

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.10.2017
Delivered on : 01.11.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.874 of 2015 and
M.P.No.1 of 2015

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

Vs

M/s.Kanyaka Fine Weld Limited
Rep. by its Managing Director,
R.S.No.83/1, Nagor Main Road,
Melavanjore, T.R.Pattinam,
Karaikal. ...Respondent/Petitioner

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent
against the order dated 23.12.2014 made in W.P.No.29824 of 2013.

W.P.No.29824 of 2013:-

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 Appellants : Ms.V.Usha
Additional Govt.Pleader

For Respondents : Mr.D.Ravichander

J U D G M E N T

K.K. SASIDHARAN, J.

The final assessment order issued under Section 126 of the Electricity Act, 2003, by the Electricity Department, Karaikal on account of the unauthorised extraction of electricity by the respondent, was quashed by the learned single Judge on the ground that there was no abnormality reported by the officials when monthly reading was taken and that the tampering of meter had not been proved beyond reasonable doubt. The order quashing the assessment is under challenge in this intra court appeal.

2. We have heard the learned Additional Government Pleader on behalf of the appellants. We have also heard the learned counsel for the respondent.

3. The respondent is a small scale industry functioning at Karaikal, an outline region of Puducherry. The Electricity Department, Government of Puducherry granted high tension service line to the respondent.

4. The premises of the respondent was inspected by the Executive Engineer, Karaikal, along with his subordinates on 9 November, 2011. It was found that the respondent indulged in unauthorised extraction of electricity. The Executive Engineer, in his capacity as the Assessing Authority issued a provisional assessment notice stating that the respondent indulged in unauthorised extraction of electricity and called upon the industry to pay a sum of Rs.2,44,94,215/- within 7 days and directed to submit objections, if any. The assessing authority, after conducting enquiry issued a final assessment order dated 16 December, 2011 assessing a sum of Rs.2,36,10,548/- payable by the respondent. The final assessment was challenged in W.P.No.209 of 2012 before this Court.

5. The writ petition filed by the respondent in W.P.No.209 of 2012 was allowed by this Court. This Court, after setting aside the order remitted the matter to the Executive Engineer, Karaikal for passing fresh orders after inspecting the premises.

6. The Assessing Authority, pursuant to the order dated 9 January, 2013 in W.P.No.209 of 2012 issued notice to the respondent and thereafter, conducted inspection on 12 February, 2013. The Assessing Authority noticed that the seals of the metering cubicle on the secondary terminal cover were found to be varying from the seals provided initially by the Department on 10 July, 2008 as indicated in the inspection report and the related assessment order dated 22 March, 2013.

7. The order passed by the Assessing Authority dated 22 March 2013 was challenged before this Court in W.P.No.9353 of 2013. The order was challenged mainly on the ground that the assessment was made with respect to different period and there was no attempt to consider the issue with regard to the period prior to 9 November, 2011. In view of the said contention, the assessment order was quashed and the Assessing Authority was directed to pass a fresh order relating to the period prior to 9 November, 2011. Thereafter, the Assessing Authority passed the impugned order dated 18 October, 2013.

8. The order dated 18 October, 2013 was challenged by the respondent before the writ court on the ground that there was no assessment by following the direction given by this Court in W.P.Nos.209 of 2012 and 9353 of 2013.

9. Before the writ court, the Assistant Engineer, Electricity Department, filed a counter affidavit, wherein, the modus operandi adopted by the respondent for the unauthorised extraction of energy was clearly explained.

10. There was no rejoinder filed by the respondent to the counter affidavit filed by the electricity department.

11. The learned single Judge without addressing the actual issue raised in the writ petition quashed the assessment order on a totally different ground. The learned single Judge observed that reasonable time was not given for paying the amount as per the assessment order. In short, the learned single Judge set aside the assessment without dealing with the defence taken by the appellants.

12. The following paragraph of the counter affidavit filed by the Assistant Engineer, Electricity Department, would prove the fraudulent means adopted by the respondent for the unauthorised extraction of electricity.

"13. I am to humbly submit that, the 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 cubicle. The meter terminal and 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 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."

13. The appellants clearly explained the manner and method by which the respondent indulged in unauthorised extraction of energy. There is no challenge to the said fact. In fact, there is no denial of the facts pleaded in the counter affidavit filed by the appellants before the writ court.

14. The statute itself prescribes the method to calculate the loss sustained by the Electricity Department on account of unauthorised extraction of energy. There is no challenge to the calculation also. The jurisdiction of the Court in a matter of this nature is very limited. The authorities under the Electricity Act conducted surprise inspection and it was found that the security seal was tampered with and it was substituted by a seal manufactured by the respondent. The Assessing Authority, after conducting inspection prepared a Mahazar and it was signed by witnesses. The learned single Judge disputed the Mahazar on the ground that witnesses were none other than the officials. The respondent was given sufficient time by the appellants to prove its case. It was only after giving reasonable opportunity, the Assessing Authority passed the impugned order of assessment. The order was set aside by the learned single Judge without any valid reason. We are therefore of the view that the order passed by the learned single Judge deserves to be set aside.

15. The impugned order dated 23 December, 2014 is set aside. The writ petition in W.P.No.29824 of 2013 is dismissed.

16. In the up shot, we allow the intra court appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Chief Secretary,
The Union Territory of Puducherry,
Secretariat, Puducherry.
- 2.The Executive Engineer V
Assessing Officer,
Electricity Department,
Government of Puducherry, Karaikal.
- 3.The Assistant Engineer/Town I,
Electricity Department,
Karaikal.

+1cc to Mr.D.Ravichander, Advocate, S.R.No.77395
+1cc to the Government Pleader, S.R.No.77504

W.A No. 874 of 2015

RV(CO)
CS/04/12/17

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