

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 26.02.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.40269 of 2015

&

M.P.No.1 of 2015

Indu Sethia

... PETITIONER

Vs

1. The Tamil Nadu Electricity Board
Rep by its Chairman and Managing Director
Anna Salai, Chennai 600 002.
2. Assistant Engineer (O & M)
Tamil Nadu Electricity Board
Nazarathpettai Sub Division
Poonamallee Taluk
Thiruvallur District
3. M/s.Fine Furniture Pvt.Ltd.
Rep by its Managing Director
Pradeep Chirakkal
No.184/3C Mettupalayam
Parivakkam Road, Chennai 600 077.

... RESPONDENTS

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of mandamus, to direct the respondents 1 and 2 to follow the due process of law to claim any amount apart from consumption charges in respect of LT Service Connection No. 281/031/3 bearing consumer No. 092810313 for the Door No.48 (Old No.37), Varadharajapuram Village, Poonamallee Taluk, Chennai 600 056.

For Petitioner : Mr.R.Murali

For Respondents : Mr.S.K.Raameshuwar -R1 & R2
Standing counsel

O R D E R

Heard Mr.R.Murali, learned counsel appearing for the petitioner and Mr.S.K.Raameshuwar, learned Standing Counsel, accepting notice on behalf of respondents 1 & 2. By consent of the learned counsel on either side, the Writ Petition is taken up for final disposal.

2.The petitioner has filed this Writ Petition, praying for issuance of a writ of mandamus to direct the respondents to follow the due process of law to claim any amount payable in respect LT Service Connection No. 281/031/3 bearing consumer No. 092810313 for the Door No.48 (Old No.37), Varadharajapuram Village, Poonamallee Taluk, Chennai 600 056.

3.The petitioner owns a warehouse and she is enjoying the service connection which stands in the name of M/s Radha International, and she is aggrieved by the action of the second respondent in claiming an amount of Rs.9,24,461/-, alleging the same to be the shortfall of the current consumption arrears. The demand for the said shortfall has been uploaded in the official website of the TNEB sometime during November, 2015, showing the same as arrears and they have sought to recovery the amount in six instalments at the rate of Rs.1,54,077/- per instalment. The petitioner was perplexed as to how the amount is due and liable to be payable, since no information was forthcoming, despite their representation dated 16.12.2015, has approached this Court.

4.Even prior to the filing of the writ petition, the electricity supply was disconnected and on the petitioner effecting payment of a sum of Rs.1,10,000/-, without prejudice to her claim, re-connection was effected by the second respondent. Subsequently, when the matter was heard by this Court at the admission stage, this Court directed the petitioner to deposit a further sum of Rs.1,10,000/-, within a time frame, as condition precedent by granting a stay, it is stated that the petitioner has complied with the said condition.

5.Thus, as against the amount demanded by the respondents, the petitioner has paid a sum of Rs.2,20,000/-, which obviously is without prejudice to her rights. Only after the counter affidavit has been filed by the second respondent, it has come to light that the said amount of Rs.9,24,461/- is claimed as shortfall i.e. arrears for the period from 31.10.2010 to 16.5.2012 and that was based on MRT recommendation, vide their letter dated 23.01.2013.

6.The learned counsel for the petitioner submitted that the amount demanded is in utter disregard to the mandatory statutory provisions viz. section 56 (1) of the Electricity Act, 2003, which states that such a demand could have been made only after giving not less than fifteen days clear notice in writing and in the instant case, no such notice was given to the petitioner, except for the information being uploaded in the website and immediately disconnection was effected. Further, the learned counsel submitted that the demand of Rs.9,24,461/- is clearly barred by limitation, as it is an

amount stated to be recoverable for a period much beyond the period of two years, as stipulated under sub-section (2) of section 56 of the Act.

7. Thus, challenge to the impugned order is broadly on two grounds viz. on the ground of non-adhering to the mandatory procedure under section 56(1) of the Act and the demand is barred by limitation.

8. After hearing the learned counsel for the parties and perusing the materials placed on record including the counter affidavit filed by the respondents, it is seen that the amount has been demanded as shortfall of current consumption arrears and it was based on MRT recommendation. It is not known as to whether the consumer/petitioner was put on notice prior to the inspection being made for MRT, which obviously could not have been done without notice to the petitioner. That apart, it has to be seen as to whether the demand is barred by limitation. However, those aspects cannot be adjudicated at this juncture, since the second respondent has failed to adhere to the procedure contemplated under section 56(1) of the Act.

9. Hence, for all the above reasons, the Writ Petition is allowed on the following terms:

(i) The second respondent is directed to issue a show cause notice to the petitioner, furnishing all relevant information and giving fifteen days time to submit her explanation/objection and the petitioner is entitled to raise all her contentions in the objection to be filed by her, such as factual and legal, including the contention that the demand is barred by limitation.

(ii) The second respondent on receipt of the explanation/objection submitted by the petitioner, after affording an opportunity of personal hearing to the petitioner, shall take a decision in the matter, pass a reasoned order and communicate the same to the petitioner. The above direction shall be complied with by the second respondent, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) As the petitioner has already remitted a sum of Rs.2,20,000/-, the electricity connection should not be disconnected on the ground that shortfall current consumption arrears has not been paid and it shall abide by the orders to be passed by the second respondent in terms of the above direction.

(iv) It is made clear that so far as the current consumption charges are concerned, the petitioner shall continue to pay the same, as per the meter reading.

No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

r p a

To

1. The Tamil Nadu Electricity Board
Rep by its Chairman and Managing Director
Anna Salai, Chennai 600 002.
2. Assistant Engineer (O & M)
Tamil Nadu Electricity Board
Nazarathpettai Sub Division
Poonamallee Taluk
Thiruvallur District
3. M/s.Fine Furniture Pvt.Ltd.
Rep by its Managing Director
Pradeep Chirakkal
No.184/3C Mettupalayam
Parivakkam Road, Chennai 600 077.

+1cc to Mr.R.Murali, Advocate, S.R.No.12422

+1cc to Mr.S.K.Raameshuwar, Advocate, S.R.No.12238

SAI (CO)
CA(07/03/2016)

W.P.No.40269 of 2015

WEB COPY