IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV On: 22.12.2014

DATED:23.12.2014

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.29824 of 2013
and
M.P.No.1 of 2014

M/s.Kanyaka Fine Weld Limited,
rep. by its Managing Director,
R.S.No.83/1, Nagore Main Road,
Melavanjore,
T.R.Pattinam, Karaikkal. .. Petitioner

..Vs..

1. The Union Territory of Puducherry,
Rep. by its Chief Secretary,
Secretariat,
Puducheery.
2.The Executive Engineer-V,
Assessing Officer,
Electricity Department,
Government of Puducherry,
Karaikkal.
3.The Assistant Engineer/Town-I,
Electricity Department,
Karaikkal.
.. Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ or order or direction or any other writ in the nature of Writ of Certiorari, calling for the records of impugned order dated 18.10.2013 passed by the 2nd respondent in his proceedings No.1657/EDK/EE-V/JE-Tech/F.Kanyaka/2013-2014 and quash the same.

For Petitioner : Mr.D.Ravichandar

For Respondents :Mrs.Mala
Government Advocate (Pondicherry)

O R D E R

The petitioner further submits that he is the Manager of the Petitioner's company which is a private Limited Company, engaged in manufacturing of Ferro-Silicon, the petitioner was granted sanction under the 100 KVA load in the year of 1999. Ever since, the petitioner's concern has been paying the Consumption Charges regularly and he had never defaulted in payment. The respondent department for the purpose of nothing the consumption of electricity had provided an electronic meter fitted in the petitioner's premises with due serial and fitted it with "Poly Carbonate security seals". The said electric meter is tamper-proof meter and no pilferage or illegal or unauthorized use of electricity is absolutely not possible through the electronic meter.

2. The petitioner further states that on 09.11.2011 at 11.30 hours, the Executive Engineer and Junior Engineer inspected the service connection and alleged that there was a meddling of the metering equipment which amounts to unauthorized use of electricity as per the provisions of Joint Electricity Regulatory Commission (JERC) Electricity supply code Regulations 2010 (10.1.(2) (V). The respondent issued an initial assessment notice on 11.11.2011 directing them to pay Rs.2,44,94,215/- within 7 days and directed them to file objections if any and directed to appear in person on 22.11.2012. On 17.11.2011, they submitted their objection in detail and denied the unauthorized use of electricity, they had also contended that the Junior Engineer, Karaikkal, who took the meter reading on 31.10.2011, had not found any change in the seals or any abnormality in the meter readings. Therefore, the issuance of initial assessment order for one year is illegal and arbitrary. However, the respondent without considering their submissions, passed an order on 16.12.2011, vide Lr.Nos.2729/ED/SE-II/AE-Tech/F-45/2011-12, stating that the unauthorised use of electricity has been established beyond any reasonable doubt as per section 126 of the Electricity Act 2003. The Assessment charges were retired to Rs.2,36,10,548/- considering the period during which power supply was not available to the industry and demanded payment of the same within 15 days. Aggrieved by that order, Writ Petition in W.P.No.209 of 2012 before this Court.

3. The petitioner further submits that it was contended by them before this Court that there was no complaint against the petitioner, at the time of taking the meter reading by the Junior Engineer every month. As the meter is an electronic one, the tampering as alleged, is not possible, as every such act would be recorded in the meter and it is easy for the officer to detect the theft or unauthorized abstraction of electricity, if any. Therefore, the allegation that the petitioner tampered with the seals and unauthorizedly replaced the same with a spurious one is unsustainable. The Hon'ble Judge after considering the submission made by the petitioners and the Respondents, directed the 1st respondent to take action pursuant to the inspection conducted by him on 09.11.2011 and further gave liberty to the 1st respondent to inspect the meter and electrical apparatus for taking action, if any. In case, the Executive Engineer is of a view that the petitioner had indulged in unauthorized use of electricity by spurious means, it is open to him to issue a provisional order to the consumer and the proceedings should be conducted in accordance with the procedure provided under section 126 of the Electricity Act, 2003 as well as JERC Code, 2010. The said order came to be passed on 09.01.2013. The relevant portion of the Order is extracted hereunder:

> "There is no dispute that the Executive Engineer conducted the inspection on the subject premises on 09.11.2011. According to the Executive Engineer the metering arrangement have been replaced by similar seals by the petitioner and as such it was a case of tampering with the seal and unauthorized use of electricity. The Government as per the order in G.O.Ms.No.12 dated 18.05.2011 conferred power on the jurisdictional Executive Engineer to inspect the premises of the consumer and to assess the unauthorized use of electricity under Section 126 of the Act. The Executive Engineer who inspected the premises on 09.11.2011 was later notified as Assessing Officer. Therefore, no prejudice would be cast to the petitioner by giving liberty to the Executive Engineer. In fact, the learned Government Advocate on instructions from the Executive Engineer, who was present in the Court submitted that the Executive Engineer would visit the premises once again and inspect the meter and the apparatus in the presence of the petitioner and only thereafter, action would be taken under Section 126 of the Act. Therefore, the view that liberty should be given to the Executive Engineer, Karaikal to take further action pursuant to the inspection conducted by him on 9th November 2011. It is open to the Executive Engineer to inspect the meter and electric apparatus once again for the purposes of taking further action, if any, in case the Executive Engineer is of the view that the petitioner has indulged in unauthorized use of electricity by spurious

means, it is open to him to issue provisional order to the consumer. The proceedings should be conducted in accordance with the procedure provided under Section 126 of the Electricity Act, 2003 as well as the Joint Electricity Regulatory Commission (Electricity Supply Code) Regulations 2010.

In the result the impugned order is quashed. The 2nd respondent is directed to pass a fresh order relating to the period prior to 09.11.2011. Such exercise shall be completed within a period of two weeks from the date of receipt copy of this Order".

4. Accordingly, there was an inspection by the respondents on 12.02.2013. The finding and the conclusion of the inspection team dated 12.02.2013 is as follows:

"Genuineness of the number seals provided to the metering arrangement (i.e.) to the metering cubicle, secondary side cover, meter cover, meter terminal, cover and hylum board were checked. It was found that the seals of the left bottom of the secondary side cover of the metering cubicle seal No.0007893 (green) and at the right bottom of the secondary side cover of the metering cubicle seal No.0007898 (green) were spurious seals.

The consumer has tampered the original seals and replaced the original seals with spurious seals. The spurious seals should have been provided by the consumer during the period between 18.10.2010 and 08.11.2011.

The HTM Wing was requested by the Executive Engineer V, to test the metering cubicle and meter, Ratio tests are conducted by the HTM Wing without disturbing the spurious seals provided by the consumer and additional seal provided by the department but releasing the number seals provided at the meter terminal cover. The ratio tests on metering cubicle were found normal. The meter recording performance was checked and found normal."

