

IN THE COURT OF THE ADDITIONAL JUDGE, CITY SMALL
CAUSES COURT-CUM-VI SENIOR CIVIL JUDGE, CITY CIVIL
COURT, AT, HYDERABAD, A.P.

DATED THIS THE 16th DAY OF DECEMBER 2003.

PRESENT: SRI M. RAJENDER, B.SC., LL.M.,
ADDL. JUDGE-CUM-VI SR. CIVIL JUDGE,
HYDERABAD.

O. S. NO.1218 OF 1995.

BETWEEN

1. M/S. SAILORS INN

PLAINTIFF.

A N D

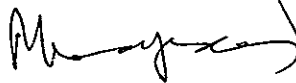
1. A.P. STATE ELECTRICITY BOARD
REP. BY ITS MEMBER SECRETARY.
2. A.P. STATE ELECTRICITY BOARD.
REP. BY ITS CHIEF ENGINEER,
3. A.P. STATE ELECTRICITY BOARD
REP. BY ITS SUPERINTEND ENGINEER.
4. A.P. STATE ELECTRICITY BOARD
REP. BY ITS ASST. DIVISIONAL ENGINEER.
5. A.P. TRANSCO
REP. BY ITS MEMBER SECTETARY.
6. A.P. TRANSCO
REP. BY ITS CHIEF ENGINEER.
7. A.P. TRANSCO
REP. BY ITS SUPERINTENDENT ENGINEER.
8. A.P. TRANSCO
REP. BY ITS ASST. DIVISIAIONAL
ENGINEER.

(D-5 TO D-8 ADDED AS PARTIES AS PER ORDERS
PASSED IN I.A. NO. 431 OF 02 DT. 10.10.02.) DEFENDANTS. •

This suit coming up before me for final disposal on 12-12-2003
in the presence of Sri J. Nanda Kishore, Advocate for the plaintiff
and of Sri K. Ravindra Kumar, Advocate for the defendants and
having been stood over the matter for consideration, till this day,
this court made the following:

J U D G M E N T

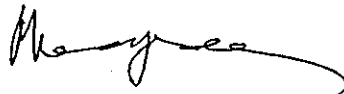
1. This is a suit for declaration and injunction.



2. The brief averments of the plaint are that the plaintiff is a consumer of Low Tension power supply for contracted load of 50 KW under Service connection No. S.C. No. D-6283/Cat II at premises bearing No. 1-8-169, Penderghast Road, Secunderabad from 15-12-1991. The defendant No.1 is a statutory body has to regulate the distribution of electricity energy through various offices. It is submitted that on 27-3-1993 the Officials of the board visited the plaintiff premises and prepared the inspection notes in the presence of K. Kishore and recorded the incriminating points as under:

1. Meter Box glass is not available.
2. Meter Box seal is found to be tampered.
3. Found 4 Nos. meter cover seals in tampered condition.
4. The terminal cover seal is missing.
5. The representative of the plaintiff made an endorsement in the said inspection notes that the inspecting staff removed the meter box seal, CT Box seals and meter cover seals from service meter and provided two seals to the said meter. He has also endorsed that the said seals are preserved in a sealed cover. This endorsement does not testify above incriminating points mentioned in the report in Clause No.8 at page No.3 of the inspection notes dated 27-3-1993.

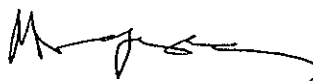
The defendant No.4 has served the initial assessment notice on 8-4-1993 estimating the value of energy pilferage at Rs. 3,75,079-25 ps. The defendant No.4 disconnected the supply of the plaintiff premises on 8-4-1993 and demanded to pay a sum of



