
(2008) 11 MAD CK 0190
In the Madras High Court
Case No : A.S. (MD) No. 1052 of 1995

Tamil Nadu Electricity Board	Vs	APPELLANT
P.N. Kumarapandian and Others		RESPONDENT

Date of Decision : 20-11-2008

Acts Referred:

Electricity Act, 1910 — Section 24(1)
Limitation Act, 1963 — Article 137

Citation : (2008) 11 MAD CK 0190

Hon'ble Judges : A.C. Arumugaperumal Adityan, J

Bench : Single Bench

Advocate : M. Sureshkumar, for the Appellant; S. Meenakshi Sundaram, R1 to 7 and R 10 to 18, for the Respondent

Final Decision : Dismissed

Judgement

A.C. Arumugaperumal Adityan, J.—This appeal has been directed against the decree and judgment in O.S. No. 75 of 1988 on the file of the Court of Subordinate Judge, Tenkasi. The unsuccessful defendants before the trial Court are the appellants herein.

2. The plaintiffs filed the suit for declaration that the demand of payment by the defendants towards surcharge in respect of belated payment of electricity consumption charges for the period from 1979 to 1982 is illegal and untenable, since the demand under Ex.A1 in the year 1988 is barred by limitation and also for consequential injunction.

3. The short facts of the plaint runs as follows:

The plaintiffs are residents of Kuthapanchan and Kalathimadam Villages in Ambasamudram Taluk. The first plaintiff owns Nanja lands and there is a well in the lands owned by them. Plaintiffs 2 to 7 and 10 to 14 also own Punja lands and there are wells in their lands. Plaintiffs 1 to 7 and 10 to 18 have installed electric motor pump sets in their respective wells and have obtained electric connection

from the first defendant to draw water from their wells through the means of their electric motor pump sets. The Plaintiffs 1,4,5,8 to 10, 12, 13 and 15 also own house at Kalathimadam Village and they have obtained electric connections to their house from the first defendant. The service connection numbers of the plaintiffs are given in the schedule to the plaint. S.C. numbers denote agriculture services and H.S.C numbers denote house service connections. The service connections to the pump sets described in the schedule are classified as agriculture services. The plaintiffs are liable to pay 12 Paisa per unit for the electric energy consumed by them. Due to agriculturists' agitation, the plaintiffs did not pay electric consumption charges from 1979 to 1982. The plaintiffs have also paid the dues payable by them from 1979 to 1982 as claimed by the defendants. There are no arrears of electric consumption charges payable from 1979 to 1982. But all of a sudden, the plaintiffs have been served with notices by defendant No. 3 dated 18.03.1988 demanding to pay amounts described in the schedule alleging that the amounts represent penal levy for the delay in the payment of electric consumption charges. Defendants also threatened that if the amounts are not paid before 30.04.1988, their services would be disconnected. Hence, the suit.

4. Defendants 2 and 3 have adopted the written statement filed by the first defendant, which runs as follows:

The suit is not maintainable. The plaintiffs did not pay the electric consumption charges from 1979 to 1988 within the stipulated time due to unlawful agitation. Later on as they came forward to remit the arrears in instalments, they were permitted to pay the arrears in equal instalments under 1 plus 1 formula. The plaintiffs paid arrears from 12/83 to 10/84 in various instalments. The payments of arrears by the plaintiffs were all belated payments. As per the terms and conditions of supply and under the terms of the Agreement executed by the plaintiffs with the Board, all belated payments carry interest/surcharges. Accordingly, the plaintiffs were intimated regarding the payment of interest, B.P.S.C., on the belated payment of arrears. They were also specifically informed that the claim should be settled on or before 30.04.1988, failing which, these services would be disconnected. The demand made by the Board is perfectly valid, legal, just and enforceable as against the plaintiffs. The plaintiffs are estopped from contending that they are not liable to pay the surcharge. The plaintiffs are bound by the terms and conditions of supply. The said surcharge is leviable under the terms and conditions of supply. Under the terms and agreement, the plaintiffs are liable to pay the surcharge for their belated payment. The Board is entitled to collect the said surcharge. The payment of arrears in instalments under 1 plus 1 formula has been permitted to the plaintiffs subject to levy of the said surcharge at 2% P.M. upto 08.04.1983 and 1-1/2% per month from 09.04.1983. The claim is not barred by limitation. These defendants are entitled to make demand and collect the surcharge from the plaintiffs. The surcharge on belated payments were not paid by the plaintiffs nor waived by the defendants. The said surcharge on belated payments could be

