

(2009) 09 MAD CK 0228

In the Madras High Court

Case No : Second Appeal No. 797 of 1994

The Superintending Engineer, Tamil Nadu Electricity Board
and Divisional Engineer (O and M), Tamil Nadu Electricity
Board

APPELLANT

Vs

Jayaraman (died) and Others

RESPONDENT

Date of Decision : 02-09-2009

Acts Referred:

Electricity Act, 1910 — Section 39, 44

Citation : (2009) 09 MAD CK 0228

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : N. Muthusamy, for the Appellant; T.P. Sankaran, for the Respondent

Final Decision : Allowed

Judgement

M. Jaichandren, J.—This second appeal has been filed against the judgment and decree, dated 11.10.1993, made in A.S. No. 55 of 1993, on the file of the Principal District Court, Salem, reversing the judgment and decree, dated 30.11.1992, made in O.S. No. 7 of 1988, on the file the Principal District Munsif Court, Salem.

2. The plaintiff had filed the suit in O.S. No. 7 of 1988, praying for a declaration and injunction to declare that the order passed by the Superintending Engineer, the first defendant in the suit, dated 11.12.1987, as being arbitrary in nature and for a permanent injunction restraining the defendants and their men from, in any way, disconnecting the electricity supply, in S.C. No. 67 (Part IV) of M.P.K. Distribution of Arisipalayam Operation and Maintenance Section. The plaintiff had stated that he is the owner of the service connection, in S.C. No. 67 Tariff IV of M.P.K. Distribution of Arisipalayam Operation and Maintenance Section. The plaintiff is using the service connection in his Dhal Mill. The defendants and their subordinates have allegedly inspected the service connection, on 28.5.1984, and they had claimed that the plaintiff had tampered with the electricity meter and

that he had pilfered energy. The plaintiff had alleged that some of the authorities of the Tamil Nadu Electricity Board had a grudge against the plaintiff as he had made certain complaints against the Assistant Divisional Engineer. Therefore, the Assistant Divisional Engineer concerned had foisted criminal cases against the plaintiff and his family members.

3. The plaintiff had further stated that the provisional assessment made by the Assistant Divisional Engineer, stating that a sum of Rs. 1,59,356/- was due from the plaintiff, is arbitrary and baseless. Pursuant to the directions issued by the High Court, the plaintiff had paid 1/8th of the provisional assessment and he had faced the enquiry conducted by the Divisional Engineer, Salem. The plaintiff was not given sufficient opportunity to explain his case as directed by the High Court. An order had been passed, arbitrarily, confirming the provisional assessment made against the plaintiff. Thereafter, the plaintiff had filed an appeal before the first defendant, challenging the order passed by the second defendant. During the pendency of the appeal, the Divisional Engineer concerned had made an inspection of the plaintiff's mill, on 30.11.1987. All necessary particulars relating to the processes and the duration for each of the process and the actual consumption of electricity for the processes had been submitted to him. While so, the Superintending Engineer, the first defendant in the suit, had compelled the plaintiff to pay a sum of Rs. 89,641/-, under the threat of disconnection of electricity supply to the Mill. While so, without giving any further opportunity to the plaintiff, after the inspection made by the Divisional Engineer concerned, the Superintending Engineer passed an order, confirming the order of the second defendant. The order of the first defendant is arbitrary and without any basis. It is also a non-speaking order. No reasons have been given by the first defendant for coming to his conclusions.

4. In the written statement filed on behalf of the defendants it has been stated that the service connection of the plaintiff, in S.C. No. 67, had been inspected on 28.5.1984. There was tampering of the meter and theft of electricity had been committed. The allegation of the plaintiff that there was bitterness between the plaintiff and the Assistant Divisional Engineer concerned, due to the complaint made against him by the plaintiff, is false. No case had been foisted, as alleged by the plaintiff. During the surprise inspection by the officers of the Electricity Department, a number of cases of theft of electricity had been found. Therefore, several criminal complaints had been lodged in that regard. The agreement made by the Assistant Divisional Engineer is only in accordance with B.P.780, dated 21.6.1977, as per the terms and conditions of supply of electricity.

