

plaintiff, the Defendant gave seven days notice for clearance of the electricity dues with a threat of disconnection.

The plaintiff has stated that on inquiry it came to know that meter was removed firstly on 28.12.1983 and then on 30.12.1983, and by that, evidence in respect to consumption was destroyed. The Defendant also failed to satisfy as to how he was applying multiplying factor as “6”. The plaintiff has further submitted that all meter equipment remained in separate room under exclusive custody of the Defendant in its lock and key and demand of Defendant for Rs.12,284,756.70 is denied and that the plaintiff is entitled to recover the amount, which has been paid to the Defendant. It has also stated that under existing Agreement, fixed charges were payable on billing demand as defined in the Agreement between the parties and that the billing demand is contrary to the clauses of the Agreement. The plaintiff has also disputed fuel adjustment charges as energy charges and their calculation towards aggregate amount, nor, according to plaintiff, there have been any late-payment, as the plaintiff never defaulted. The plaintiff has further submitted that Defendant was sending the bills for longer period, therefore, it must have knowledge about this mistake and that during the disputed period of three years, the Defendant through its officer have access to the plaintiff electricity supplying equipment, therefore, it could be checked by observation or by other calculation. The plaintiff has also submitted that it has acted upon in accordance with the bills submitted by the Defendant, as it calculated the cost of its products by taking into account all factors including electricity and submitted accounts, therefore, there were certain adjustments in the business. It has also been contended that the Defendant was under obligation to take care of its duty assigned to it under Electricity Act 1910, and by acting contrary, it has committed breach of its aforesaid duty as it failed to apply proper multiplying factor and at the belated stage, the plaintiff is not in a position to adjust the huge amount as claimed by the plaintiff towards its consumption nor adjustments and alteration could be made to certain Agreements entered into with the labours / workers. It has been submitted that Defendant is entitled for recovery on monthly basis only so the consumer may adjust its schedule and routine and that no supplementary bill can be issued and the plaintiff is entitled to adjust and to recover all installments which were paid under pressure and is entitled to claim all the amount which were paid before filing of the suit or during the filing of the suit by way of installments.

On the other hand, Defendant have raised Legal Objection, by stating, that the suit is barred under Electricity Act and that the suit is also time barred and not maintainable. On merit it is submitted that government has changed the Tariff Rates from time to time and consumer is bound to pay according to changed schedule and that the plaintiff is bound to obey its own Agreement, specifically, by Clauses 2, 8 and 9, it has to pay as per schedule, which were sent twice in 1980 and in 1983. The Defendant has not denied the factual position in respect to the issuance and payment of bills but has stated that since 04.10.1980, the plaintiff was under charged due to computer mistake by not applying correct multiplying factor for which supplementary bill were issued to

recover the left over amount and that the plaintiff itself has admitted that mistake and requested for installments and paid the same till 1987. Against the supplementary bill and that the working of the supplementary bill was sent to plaintiff for checking but no objection was raised to that working. It has also been pointed out that the plaintiff filed a Petition before Wafaqi Mohtasib against the Defendant, which was dismissed after thorough investigation and scrutiny and order was passed on 16.06.1985. Against the said order of Ombudsman, the plaintiff filed a Review Application before Wafaqi Mohtasib but the same was also dismissed and supplementary bills were declared to be justified. However, late payment, balance charge amount of Rs.11,04,456.17 was waived by Waqafi Mohtasib. The Defendant has also stated that removal of electricity meter, twicely in December 1983, was in proper knowledge of the plaintiff as while removing the electricity meter, the industry has to be switched off completely and that the plaintiff claimed to be a big industry cannot be switched off for an hour by the Defendant without notice and the change of metering equipment was conducted before the senior officials of the plaintiff and that the sub station is situated within the premises of plaintiff, where they have easy access. It has been submitted that in 1980 load of the plaintiff was extended from 400 KW to 1450 KW and accordingly metering equipment were also changed on the increase of load and previously Transformer with the reading of 200/5 AMPs and meter having current rate of 100/5 AMPs with multiplying factor-2 were removed. In view of current transformer rating 300/5 and meter 50/5 AMPs were installed with multiplying factor-6 but due to computer mistake electricity load consumption remained multiplied by multiplying factor-“2” instead of “6”, therefore, supplementary bill was sent to correct the losses suffered by the Defendant and that on the request of the Defendant supplementary bill was bifurcated in 60 installments, out of which 30 installments without interest and 24 installments with 12% compensation and the plaintiff paid several installments prior to filing of the suit. Supplementary bill for the period 1980 to 1983 has been prepared strictly in accordance with the use of the plaintiff and that billing method etc were communicated to the plaintiff and the contentions of the plaintiff as well as claim in the suit are misconceived and not maintainable. The Defendant has charged all the charges including fuel, incurred adjustment, strictly in accordance with the guideline of the Government and nothing more has been demanded. It has also been pointed out that after enhancement of electricity load from 400 KW to 1450 KW, the plaintiff itself would have noticed that the bills are in accordance with the ratio of enhancement and had it pointed out that error then issue would have been settled and fault would have been rectified. The plaintiff has denied each and every allegations and demand and has requested for dismissal of the Suit.