calculated only after last instalment is paid. Mere payment of the instalments of arrears will not absolve the plaintiffs from paying the surcharge as aforesaid. The plaintiffs are not eligible to any declaration nor injunction. The suit as framed is not maintainable. Hence, the suit is liable to be dismissed. On the above pleadings, the learned trial Judge had framed six issues for trial.

5. Before the trial Court, 14th plaintiff has examined himself as P.W.1 and exhibited Ex.A1 series, impugned demand notices, for surcharges for the belated payment of electricity consumption charges for the period from 1979 to 1982, in the year 1988. Exs. D1 to D4 were marked on the side of the defendants under Ex.C.1, Memo.

6. The defendants have not pressed their defence in respect of surcharge for the electricity consumption charges. Delay in payment of electricity consumption charges for the motor pump sets, which were used for agricultural purpose.

7. After scanning the evidence both oral and documentary, the learned trial Judge has come to a conclusion that the demand under Ex.A1 by the defendants is barred by limitation and accordingly, decreed the suit as prayed for, which necessitated the defendants to approach this Court by way of this appeal.

8. The points for determination in the appeal are that;

1. Whether the claim made by the defendants under Ex.A1 series, Notices for surcharge/penal penalty for the electricity consumption charges due for the service connection scheduled to the plaintiff for the period from 1979 to 1982 are barred by limitation?

2. Whether the decree and judgment of the learned trial Judge in O.S. No. 75/1988 is liable to be set aside for the reasons stated in the memorandum of appeal?

9. Point No. 1:

Ex.A1 series are the demand notices of the defendants for penal charges in payment of electricity consumption charges for S.C.Nos.2, 4, 147, 126, 196, 242, 104, 208, 93, 28, 227, 29, 122, 204, 121, 64, 105, 76, 277, 210, 20, 214, 25, 209, 115, 133, 32, 146, 59 and 213. Under Ex.A1 series, the defendants have demanded not the electricity consumption charges but the surcharge for the delay in payment of the electricity consumption charges, for the above referred service connections at Kuthapanchan Village at Alangulam. D.W.1 would also admit in his evidence that Ex.A1 series notices were issued to the plaintiffs only for the surcharge for the electricity consumption charges due for the period from 1979 to 1982 for the service connections mentioned in the plaint. He would further admit that in respect of motor pump sets used for agricultural purpose, the entire electricity consumption charges have been waived by the Government as per Ex.B1 and B2, Government Orders. In the cross examination D.W.1 would admit that the electricity consumption charges due from the agriculturists for the electric motor pump sets used by the plaintiffs for the agricultural purpose is paid