5. Based on the Inspection Report dated 12.02.2013, the 1st respondent has issued a initial assessment notice in Memo No.2181/ED/EE-V/JE/F-Kanyaka/2012-13, dated 21.02.2013, calling upon the petitioner to remit a sum of Rs.2,28,73,309/- and afforded an opportunity for personal hearing on 27.02.2013, therefore, the petitioner had filed their objection on 18.02.2013. However, the respondent had passed the final assessment order dated 22.03.2013. The order stated that, it is established beyond doubt that

M/s.Kanyaka Fire Weld Industries had unauthorisedly used electricity through tampered meter as per section 126-6(b) (iii) of the Indian Electricity Act 2003, and the final assessment order along with the assessed sum of Rs.2,28,73,309/- and the said amount is to be paid within 15 days from the date of receipt of the final assessment order. He questioned the legality of the order in W.P.No.9353 of 2012, on the file of this Court. He specifically contended that the order came to be passed without considering the scope of the order of remand passed by this Court. The respondents contested the above writ petition by filing their counter. This Court by its order dated 10.09.2013 was pleased to set aside the impugned order as the impugned order was not in consonance with the order passed in W.P.No.209 of 2012, dated 09.01.2012. The second respondent passed the above Final Assessment order for the subsequent period from February 2012 to January 2013, however the actual period of dispute is prior to November 2011. Thus the above final Assessment Order passes for the subsequent period from February 2012 to January 2013, as against the actual period of dispute i.e., prior to November 2011, is against the order passed in W.P.No.209 of 2012. The 2nd respondent misinterpreting the above of this Court had passed the above Final Assessment Order for the subsequent period instead of the actual period of dispute namely prior to November, 2011. Thus the above Final Assessment order was set aside by this Court by this Order dated 10.09.2013 in W.P.No.9353 of 2012.

6. The petitioner further states that after the order of this Court, the 2nd respondent had once again issued the initial Assessment Notice dated 03.10.2013 for which he had also issued a suitable reply. He states that the 2nd respondent once again impugned the Final Assessment Order, which is impugned herein. The Impugned Order of the 2nd respondent was passed in an arbitrary capricious manner and once again against the direction of this Court. Hence, this Writ petition is filed.

7. On behalf of all the respondents the 3rd respondent herein namely the Assistant Engineer/Town1, Electricity Department, Karaikal, has filed a counter statement and resisted the above writ petition. The respondent submits that the petitioner's Industry is located in Melavanjore Village, T.R.Pattinam, Karaikkal Region of the main territory of Puducherry. The Industry has been given a H.T.Power supply for a contracted maximum demand of 700KVA. The service connection was affected on 26.05.1997, the consumer Policy Number being 721. The Industry is classified as HT-1(a) category.

8. The respondent humbly submit that, in order to check and curb mal practices, theft and misuse of electrical energy, the Department

had formed an Anti Power theft squad Sub-Division (APTS) in 2007. Subsequently, the circular issued by the department, dated 26.07.2007, authorized the squad to conduct regular inspection of High Tension (HT) and Low Tension (LW) services, apart from the routine inspections carried out by the jurisdictional field officers and HT metering section. Another Notification was issued on 18.05.2012 in G.O.Ms.No.12 to specify the Assessing Officer, Appellate Authority and Authorized Officer to assess the unauthorized use of Electricity under the provisions of the Electricity Act, 2003.

9. The respondent submits that during one such Joint Inspection, the petitioner industry was inspected by the APTS and the H.T metering section along with the Jurisdictional Officers of the Electricity Department and independent witness of the Revenue Department on 08.11.2011. During the course of inspection, it was noticed that the green coloured, serially numbered, Poly Carbonate security seals, provided by the HT metering section, on the secondary terminal cover of the metering cubicle equipment, which is part of the metering arrangement, had been replaced by a similar seal, but with a different serial number. The seals provided by the HT metering section on 10.07.2008 and acknowledged by the Consumer, were 0006556 and 0006554. Whereas at the time of inspection, the numbers found on the seals were 0007893 and 0007898. This is a clear indication that the consumer had tampered with the seals and had unauthorisedly replaced them with spurious ones. Based on the inspection report dated 08.11.2011, of the APTS of the Department, the jurisdictional Executive Engineer inspected the petitioner industry on 09.11.2011 and confirmed that the seals had been replaced. The inspection report dated 08.11.2011 of the APTS of the Department, the jurisdictional Executive Engineer inspected the petitioner industry on 09.11.2011 and confirmed that the seals had been replaced. The inspection report of the HT metering section dated 11.11.2011 was also submitted to the jurisdictional Assistant Engineer. Copies of the Inspection reports dated 08.11.2011 and 09.11.2011 were also served on the Petitioner Industry.

10. The respondent further submits that the inspecting officials confirmed and concluded that the petitioner Industry M/s.Kanayaka Fine Weld Limited, T.R.Patinam, Karaikal had indulged in unauthorized use of energy within the meaning of Section 126 of the Electricity Act, 2003 read with Regulations 10.1(2) (v) of the Joint Electricity Regulatory Commission (Electricity Supply Code), 2010, notified in the official Gazette of India, dated 20.05.2010. Upon analysing the available records on hand and the submissions made by the officers concerned, the Assessing Officer, in this case, the Superintending Engineer - II, Electricity Department, Puducherry, satisfied that the petitioner industry had indulged in unauthorized use of energy,

issued the Provisional Assessment Notice to the consumer, directing the petitioner industry to deposit an amount of Rs.2,44,94,215/- within 7 days time or file objections, if any, before the Assessing Officer. The petitioner industry was also informed that a personal hearing on the matter would be held at 11.00 a.m., on 22.11.2011. The provisional Assessment Notice was served to the petitioner Industry through the Executive Engineer, Karaikal on 11.11.2011, under due acknowledgement. He humbly submits, that in response to the Provisional Assessment Notice, the Petitioner Industry submitted its response vide letter dated 17.11.2011, wherein the Petitioner Industry denied the allegation of unauthorized use of energy. Thereafter, the petitioner industry appeared before the Assessing Officer i.e., Superintending Engineer-II, on 22.11.2011 and presented their case in person and also submitted a written statement stating that the Provisional Assessment Notice was not specific in nature, as it did not specify the act leading to unauthorized use of energy. The industry also denied that they had done anything to attract the provisions of section 126 of the Act and also agreed to respond with due explanations if a fresh assessment notice was issued indicating the specifics of the act amounting to unauthorized use of energy. Accepting the arrangement put forward by the Petitioner Industry, a revised Provisional Assessment Notice dated 29.11.2011 was issued to the Industry, detailing the specific nature of unauthorised use of energy and confirming the amount to be deposited by the industry. The industry was further informed that a personal hearing would be held on 08.12.2011.

