

(2014) 03 MAD CK 0118
In the Madras High Court
Case No : S.A.(MD) No. 1151 of 2006

The Assistant Engineer, Distribution and The Superintending Engineer, Madurai Distribution Circle, Tamil Nadu Electricity Board APPELLANT

Vs

M. Vasu Devan RESPONDENT

Date of Decision : 17-03-2014

Acts Referred:

Electricity Act, 1910 — Section 26, 26(6)

Citation : (2014) 03 MAD CK 0118

Hon'ble Judges : G. Chockalingam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

G. Chockalingam, J.—Challenge in this second appeal is to the judgment and decree, dated 28.11.2005 passed in A.S. No. 97 of 2005 by the I Additional Subordinate Judge, Madurai, reversing the judgment and decree passed in O.S. No. 308 of 2004 on the file of the District Munsif, Melur, dated 23.03.2005. The respondent herein as plaintiff has instituted Original Suit No. 308 of 2004 on the file of the District Munsif, Melur, for the relief of declaration and permanent injunction, wherein the present appellants have been shown as defendants.

2. It is averred in the plaint that the plaintiff is running a Modern Rice Mill as Hulling Agent for Tamil Nadu Government. The defendants Tamil Nadu Electricity Board, supplies electricity to the plaintiff's Rice Mill in Service Connection No. 60 for running machineries (power load) and another service connection for lighting, fan etc. (lighting load). The Government (Tamil Nadu Civil Supplies Corporation Ltd.,) used to periodically give licence to the petitioner's Rice Mill as Hulling Agent and supply bulk quantity of paddy to the plaintiff for hulling. The supply of electricity by the Tamilnadu Electricity Board varied according to season and according to generation of electricity and grid supply. As the Mill is in the rural area, 3 Phase current will be supplied only from 10.00 p.m. to 6.00 a.m. and

alternatively for six hours in day time.

Hence, the plaintiff permanently kept a generator and used it for running his Rice Mill whenever there was no supply of electricity or whenever there was erratic supply. During the period of non-supply of paddy, the Rice Mill will remain idle. The Meter reading in the plaintiff's Rice Mill is taken by the Assistant Engineer once in every two months and the electric units consumed and the charges collected are entered in the Meter Reading Card. Whenever the Mill was not running due to non-supply of paddy by the Government or whenever due to erratic voltage in one of the 3 phases of supply of electricity and consequently, the plaintiff runs the Rice Mill with the generator or whenever the electric meter becomes defective and gets struck up, the plaintiff used to intimate the same orally as well as by letter to the defendants. When the Mill did not function due to delay in appointing the plaintiff as Hulling Agent and due to non-supply of paddy for hulling between the later part of October 1996 and the earlier part of January 1997, the plaintiff had intimated by its letter to the defendants. The defendants took meter reading in December 1996 was satisfied about the non-running of the Mill and consequently collected minimum charges of Rs. 7,900/-. During April 1997 to July 1997, the electric supply was erratic with low voltage in one phase of the 3 phases supply. During that period, the Mill was not run. On 01.09.1997, the meter got struck up. This was informed to the defendants and they came on 30.09.1997 and removed the defective meter and installed a new one. On 23.10.1997, the defendants took meter reading and collected charges for 35 days between the date of reading in August & February 1998 and the date of fixing of new electric meter on average basis. Towards later part of 11.03.1998, another new meter was fixed in the place of the earlier one. During April 1998, the defendants took meter reading and collected average charges also for 16 days from previous reading date 24.02.1998 to 11.03.1998. The newly fixed meter also is a defective one, which shows excessive reading. This was intimated to the defendants during May, June & July 1998. On 27.08.1998, the defendant came and found the defective one and fixed another meter. Due to such excessive reading, the bill amount for June 1998 came to Rs. 88,682/- and for August 1998 it came to Rs. 1,01,416/-. While so, the 1st defendant sent a notice to the plaintiff on 06.11.1998 that being the meter is a defective one, the average consumption was calculated for the period from December 1996 to February 1998 and that amount comes to Rs. 4,00,244/- and in default of payment, the electric service connection would be disconnected. Hence, the suit has been filed for declaration and consequential relief of permanent injunction.