5. It has also been stated that a fair opportunity had been given to the plaintiff by observing the rules and regulations before the orders had been passed by the defendants. When the plaintiff had paid the amounts by admitting the facts he cannot raise any further objections. It is incorrect to state that the order passed by the defendants are arbitrary and without sufficient reasons. They are in strict compliance with the directions issued by the High Court, as well as in accordance

with the terms and conditions of the supply of electricity. There is no cause of action for the filing of the suit.

6. Based on the averments made on behalf of the plaintiff, as well as the defendants, the following issues had been framed by the trial Court

1) Whether the plaintiff is entitled to the relief of injunction, as prayed for in the plaint?

2) Whether the plaintiff is entitled to any other relief?

7. The plaintiff had examined himself as a witness and the defendants had examined four witnesses in support of their claims. Exhibits A-1 to A-25 had been marked on behalf of the plaintiff and Exhibits B-1 to B-19 had been marked on behalf of the defendants.

8. The claim of the plaintiff that the allegation of theft against the plaintiff and the criminal case foisted against him was due to the fact that there was previous enmity between the plaintiff and the Assistant Divisional Engineer, Pazhanirajan, had not been believed by the trial Court. If there was any complaint, with regard to the deficiency of service or with regard to the demand of money by the staff of the department, it was open to the plaintiff to bring it to the notice of the higher authorities. Since the plaintiff had not done so his claim that there were ill-feelings between him and the Assistant Divisional Engineer, Pazhanirajan, cannot be believed. Therefore, the trial Court had held that it cannot be concluded, based on the letters, dated 12.5.1984 and 21.5.1984, marked as Exhibits A-1 and A-3, respectively, that the surprise inspection done, on 28.5.1984, in the Dhal mill belonging to the plaintiff was accentuated due to previous enmity. The trial Court had also come to the conclusion that the plaintiff had made contradictory statements as to the reason why he was not available at the Mill during the inspection by the authorities of the defendant department. In fact, he had stated that he could not be available during the inspection as he had gone out. Later, during the enquiry held, on 21.12.1985, and in the affidavit filed in support of the writ petition before this Court he had stated that he was out of station at the time of the inspection, as he had gone to Chennai for eye treatment with Dr. Agarwal, along with his daughter. However, there was no evidence shown on behalf of the plaintiff to support the said claim. Therefore, the trial Court had not believed the claim of the plaintiff that the procedures required to be followed before an inspection was done had not been adhered to by the authorities of the respondent Department, during their inspection of the petitioner's Mill, on 28.5.1984. The trial Court had also come to the conclusion, based on the reports marked as Exhibits B-13 and B-16 that the original seals had been broken and bogus seals had been put on the electricity meter available at the petitioner's Mill. Further, the provisional assessment notice, dated 10.6.1984, marked as Exhibit B-4 and the proceedings, dated 17.6.1987, marked as Exhibit B-7 and the order of confirmation by the first defendant, dated 11.12.1987, marked as Exhibit A-12, have been held to be valid, as they are in

accordance with the procedures established by law. As such, the trial Court had concluded that the plaintiff was not entitled to the reliefs prayed for by him, in the suit in O.S. No. 7 of 1988. Accordingly, the trial Court by its judgment and decree, dated 30.11.1992, had dismissed the suit, in O.S. No. 7 of 1988.

9. Aggrieved by the judgment and decree of the trial Court, dated 30.11.1992, the plaintiff had filed an appeal on the file of the District Court, Salem, in A.S. No. 55 of 1993. The first Appellate Court had framed the following points for consideration:

1) Whether the plaintiff is entitled to the relief of declaration as prayed for by him?

2) Whether the plaintiff is entitled to the relief of permanent injunction?

