

ASSAM SCHEDULE VII, FORM NO. 143

HIGH COURT FORM NO. (J) 13

FORM OF ORDER SHEET District: Sonitpur

Court of Munsiff no. 2, Tezpur, Sonitpur

Present: Uttam Chetri

Misc (J) Case No. 194/2014 in TS No. 111/2014

Sl No of orders	Date	Order or other proceedings
	06.05.15	<p>Both sides are represented.</p> <p>Heard learned counsel for both the sides.</p> <p>The instant Misc (J) Case arises out of petition bearing no. 3011/14 dated 27.11.14 filed by the petitioner/plaintiff praying for temporary injunction under Order XXXIX Rule 1 and 2 r/w Section 151 of the Civil Procedure Code. The petitioner/plaintiff pleads that he has been carrying on the business of sale of petro products being produced by Indian Oil Corporation for the last three decades as an authorized dealer of erstwhile Assam Oil Company re-christened as Indian Oil Corporation and is permanently settled at Parowa Chariali, Mouza-Mahabhairav within Tezpur Revenue Circle, Tezpur; that the opposite party namely Assam Power Distribution Company Limited (in short APDCL) is a company registered under the Companies Act, 1956 and is engaged in the matter of distribution of power vis-a-vis collection of revenue from the consumers; that the APDCL procures and sells energy and collects revenue on monthly basis from the consumer and has got monopoly and command over the supply of electricity within the State of Assam; that the petitioner is a regular and bona fide consumer of the opposite party for decades together and his consumer no. is 093000025337; that as a bona fide consumer, the petitioner has been paying the monthly bill raised by the opposite party more particularly under the signature of the opposite party</p>

no. 4 regularly and without any default; that in the month of July, 2014, the Bill No. 1890237 dated 23.07.2014 was raised by the opposite party APDCL to the tune of Rs 97,065/-; that the petitioner was astonished to find this abnormal and excessively high bill amount and lodged his protest in this regard; that the APDCL on its own volition decided to test the meter through its own system available at its disposal and did it on 02.09.2014 under the signatures of SDE, T&C, S/D, JE, TESD-1 and found it in order; that after the above exercise conducted by APDCL, the bill of Rs 97,065/- came into force as stated hereinabove; that the petitioner submitted his protest on 30.09.2014 to the opposite party no. 1 and submitted that the whole situation has been an outcome of inefficient handling by the officers of APDCL and that the instant action is bound to lead to a critical financial situation on the part of the petitioner consumer and requested the opposite party no. 1 to grant soft monthly instalments for repaying the aforesaid amount in 5 years; that after receipt of the appeal from the petitioner the opposite party no. 3 communicated his reply to the former vide letter dated 15.10.2014 wherein he divulged that '**our outsource meter reader Arup Nath did not take the correct meter reading monthly due to his negligence and other factor and that is why he was immediately expelled from job. After proper enquiry it reveals that this huge amount suddenly raised is due to the accumulated reading got after the outsourced meter reader was expelled**' and further stated that '**you can apply for installment on payment to the AGM, Tezpur Electrical Division regarding this bill**'; that the opposite party illogically stated that the exorbitant bill of Rs 97,065/- related to the year 2011 without divulging the method by which they ascertained the bill amount; that faced with such an unexpected and never before situation the petitioner has been continuously insisting and pleading for soft monthly instalment payment of the said '**sudden bill amount**' of Rs 97,065/- and ultimately on 18.11.2014 served a legal notice to the opposite party '**to extend and provide appropriate relief to the convenience and advantage of the**

petitioner and for avoiding any kind of unpleasantness in the matter like commencement of suit or proceeding in a Court of Law'; that despite all these efforts made by the petitioner, the outcome has been hopelessly nothing, though the present abnormal and excessive bill is nothing but field level mismanagement by the field workers of the opposite party; that on 24.11.2014, the petitioner was served with a disconnection notice dated 13.11.2014 without any seal and signature of the competent officer of APDCL demanding bill to the tune of Rs 1,22,384/-; that though the petitioner has been making and insisting for a logical conclusion of the matter in regard to the payment of the huge bill amount, but it failed to yield any positive result because of the illogical stand taken by the APDCL; that apprehending the treat of disconnection which looms large on the head of the petitioner without any fault of his, he is left with no other alternative, but to come before this Court to protect his rights and interest; that the instant demand of Rs 1,22,384/- vis a vis disconnection notice is not only harsh and unprofessional but is also illogical and unjust; that, although, the error was committed by APDCL, the burden of heavy bill has to shouldered by the petitioner; that monopoly control and command over an essential service does not mean that the wrong committed by the APDCL should be shouldered by the petitioner/consumer; that the huge and exorbitant bill slashed on the petitioner is bound to upset and jeopardize the monthly budget and budgetary allocation of the petitioner's refuelling station; that although the plaintiff is ready and willing to make the payment of the bill of Rs 1,22,384/- in soft monthly instalments of Rs 2500/- per month but the opposite party namely APDCL is not ready to give any kind of relief for the reasons best known to them; that, if APDCL resorts to illegal disconnection on the basis of notice dated 13.11.2014, it will adversely affect the activities of the petitioners and will bring bad name to the decade old refuelling station and will adversely affect their livelihood; that there is strong prima facie case in favour of the petitioner for the grant of Temporary Injunction to prevent the threat of disconnection; that the balance of convenience lies in favour of

the petitioner in granting Temporary Injunction; that if the Temporary Injunction as prayed for is not granted in favour of the petitioner, it will cause irreparable harm, loss and injury to the petitioner and prays for a direction to the opposite parties not to resort to disconnection of the electricity connection of the plaintiff's refuelling station till the disposal of the suit with a further relief of monthly instalment payment of Rs 2500 in respect of bill dated 13.11.2014 for Rs 1,22,384/-