Rs. 1,87,899-15 being 50% of the provisional assessment plus reconnection charges of Rs.20/- and supervision of Rs.150/- for obtaining restoration of electrical supply. The plaintiff could not rent its business without energy and thereby the plaintiff was put too much inconvenience and hardship. The plaintiff made representation on 12-4-1993 to the defendant No.1 without prejudice to the rights in contesting the demand made by defendant No.4 and sought for restoration of power supply by paying a sum of Rs. 1,87,899-15 together with incidental charges in six monthly instalments. The defendant No.3 on 16-4-1993 permitted the plaintiff to pay the above amount in four monthly instalments commencing from 17-4-1993. A bond was also obtained on 17-4-1993 by the board officials for the payment of the said sum in four instalments. The plaintiff accordingly paid the first instalments and the electricity was restored on 19-4-1993 with a new meter bearing No. 7500581 by removing the old meter. The reading shows in the said meter at the time of removing was 003264 and the initial reading of the said new meter was 00007. The old meter was sent to the MRT Section of the A.P.S.E.Board along with the seals preserved in sealed cover signed by the plaintiff's representative for inspection to find out whether there was tampering of the seals and meddling with the meter to record less consumption of the electricity. The officials of the M.R.T. section informed the plaintiff on 17-8-1993 to be present at the time of testing the meter and condition of the seals on 18-8-1993. The representative of the plaintiff as well as the inspecting staff by



name J. Narsimha Rao and another were present at the time of the testing the meter. M.R.T. Section people also obtained signature of the representative of the plaintiff and also the officials of the D.P.E. staff on test certificate on 18-8-1993 about their presence. The test certificate discloses that the initial reading recorded in the meter before testing was 003263 and the final reading recorded in the said meter was 003265.5. The observation made in test certificate that inside the meter after opening the seal was found to be intact and the condition of the seals was found to be intact and normal. The meter test results recorded in the said test certificate do not disclose any interference or meddling with the meter. Thereby it is evidence that so called pilferage of energy based on assumption and surmises is incorrect. The estimation of the pilferage of energy mentioned in the initial assessment notice dated 7-4-1993 was also based on false presumptions. The plaintiff submits that after receiving notice from the defendant No.3 filed his objection for assessing the pilferage of energy at Rs. 3,75,798-25 ps. Defendant No.3 has not considered the objection raised by the plaintiff herein and come to the conclusion that there was pilferage of energy by the plaintiff. He came to the conclusion that the plaintiff was running Bar and Restaurant and taking into consideration of electrical appliances used therein, assumed that the load factor in the day time from 10-30 a.m. to 6-30 p.m. was 40% and load factor between 6-30 P.M. to 10-30 P.M. was 90% and reduced the value of the loss of energy sustained by the Board on account of such pilferage by the plaintiff estimating the same at

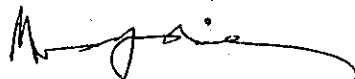


Rs. 2,49,705-20 which is incorrect. The defendant No.3 ought to have set aside the provisional assessment dated 7-4-1993 and ought to have held that there was no pilferage of energy by the plaintiff basing on the test certificate date 18-8-1993 issued by M.R.T. Section. There was increase in the electrical consumption during the months of March and April 1993 as it was peak summer season and due to fixation of additional Air Conditioner of 7.5 tonn capacity. The plaintiff submitted that the consumption of energy was 4716 units from 17-4-1993 to 25-6-1993 which also indicates that the average bi-monthly consumption was the same as was shown in the old meter. It is also submitted that when meter box glass was not provided at the time of fixation, the same was not available at the time of inspection. The inspection report dated 27-3-93 is falsified by M.R.T. test certificate dated 18-8-1993. The plaintiff preferred an appeal before the defendant No.2 aggrieved by the order of the defendant No.3. Defendant No.2 even without looking into the ground of appeal has confirmed the order of the defendant No.3. Defendant Nos. 2 and 3 misapplied the provisions of the Terms and Conditions and wrongly assessed the value of the energy for one year preceding to 27-3-1993. The order dated 15-9-1995 passed by defendant No.2 and the order of defendant No.3 dated 30-7-1994 is liable to be declared as bad in law, null and void and not binding. The defendant No.2 in his order dated 15-9-1995 directed the plaintiff to pay a sum of Rs.2,49,705-20 after adjusting Rs. 1,97,011-15 being an amount paid by the plaintiff in four instalments within 30 days from the

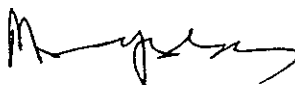


date of receipt of the order. The order of the defendant No.2 received by the plaintiff on 19-9-1995 and the plaintiff apprehends that the defendant may disconnect the electricity supply in view of the said order of the defendant No.2. Therefore prayed for permanent injunction against the defendants and further prayed for declaration that the order of defendant No.2 in appeal No. 4/94-95 of defendant No.3 is bad in law, null and void and not binding upon the plaintiff.