10. Based on the contentions raised on behalf of the appellants, as well as the respondents and the evidence available on record, the first Appellate Court had set aside the judgment and decree of the trial Court, dated 30.11.1992, made in O.S. No. 7 of 1988, and it had decreed the suit in favour of the plaintiff. The first Appellate Court had noted that no prior notice had been issued to the plaintiff before conducting an inspection of the service connection, in S.C. No. 67, at the Dhal Mill belonging to the plaintiff, on 28.5.1984. On inspection the defendants had found that there was tampering of the meter relating to the service connection, in S.C. No. 67 and there was theft of electricity. The first Appellate Court had found that the defendants had come to the said conclusion only on the basis that the seal on the electricity meter was not similar to the one in the possession of the officers of the defendant Department. Though it was alleged that the plaintiff had refused to receive the notice of inspection the concerned Engineer, who had made such a statement, had not been examined. Further, the Village Administrative Officer, who had signed on the notice, which was affixed on the meter at the plaintiff's Mill had also not been examined. According to the first Appellate Court, D.W.1, namely Pazhanirajan, had stated, in his evidence, that the plaintiff was not available to receive the notice of inspection. However, during his cross examination he had stated that the plaintiff had refused to receive the notice. In such circumstances, the first Appellate Court had concluded that there was no attempt to serve the notice of inspection on the plaintiff. It was also found that the witnesses examined on behalf of the defendant Department had admitted that the electricity meter at the plaintiff's Mill was running and that it was not known as to when the meter had been fixed. Further, the plaintiff had been acquitted in the criminal case instituted against him, for theft of electricity, as found in Exhibit A-16. It had also been admitted that no regular inspections were conducted, in respect of the electricity meter. The first Appellate Court had also stated that there is no proper explanation as to how the theft had taken place. The first Appellate Court had also stated that proper opportunity had not been given to the plaintiff during the enquiry, as directed by the High Court, in the writ petition filed before it. Therefore, it had come to the conclusion that the proceedings under challenge in the suit were

arbitrary and illegal.

11. Aggrieved by the judgment and decree of the first Appellate Court, dated 11.10.1993, made in A.S. No. 55 of 1993, the defendants have filed the present second appeal. The second appeal had been admitted by this Court on the following substantial questions of law:

1. Is a notice necessary before inspection of a consumer's premises and verification of the matter?

2. Is the assessment of the alleged loss suffered by the Board properly calculated as per the Rules.

12. It has been submitted on behalf of the appellants that the judgment and decree of the lower Appellate Court, in reversing the well considered judgment of trial Court, is improper, irregular and illegal. The lower Appellate Court had set aside the judgment and decree of the trial Court, without properly appreciating the oral and documentary evidence available on record. The case of the plaintiff ought to have been rejected on the ground of estoppel, as he had already paid the amount assessed by the defendant department as the amount due from him. The lower appellate Court had come to the wrong conclusion that the inspection of the meter at the plaintiff's Mill ought to have been done only after the issuing of a prior notice. The first Appellate Court had also committed an error in coming to the conclusion that there was no opportunity given to the plaintiff before finalising the assessment.

13. The learned Counsel for the appellants had further submitted that no prior notice is necessary before conducting a surprise inspection, since the whole purpose of a surprise inspection of the electricity meter would be lost if prior intimation is given to the owner and the occupier of the premises or to their authorised representatives. It was also contended that the findings of the criminal court, resulting in the acquittal of the plaintiff, will not affect the proceedings initiated against the respondent. According to Clause 8.01 relating to theft of energy and extra levy of the terms and conditions of The Tamil Nadu Electricity Board any consumer, who dishonestly abstracts or uses energy shall be deemed to have committed theft, within the meaning of Indian Electricity Act, 1910 and the existence of artificial means of such abstractions shall be prima facie evidence of such dishonest abstraction. From the test report of the meter it is clear that there was tampering of the meter.

14. The learned Counsel for the appellant had relied on the decision of the Supreme Court, reported in M/s. Hyderabad Vanaspathi Limited Vs. Andhra Pradesh State Electricity Board and Others, , to contend that the Terms and Conditions of the Tamil Nadu Electricity Board are statutory in character and that they cannot be said to be purely contractual in nature. In the decision, reported in J.M.D. Alloys Ltd. Vs. Bihar State Electricity Board and Others, , it has been held that the purpose of trial under Sections 39 and 44 of Indian Electricity Act, is entirely different. The object is to punish and sentence the person, who is

alleged to have committed the offence. The trial of the accused in a criminal case can have no bearing in the matter of assessment made, in accordance with the tariff of the value of electricity dishonestly abstracted or consumed. The learned Counsel had also relied on a judgment, dated 12.1.2009, passed by a Division Bench of this Court, in W.A. No. 343 of 1998 (batch), in support of his contentions.