11. The respondent further submits that on 08.12.2011, the petitioner industry represented by its advocate, denied all the allegations against them and requested the Department to further investigate the matter and assured all Co-operation in that regard. Again on 12.12.2011, the petitioner industry submitted a written statement once again denying all the allegations as baseless and devoid of any proof. He humbly submits that careful consideration of the replies furnished by the Petitioner Industry, and the material evidence placed before the Assessment Officer, the Final Assessment Notice was served on the Petitioner Industry on 16/12/2011, directing the industry to pay an amount of Rs.2,36,10,548/- within fifteen days from the date of receipt of the order, failing which, the Department would disconnect the power supply of the Industry without any further intimation.

12. He humbly submits that, aggrieved by the Final Assessment Notice, the Petitioner filed a Writ Petition in W.P.No.209 of 2012 before this Court of Judicature at Madras. This Court in its Order observed that the Inspection, which is the subject matter of the present writ petition was conducted by the Executive Engineer on 9th

November 2011. Admittedly, there was no notification as on the said date authorizing the Executive Engineer to function as Assessing Officer and to pass provisional order under Section 126(1) of the Act and final order under Section 126(5) of the Act. The Electricity Regulation mandates that the inspection should be conducted by the Assessing Officer and he should satisfy that the consumer has indulged in unauthorised use of Electricity. Even though the Executive Engineer inspected the premises of the petitioner on 9th November 2011, the fact remains that the provisional order was issued only by the Superintending Engineer. Again, it was only the Superintending Engineer, who issued the final assessment order. Since, there was no notification as on 9th November 2011 appointing the Executive Engineer, Karaikal as the Authorized Officer under Section 126(6) of the Electricity Act and in the absence of inspection conducted by the respondent against the petitioner, is liable to be quashed.

13. The respondent further submits that, this Court in its Order dated 09.01.2013, was of the view that "liberty should be given to the Executive Engineer, Karaikal to take further action pursuant to the inspection conducted by him on 9th November 2011. It is open to the Executive Engineer to inspect the meter and electrical apparatus once again for the purpose of taking further action, if any. In case the Executive Engineer is of the view that the petitioner, has indulged in unauthorized use of electricity by spurious means, it is open to him to issue a provisional order to the consumer. The proceedings should be conducted in accordance with the procedure provided under Section 126 of the Electricity Act, 2003 as well as Joint Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2010''. As a result, this Court, to set aside the impugned order of the Superintending Engineer-II, dated 16 December 2011 and remitted the matter back to the Executive Engineer, Karaikal, with liberty to proceed in accordance with law. He humbly submits that, vide office Memo Ref.No.4482/ED/SE-II/Tech-II/F-Kanyaka/12-13, dated 08.02.13, the copy of the order was forwarded, by the Controlling Officer, i.e., Superintending Engineer-II, for taking necessary action at their end, based on the order dated 09.01.2013.

14. The respondent further submits that, accordingly the Executive Engineer - V, in the capacity as Assessing Officer, as per the Directions of the Court in its order dated 09.01.2013, conducted the inspection of the premises of the Petitioner on 12.02.2013, along with Assistant Engineer-Town-I (O & M) the Junior Engineer, T.R.Pattinam (O & M) A.E(HTM) Wing, APTS Wing and independent witness of the Revenue Department. It was observed that the number seals provided in the metering cubicle (CT, PT) secondary box had been

replaced by seals with different serial numbers indicating that the seals provided by the department had been removed. Removal of seals from the secondary terminal of the Metering Cubicle amounts to tampering of meter. The firm has been consuming the Power through the above tampered metering cubicle. As such the above Act of the HT industry shall be considered as unauthorized use of electricity and shall be dealt with for assessment under the provisions of Section 126 of the Electricity Act 2003 as stipulated in the Joint Electricity Regulatory Commission (Electricity Supply Code) Regulation.

15. The respondent further submits that, metering cubicle, is an equipment, which is an integral part of the metering system and which converts the high tension level of voltage and current to the low tension level of voltage and current and feeds the same to the meter for registering the energy and other electrical parameters, utilized by the consumer. The output of the metering cubicle is available in the secondary terminal of the metering cubicle are interlinked through a cable concealed in galvanized iron pipes so as to make it tamper proof. Once, the secondary terminal cover seals of the metering cubicle are tampered, the terminal cover can be opened and the consumer can easily get fraudulent access to the voltage and current terminals of the cubicles and can alter the actual voltage or current of the secondary side of the metering cubicle, current ratio of the current transformer and restore it to the normal positions at the industry's convenience, thereby preventing the meter from duly registering the actual energy consumed. The only motive behind the act of tampering with the security seals can be only to get fraudulent access to the voltage and current terminals of the cubicles and can alter the actual voltage or current of the secondary side of the metering cubicle, current ratio of the current transformer and restore it to the normal positions at the industry's convenience, thereby preventing the meter from duly registering the actual energy consumed. The only motive behind the act of tampering with the security seals can be only to get fraudulent access to the connections as said above and nothing else. Therefore, it is clearly evident that the Petitioner Industry has indulged in tampering with the metering cubicle and not electronic meter.

16. The respondent further submits that, accordingly, the Assessing Officer, based on the above findings, issued an Initial Assessment Notice to the Petitioner, vide memo No.2181/ED/EE-V/JE/F-Kanayaka/2012-13, dated 21/02/2013, for an amount of Rs.2,28,73,309/- and provided an opportunity for a personal hearing on 27/02/2013. The petitioner filed their objection on 18.02.2013 once again denying all the allegations as baseless, devoid of any proof. Thereafter, the Assessing Officer, passed the Final Assessment order dated

22/03/2013, stating that it was established beyond any reasonable doubt that petitioner has unauthorisedly used Electricity, as per Section 126 of the Electricity Act, 2003 and assessed the loss as Rs.2,78,73,309/- (Rupees Two Crores Seventy three thousand three hundred and nine only) and informed that an amount of Rs.2,28,73,309/- was payable after deducting the previous amount of Rs.50,00,000/- (Rupees Fifty Lakhs) deposited by petitioner vide Banker's Cheque No.011847, dated 20.01.2012, City Union Bank, Karaikal, based on the Interim Order of this Court vide Order dated 05.01.2012 in W.P.No.209 of 2012. It was also informed that if the petitioner wish to prefer an appeal against this order, they may do so with the Appellate Authority, the Superintending Engineer-III, within 30 days from the date of receipt of this order, after making payment of half of the assessed amount either by way of cash at the office of JAO/Revenue, Electricity Department, Karaikal or by way of DD drawn in favour of JAO/Revenue, Electricity. It was alleged in the Petitioners reply letter to the initial assessment notice that "The Seal Number and the Seal Color are written manually in Seal card Register by the Department and acceptance signature is obtained from them. Hence, these manual entries always have the possibility of "human error" was baseless and promptly refuted by him in the Final Assessment Notice that the seal number was not done independently by the Department and has been signed for acceptance by the petitioner too. As it is only a number entry (Seal number) the Petitioner's staff while signing their acceptance could have very easily ensured the correctness and hence the reason for human error is not acceptable. The petitioner is only attempting to divert the Court by repeatedly raising different false issues, with sole intention to gain time and to dilute the issue.