in May-1994 itself. Further would admit that even the electricity consumption charges for the period from 1979 to 1982 from the plaintiffs there was a settlement entered into between the plaintiffs and the Electricity Department and as per the terms of the said settlement, the plaintiffs have been permitted to pay the dues for the period from 1979 to 1982 electricity consumption charges in instalments and since the instalment payments are delayed payment, they have levied a surcharge under Ex.A1 series. But, absolutely no material placed before the trial Court to show what was the agreement entered into between the plaintiffs and the defendants in respect of the payment of the electricity consumption charges for the service connection scheduled to the plaintiff for the period 1979-82. The learned trial Judge has rejected the demand made by the defendants under Ex.A1 series on the ground that for the amount due for the period 1979-82 the demand made under Ex.A1 series in the year 1987 are barred by limitation. The learned Counsel appearing for the Electricity Board relying on the Judgment of this Court in S.M. Amarchand Sowcar (died) and others Vs. Tamil Nadu Electricity Board and others, would contend that there is no provision in the Electricity Act prescribing any time limit for claiming the electricity consumption charges from the consumers and hence, the suit filed by the plaintiffs under Ex.A1 series, demand notice, is not maintainable. In the above said ratio relied on by the learned Counsel for the appellants/defendants the moot point is whether the Electricity Board is empowered u/s 24 of the Electricity Act, 1910 (herein after referred to as "the Act") to disconnect the electricity supply connection for non-payment of arrears of the electricity charges. The short facts of the said ratio is that "the suit was filed by the plaintiff for declaration that the demand made by the defendants for Rs. 2,500.95 in their letters dated 23.07.1981 and 15.08.1981 are illegal and ultravires and for a consequential injunction restraining the defendants from disconnecting the plaintiff's service connection No. 249. Admittedly, the demand notice was issued by the Electricity Department against the plaintiff for the electricity consumption charges issued from January-1970 to June-1976. The plaintiff contended that the plaintiff received electricity consumption bills only on 15.08.1981 claiming the first instalment of Rs. 400.95 along with other consumption charges and threatening to disconnect the service of the plaintiff for non payment of the said bill amount. It was contended on behalf of the plaintiff that the claim made by the Electricity Department is barred by limitation. The suit was defended by the Electricity Board on the ground that the original owner was having two service connections and due to non-payment of charges in S.C. No. 696 the supply for other S.C, was disconnected by the Board and that the consumer was liable to pay annual minimum charges though the service connection was disconnected till the consumer expresses his unwillingness or willingness to discontinue the supply of energy and there was no request from the service holder upto 1974-75. The agreement period was over and till that time also the defendants are entitled to claim annual minimum charges. It was contended on behalf of the Electricity Board that the Courts below have not properly considered Section 24 of the Act and that the Board is entitled to cause disconnection of the service for

non-payment of the dues and there was no bar of limitation for doing so. As far as the claim of the dues in respect of disconnection of service for non-payment of dues for another service connection, Clause 40(b) of the terms and conditions of supply was referred on behalf of the Electricity Board". Under such circumstances, it was held by this Court as follows:

8. On a perusal of the Judgment of the trial Court, it is seen that the court has mixed up two separate issues as mentioned above resulting in a confused approach. Reference is made to Section 24(1), as if the said provision entitles the Board to disconnect one service connection for default committed in respect of another service connection. Apparently there is a wrong mix up of the said provision with the terms of agreement. This erroneous approach had been mechanically confirmed by the appellate court also. Therefore it is necessary to consider the relevant provisions in the light of the facts of the present case.

9. ...

10. ...

11. ...

12. The issue pertaining to limitation assumes importance, having regard to the plaint claims. The action of the board, which is called in question is their attempt to disconnect the supply for the arrears. It is the consumer, who has come to the court seeking for a declaration that the demand of the Board was illegal and this is not a suit at the instance of the Board for recovery of its dues. In this context of Section 24 of the Act assumes significance. The Section itself signifies only discontinuance of the supply to the consumer, who is at default. There is no time limit or restrictions on the board to disconnect the supply. In fact the provision envisages that the supply can be cut off immediately after the default and without seeking to recover the dues by filing a suit. This right to disconnect is absolutely independent of the Board's right to recover the dues. Section 24(1) of Indian Electricity Act, 1910 is as follows:

24. Discontinuance of supply to consumer neglecting to pay charge - (1) 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, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and re-connecting the supply, are paid, but no longer.

13. The fact that the right to disconnect is independent of recovery of the dues is made clear by the expression "without prejudice" to his right to recover such charge or other sum by suit. It is up to the Board to file a suit or not and if the

board seeks to file a suit., it should be filed within the period of limitation. But the said right to file a suit for recovery may or may not be exercised by the Board but the right to disconnect the supply is always available and is not circumscribed by any limitation nor is it dependent on the existence of the Board's right to recover the dues by filing a suit. Therefore the limitation, which is applicable to the Board for filing a suit is irrelevant and hence the objection taken by the consumer cannot be sustained.