3. The brief averments of the written statement filed by the defendants are that the service connection in the plaintiff premises was released in the name of P.C. Modi on 15-12-1991 for a sanctioned loan of 50 KW under S.C. No. D-6283 under Category-II. As per the reports of the meter reader the regular current consumption bills were issued on the consumer who was paying the current consumption charges as per the bills sent by the defendant D-4. It is pertinent to mention that the meter reader is not competent to deduct whether the seals of the meter position are intact or not. Generally the meter reader taking meter readings at a random phase going to various places and he will not observe the condition of the meter. In any event it is neither the meter reader nor Asst. Engineer of concerned Electricity Revenue Office or Distribution is competent to deduct pilferage cases as per terms and conditions of supply. In fact there is a separate wing of defendant board which is called Detection of pilferage of energy which does the function of detection of pilferage of energy. The contention of the plaintiff that he did not exceed the contracted



maximum demand of 50 KW and was only utilizing connected load of 29.69 KW does not in any way absolve him from the act of pilferage committed by him. M. Chiranjeevi, Assistant Divisional Engineer, Hyderabad inspected the plaintiff service connection on 27-3-93 at 13-20 hours and booked a pilferage case since the plaintiff was violating the terms and conditions of supply. The representative of the plaintiff signed on inspection report on 27-3-1993 and all the proceedings conducted by the inspecting officers. Apart from this the plaintiff who was also present during the course of inspection also testified the spot inspection report after observing the proceedings of inspection officer. If at all there was any grievance the plaintiff ought not to have signed the inspection report or the plaintiff could have expressed his observations on the inspection report before signing it. The fact that the meter glass was not available and the meter seals were found tampered itself proves beyond reasonable doubt that the plaintiff was indulging the pilferage of energy. The defendant denied that the test certificate of M.R.T. Lab do not disclose any interference or meddling with the meter. The M.R.T. test certificate will not indicate any internal interference with the meter mechanism. It is further submitted that the defendant No.2 and defendant No.3 have given a very fair hearing of the plaintiff and based on the records available and produced by both sides they have arrived at a judgment. The orders do not suffer any material irregularity or any illegality. The defendant No.3 has directed the plaintiff to pay the balance amount of Rs. 2,49,705-20 which is in consonance




terms and conditions of supply. It is submitted that no cause of action arose and the suit is totally devoid of merits and substance and liable to be dismissed.

4. In view of the above pleadings the following issues were framed.

1. Whether the plaintiff is entitled for the relief of declaration and order passed by defendant No.2 on 15-9-95 is illegal and void?
 2. Whether the plaintiff is entitled for the relief of injunction as prayed for?
 3. To what relief.
5. On behalf of the plaintiff P.W.1 and P.W.2 are examined and got marked Exs.A-1 to A-8.
6. On behalf of the defendants D.W.1 and D.W.2 were examined. The defendants got marked two documents and in the chief examination of D.W.1 the documents are mentioned as Exs.A-1 and A-2 instead of Exs.B.1 and B.2. Therefore it may be treated as Exs.B.1 and B.2.

7. ISSUE NO.1

It is contended by the learned counsel appearing for the plaintiff that D.W.1 in his cross-examination clearly admitted that according to M.R.T. report there was no tampering. Since there is no tampering of electricity the plaintiff is entitled for relief of declaration and that the order passed by defendant No.2 on 15-9-95 is illegal and void. Contrary to this arguments the learned counsel appearing for the defendants submitted that the Civil



Court has no jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer or an appellate authority or adjudicating officer who are appointed under sections 126 or 127 of Electricity Act 2003. He further submitted that the Civil Court jurisdiction is barred as there is alternative statutory remedy available in the Act. The plaintiff should not prefer the suit in the Civil Court and there is only remedy available, but the plaintiff to proceed under 226 of the Constitution. Therefore prayed for dismiss the suit with costs. In support of his arguments he relied upon a decision reported in (1997) 5 Supreme Court Cases page 120 held in between PUNJAB STATE ELECTRICITY BOARD AND ANOTHER, APPELLANTS vs. ANSWANI KUMAR, RESPONDENT, wherein it was held that

“When the provision for appeal by way of review has been provided by the statutory instructions, and the parties are directed to avail of the remedy, the authorities are enjoined to consider all the objections raised by the consumer and to pass, after consideration, a reasoned order in that behalf, so that the aggrieved consumer, if not satisfied with the order passed by the Board/appellate authority, can avail of the remedy available under Article 226 of the Constitution. Therefore, by necessary implication, the appropriate competent authority should hear the parties, consider their

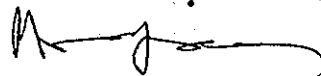


objections and pass the reasoned order, either accepting or negating the claim. Of course it is not like a judgment of a civil court."