The opposite parties have filed their written objection wherein they state that the petitioner having accepted the bill for electricity consumption of Rs 97,065/- and their willingness to pay the aforesaid amount, they have no right whatsoever to ask for temporary injunction directing the opposite parties not to disconnect the electricity connection of the petitioner's refuelling station. The opposite parties, therefore pray for dismissing the injunction petition with costs.

As per the provisions of Order XXXIX Rule 1 and 2 of the Code of Civil Procedure Code the essential ingredients necessary to be proved for grant of temporary injunction are:

Prima Facie Case

Balance of convenience

Irreparable loss

1. **Prima facie case:** The petitioner is aggrieved by the exorbitant bill (Bill No. 1890237 dated 23.07.2014) raised by the opposite party APDCL to the tune of Rs 97,065/- which he claims to be the outcome of inefficient handling of the officials of the APDCL. To prove his claim the petitioner has submitted letter under Memo No. SDE/TESD-1/Rev/2014 dated 15.10.2014 written by the official of the APDCL in reply to the appeal of the petitioner wherein he has divulged that' **our outsource meter reader Arup Nath**

did not take the correct meter reading monthly due to his negligence and other factor and that is why he was immediately expelled from job. After proper enquiry it reveals that this huge amount suddenly raised is due to the accumulated reading got after the outsourced meter reader was expelled'. Thus, after going through the letter it becomes amply clear that the opposite parties have themselves admitted to the fact that the exorbitant bill amount which they claim to have accumulated for a long period of time and slashed on the petitioner was not due the fault of the latter but because of the fault of an employee of the opposite party namely APDCL. Further the opposite parties have not divulged the method by which they have ascertained or come to the conclusion that the accumulated bill would necessarily amount to Rs 97,065/. In such a scenario slashing such an exorbitant bill is bound to put any institution in a critical financial situation. Thus, whether the bill dated 23.07.2014 for Rs 97,065/- and subsequent bill dated 13.01.2014 for Rs 1,22,384 slashed on the petitioner is exorbitant or not and whether disconnection notice dated 13.11.2014 is illegal or not can be decided in the original suit after weighting the evidence but at this stage after going through the list submitted by the petitioner wherein he has shown the monthly bills paid by him to the opposite party from January 2011 to May 2014 showing the monthly bills paid by him varied from Rs 2889 to Rs 5750, it becomes amply clear that the bill dated 23.07.2014 for Rs 97,065/- and subsequent bill dated 13.01.2014 for Rs 1,22,384 slashed on the petitioner is exorbitant prima facie. Further, the admission made by the opposite party no. 3 that due to the outsourced meter reader Sri Arup Nath, the billing against consumer no 09300002533 was not done properly and the fact that the opposite parties have not divulged the method by which they have ascertained or come to the conclusion that the accumulated bill would necessarily amount to Rs 97,065/- establishes a prima facie case in favour of the plaintiff/petitioner. Hence in light of the above discussion, this point is decided in favour of the plaintiff.

2. **Balance of convenience**: On the basis of prima facie evidence, if the plaintiff are denied the relief of Temporary Injunction directing the opposite party not to disconnect the electricity connection of the petitioner's refuelling station particularly when the petitioner is ready to pay the exorbitant amount but in instalments to the opposite party, it would cause more inconvenience to the petitioner than to the opposite parties because such a course of action will adversely affect the activities of the petitioner and his livelihood apart from bringing bad name to the decade old refuelling station. Hence, I am of the opinion that balance of convenience tilts towards the petitioner.

3. **Irreparable loss**: On the basis of the discussion aforesaid, prima facie it seems that the petitioner is already affected due to the exorbitant bill imposed on him due to no fault of his. In spite of this, the petitioner is ready to pay bill amounting to Rs 1,22,384/- thereby categorically admitting his liability with a condition of paying the aforesaid amount in instalments. In such a scenario, if the electricity connection to the premises is disconnected it will surely cause irreparable loss to the petitioner as disconnection will lead to multiplicity of procedural steps like submission of retesting report, estimate of reconnection, deposit of reconnection fees etc at the office of the opposite party apart from adversely affecting the activities of the petitioners and his livelihood.

Hence considering the facts and circumstances of the case and the reasons discussed above, I am of the considered opinion that this is a fit case to grant temporary injunction to the petitioner.

The opposite parties are, hereby, directed not to disconnect the electricity connection of the petitioner's refuelling station till disposal of the Title Suit bearing No. 111/2014 and the petitioner is directed to pay future bills which

		<p>may be raised against Consumer No. 093000025337 by the opposite parties.</p> <p>The petition is disposed of accordingly.</p> <p>Accordingly the Misc Case is disposed of on contest.</p> <p>Parties are directed to bear their own cost.</p> <p style="text-align: right;">(11)</p>
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ITP Ltd VS Govt. of Assam and Ors

