
(2001) 11 MAD CK 0045

In the Madras High Court

Case No : S.A. No's. 812 and 843 of 1991

The Superintending Engineer, Madurai Electricity Distribution
Circle, Madurai

APPELLANT

Vs

Nelco Metal Products Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 16-11-2001

Acts Referred:

Contract Act, 1872 — Section 23

Citation : (2001) 11 MAD CK 0045

Hon'ble Judges : A.K. Rajan, J

Bench : Single Bench

Advocate : V.P. Raju, for Rangabashyam, for the Appellant; P. Pandi, for the Respondent

Final Decision : Allowed

Judgement

1. O.S. No. 1262 of 1981 was filed by the defendant who is the consumer of electricity for declaration that demand notice issued by the

Department for payment of minimum charges of electricity as per the agreement between the defendant and the Board is not valid and for quashing

the demand notice. The said suit was dismissed by the Trial Court. Against that, the defendant filed first appeal in A.S. No. 130 of 1989.

2. During the pendency of the proceedings stated earlier, there was another demand notice issued by the Department demanding payment of

minimum charges. To prevent disconnection of electricity supply, the defendant filed another suit in O.S. No. 51 of 1984 for declaration that the

demand notice was invalid and for consequential prayer not to disconnect the electricity supply. The said suit was also dismissed by the Trial

Court. Against that A.S. No. 147 of 1987 was filed by the defendant. The first

Appellate Court heard both the appeals viz. A.S. Nos. 130 of 1989 and 147 of 1987 together and passed a common judgment.

3. Against that common judgment and decree, the Board has filed the above two appeals.

4. Counsel for the appellant has argued that as per the agreement Ex. B3, in paragraphs 7 and 8, the defendant has agreed to pay minimum

charges and also agreed for power cut being imposed partially or totally. The lower Court relied upon these terms and held that the Department

can impose power cut partially or totally and even in such circumstances, the defendant is bound to pay minimum charges as agreed under Ex.B3.

The learned counsel for the appellant has submitted that Trial Court has rightly dismissed the suit filed by the defendant. But the Appellate Court

decreed, the suit relying upon the Supreme Court judgment referred therein. The learned counsel further submits that, judgment of the Supreme

Court referred therein is not applicable to the facts of the present case. Therefore, the judgment of the first Appellate Court is liable to be reversed.

5. This Court while admitting the second appeals framed following substantial question of law in SA No. 812 of 1991:

Whether the lower Appellate court is right in holding that the terms of Ex.B-3 are not enforceable, overlooking that it is a valid contract, not

vitiated by any of the circumstances set out in Section 23 of the Contract Act?

6. In S.A. No. 843 of 1991 following substantial questions of law are framed;

(1) In the absence of any finding regarding the invalidity of Ex.B3 agreement executed" by the plaintiff, has the lower Appellate Court jurisdiction

to decree the suit as prayed for?

(2) In the absence of any plea that Ex.B3 is hit by Section 23 of the Contract Act, is not the plaintiff/ respondent bound by the terms and

conditions of Ex.B3 agreement?

(3) Whether the lower Appellate Court ought to have seen that there was no plea by the plaintiff that Ex.B3 had been executed under coercion,

fraud or undue influence?

7. Learned counsel for the respondent argued that the Supreme Court in the decision of Eastern Electronics (Delhi) Ltd, Faridabad and Ors. v.

The State of Haryana and Anr., 1976 (2) SCC 878 has held that when the

Electricity Board imposes power cut and was not able to supply the full requirement to the consumer under the contracts, the Board is entitled to get only the proportionate reduced charges. It held that:

In such a situation the amount of duty payable will be on the actual amount of demand charge realisable from the consumer after the proportionate reduction of the tariff.

8. Learned counsel for the respondent further relied upon the decision in *Man Industrial Corporation v. Rajasthan State Electricity Board and Ors.*,

AIR 1986 Raj. 137 wherein it is held as follows:

Where the Electricity Board supplies energy to the consumers under an agreement and they are liable to pay minimum charges for the supply, the

consumers are entitled to proportionate reduction in the minimum charges payable by them in the event of curtailment of the supply of the electric

energy to them on account of imposition of the power cut.

9. Learned counsel for the respondent relied upon another judgment in *LIC of India and Another Vs. Consumer Education and Research center*

and Others, wherein it is held that in case of unconscionable contract, a standard form contract with the private persons on the basis of its standard

terms and if the contract is unreasonable, unfair or irrational that would be open to judicial review and such unconscionable contract would be held

to be illegal. Learned counsel for the respondent also contended that this unconscionable contract is not binding under the circumstances of the

case. Hence, the contract is liable to be held as illegal and unenforceable as it is against the public policy.

10. It is very difficult to accept the argument of the learned counsel for the respondent that this contract is against the public policy or

unconscionable. In the facts and circumstances, of the particular cases in the two judgments referred viz., Supreme Court as well as Rajasthan

High Court, came to the conclusion that minimum charges were not payable during the power cut. But in the present case, there are specific terms

agreed to by the parties to the contract.

11. Further, it is to be noted that it is not printed or standard form of contract. This is a separate agreement prepared only for the purpose of this

contract between the parties. The parties specifically agreed to terms of the contract. As per paragraph 7 of the agreement.

It is also open to the Board to restrict or impose power cuts totally or partially at any time as it deems fit.

12. In paragraph 8 of the agreement it is further stated that:

The consumer agrees to pay minimum charges every month as prescribed in the tariffs, and terms and conditions of supply even if no electricity is

consumed for any reason whatsoever, and also if the charges for electricity actually consumed are less than the minimum charges. The minimum

shall be payable even if electricity is not consumed because of disconnection of supply by the Board due to non-payment of electricity charges,

pilferages or other malpractices or for any other valid reason.

13. Therefore, from the terms of the contract, it is very clear that the parties, especially the defendant agreed to pay minimum charges in all

circumstances whether there was a power cut or there was no consumption of electricity even due to disconnection or for any other reasons.

Therefore, this contract is a specific contract to which the decisions relied upon by the respondents are not applicable, Therefore the judgment

referred to by the respondent will not be of any help to him.

14. The Trial Court has rightly dismissed the suit relying upon the paragraphs 7 and 8 of the agreement, Ex.B3 and hence reversing the judgment

by the first Appellate Court is not legal.

15. Hence, both the appeals are allowed. The judgment of the first Appellate Court is set aside and the Trial Court judgment is restored. The

substantial questions of law framed in both the appeals are answered in favour of the appellant and against the respondent/ consumer.

16. Both the appeals are allowed. No order as to costs.