8. No issue is framed by this court whether civil court has no jurisdiction or not. But to grant the relief prayed by the plaintiff it is necessary to see whether the civil court has got jurisdiction to entertain the suit or not. It is relevant to read Section 145 of the Electricity Act, 2003. Section 145 reads as follows:

"No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in section 126 or an appellate authority referred in section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

9. The plaintiff preferred Appeal under Ex.A-8 confirmed the order of the defendant No.3. D.W.1 in his cross-examination admitted that according to the M.R.T. report there is no tampering but added that the consumer indulged external network, meter box, meter cover seal, meter terminal cover seal and meddled with the meter to manipulate the consumption. The M.R.T. test report



of the meter will not indicate the pilferage as it was tested in Lab without any by passing. From the above explanation by D.W.1 the M.R.T. report cannot indicate the pilferage of power as it was tested in lab without any by passing.

10. Section 145 is very clear that the civil court has no jurisdiction to entertain any suit or proceeding against the orders passed by the appellate authority. I have also perused the judgment cited by the learned counsel for the defendant wherein the Hon'ble Supreme Court opined that when the provisions of appeal by way of review has been provided by statutory instructions and the parties are directed to avail the remedy. Even after that if the party aggrieved they can avail of the remedy under 226 of the Constitution. From the above citation and section 145 of the Act it is very much clear that the civil court is not having any jurisdiction to entertain the matter against the order passed by authority under the Act. Moreover the order passed under Ex.A-8 a well reasoned order, therefore entertaining of this suit does not arise and it is barred by jurisdiction. Therefore the suit is liable to be dismissed. I answer this issue accordingly against the plaintiff.

11. ISSUE NO.2


Since the civil court has no jurisdiction to entertain the suit the answering of this issue is not necessary.



12. ISSUE NO.3

In the result, the suit is dismissed. Each party do bear their own costs.

15/6
 DICTATED TO THE STENO AND AFTER HIS TRANSCRIPTION, CORRECTED AND PRONOUNCED BY ME IN THE OPEN COURT ON 16th December 2003.


 VI SENIOR CIVIL JUDGE,
 CITY CIVIL COURT.AT: HYDERABAD.

APPENDIX OF EVIDENCE
 WITNESSES EXAMINED FOR
 DEFENDANTS

PLAINTIFF

P.W.1K. Radheshyam
 P.W.2 Katara Kishore

D.W.1 G.V. Ramana Rao.
 D.W.2 M. Chiranjeevi.

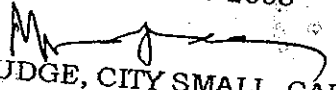
EXHIBITS MARKED

FOR PLAINTIFF

- Ex.A-1 Initial assessment Notice dated 7-4-1993.
 Ex.A-2 Test Certificate for L.T. Meters. Dt. 18-8-93
 Ex.A-3 Letter No. SE/SPL/HYD-F/SBD.23/D.No. 1502/93 dated 8-7-1993
 Ex.A-4 Lr. No. CE/MZ/HYD/T&P:SMRT: F: PA: D. No.1574:95, dated 15-9-1995
 Ex.A-5 Judgment copy in C.C. No. 157 of 95.
 Ex.A-6 Charge sheet in C.C. 157 of 1995
 Ex.A-7 Deposition of P.W.1 to P.W.4 in CC. No. 157 of 95
 Ex.A-8 Proceedings of the Chief Engineer in Appeal 4/94-95.

FOR DEFENDANTS.

- Ex.B.1 Inspection report dated 3-4-1993.
 Ex.B.2 Provisional Assessment notice dated 7-4-2003


 ADDL. JUDGE, CITY SMALL CAUSES
 COURT-cum-VI SENIOR CIVIL JUDGE,
 CITY CIVIL COURT.AT: HYDERABAD.