17. The respondent further submits that, aggrieved by the above Final Assessment order of Executive Engineer-V, dated 22.03.2013, the petitioner has obtained Court order in W.P.No.9353 of 2013, dated 10.09.2013 as given below. In the result, the impugned order was quashed. The second respondent was directed to pass a fresh order relating to the period prior to 9th November 2011. Such exercise shall be completed within a period of two weeks from the date of receipt of copy of this order. Incase, the second respondent is of the view that theft of electricity continued even thereafter, it is open to him to initiate separate proceedings. He humbly submits that, accordingly the Executive Engineer-V, in the capacity as Assessing Officer, as per the directions of this Court in its order dated 10.09.2013 in W.P.No.9353 of 2013, issued an initial assessment notice vide No.1501/EDK/EEV/JE(T)/F. Kanyaka/2013-2014, dated 03.10.2013, on the petitioner Industry, for the period prior to November 2011, instead of order passed for the subsequent period from February 2012 to January 2013, for a loss amounting to

Rs.2,36,10,548/- and provided an opportunity for a personal hearing on 11.03.2013. Thereafter, the Assessing Officer, in the capacity of Executive Engineer, Karaikal, passed the Final Assessment order dated 18.10.2013 vide No.1657/EDK/EEV/JE(Tech)/F.Kanyaka/2013-2014 for an amount of Rs.1,86,10,548/- after deducting the previous amount of Rs.50,00,000/- deposited by the petitioner vide Bankers Cheque No.011847, dated 20.01.2012, City Union Bank, Karaikal. It was also directed that if the petitioner wished to prefer an appeal against this order, they have do so with the Appellate Authority, the Superintending Engineer-III, within the 30 days from the date of receipt of this order after making payment of half of the assessed amount either by way of DD drawn in favour of JAO/Revenue, Electricity Department, Karaikal.

18. The respondent further submits that once again aggrieved by the above final assessment order of Executive Engineer-V, vide No.1657/EDK/EEV/F.Kanyaka/13-14, dated 18.10.2013, petitioner had approached this Court through W.P.No.29824 of 2013 and M.P.No.1 of 2013 to quash the assessment order. This Court has granted interim stay of the operation of the impugned order passed by the 2nd respondent in proceeding No.1657/EDK/EEV/F.Kanyaka/2013-2014, on condition that the petitioner deposits a sum of Rs.40,00,000/- (Rupees Forty Lakhs only), within a period of eight weeks from the date of receipt of this order. He humbly submits that the Petitioner Industry ignored to deposit the amounts directed by this Court. Meanwhile, the power supply to the petitioner Industry was disconnected on 11.01.2014 due to default in payment of regular current consumption bills. He humbly submits that the contention of the petitioner in the current Affidavit, that "Assessment order passed by the respondent, is contra to the order passed by this Court in W.P.No.209 of 2012, dated 09.01.2012, is totally denied, for the reason that the Inspection of the HT Industry was not preferred since the spurious seals found in the previous inspections dated 09.11.2011 and 12.02.2013, referred under pre paras of this counter affidavit, has been kept under sealed condition by the department. Therefore, unauthorised use of electricity by the HT Industry was an already established fact, by this Department. Further, the Assessing Officer, in the capacity as Executive Engineer-V, have already inspected the premises on 12.02.2013 and as such only a fresh assessment order, with the revision of period, as per directions of the Court in W.P.No.9353 of 2013 was issued. The quashing of the Final Assessment Orders were only on technical grounds and not on grounds of facts, hence inspection of the site is not required. Hence, the affidavit is therefore liable to be dismissed as the same is devoid of merits.

19. The respondent further submitted that while the facts of the case are as stated above, the Grounds submitted by the petitioner Industry is rebutted as under:

(a) He submits that the initial Assessment Orders issued vide No.1501/ED/EE-V/JE/F-Kanyaka/2012-13, dated 03.10.2013 and the Final Assessment order issued vide No.1657/EDK/EE-V/JE-Tech/F.Kanyaka/2012-13, dated 18/10/2013 are sustainable before law. Also the said orders are consistent with the provisions of Sections 126 of the Electricity Act, 2003 and Regulation 10.3 of the JERC (Electricity Supply Code) Regulations, 2010, and in line with the order dated 10.09.2013 of this Court of Chennai, in W.P.No.9353 of 2013;

(b) The contention of the Petitioner in Para(b) that the impugned order is total non-Application of mind as the 2nd respondent had failed to see that the inspection conducted during the relevant time by the Junior Engineer during his periodical inspection made clear that absolutely there is no tampering of seals during the relevant point of time and it is liable to be quashed. In this regard, he submits to state that the Junior Engineer had during the course of his taking the reading and as a routine procedure had checked all the seals provided by him, the previous month, on the energy meter and the metering box and had certified that they were intact. The seal provided on the metering cubicle are those provided by the MRT Division of the department. The Junior Engineer (Operation and Maintenance) can vouch only for the seals affixed by him and has also done so. He is neither competent to certify anything about the seals provided by the another Division of the Department, nor can his certificate can be construed to mean that he had certified that all the seals including those provided by MRT Division were in order. The petitioner Industry has raised this non-issue only to confuse this Court;

(c) He submits that the petitioner in his affidavit in W.P.No.29824 of 2013, has noted that the 2nd respondent is stopped from passing the order as his sub-ordinate during the relevant period had as a matter of undisputed fact recorded that the petitioner had not indulged in any act as mentioned in the impugned order, is not correct, since during the inspection made by Authorized Officers, on 12/02/2013, it was found that the seals provided at the secondary cover of CT/PT unit were spurious seals (i.e) 0007893 Left bottom (green), 0007898/Right Bottom (green) and the above spurious seals still existed, during the second inspection;

(d) The contention of the petitioner is that the 2nd respondent failed to take note of the fact that while exercising a quasi judicial function ought to have placed reliance upon the inspection report of his Subordinate, is baseless for the reason that in order to check and curb mal practices, theft and misuse of electrical energy, the Department had formed an Anti Power theft squad Sub Division (APTS) in 2007. It was during such inspection by the APTS Wing of this Department, that the incidence of theft by the petitioner was found. Whereas the petitioner Industry is repeatedly focussing on the reported visit of the Junior Engineer (Operation & Maintenance) and his certifying that the seals were intact during the time of taking the reading, the previous month. It is once again submitted that he has certified only about the seals provided by the O and M section and not by the HTM Section. He is neither competent to certify anything about the seals provided by the another (MRT) Division of the Department, nor his certificate can be construed to mean that he had certified that all the seals including those provided by MRT Division were in order. The petitioner industry has raised this non issue only to confuse this Court;

(e) The statement of the petitioner that the "Power To invoke section 126 of the Electricity Act to assess the Penalty charges will come into operation only if the authorities come to an irresistible conclusion that there is an unauthorized use of energy, when the allegations made in the impugned order runs contra to the personal inspection of the Junior Engineer. Hence, the 2nd respondent does not have any jurisdiction to invoke the powers under section 126 of Electricity Act is baseless. It is once again reiterated that as he is neither competent to certify anything about the seals provided by the another (MRT) Division of the Department, nor can his certificate can be construed to mean that he had certified that all the seals including those provided by MRT Division were in order.

