

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2017

CORAM :

The Hon'ble MR.JUSTICE M.SUNDAR

W.P. No.30917 of 2004

Vimal Kumar

.. Petitioner

-vs-

1. The Executive Engineer/O&M,
Egmore, Tamil Nadu Electricity Board,
Chennai Electricity Distribution Circle/
Central, Chennai 600 007.
 2. The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai-2.
 3. The Superintending Engineer/
CEDC/Central, Chennai 600 034.
(R-3 suo motu impleaded as per
order of Court dt.25.07.2017 in WP)
- .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records of the first respondent in his letter No.EE/O&M/EG1/AE/CAUP/F.Doc./D.No.736-1/ 04-05 dated 28.09.2004 and quash the same as illegal and arbitrary.

For Petitioner : Mr.K.Seshadri
For Respondents : Mr.P.R.Dhilip Kumar

O R D E R

Subject matter of the writ petition is alleged theft of energy.

2.An order dated 28.09.2004 bearing Ref. letter No.EE/O&M/EG1/AE/CAUP/F.Doc./D.No.736-1/04-05 made by the first respondent before me, i.e., Executive Engineer/O&M, Egmore, Tamil Nadu Electricity Board, Chennai Electricity Distribution Circle/Central, Chennai 600 007, has been called in question. This order is hereinafter referred to as 'impugned order' for

the sake of clarity.

3.Vide the impugned order, the first respondent had concluded that there was theft of energy in service connection of the writ petitioner. On that basis, vide the impugned order, the first respondent worked out the extra levy payable by the writ petitioner for energy allegedly stolen. It was quantified at Rs.10,74,213/- (Rupees ten lakhs seventy four thousand two hundred thirteen only) and a schedule of payment has also been drawn.

4.Mr.K.Seshadri, learned counsel for the writ petitioner, would contend that the entire proceedings are illegal and that they have misapplied the relevant provisions of law.

5.Per contra, Mr.P.R.Dhilip Kumar, learned Standing Counsel for the respondents, would submit that the impugned order has been passed in accordance with the obtaining statute and the rules thereunder. Learned Standing Counsel would also contend that there is no infirmity in the impugned order warranting interference by this Court.

6.However, I am not delving further into the merits of the matter, in the light of the order I propose to pass.

7.From the very impugned order, it is very clear that the writ petitioner has a right of appeal before an appellate authority and that he has to file the same within sixty (60) days from the date of the impugned order.

8.This is clearly set out and articulated in the penultimate paragraph of the impugned order, which reads as follows:

"If you choose to prefer an appeal against this order, you may appeal to the appellate authority viz. Superintending Engineer/CEDC/Central/Chennai 34 within 60 days from the date of receipt of this order without prejudice to any other action that may be taken by TNEB including disconnection of service connection as stated above."

9.It is seen that the impugned order is dated 28.09.2004. The date on which it was served on the writ petitioner is not clear. Therefore, I take 28.09.2004 as the reckoning date. The instant writ petition (W.P.No.30917 of 2004) was filed on 19.10.2004. Therefore, 19 days out of 60 days provided for appeal have been consumed in filing this writ petition, that leaves the writ petitioner with 41 days more to file an appeal as per the penultimate paragraph of the impugned order extracted supra, if he chooses to do so. I say so by applying Section 14 of the Limitation Act, wherein and whereby the writ petitioner will be entitled to exclusion of time spent in this Court in

this writ petition.

10.It is also seen from the records that when the writ petition was moved, this Court had granted an order of interim stay staying the operation of and all further proceedings pursuant to the impugned order. This is vide interim order of this Court dated 26.10.2004 made in WP.M.P. No.37457 of 2004. Thereafter, as no steps have been taken to vacate the interim order, this Court made the interim order absolute by order dated 13.03.2009. The order of this Court dated 13.03.2009 in WP.M.P. No.37457 of 2004 reads as follows:

"This Court as early as on 26.10.2004 at the time of admission of the writ petition had granted interim stay. The respondents had not taken any steps to vacate such order of interim stay. Hence, the order of interim stay granted on 26.10.2004 by this Court is made absolute."

11.I also see from a perusal of the impugned order as well as the rival submissions that have been made at the bar, that the matter turns heavily on facts. Therefore, owing to the peculiar circumstances/ facts of the case, I am of the view that this would be a fit case to relegate the writ petitioner to the appeal remedy set out supra.

12.It is also seen that an appeal lies to Superintending Engineer/CEDC/Central, Chennai 600 034. I find from the array of parties that this appellate authority has not been arrayed as one of the respondents. Therefore, Superintending Engineer/CEDC/Central, Chennai 600 034, is suo motu impleaded as respondent no.3 in this writ petition. Memo of parties be suitably amended by the Registry. The Registry shall also send a certified copy of this order to the third respondent directly.

13.I give the following directions in this order:

- a) Writ Petitioner shall prefer an appeal to respondent no.3, i.e., Superintending Engineer/CEDC/Central, Chennai 600 034, within forty one (41) days from the date of receipt of a copy of this order.
- b) If the writ petitioner chooses to do so, the third respondent/ Superintending Engineer/CEDC/Central, Chennai 600 034, shall dispose of the appeal in a manner known to law, within a period of two (2) months from the date of filing of the appeal, after putting all concerned on notice and giving adequate opportunity to all concerned, particularly, the writ petitioner.
- c) The interim order already granted on 26.10.2004 and made absolute by this Court on 13.03.2009 in WP.M.P.No.37457 of 2004, shall continue to operate. It will operate till

the disposal of the appeal by respondent no.3 as aforesaid. This direction is given as the writ petitioner had the benefit of interim order throughout the pendency of this writ petition.

- d) If the ultimate order of the third respondent is adverse to the writ petitioner, the above said interim order shall continue to operate for another forty five (45) days therefrom (from the date of the order in appeal) so as to enable the writ petitioner to work out remedies that may be available to him under law.

14. In the light of the directions above, though obvious, it is made clear that if the writ petitioner does not file an appeal to respondent no.3 within 41 days from the date of receipt of a copy of this order, the impugned order will start operating and all directions that have been given supra in the preceding paragraph shall cease.

This writ petition is disposed of on above terms. No costs.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

sra

To

1. The Executive Engineer/O&M,
Egmore, Tamil Nadu Electricity Board,
Chennai Electricity Distribution Circle/
Central, Chennai 600 007.
 2. The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai-2.
 3. The Superintending Engineer/
CEDC/Central, Chennai 600 034.
- +1 Cc to Mr.K. Seshadri, Advocate sr 52376
+1 CC to Mr.R. Dhilip Kumar, Advocate sr 52643.

W.P.No.30917 of 2004

SP(05/09/2017)