

(2001) 08 MAD CK 0081
In the Madras High Court
Case No : S.A. No. 512 of 1990

State of Tamil Nadu

APPELLANT

Vs

Gomathi Mills

RESPONDENT

Date of Decision : 17-08-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 14, 9
Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 15, 20
Electricity Rules, 1956 — Rule 46

Citation : (2002) 1 LW 411 : (2001) 3 MLJ 602

Hon'ble Judges : K. Sampath, J

Bench : Single Bench

Advocate : S.T.S. Murthi, Special Government Pleader C.S, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

1. Defendants in O.S.No.403 of 1981, on the file of the District Munsif, Ambasamuthiram, are the appellants in the second appeal.

2. The respondent herein represented by its Managing Partner filed the suit for recovery of a sum of Rs.10,000 with interest on the following

averments:

As per Rule 46 of the Indian Electricity Rules, 1956, once in five years the electrical installations in Industrial Undertakings had to be inspected and

tested; as per G.O.Ms.No.1437, dt.18.5.1963 inspection charges were fixed; in view of the increase in the pay of the employees and other over-

heads, the Chief Electrical Inspector requested the Government to revise the rates; as per G.O.Ms.No.1172, dt.26.7.1975, the rates were fixed;

the new rates were 7 to 9 times higher than the previous rates; inspection would

take place for a single day; the revised rates were unjust and beyond all proposition; they had no relationship to the services rendered; M/s. Bojraj Textile Mills Ltd., of Theni, challenged the revised rates in W,P.No.2405/1976 before this Court; the Court accepted the case of the writ petitioner and quashed the Government Order on 6.11.1978 so far as the writ petitioner was concerned; the plaintiff was a member of South India Mill-Owners' Association at Coimbatore; since the rates were on the high side, the said Association made a representation to the Government for revision of the rates; the Government examined the grievance, revised the rates, and brought down the rates by G.O.Ms.No.1569, 11.8.1979; in those circumstances, the Government had accepted that the G.O.Ms. No. 1172 dt.26.7.1975 was illegal and had no proportion to the services rendered; the plaintiff had paid Rs. 5,975 in 1975, Rs.6225 in 1976, Rs.6025 in 1977, and Rs.6225. In the year 1979; for each year, the extra amount collected was Rs.2,000; the excess amount was paid on the specific understanding that the same would be adjusted in the payments due in future; this had been so assured in several letters from the second defendant on various dates, namely, 3.9.1976, 17.2.1977, etc.; on 1.2.1980, the plaintiff/Mills asked for refund of the excess amount; the Chief Electrical Inspector by letter dt. 18.2.1980 responded by saying that only in respect of M/s. Bojraj Textile Mills Ltd., Theni, this Court had quashed the Government Order and there was no question of refunding the amount, if any due, to the plaintiff; this was contrary to law; this Court had held against the Government; it was only on the assurance given by the second defendant the amounts had been paid on various dates; otherwise, the plaintiff would not have paid the amount; the plaintiff itself could have filed the writ petition; the second defendant had accepted through his letters that only the ratio of the decision to be tendered by the High Court would apply to all the parties concerned; and the Order of the High Court was pronounced on 6.11.1978 and within three years therefrom the suit had been filed.

3. The first defendant filed the written statement and the same was adopted by the second defendant. Besides denying the various averments in the plaint, it was contended that the quid pro quo principle could not be satisfied, if the new fee was not proportionate to the quantum of inspection

work actually involved in respect of different consumers and if inequality among consumers were not avoided; it could not be said that the fee fixed was unjust and illegal and it did not satisfy the principle of quid pro quo; the expenditure of the staff had been steadily increasing year-after-year and it was therefore quite essential to increase the fees correspondingly for the inspections carried out by the staff of the department; the case of M/s. Bojraj Textile Mills, Theni, was an individual and special case and this Court had made inapplicable the G.O. so far as the petitioner, in that writ petition was concerned on the ground that no material was forthcoming for the fee fixed and the services tendered and the return for it; the orders passed by this Court in respect of M/s. Bojraj Textile Mills could not be made applicable to other consumers as the G.O. itself was not struck down; the basis on which the refund was claimed had not been made clear in the plaint; the plaintiff was not a party to the writ petition, nor was there any stay of collection of inspection fees from the plaintiff; the suit as framed was not maintainable and it was hopelessly barred by time; the understanding between the plaintiff and the second defendant was not true; what was stated in those letters that if any amount paid by the plaintiff was found to be in excess by the High Court, the same would be arranged to be adjusted against the future demands for inspection fees; the decision of the writ petition would not apply to the plaintiff and it was only for the petitioner in that writ petition; to apply the decision in that writ petition without considering the separate facts and circumstances of each Mill owner and the installations they had, the time and labour taken by the Electrical inspectorate to carry out the inspections, it would result in a serious misapplication of the principle of quid pro quo in those cases; the levy was legal; again in the absence of any specific provisions either in the Indian Electricity Act (Central Act of 1910) or in the Indian Electricity Rules, 1956, for giving retrospective effect to the revision of the rate of inspection fees, prospective operation could be given to the revised rates; and there was no case for the suit and it was liable to be dismissed.