3. The 1st defendant filed written statement, which was adopted by the 2nd respondent, it is averred as follows:- This suit is a false one. The suit is not maintainable in law or on facts. The notice, dated 06.11.1998 sent by the 1st defendant is a true one and it has no defects at all. In any healthy transformer, the voltage in all the three phase should be equal. But in the plaint, it has been mentioned that from the same transformer, one is of 215 volts and the other one of 170 volts is a false one. The plaintiff has sent only one letter, which is, dated

17.07.1997. For the period from 24.10.1996 to 26.12.1996, an amount of minimum charge Rs. 7900/- has been charged, which shows that the meter was in good condition and it is not in a defective stage. On 30.09.1997, the service connection No. 60 was verified and service was given to that connection and new meter was fixed. It is false to state that the plaintiff sent two letters on 14.10.1997 and 15.12.1997. On 11.03.1998, the meter was repaired and it was set right. Likewise, there was no letter from the plaintiff on 04.05.1998, 15.05.1998, 28.05.1998 and 15.06.1998 to the defendants. On 27.08.1998, the service connection No. 60 was fully dismantled and rectified and at that time, it shows no problem and no defect. Hence, there is no necessity to analyse the meter and that on 30.09.1997 and 11.03.1998, the meter was inspected legally and that if injunction is granted in favour of the plaintiff, the defendants will be affected to a larger extent. Hence, the defendants prayed for the dismissal of the suit.

4. The trial court, after considering the rival submission made on either side, has dismissed the suit. Against the judgment and decree passed by the trial court, the plaintiff as appellant has preferred A.S. No. 97 of 2005 on the file of the first appellate court. The first appellate court, after hearing both sides and upon reappraising the evidence available on record, has allowed the appeal and thereby set aside the judgment and decree passed by the trial court in O.S. No. 308 of 2004. Against the judgment and decree passed by the first appellate court, this second appeal has been preferred at the instance of the defendants as appellants.

5. At the time of admitting the second appeal, the following substantial questions of law have been formulated for consideration:-

1. Whether in law, the judgment of the appellate Judge in reversing the trial court judgment without assigning any valid reason is sustainable?

2. Whether in law, the judgment of the appellate judge is sustainable in view of the judgment rendered by the Supreme Court in Punjab State Electricity Board and Another Vs. Ashwani Kumar, , held to the effect that the suit is not maintainable against the Electricity Board since there is an implied bar of jurisdiction of Civil Court in dealing with collecting and recovering dues from the consumers by the Board?

6. Before going into the merits of the case, it is very necessary to narrate the admitted facts of this case.

7. It is an admitted fact that the service connection Nos. 60 and 132 belonged to the respondent/plaintiff and the respondent/plaintiff that the respondent/plaintiff is running the Rice Mill and two separate service connections are available for the plaintiff's rice mill, one for running the machineries (power load) and another service connection for lighting, fan etc., (lighting load).

8. It is argued on the side of the appellants/defendants that the meter for the

above service connections was struck off and the same was found by the Electricity Officials at the of time of taking meter reading and in this regard, the respondent/plaintiff also sent many letters to the Electricity Board and subsequently, the Electricity Board, after analysing the same, fixed a new meter and thereafter also, the meters found to be struck off. Therefore, totally three meters were fixed and latter on all the meters found to be defective and therefore, as per the Electricity Act and Rules, the consumption charges were determined on the basis of Ex. A17 Meter Reading Card and in the meantime, the respondent/plaintiff filed a suit and the trial court dismissed the suit filed by the respondent/plaintiff and the first appellate court, without any basis and application of principle of law, reversed the judgment and decree of the trial court and decreed the suit and therefore, the judgment and decree of the first appellate are to be set aside and the second appeal has to be allowed.