From the facts of the said case it is clear that in respect of the electricity consumption charges for one service connection, the Electricity Board had disconnected electricity supply to other service connection which also belongs to the same consumer. It is made clear from the above said judgment also that the Electricity Board is competent to file a suit for arrears of electricity consumption charges within a period of limitation. Under Limitation Act Article 137, the residuary article will be applicable. In the case on hand, admittedly, Ex.A1 series, the demand notices from the Electricity Board are barred by limitation because for the penal charges for the delayed payment of Electricity consumption dues for the period from 1979 to 1982 the demand notices under Ex.A1 were issued to the plaintiffs in the year 1988. Under Ex.A1 demand notices, the defendants/appellants have claimed surcharge dues for the delayed payments of the electricity consumption charges, which were admittedly allowed by the defendants/appellants-Electricity Board to pay in instalments. After permitting the respondents/plaintiffs to pay the electricity consumption charges due for the period 1979-82 in instalments, the demand for penal charges under Ex.A1 that too, after a lapse of three years is clearly barred by limitation, as correctly held by the Court below. Once the demand under Ex.A1 is barred by limitation, on that score the appellants-Electricity Board cannot disconnect the supply. But, the appellants are empowered to exercise their powers u/s 24 of the Act, if their claim is within the period of limitation. The other dictum relied on by the learned Counsel for the appellants/defendants in Asmath Begum Vs. The Superintending Engineer, Tamil Nadu Electricity Board and Others, . also reiterates the same position of law. The relevant observation in the said dictum runs as follows:

6. ...

So far as the Electricity Board is concerned, the rights secured to them u/s 24 of the Indian Electricity Act cannot be ignored or denied. The disconnection or even dismantling u/s 20 of the Act of the installations, ultimately, which is available for the Electricity Board to ensure recovery of arrears due to them, cannot be said to have been lost by any period of limitation stipulated in the Limitation Act and the provisions contained in Section 24 being a special provision to safeguard the interest of the Electricity Board, a public undertaking, cannot be construed in a manner such to defeat the legislature intendment itself. it is not a condition precedent that the amount due from the consumer concerned must also be such, which should not have been barred by limitation, if a suit for recovery thereof is filed by the Electricity Board. Whether the remedy available to the Board under

Sections 20 and 24 of the Act. On the other hand, the word "due" used in Section 24 would take within its fold to mean of monies owed and payable even though their recovery may be barred by the law of limitation. Thus viewed, the amount indisputably payable could not be avoided to be paid or could not be prevented from being recovered by Board having recourse to Section 24 of the Act by the Electricity Board. If that be the correct position of law and in my view. It is so then it is not given to the appellant to seek a permanent injunction restraining the Electricity Board from recovering the amount due to the Board by having recourse to penal and coercive action of the nature envisaged u/s 24 of the Act cannot be any injunction granted to operate or run against specific mandate of the statute and the learned trial Judge committed a grave error in decreeing the suit as prayed for in such wide terms thereby preventing the Electricity Board from invoking a statutory provision enacted by the Parliament conferring a specific right upon the Board and its servants there is no inbuilt condition as a prerequisite for the Board to have recourse to Section 24 of the Act to prove that the claim or amount due and is sought to be recovered, if claimed before the civil court would also be decreed and would not be barred by limitation under the general law of limitation.