(f) Further, the statement of the petitioner that the impugned order is liable to be quashed as same is passed without jurisdiction and product of non-application of mind is clearly misleading as Executive Engineer-V, in the capacity as Assessing Officer, as per the directions of the Court in its order dated 09.01.2013, conducted the inspection at the premises of the petitioner on 12.02.2013, along with Assistant Engineer-Town-I (O&M), the concerned Junior Engineer, T.R.Pattinam, A.E(HTM) Wing, APTS Wing, along with the officials and independent witness of the Revenue Department and observed that the number seals provided in the metering cubicle (CT, PT) secondary box had been replaced by the seals with different serial numbers indicating that the seals with different serial numbers indicating that the seals provided by the department had been removed. Removal of seals from the secondary terminal of the Metering Cubicle amounts to tampering of meter. Regarding the seals it is submitted that, at the time of affixing the seals, the seals were shown to the representative of the petitioner Industry and only after obtaining the signature of the representative in the sealing Register, the seals were affixed. The fact that the numbered seals differ from the ones provided by the department, is itself conclusive evidence for tampering with the seals and thereby the metering equipment. This case is purely based on material and documentary evidence and no witnesses were sought to be examined by the petitioner;

(g) The contention of the petitioner Industry that the order of the respondent besides has brought disrepute to the petitioner and thus had created a stigma on the petitioner concerned is incorrect as, the Assessing Officer, upon careful examination concluded based on the inspection of the Meter and the electrical apparatus, by him, that the petitioner has been indulging in unauthorised use of electricity, by directly tampering with the security seals provided on the Metering Cubicle and thereby consuming electricity through a tampered metering equipment.

(h) The petitioner has noted in his affidavit that "The Impugned order passed by the 2nd respondent is in clear violation of the order passed by this Court in W.P.No.209 of 2012, dated 09.01.2013, wherein it was categorically observed that it is open to the 2nd respondent to inspect the meter and electrical apparatus once again for the purpose of further action, based on the undertaking that the 2nd respondent would once again inspect the meter in the presence of the petitioner and accordingly proceed with Section 126. In the present case, as no inspection was conducted prior to the passing of the present impugned order, the present impugned order stands in clear violation of above order in W.P.No.209 of 2012 is baseless, since self, along with the inspection team of authorized officers, carrried the inspection on 12.02.2013, and found that the seals provided at the secondary cover of CT/PT unit were spurious seals (i.e) 0007893 Left bottom (green), 0007898/Right bottom (green) and the above spurious seals still exists, during inspection and remains as (spurious) as found during the earlier inspection. It was for this reason, that the inspection of the HT industry was not preferred since the spurious seals found in the previous inspections dated 09.11.2011 and 12.02.2013, referred under pre paras of this counter affidavit, has been kept under sealed condition by the department. Therefore, unauthorized use of electricity by the HT industry was an already established fact, by this Department. The Assessing Officer, has issued the present assessment order, with only the revision period, as per directions of the Court in (W.P.No.9353/2013, dated 10.09.2013);

(f) Further the contention of the Petitioner that "the Above grounds will go to show that the Impugned order was passed arbitrarily and the same does not constitute a reasonable restriction and thus violates Article 19(1)(g) of Constitution of India, is unsustainable for the reason that this case is purely based on material and documentary evidence and for the fact that the numbered seals differ from the ones provided by the department, is itself conclusive evidence for tampering with the seals and thereby the metering equipment;

(j) The petitioner has noted in W.P.No.29824 of 2013, para (j) that" despite direction and undertaking to conduct fresh inspection of the metering instrument of the disputed period i.e., prior to November 2011, the 2nd respondent neither conducted fresh inspection of the metering instrument nor quantified the actual loss incurred by the Department with support of any documents. Thus there is complete lapse of procedure while passing the above impugned order, resulting in no loss to respondents is not correct as the petitioner Industry had tampered and replaced the seals on the metering cubicle (Current Transformer and Voltage Tansformer) which is an integral part of the metering equipment as defined by the Central Electricity Authority (Regulations or Installation and operation of Meters) Regulations, 2006 in Regulation 2 (1) (p). Therefore, the petitioner industry was availing power supply through a tampered meter, within the meaning of Section 126(6) (b) (iii) irrespective of how the meter was functioning. Hence, there was no necessity to analyse the downloaded data, for quantifying the actual loss;

(k) The petitioner has noted in W.P.No.29824 of 2013, para (h) that ''it is pertinent to note that the Junior Engineer had conducted inspection of the metering instrument on each month during the relevant disputed period i.e., 01.02.2011 to 01.11.2011, excluding the September Month and on the said inspection had categorically found that the metering instrument is intact and not tampered. Hence, the respondents are now stopped to take a contrary stand that there has been unauthorised use of Energy by tampering with the original seals during the above period" is baseless as the Junior Engieer (Operation and Maintenance) can vouch only for the seals affixed by him and also done so. He is neither competent to certify anything about the seals provided by the another Division of the Department, nor can his certificate can be construed to mean that he had certified that all the seals including those provided by MRT division were in order. The petitioner Industry is repeatedly raising this non-issue only to confuse this Court;

(l) Further the petitioner has noted in W.P.No.29824 of 2013, Para (5) that the respondents had each and every time mechanically passing various impugned orders which have been set aside by this Court irrespective of the fact that the respondent is suffering twice, did not pass the impugned order in consonance with the direction of this Court. The same is not only in violation of the order of this Court but also stands as a threat to the very operation of the company. Hence, the alternative remedy would not stand as a bar for the petitioner to invoke the extra ordinary jurisdiction vested under Article 226 of Constitution of India. The above statement is clearly a misleading one, as the petitioner has indulged in the Act of unauthorised usage of electricity, for which necessary penalty has to be imposed to the petitioner. Accordingly, self Assessing Officer, in the capacity Executive Engineer - V, has carried out the Inspection as per the directions of this Court vide order in W.P.No.209 of 2012, dated 09.01.2013 and the penalty has been imposed as per the directions of this Court vide order No.9353 of 2013, dated 10.09.2013.