9. The learned counsel for the respondent/plaintiff argued that the first appellate court, after analysing the evidence and documents, has correctly come to the conclusion and thereby set aside the judgment and decree of the trial court and therefore, there is no need to interfere with the judgment and decree of the first appellate court and the second appeal filed by the appellants/defendants has to be dismissed in toto.

10. The learned counsel for the respondent/plaintiff further argued that without giving any notice to the respondent/plaintiff, the Electricity Board passed the unilateral order, without following the procedures contemplated under the Electricity Act and Rules, which is not binding upon the respondent/plaintiff.

11. It is further argued on the side of the respondent/plaintiff that there was no power given under the Electricity Act or the terms and conditions in the Tamil Nadu Electricity Board Manual to make a revised assessment, after such a long period and that too for a continuous period of 16 months and according to Electricity Law, the defective meter has to be sent to the Electrical Inspector and thereafter only, the appellants/defendants has to take steps to calculate the consumption charges, but without following the above rules and procedures, they unilaterally passed the reassessment order, which is not correct and the first appellate court, considering all these aspects, set aside the judgment and decree of the trial court and therefore, judgment and decree of the first appellate court are to be confirmed and the second appeal filed by the appellants/defendants has to be dismissed with costs.

12. The learned counsel for the respondent/plaintiff cited the following rulings in support of his contention:-

(1) The Superintending Engineer, Tamil Nadu Electricity Board and Others Vs. Uchappa Gounder, .

(2) (1998) 1 SCC 23, in the case of Madhya Pradesh Electricity Board and others vs. Smt. Basantibai.

(3) (2003) 3 MLJ 293 in the case of A.A. Mohd. Rafi vs. Tamil Nadu Electricity Board, represented by its Chairman, Madras and others.

(4) Superintending Engineer, Tiruvannamalai Distribution System, Tamil Nadu Electricity Board and Asst. Executive Engineer, O and M (North) Panchal, G. Ganesan, Tiruvannamalai Distribution System, Tamil Nadu Electricity Board Vs. Ramathai Udayar (deceased), Soundararajan, Munuswamy and Renu, .

13. The learned counsel for the appellants/defendants cited a ruling reported in Punjab State Electricity Board and Another Vs. Ashwani Kumar, . The ruling cited by the defendants are not applicable to the facts of this case as that case only dealt with tempering with meter.

14. But in the case it is admitted that the meter fixed by the Electricity Board has struck off without any reason. Therefore, the argument of the learned counsel for the appellants/defendants that the civil court has no jurisdiction to try the issue is not applicable to facts of the present case.

15. It is the admitted case of the appellants/defendants that before passing of Ex. A16, no notice was given to the respondent/plaintiff. Therefore, Ex. A16 order was straight-way passed by the Electricity Department, by charging Rs. 4,00,244/- as consumption charges for a period of 16 months.

16. It is also admitted by both parties that Ex. A16 reassessment of electricity charges was issued on 06.11.1998 for the period from 12/96 to 2/98. As per Clause 17.10, they have taken the average calculation on the basis of consumption during the period 8/96 and 10/96 and raised the bill for 12/96 to 2/97 and subsequently, also in the II category, the average calculation taken on the basis of consumption between 4/98 and 6/98 and calculated the reassessment for the period 4/97 to 2/98 and in Ex. A16, it is also stated that three new meters were fixed on different dates, viz., 30.09.97, 11.03.1998 and 27.08.1998 respectively. So it is made clear, three times, the meter was struck off and new meter was re-fixed by the Department.

17. According to the respondent/plaintiff, during some interval period, the consumption recorded in the new meter is between the period from 30.09.1997 to 23.10.1997 and 26.08.1997 to 29.09.1997 and after fixing of new meter on 27.08.1998, the reading was taken on 27.10.1998 shows that normal and correct consumption is Rs. 67,646/-. So even as per Ex. A16 order, the Department has reassessed the electricity consumption charges from December 1996 to February 1998 for 16 months, without taking the period whenever new meter was running correct reading and the consumer charges during that period. So, without giving any opportunity to the respondent/plaintiff and without calling for explanation from the respondent/plaintiff that as to what had happened to the meter, the Electricity Department unilaterally passed an order, which is not correct. Hence, this court is of the considered view that the argument of the learned counsel for the respondent/plaintiff is acceptable one.