But in the case on hand, the demand by the defendants/appellants under Ex.A1 series are clearly barred by limitation, even though the Electricity Board has not filed a suit for recovery of surcharge due from the plaintiffs. So far the dues which are barred under limitation, the Electricity Board is not entitled to disconnect the electricity supply to the defendants. No doubt, u/s 24 of the Act, the appellants are entitled to exercise their power conferred u/s 24 of the Act for the recovery of electricity consumption charges or surcharges as the case may be, if the same is not barred under law of limitation. The other ratio decidendi relied on by the learned Counsel for the appellants is in 2002 (2) CTC 222 (Tamil Nadu Electricity Board rep. by Superintending Engineer Villupuram v. Sri Murugan Talkies Pennadam rep. by partner K.M. Thangavel. The plaintiff in that suit a Theatre has secured two service connections from the Electricity Department, bearing Nos. 350 and 396. The plaintiff has also remitted the electricity charges on 08.09.1979. The plaintiff was called upon to remit a sum of Rs. 2,212.20 for the period from 1.3.1978 to 30.04.1979, since it was transferred from Tariff No. 5 to Tariff No. 2. The plaintiff has sent a reply on 1.10.1979 and thereafter he was informed that they have exceeded the sanctioned load for more than 50 per cent, in burning of lights. On 29.12.1983 also the second defendant sent a communication calling upon, the plaintiff to pay the amount, for which a reply was sent on 27.4.1983. On 5.3.1979 the Junior Engineer of the Electricity Department has not inspected the Service connections. Now on the ground of short assessment for the period from 1978 to 1982 a sum of Rs. 672.25 was also claimed. The defendant also threatened to disconnect the electric supply. According to Audit report filed by the plaintiff, the period from 15.9.1962 to February 1968 a sum of Rs. 5,365.25 is payable. According to the terms and conditions of supply, only for the period of one year, the claim can be

made and not beyond that. On 21.10.1983 also the plaintiff was called upon to pay a sum of Rs. 17,940.40 for the period from March, 1964 to April 1969. It was contended on behalf of the plaintiffs that they have not used more than 50 per cent of the sanctioned load for the purpose of lighting and, as such, the entire calculation made by the defendant is not proper and correct and therefore, sought the relief of declaration and permanent injunction. The defendants resisted the suit by stating that on 5.3.1979, the premises was inspected by the electricity Officials and they have noticed the violation of the Tariff condition and also excessive use of more than 50 per cent of the sanctioned load. Hence the calculation of the amount was made at Tariff No. 2 and they contended that they have got power to collect the amount by virtue of the Electricity Act and that the claim is also in time. At the time of admission of the Second Appeal, the Substantial Question of law was raised as:

Whether the Courts below are correct in law in holding that the power of disconnection conferred u/s 24 of the Indian Electricity Act, 1910 cannot be exercised for the claim of revision, of bills, for the period exceeding three years, that is, after the expiry of the period of limitation?

There was no finding as to the effect that the claim made by the Electricity Board was barred by limitation. Only under such circumstances it has been held that it is not open to the defendant to contend that the Electricity Board is not empowered to exercise its power u/s 24 of the Electricity Act taking shelter under the Limitation Act. So it is settled proposition of law that it is not open for a consumer of the Electricity to contend that the Electricity Board is not empowered to exercise its power u/s 24 of the Electricity Act, taking advantage any of the provision of the limitation Act. But in this case as I have already observed that the demand notice issued to the plaintiffs under Ex.A1 series for the claim of surcharges for the delayed payment of electricity consumption charges are barred by limitation. Since those notice under Ex.A1 series were issued in the year 1987, claiming the surcharge dues for the delayed payment of electricity consumption charges relating to a period 1979-82. Further in this case, the electricity consumption charges for the period 1979-82 were also admittedly permitted by the Electricity Board to be paid in instalments as per the agreement entered into between the plaintiffs/respondents and the defendants/appellants. Under such circumstances, I hold on Point No. 1 that the demand made by the appellant under Ex.A1 series are clearly barred by limitation, as correctly held by the Court below.

10. Point No. 2:

In view of my findings and observation in the earlier paragraphs, I hold on point No. 2 that the judgment and decree of the learned trial judge in O.S. No. 75/88 on the file of Court of Subordinate Judge, Tenkasi, need not be interfered with for the reasons stated in the memorandum of appeal. Point No. 2 is answered accordingly.

11. In fine, there is no merit in the appeal and the same is hereby dismissed, confirming the decree and judgment of the learned trial judge in O.S. No. 75/88 on the file of Court of Subordinate Judge, Tenkasi. No costs.