20. Further to the above, it is submitted that this Court in M.P.No.1 of 2013 in W.P.No.29824 of 2013, dated 08.11.2013, has granted an Interim stay on condition that the petitioner deposits a sum of Rs.40,00,000/- Rupees forty lakhs only) within a period of eight weeks, from the date of receipt of a copy of this order. If the petitioner does not comply with the condition, the stay granted would automatically be vacated, without reference to the orders of this Court. Whereas the petitioner has not deposited to this Department the above directed sum, within the stipulated period of eight weeks, because of which, the interim stay granted is deemed vacated and hence the direction of the Final Assessment order No.1657/EDK/EE-V/JE-Tech/F-Kanyaka/2013-2014, dated 18.10.2013, prevails. Hence, in the light of the submission and reasons submitted, herein, it is humbly prayed that this Court may be pleased to dismiss the writ petition.

21. The highly competent counsel Mr.D.Ravichander, appearing for the petitioner submits that the petitioner's company is engaged in manufacturing of Ferro-Silicon, the petitioner has been sanctioned 100 KVA load in the year 1999. The petitioner without default was remitting the consumption charges regularly. The respondent also had provided an electric meter fitted in the petitioner's premises with due serial number and fitted it with Poly Carbonate security seals. The said electronic meter is a tamper-proof meter and not pilferage or theft of energy or measure of power can be done in the premises without being recorded in the meter. Therefore, there is no possibility to use the electricity through pilferage. The Executive Engineer had inspected the service connection on 09.11.2011 and alleged that there was a meddling of the metering equipments which amounts to unauthorised usage of electricity as per the provisions of Electricity Regulatory Commission. The respondent issued an initial assessment notice on 11.11.2011 and directed the petitioner to pay a sum of Rs.2,44,94,215/- within a period of 7 days and directed the

Company to file objection if any and also directed to appeal in person on 22.11.2012. This order a final order is an arbitrary one and a one sided decision. As such, the impugned order is not fit to proceed with any further.

22. The very competent counsel further added that the Company had submitted a detailed objection on 17.11.2011 and denied the said accusation. The learned counsel vehemently pointed out that the Junior Engineer, who is attached to the Karaikkal Division, had taken the meter reading on 31.10.2011 and he had not found any change in the meter seals. Therefore, the impugned order dated 11.11.2011 is not appropriate for executing the same. After submitting a comprehensive reply to the respondents and without considering it, the respondent had passed an order on 16.12.2011 and stated that the unauthorized usage of electricity has been established beyond any reasonable doubt. The assessment charges had been modified to 2,36,10,548/-. Considering the period during which power supply was not available to the Industry and demanded payment of the same within 15 days. This order has been challenged before this Court by way of filing in writ petition No.209 of 2012, before this Court. The very competent counsel Mr.D.Ravichander, additionally added that on an electronic meter with proper protection cannot be tampered with. Therefore, the allegation against the petitioner is vague and unacceptable. Further, this Court directed the 1st respondent to take action pursuant to the inspection conducted by him on 09.11.2011 and further gave liberty to the 1st respondent to inspect the meter and the electrical apparatus, for taking action if any. Subsequently, the impugned order relating to the period prior to 09.11.2011, such an exercise shall be completed within a period of two weeks from the date of receipt of a copy of this order. Accordingly, there was an inspection by the respondents on 12.02.2013. The inspection team has found that the consumer has tampered with the original seals and replaced the original seals with spurious seals. The spurious seals should have been provided by the consumer during the period between 18.10.2010 and 08.11.2011. This finding is nothing but an old opinion of the respondents not supporting any documents.

23. The highly competent counsel further submits that the H.T.M Wing was requested by the Executive Engineer to test the metering cubicle and meter, ratio test be conducted by the HTM Wing without disturbing the spurious seals provided by the consumer and additional seal provided by the department but released the member seals provided at the meter terminal cover. The ratio tests on metering cubicle was found normal. The meter reading performance was checked and found normal. Therefore, the impugned order is not sustainable under law as per the valid report given by the HTM Wing. The report

also collected in the presence of the respondents. Based on the inspection report, the 1st respondent had issued an initial assessment notice dated 21.02.2013, calling upon the petitioner to remit a sum of Rs.2,28,73,309/- and afforded an opportunity for personal hearing on 27.02.2013. The said initial assessment had been passed in a unilateral manner which is against the principle of natural justice. However, the petitioner had filed a detailed objection on 18.02.2013, the same was not considered by the respondents and passed a final order, consequently, conforming the initial assessment order. The respondent's without following proper procedure had passed the said impugned order. Further, the said order dated 22.03.2013 had been challenged before this Court by way of filing another writ petition No.9353 of 2013 before this Court. The said order has been set aside on merits, since the impugned order was not in consonance with the order passed in an earlier writ petition No.209 of 2012, dated 09.01.2012. The 2nd respondent passed the final assessment order for the subsequent period from February 2012 to January 2012, however the actual period of dispute is prior to November 2011. As such the final order passed against the actual period of dispute. As such the 2nd respondent misinterpreting this Court's earlier order. Therefore, the final order had been set aside in writ petition No.9353 of 2013, dated 10.09.2013.

24. The very competent counsel further submits that the 2nd respondent once again issued an initial assessment notice on the same cause of action which is not permissible under law and also resjudicata since the same matter had already been decided by this Court on the same cause of action between the same parties. Hence, the highly competent counsel Mr.D.Ravichander makes a department to allow the above writ petition. Supporting this writ petition the learned counsel has cited judgment which are as follows:

(i) Executive Engineer, Southern Electricity supply Company of Orissa Limited (South-Company) and another vs Sri Seetaram Rice Mill reported in (2012) 2 Supreme Court Cases 108.

"A. Electricity - unauthorised use - Scope of - Consumption of electricity (1) in excess of sanctioned load, or (2) involving change of user or category of customer, or (3) involving pilferage not amounting to theft- Held, covered - Expression "Unauthorised use of electricity" in S.126 Expln. (b) of Electricity Act, 2003 covers consumption in excess of sanctioned/contracted load - such consumption, particularly when involving change of category of consumer and tariff, held, does fall under S.126 Expln (b) (iv) of 2003 Act - Relevant

Regulations also confirm this position - Moreover, said expression covers pilferage of electricity by malpractices not amounting to theft under S.135.

-By specifically providing method of computation of amount payable for excessive consumption of electricity and manner of assessment, S.126 of 2003 Act seeks to put implied restriction on unauthorised consumption of electricity - Hence, in preference to strict and textual interpretation, S.126 given purposive interpretation by applying maxims-ex visceribus actus and ut res magis valeat quam pereat - Rule of practical interpretation also, held, applicable to such statues - Modern trend of application of common sense principle by courts for interpretation of contractual documents, followed

- Further held, expression "means" in definition clause S.126 Expln.(b) is illustrative and exhaustive.