18. Further, in the judgment reported in (2000) 3 M.L.J. 293, in the case of A.A. Mohd. Rafi vs. Tamil Nadu Electricity Board, represented by its Chairman, Madras and others, it has been held as follows:-

5. In the light of the above pleadings, I have heard the learned counsel for the petitioner as well as the respondents. There is no dispute with regard to the fact that the petitioner herein in was given Service Connection, namely, SC No. 56, Santhi Nagar Distribution, Coimbatore and the connected load is 6.5 kw. It is seen from the letter of the petitioner, dated 10.2.1995, after noting the meter reading, he had requested the Assistant Engineer, Tamil Nadu Electricity, Board, the third respondent herein, stating that an opportunity may be given to him before making any disconnection or claim for compensation. By the impugned proceedings, dated 8.6.1996, the third respondent had directed the petitioner to pay a sum of Rs. 1,51,695 towards the revised bill for the Service Connection No. 56. The reason mentioned therein is that there is a defect in the meter, A reading of the said order shows that without reference to notice, explanation/representation of the petitioner or any of the provisions, namely, Section 26(6) of the Indian Electricity Act or Clause 17 of Terms and Conditions of Supply of Electricity, the third respondent has passed the impugned order. Though the respondents are empowered to revise the bill and collect the difference amount from the consumers, undoubtedly, they have to follow the statutory provisions. The learned counsel for the petitioner has very much relied on Section 26(6) of Indian. Electricity Act, 1910. The said Section is as follows:-

26. Meters.- (1) to (5)...

(6). Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied, to the consumer or the electrical quantity contained in the supply during such time not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity:

Provided that before either a licensee or a consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven days" notice of his intention so to do.

It is clear from the above said provision that in case of any difference or dispute with reference to the meter referred to in sub-section (1) of Section 26, the same has to be decided by making an application either by the consumer or the officers of the Electricity Board by an Electrical Inspector. It is also clear that it is for the Electrical Inspector to verify and ascertain the correctness of the meter and even if there is any defect in the meter, it is for the Inspector to estimate the amount of average supply, not exceeding six months. A reading of the said

provisions show that an elaborate procedure is provided in case of any defect in the meter. Admittedly, the respondents, particularly, the third respondent has not followed the said recourse.

6. The learned, counsel for the petitioner has also relied on *Topasa Ramasa Patil Vs. Karnataka Electricity Board, Bangalore and Others*, . In a similar circumstance. Justice S. Rajendra Babu (His Lordship as he then was) while considering Section 26(6) of Indian Electricity Act, has held that in respect of faulty recording of meters, the Board cannot raise bill without approaching Electrical Inspector u/s 26(6) and getting meters tested. The same view has been reiterated by the learned Single Judge of the Delhi High Court in *H.D. Shourie Vs. Municipal Corporation of Delhi and Another*, .

7. It is also relevant to refer Clause 17.10 of Terms and Conditions of Supply of Electricity. The said clause is as follows:

17.10. Where supply to the consumer is given without a meter or where the meter fixed is found defective or to have ceased to function and no theft of energy or violation is suspected, the quantity of electricity supplied during the period when the meter was not installed or the meter installed was defective, will be assessed as mentioned hereunder:

The quantity of electricity, supplied during the period in question will be determined by taking the average of the electricity supplied during the preceding four months in respect of High Tension service connections and two assessment periods (four months) in respect of Low Tension service connections, provided that the conditions in regard to use of electricity during the said four months 2/3 two assessment periods were not different from those which prevailed, during the period in question. In respect of High. Tension service connections, where the meter fixed for measuring the maximum demand becomes defective, the maximum demand will be assessed by computation on the basis of the average of the recorded demand during the previous four months. When the meter becomes defective immediately after the service connection is effected, the quantum of electricity supplied during the period in question is to be determined by taking the average of the electricity supplied during the succeeding two assessment periods, provided the conditions in regard to the use of electricity in respect of such Low Tension service connections are not different,

Even-though in the counter filed by the second respondent there is a reference to Clause 17.10 of Terms and Conditions of Supply of Electricity, it is not reflected in the order impugned whether the third respondent had followed any such procedure. It is settled law that it is not open to the respondents to improve their case by furnishing certain details in the counter affidavit.