15. It was also submitted that the plaintiff, in the suit O.S. No. 7 of 1988, had not proved that the authorities of the defendant Electricity Department had acted in a mala fide manner. Since the plaintiff had already paid 50% of the amount assessed against him, he is liable to pay the balance amount of Rs. 69,715/-, along with the belated payment and surcharge due from him.

16. Per contra, the learned Counsel appearing on behalf of the respondents, in the present second appeal, had submitted that the defendants in the suit had not established the fact that there was theft of electricity by tampering the electricity meter fixed at the Dhal Mill relating to the service connection, in S.C. No. 67, belonging to the plaintiff. Therefore, the question of assessment of the amount liable to be paid by the plaintiff would not arise. Since notice of inspection is a must, the alleged inspection conducted by the authorities of the defendant electricity department, dated 28.5.1984, is not in order. The notice ought to have been served on the owner of the premises or his authorised representative. Even though an Assistant Engineer of the defendant Department had stated that the plaintiff had refused to receive the notice of inspection he was not examined on behalf of the defendant electricity Department. No reasons have been given for not examining the Village Administrative Officer, who is said to have signed the notice affixed on the meter before the Inspection was done. There is no statement as to the method or the mode used by the plaintiff for misusing the electricity.

17. The learned Counsel appearing on behalf of the respondents had also relied on the following decisions of this Court:

- 1) J. Singh v. K. Murthy AIR 1967 SC 947
- 2) Subramaniam v. State 1992 MLJ (CRI) 409
- 3) Apollo Enterprises v. State by S.I of Police 1995 MLJ R 27
- 4) Ekambaram v. Subamanian 1999(1) MLJ 575
- 5) R. Chinnathambi and Vijayan @ Vijayakumar Vs. K.K. Palanisami,

The learned Counsel had also submitted that the first Appellate Court had given proper reasons for arriving at its conclusions. The conclusions are not based solely on the findings in the criminal case in which the plaintiff had been acquitted.

18. In view of the contentions raised by the learned Counsels appearing on behalf of the appellants, as well as the respondents, and in view of the citations

relied on by the learned Counsels and on a perusal of the records available, this Court is of the considered view that sufficient evidence was available for the defendants in the suit to come to the conclusion that the plaintiff was liable for the amount assessed to be due from him, since the reports relating to the inspection and testing of the electricity meter of the electricity service connection at the Dhal Mill belonging to the plaintiff, in S.C. No. 67, had clearly shown that there was tampering of the meter after the removal of the original seal of the defendant Department. It is clear that there is no provision for the issuing of a prior notice before a surprise inspection is made by the authorities of the electricity department. Further, the proceedings of the defendants relating to the assessment of the amount due from the plaintiff are in accordance with the terms and conditions of the Tamil Nadu Electricity Board. From the decisions relied on by the learned Counsel for the appellants, it is clear that the proceedings initiated for the criminal offence of theft of energy, u/s 39 of the Indian Electricity Act, 1910, is a separate procedure, apart from the proceedings that could be initiated by the Department for assessing the value of electricity, dishonestly abstracted or consumed by the person concerned. Even if the plaintiff had been acquitted in the criminal proceedings initiated against him, for the theft of electricity, u/s 39 of the Indian Electricity Act, 1910, it cannot be said that there is a bar for initiating further proceedings against him for the dishonest use of electrical energy. The plaintiff has not been in a position to substantiate his claim of mala fides against the defendants, by sufficient evidence. It has also not been shown as to how the enquiry conducted by the authorities of the defendant department is not in accordance with the directions issued by this Court. Even if the Village Administrative Officer, who had signed on the notice affixed on the electricity meter and the Assistant Engineer, belonging to the defendant Department, who had stated that the plaintiff had refused to receive the notice, had not been examined, it would not be fatal to the case of the defendants. Once it is found that the electricity meter had been tampered it is for the plaintiff to have given sufficient explanation in support of his claim that there was no theft of electricity in respect of his electricity service connection, in S.C. No. 67, at the Dhal Mill belonging to him. Since sufficient evidence had been shown on behalf of the defendants to substantiate their claims, the findings of the first Appellate Court cannot be sustained. Hence, the judgment and decree of the first Appellate Court, dated 11.10.1993, made A.S. No. 55 of 1993, is set aside and the judgment and decree of the trial Court is restored. Accordingly, the second appeal stands allowed. No costs.