- Therefore, consumer's contention that S.126 Expln. (b) (iv) applies only to case of actual change in purpose of use of electricity and not to change of category of consumer, rejected - Electricity Act, 2003 - Ss.126, 135 and 181(2) - Orissa Electricity Regulatory Commission Distribution (Conditions of supply) Code, 2004 - Regns.80, 82 and 106 - Orissa Electricity Reforms Act, 1995 (2 of 1996) - S.15 - Words and Phrases - "Unauthorised use of Electricity", "unauthorised use", "means" and "authorisation".

Allowing the appeal partly, and remanding the matter to the assessing authority for passing a final assessment order as contemplated under section 126(5), the Supreme Court.

(ii) State of Madhya Pradesh and Others Vs Sanjay Nagayach and others reported in (2013) 7 Supreme Court Cases 25.

A. Co-operative Societies - M.P.Co-Operative Societies Act, 1960 - Ss.53(1) Proviso 2 & 53(2) and S.49(7-A) (i) and proviso thereto - Supersession of an elected body (Body of Directors of District Co-operative Central Bank) before completion of its term - Power of Registrar/Joint Registrar in respect of - proper exercise of - what is - need for bonafide action within four corners of statute in best interest of members of society, based on objective criteria - previous consultation with Reserve Bank of India (RBI) before exercise of power of supersession by Registrar/Joint Registrar - Mandatoriness of - Meaningful and effective "consultation" with RBI - what amounts to -effect of non-compliance with requirement of previous consultation - reinstatement of elected body to complete remaining period of term for which it was elected - Exclusion of period of illegal supersession;

-Held a legally elected Board of Directors cannot be put out of office by an illegal order - previous consultation with RBI is mandatory before opinion is formed by Registrar/Joint Registrar to supersede elected Board of Directors - Mere forwarding copy of show cause notice, issued on Board of Directors seeking their reply, to RBI does not amount to "consultation" - Supersession of an elected Managing Committee/Board is an exception and is to be resorted to only in exceptional circumstances - If Board of Directors of Bank is illegally superseded, suspended or removed, it has be reinstated to complete its full term of five years, because electorate elected said Board for five year term;

- Joint Registrar of Co-operative Societies passed order superseding Board of Directors of District Co-operative Central Bank on certain allegations of shortcomings and illegalities, and made available show cause notice served on Board of Directors- Legality - Held, meaningful and effective consultation with RBI under Section 53(1) second proviso means furnishing copy of reply filed by Board of Directors of Bank to various charges and allegations levelled against them, to RBI as well as action proposed by Joint Registrar after considering said reply submitted by Board of Directors - views expressed by RBI thereon will be relevant material for Registrar/Joint Registrar to decide whether elected Board be superseded or not - In instant case, Joint Registrar merely forwarded copy of show-cause notice issued on Board of Directors to RBI, which does not amount to consultation - Further, charges levelled against Board of Directors could not be held responsible - Hence, held supersession of Board of Directors is in violation of S.53(1) second proviso - Also report of RBI advised that allegations raised in show-cause notice being of general nature of deficiencies relating to systems and procedures were not grave enough to supersede democratically elected Board of Directors;

- Registrar/Joint Registrar, held, while exercising powers of supersession, has to form an opinion based on objective criteria which have nexus with final decision - they are expected to act in best interest of society and its members and they have to act bonafide and within four corners of statute - However; in instant case, Joint Registrar clearly acted under extraneous influence and under dictation - Hence, Board of Directors directed to be reinstated to complete remaining term of five years, excluding period of illegal - supersession - Appeal dismissed with costs of Rs.1,00,000/- payable by State for pursuing frivolous litigation and also Rs.10,000/- payable by Joint Registrar who passed said order to be realised from his salary, for having acted improperly - General directions issued in view of many such cases emanating in various Courts challenging orders of supersession of elected Boards/Committees/Reserve Bank of India Act, 1934- Ss.42 and 43 - Banking Regulation Act, 1949 - Ss.56 and 35 - Deposit Insurance and Credit Guarantee Corporation Act, 1961 - S.2 (gg) (iii) - National Bank for Agriculture and Rural Development Act, 1981, S.38.

25. The very competent counsel, Miss.Mala, appearing for the respondent submits that the petitioner Industry has been given a H.T.Power supply for a contracted maximum demand of 700 KVA and the Industry has been classified as H.T-1(A Category). The service connection has been affected from 26.05.1997. In order to check and curb mal practices, theft and misuse of electrical energy, the department had formed an anti theft squad to conduct regular inspection of High Tension and Low Tension services, apart from the routine inspection carried out by the jurisdictional Field Officers and High Tension metering section. Further, as per G.O.Ms.No.12, dated 18.05.2012, the Assessing Officer, Appellate Authority and authorized Officer to access the unauthorised use of electricity under the provisions of the Electricity Act 2013. On joint inspection the petitioner's Industry have been inspected by the Anti power theft squad the High Tension metering section along with the Jurisdictional Officers who are attached to the Electricity Department and the independent witnesses of the Revenue Department on 08.11.2011. During the course of inspection it was found that the green coloured serially numbered, Poly Carbonate security seals, provided by the High Tension metering section, on the secondary terminal cover of the metering cubicle equipment, which is part of the metering arrangement had been replaced by a similar seal, but with a different serial number.

26. The very competent counsel vehemently pointed out that the seals provided by the High Tension metering section on 10.07.2008 and the same acknowledged by the consumer/petitioner herein, were 0006556 and 0006554. Whereas, at the time of inspection the numbers found on the seals were 0007893 and 0007898. This is a crystal clear indication that the petitioner had tampered with the seals and unauthorisedly replaced them with spurious ones. This kind of tampering had been detected in the presence of independent witnesses and the petitioner herein. As such the theft of energy had been proved beyond doubt. Following the inspection report of the Anti

Power theft squad, the jurisdictional Executive Engineer inspected the petitioner's Industry on 09.11.2011 and confirmed that the seals had been replaced, besides the Inspection report of the High Tension metering section dated 11.11.2011 was also submitted to the Jurisdictional Assistant Engineer. The copies of the inspection report dated 08.11.2011 and 09.11.2011 was also served on the petitioner Industry, therefore the assessment order is an appropriate one and suitable for implementation.