8. I am satisfied that before passing the impugned order, the third respondent neither followed section 26(6) of the Indian Electricity Act nor complied with Clause 17.10 of Terms and Conditions of Supply of Electricity. I have already stated that before revising the bill or claiming enhanced amount with regard to

defective meter, the respondents have to follow the above referred statutory procedures, "In the absence of any such details in the order impugned, the order of the third respondent, dated 8.6.1996, is liable to be quashed.

The above ruling is squarely applicable to the case on hand.

19. Even according to Clause 17.10 contemplates assessment for a period on the basis of preceding 4 months. It is admitted case of both parties that the service connection is very old one i.e., before 1996. But the Department, without following clause 17.10, has passed the re-assessment order under Ex. A17, which is not correct.

20. In this case, for two months period i.e.. December 1996 to February 1997, they have reassessed on the basis of the consumption charges for the period of 8/96 and 10/96. But for the month of 4/97 to 2/98, they have reassessed on the basis of the consumption for the month of 4/98 to 6/98. So when the new meter was fixed for first time, the Department is entitled to take average consumption charges for the consecutive months. When there is new service connection, they have to assess consumption charges on the basis of average of the subsequent charge. But in this case, the service connection is very old in existence for a long time. But the Department without applying clause 17.10, take the reassessment on the basis of the subsequent period is completely against the law laid down in the above said clause. Therefore, the order passed by the Department is liable to be set aside.

21. Even according to the argument of the learned counsel for the respondent/plaintiff, when the Department has found that there is a defect in the meter, they have to send the meter to the Electrical Inspector for repair. But, in this case, the meter was sent to the Assistant Executive Engineer, Meter and Relay tests, Madurai.

22. Section 26(6) of the Indian Electricity Act, reads as follows:-

When the question arises as to whether any meter is correct or not, the matter shall be decided by an Electrical Inspector upon the application of either party. Such Inspector shall estimate the amount of energy supplied to the consumer during the time not exceeding 6 months, as the meter was in the opinion of such Inspector not correct. Except as aforesaid, the register of the meter shall be conclusive proof of such amount or quantity of electricity consumed.

23. Further, according to Ex. B1, the meters sent for found to be defective and three meters are re-fixed. But According to Ex. B1 order, one meter alone sent for testing to the Assistant Executive Engineer, Meter and Relay tests, Pasumalai, Madurai-4 and after inspection, he has given recommendation stating that the released meter was tested at MRT, Lab, Pasumalai and found that the creeping within the limit. Hence, no billing recommendation. Even according to Ex. B1, the Assistant Executive Engineer, report recommendation that "billing no recommendation" was recommended. Hence, the Department has not correctly

followed the procedure laid down u/s 26(6) of the Indian Electricity Act and also they have not calculated the reassessment by following clause 17(10) of the Rules and before passing the order, they have not given an opportunity to offer his explanation, and hence, the reassessment order passed by the Electricity Department is liable to be set aside. Hence, this court is of the considered view that the demand made by the Department by way of issuing notice under Ex. A16 is liable to be set aside and accordingly, it is set aside and there is no illegality or infirmity in the judgment and decree of the First Appellate Court and the same does not require any interference by this Court and the Second Appeal is liable to be dismissed.

24. The point Nos. 1 and 2 are answered accordingly. In the result, the second appeal is dismissed. Considering the facts and circumstances of the case, both parties are directed to bear their own costs.