Engineer,

Tamil Nadu Electricity Board and Others, . It was a case where the suit was filed for declaration, stating that penal charges levied by the Electricity

Board is illegal and beyond the period of limitation as prescribed under the Limitation Act. It was held that the period of limitation prescribed in

Limitation Act is not applicable to the Electricity Board. Under the law of Limitation, it does not have the effect of destroying the right secured

under the Electricity Act.

12. But, a reading of Section 30(b) provides clearly that if a suit or action is to be initiated, it must be subject to law of limitation. Here, the claim is

made for a period of 9 years. Definitely, the Board cannot institute a claim for recovery of the same before the Court of law. The decision reported

in (1994) MLW 384 (Rangabashyam v. T. N. E. Board), is directly applicable to the facts of this case. It is also a case of a medical practitioner.

There, the Electricity Board revised the consumption bills and made a demand on that basis. They stated that the computation was made wrongly

and instead of applying the multiplying factor, they have arrived at a wrong figure and revised the bills for seven years and made a demand upon

the consumer to pay the said amount. The consumer immediately filed a suit before the Civil Court, and this Court held as follows :--

Even if the defendants wanted to recover the amount, they are bound by law of limitation, that electricity, being movable goods, the period of

limitation is three years, and in the instant case, the revision was made in utter disregard of law of limitation and the defendants cannot be allowed

to take advantage of their wrong acts.

13. In the said decision, this Court also referred to the decision reported in Srinivasa Ginning Factory, Srivilliputtur Vs. The Madras State

Electricity Board, , where it was held that period of limitation for Article 14 is three years from the date of delivery of goods, and the period of

limitation for Article 15 is three years from the time when the period of credit expires. So, it is clear that the period of limitation for claiming charges

for supply of electric energy is three years. In another decision reported in S.M. Amarchand Sowcar (died) and others Vs. Tamil Nadu Electricity

Board and others, , it was held that the right to disconnect supply to consumer is always available and not circumscribed by any limitation and such

right is not dependant on existence of Board''s right to recover its dues by filing suit. It was further held that the question of limitation would arise

only when the Board filed suit to recover arrears of electricity charges.

14. The Board on the ground that they have committed a mistake has called upon the plaintiffs to pay certain amounts, revising the charges payable

by the plaintiffs from 1971 onwards when the service connection was granted. The notice was issued in 1979. In such circumstances, I am of the

view that the suit for declaration is maintainable, since the plaintiff cannot make a demand for payment of the sum, which is on the face of it barred

by limitation. To hold otherwise would not be an equitable thing. Here, admittedly, there is no mistake with reference to the other service

connection viz., No. 2651. The mistake is said to have been committed with reference to service connection No. 3381. But, the notice is given,

threatening disconnection of both the service connections. They are a party to the contract. A party to the contract cannot on the basis of a mistake

committed by him force the other party to perform the contract, as he likes. Principles of natural justice require that the Board after inspection

given a copy of the report to the plaintiffs, calling upon them to show cause why the charges cannot be revised and then proceeded to do so. The

mistake here is arising not on account of any act on the part of the consumer. The Board cannot be allowed to take advantage of their own

mistakes. Therefore, I am of the view that the judgment and decree of the lower Court is liable to be set aside, restoring that of the trial Court.

15. In the result, this appeal is allowed, with costs, setting aside the judgment and decree of the lower appellate Court and restoring that of the trial

Court.