27. The State Law Officer for the Pondicherry Union, Miss.Mala further submits that the inspecting officials concluded that the petitioner Industry had taken part in unauthorised use of energy within the measuring of section 126 of the Electricity Act 2003, besides after analyzing he available records and the submission made by the concerned Officers the Superintendent Engineer was satisfied that the petitioner had indulged in unauthorised use of Electricity energy, hence the provisional assessment notice to the petitioner and directed him to deposit an amount of Rs.2,44,94,215/- within a period of seven days. The petitioner has been informed that a personal hearing on the issue would be held at 11.00 a.m., on 22.11.2011 after a prior notice. Therefore, the impugned order has not been prejudiced to the petitioner. The assessment order after due inspection and after scrutinizing the material evidence and on documentary proof the assessment order has been passed. Therefore, there is no impediment in the said impugned order since the theft of energy had been proved beyond doubt. After the receipt of the respondents' notice the petitioner had submitted his reply and denied the accusation and also denied that they had done anything to attract the provision 126 of the Act. Thereafter, a revised provisional assessment notice dated 29.11.2011 had been issued detailing the specific nature of unauthorised usage of energy and confirming the amount to be deposited by the petitioner's Industry. Thereafter, the petitioner had been informed that a personal enquiry would be held on 08.12.2011, therefore Article 14 of the Constitution had not been violated since an affordable opportunity had been provided to the petitioner, therefore, the impugned order is appropriate to be carried out. Further the petitioner and his counsel have an omitted written submissions and those submissions were duly considered and final assessment passed on 16.12.2011 and directed the petitioner company to pay a sum of Rs.2,36,10,548/- .

28. The very competent counsel additionally added that aggrieved by the final assessment notice the petitioner filed a writ petition No.209 of 2012 before this Court. This Court observed that the inspection which is the subject matter of the present writ petition had been conducted by the Executive Engineer on 09.11.2011. Admittedly, there was no notification as on the said date

authorizing the Executive Engineer to function as an Assessing Officer and to pass a provisional order under section 126(1) of the Act and final order under section 126(5) of the Act. The Electricity regulation mandates that the inspection should be conducted by the Assessing Officer and he should satisfy that the consumer indulged in unauthorized use of electricity. However, the final assessment order has been passed by the Superintendent Engineer, since the facts remains to be appropriate. This Court passed an order dated 09.01.2013 in the above said writ petition stating that liberty should be given to the Executive Engineer to take further action pursuant to the inspection conducted by him on 09.11.2011. Further, as per the direction of this Court, inspection was conducted by the Assessing Officer on 12.02.2013 along with independent witness and it was observed that the number seals provided in the metering cubicle secondary box had been replaced by seals with different serial numbers indicating that the seals provided by the department had been removed. As such it has been clear as proved that the petitioner had tampered with the meter.

29. The very competent counsel further submits that the meter terminal and the secondary terminal of the metering cubicle are interlinked through a concealed cable in galvanized iron pipes, so as to make it tamper proof. Therefore, the Assessing Officer issued an initial assessment notice to the petitioner dated 21.02.2013, for an amount of Rs.2,28,73,309/- and also provided an opportunity for a personal hearing on 27.02.2013, The petitioner also filed an objection on 18.02.2013 and after considering the objection of the petitioner the final order has been passed since the allegation had been proved beyond doubt and informed the petitioner that an amount of Rs.2,28,73,309/- was payable after deducting the previous amount of Rs.50 lakhs paid by the petitioner as per this Court's interim direction. Therefore, the impugned order is considered appropriate as per Section 126 of the Electricity Act 2003.

30. Aggrieved by the final order dated 22.03.2013, the petitioner has filed another petition No.9353 of 2013. The said writ petition was allowed with a direction to the 2nd respondent to pass a fresh order relating to the period in 09.11.2011, accordingly the impugned order has been passed after providing an opportunity for a personal hearing to the petitioner. As such the petitioner is liable to pay a sum of Rs.1,86,10,548/- within a period of 30 days. Now, the same has been challenged before this Court. This Court has granted interim stay on condition that the petitioner shall deposit a sum of Rs.40 lakhs within a period of eight weeks, the same was not complied with, hence the respondent disconnected the power supply to the petitioner company, this is the factual position of the case.

The impugned order had been passed on merits as per the direction of this Court passed in writ petition No.9353 of 2013, hence the highly competent counsel Miss.Mala, entreats the Court to dismiss the above writ petition.

31. From the above discussion this Court is of the view that:

(i) The respondent issued an initial assessment notice dated 11.11.2011 direction, the petitioner to pay a sum of Rs.2,44,94,215/- within seven days and also directed the petitioner to file objections if any and directed to appear in person on 22.11.2012. Without any prior notice the respondent had issued an assessment order with a direction to pay a sum of money as mentioned above and further to that another direction without prior notice is also given to him to appear in person on 22.11.2012. In my opinion this is too much for anyone to adhere too. As such this order is tantamount to dealing, with the petitioner for fairness and in natural justice;

(ii) The Executive Engineer/2nd respondent herein had requested the HTM Wing, to conduct test on the meter cubicle ratio test, the same was found normal, which is existing. Thereafter, the 1st respondent had issued another initial assessment notice and called upon the petitioner to remit a sum of Rs.2,28,73,309/- which is incorrect besides the respondent had not given any reply in their counter statement regarding test report submitted by HTM Wing. Therefore, the 2nd initial assessment notice dated 21.02.2013 runs against the report of HTM Wing, it reveals that the ratio test on metering cubicle was found normal;

(iii) The actual period of dispute is prior to November 2011, but the final assessment order passed by the respondents for the subsequent period from February 2012 to January 2013, which is against the actual period of dispute. The respondents have not given reply on this issue;

(iv) The original demand was Rs.2,44,94,215/- during the period between 18.10.2010 and 08.11.2011, this period being about one year. The respondent's department officials are periodically involved for taking and recording meter reading, hence, it is surprising that the said personnel have not pointed out any abnormality with the meter that warrants any extra charge. As such there is either a lapse or insufficiency of service on the side of the respondents which is conspicuous;

(v) The respondents counter statement reveals that the petitioner Industry has been inspected by the Anti power theft services and the HTM section along with the Jurisdictional Officers of the Electrical Department and independent witnesses of the Revenue Department and the respondents department and Anti Power theft squad are all functioning under the Umbrella of the State Government Control. Therefore, the witness cannot be treated as an independent witness. Hence, the tempering of the meter had not been proved convincingly, that is through any person from the general public. Therefore, the impugned order passed by the respondents does not have the potential in order to implement the same against the petitioner's Company.

32. Considering the facts and circumstances of the case and arguments advanced by the learned counsel on either sides and on perusing the typed set of papers and the views of this Court as mentioned in (i) to (v), the above writ petition is allowed. Consequently, the impugned order dated 18.10.2013 passed by the 2nd respondent in his proceedings No.1657/EDK/EE-V/JE-Tech/F.Kanyaka/2013-2014 is quashed. Accordingly ordered. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ub

To

1. The Union Territory of Puducherry,
Rep. by its Chief Secretary,
Secretariat,
Puducheery.

2.The Executive Engineer-V,
Assessing Officer,
Electricity Department,
Government of Puducherry,
Karaikkal.

3.The Assistant Engineer/Town-I,

Electricity Department,

Karaikkal.

1 cc to Government Pleader cum Senior Public Prosecutor for Puducherry ,Sr.No63368

W.P.No.29824 of 2013
and
M.P.No.1 of 2014

msm(co)
pmk.24.3.2015