4. On the above pleadings, the trial Court framed the necessary issues and on the oral and the documentary evidence accepted the case of the plaintiff and decreed the suit with interest payable at 6% per annum. This was confirmed in the appeal by the appellants in A.S.No.66/1965. It is,

as against that, the present second appeal has been filed.

5. At the time of admission, the following substantial questions of law were framed for decision in the second appeal:

1. Does a Civil Court have power to decide the question of legality, propriety or constitutionality of Government Order issued in pursuance of

express power conferred on it by the statute while deciding the question of claim for refund?

2. Can the Court order that the relief granted only to the petitioner in W.P.No.2405 of 1976 could be made available to a third party who had not

sought such a relief?

3. Is there not a distinction between payment made under mistake of law and payment made under coercion (threat of disconnection) as laid down

in the case reported in Tilokchand and Motichand and Others Vs. H.B. Munshi and Another,

4. Is the Court competent to grant relief based upon G.O.Ms.No.1172, dt.26.7.1975 when it has been replaced by G.O.Ms.No.1509,

dt.22.8.1979?

6. The learned Special Government Pleader made a serious argument that the decision in the writ petition filed by M/s. Bojraj Textile Mills Ltd.

would not avail to the present appellant in as much as the relief was confined only to the writ petitioner. The learned counsel also submitted that the

suit before the Civil Court was not maintainable as, according to him, the Civil Court had no power to decide the question of legality, propriety or

constitutionality of Government Order issued in pursuance of express power conferred on it by the statute while deciding the question of claim for

refund.

7. In Shri Ramendra Kishore Biswas Vs. The State of Tripura and Others, where a service matter was litigated in Civil Court for more than 5

years and at the time of the final hearing it was raised that the Civil Court had no jurisdiction to entertain the suit, it was held by the Supreme Court

that such an objection was not proper and more-so when the relevant Service Rules neither expressly nor by implication had taken away the

jurisdiction of the Civil Court to deal with service matters.

8. In the present case the Civil Court is not called upon to decide the legality, propriety or constitutionality of the Government Order issued in

pursuance of express power conferred on it by the statute. What it is required to do is to follow the decision in M/s.Bojraj Textile Mills Ltd."s case

in W.P.No.2405/1976 as a binding precedent for holding in favour of the plaintiff. In several letters which have been adverted to by the Courts

below, the second defendant had advised the plaintiff to remit the inspection fees and if any amount paid was found to be in excess, consequent to

the Court decision, the same would be arranged to be adjusted against future inspection. This was in Ex.A.1, dt.7.9.1976. In Ex.A.3,

dt.19.2.1980, the position was reiterated.

9. As pointed out by the Supreme Court in the decision cited supra, the parties had understood the scope of the fight between them and let in

evidence, various documents had been marked and there was definite commitment by the second defendant that the department would abide by

the decision in the writ petition filed by M/s. Bojraj Textile Mills Ltd. The Courts below have very carefully analysed the various exhibits and found

that the reasoning in the order of the writ petition would be available to the plaintiff also. The defendants were not justified in going back on their

definite commitment with regard to the excess fees charged and collected by them from the plaintiff. The reasoning of the decision in the writ

petition would be very much available to the plaintiff to contend that it was entitled to refund of the excess fee paid by it. I therefore answer the first

substantial question of law against the appellant.

10. What is sauce for the gander is sauce for the goose. The Government cannot be allowed to take different stands in respect of the same subject

matter. I therefore answer the second question of law as follows:

The Government is bound by the decision in the writ petition and the reasons which prompted the learned Judge to quash the G.O. in the writ

petition are very much applicable to the plaintiff also.

10. So far as the third question of law is concerned, the same does not really arise for consideration. On the assurance given by the department

that the amounts would be adjusted in case the High Court held against the department, the plaintiff made payments. There was no coercion or any

mistake of law involved. The decision referred to does not apply here. The third substantial question of law is also answered against the appellant.

12. The fourth question of law is concerned, is also to be answered against the

appellant for the following reason:

At the time the plaintiff made the payments, G.O.Ms.No.1172, dt.26.7.1975 was in force. The amounts were paid on the basis of the said

Government Order. The mere fact that the Government Order had been subsequently replaced by another Government Order, would not mean

that the department could appropriate the excess amount collected from the plaintiff on the basis of the impugned Government Order.

13. Consequently, all the substantial questions of law are answered against the appellant. The second appeal fails and the same is dismissed. No

costs.