On the pleadings of the parties, the following issues were framed by the Court:

- 1. Whether suit is maintainable under the provision of Electricity act u/o 7 rule 11 CPC and section 12 of Specific Relief Act?**

2. Whether the Defendant Corporation is entitled to recover the actual charges for the electricity actually consumed by the plaintiff, under the schedule of tariff approved time to time by the Government?
3. Whether the Defendant Corporation is entitled to recover the cost of electric units under charged during the period of October 1980 to November 1983, due to technical bonafide mistake i.e. application of multiplying factor?
4. Whether the plaintiff is entitled for the relief sought in the prayer clause when the Claim / Liability of supplementary bill has been admitted by the plaintiff?
5. Whether the subject matter already adjudicated upon by the Hon'ble Wafaqi Mohtasib (Ombudsman), can be challenged by the plaintiff in the title suit?
6. Whether the assessment made by the Defendant against the units under charged communicated through supplementary bill, is justified under the provisions of Electricity Act and that the property opportunity has been provided to the plaintiff before the said assessment made by the Defendant ?
7. Whether the Defendant is stopped from recovering the said charges?
8. Whether the Defendant owed a duty of care to the plaintiff as alleged in paragraph 15 of the Plaint. If so, whether the Defendant committed breach of such duty of care and to what effect?
9. What should be the relief?

ISSUES NOS. 1 AND 5:

The Defendant has raised objection regarding maintainability of the suit on the ground that it is barred under order 7 rule 11 CPC and section 42 of the Specific Relief Act. The jurisdiction of the court has also been questioned on the ground that the Hon'ble Wafaqi Mohtasib has adjudicated upon the matter on the Complaint of plaintiff itself. The plaintiff has not given any explanation, as to how after a decision by a competent forum regarding the issue, the same issue can be taken up by the court. The plaintiff itself in paragraph No. (21-A) has stated as follows: —

“(21-A) The plaintiff respectfully places on record, that being aggrieved by the unjust demand of the Defendant and the threat of disconnecting the electric supply to the plaintiff's mills premises the plaintiff filed a Complaint before the Honourable Ombudsman complaining about the mal administration on the part of the Defendant, its agents or servants. The said Complaint was duly entertained by the Honourable Ombudsman and after calling for comments from the respective parties, the Honourable

Ombudsman was pleased to dismiss the Complaint of the plaintiff. The plaintiff filed a review Petition before the Honourable Ombudsman pointing out the errors apparent in the final order and after hearing the plaintiff, the Honourable Ombudsman has been pleased to admit the review Petition for regular hearing.

The plaintiff respectfully submits that the said proceedings and the observations of the Honourable Ombudsman are not relevant for the purposes of this suit”.

The position has been clarified by the Defendant through its written Statement wherein it has been stated that the Review Application filed by the plaintiff before the Hon’ble Ombudsman has also been dismissed. After dismissal of the Review Application, the plaintiff filed Appeal before the President of Pakistan, but it was also refused granting thereby finality to the order of Hon’ble Ombudsman. The relevant paragraph of the order of Hon’ble Ombudsman which has also been reproduced in the order of Review Application is reproduced hereunder:

“It is unbelievable that a professionally managed company like the Complaint, using modern costing system, did not detect the fact that cost of electricity had come down tremendously from November 1980. The Complainant is himself partly responsible for this situation. The above mentioned facts and particularly the figures of monthly units consumption record clearly shows that there was an error in calculation as units consumption declined sharply after installation of new meter equipment of 2200 Kws in October 1980. It is not a case of mal administration as defined in the Establishment of the office of Hon’ble Wafaqi Mohtasib order 1983. The Complaint has arisen out of technical error. The supplementary bill is based on bonafide grounds and valid reason. The Complaint is therefore, rejected”.

Some of the issues regarding the grievance of the plaintiff’s in the suit against the Defendant are in respect to mal administration. It has also been decided by the Hon’ble Ombudsman by its orders including order on Review Application.

The order of the Ombudsman has attained finality after refusal of appeal by the President of Pakistan. Section 29 of Ombudsman Order 1983 bars the jurisdiction of the Court. The said section 29 is reproduced as under:

“29. Bar of jurisdiction— No Court or other authority shall have jurisdiction—:

- (1) to question the validity of any action taken, or intended to be taken, or order made, or anything done or purporting to have been taken, made or done under this Order; or

- (2) to grant an injunction or stay or to make any interim order in relation to any proceedings before, or anything done or intended to be done or purporting to have been done by, or under the orders or at the instance of the Mohtasib”.

Under the above provision, this court has no jurisdiction to embark upon again, for adjudication of an issue, which has already been decided by the Hon'ble Ombudsman. It has further been pointed out that in the given factual position, the plaintiff has no cause of action as on its own request the load was enhanced from 450 KWs to 1450 KWs. The previous Transformer for 450 KWs load was 200/5 AMPs with meter grid of 100/3 and in that situation multiplying factor was “2” and after enhancement of load to 1450 KWs, the Transformer was of 300/5 AMPs with meter grid of 50/5 and the multiplying factor to be applied should have been “6”. It has also come on record through Statement of bills, submitted by Defendant till January 1980, that the plaintiff were paying around Rs.3,00,000/- per month towards energy while after enhancement of load their bill towards energy charges was dropped to Rs.68,134/- and this remained the situation with minor fluctuation till 1984, when the mistake of wrong calculation was noticed by the Defendant. The plaintiff have not disputed the formula of calculation but has taken miscellaneous pleas that being commercial enterprises they adjusted their annual budget including loss and profit etc., keeping in view all expenses and income, therefore, they cannot adjust the demand of arrears of Defendant. The plea is untenable as the mistake, which is apparent, is due to computer as well as human error and the plaintiff cannot claim any benefit against public functionary without any justifiable fault on its part.

In the circumstances, it is held that the suit is bar under Section 29 of Ombudsman Order 1983 and for that plaintiff has no cause of action and the suit is dismissed with costs.

Since the suit is dismissed on Issues Nos. 1 and 5, therefore, other issues do not need any deliberation.

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