

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 15.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No. 31785 of 2006
&
M.P.No.1 of 2006

M.Saravanan

... Petitioner

-Vs-

1. The Chariman,
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai.
2. The Superintending Engineer,
Electricity Distribution,
Tamil Nadu Electricity Board,
Tiruvannamalai.
3. The Executive Engineer (west)
Tiruvannamalai Division,
Tamil Nadu Electricity Board,
Tiruvannamalai.
4. Assistant Executive Engineer,
Tiruvannamalai Division,
Tamil Nadu Electricity Board,
Tiruvannamalai.
5. The Junior Engineer,
Tiruvannamalai Division, (west)
Tamil Nadu Electricity Board,
Tiruvannamalai.

.... Respondents

Prayer:

This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of the 3rd respondent in No.K.A.Ca.Pa/Ma / T/Ko.Kot/A.044/06 dated.11.08.2006 and quash the same.

For Petitioner :Mr.G.Rajan
For Respondents :Mr.Varunkumar, Senior Counsel
for Respondents 1 to 5

O R D E R

The petitioner has approached this Court seeking the following relief:

'To issue a Writ of Certiorari to call for the records of the 3rd respondent in No.K.A.Ca.Pa/Ma / T/Ko.Kot/A.044/06 dated.11.08.2006 and quash the same''.

2. The petitioner was owning Photo Copy Shop(Xerox) in the name and style of Maya Xerox at No.40, Tiruvoodal Street, Tiruvannamalai. The writ petitioner was a tenant in the said premises. In respect of the shop run by the petitioner, the service connection was given on 24.05.2006. The respondent/ authority made a sudden inspection on a particular day and found that the petitioner had tempered the incoming phase wire which goes to the meter in the first terminal. By tempering one side of the phase wire, the petitioner was directly connected the other side phase wire to the Photo Copy Machine and the other electrical equipments in the shop. By such act, the petitioner committed theft of energy and liable for both criminal and civil action by the respondent Board.

3. The petitioner on being accepted the theft had agreed to pay an initial amount of Rs.20,000/-. According to the petitioner, he was under the impression that on payment of Rs.20,000/- the entire matter had been settled and no further action would be initiated by the respondent/Board.

4. While matter stood thus, the respondent/Board had issued communication dated 11.08.2006, directing the petitioner to pay a further sum of Rs.69,880/- towards unauthorized use of electricity in seven installments. According to the petitioner, no show cause notice was served on him and the basis of such assessment was not disclosed to him before making the payment. The said communication dated 11.08.2006 is put to challenge in the present writ petition.

5. The learned counsel for the petitioner would submit that it is not for the authority to fasten a civil liability on the petitioner under Section 154 of the Indian Electricity Act provided for establishment of Special Court and it is for the authorities to approach the Special-Court under Section 154 of the Act for taking both criminal and civil action and it is only the Special Court, which can assess civil liability and not the authorities after coming into force the Electricity Act 2003. Although there is some force in the contention put forth by the learned counsel for the petitioner, however, said contingency would arise only if theft was disputed by the parties. In this

case, theft has not been disputed and therefore, the authority had rightly claimed a further amount of Rs. 69,880/- under the impugned demand.

6. Upon notice, Mr. Varunkumar, learned Senior Counsel entered appearance for the respondents and filed a detailed counter affidavit. In the counter affidavit, it is stated that the initial amount of Rs. 20,000/- was collected from the petitioner in order to save the petitioner from being proceeded against criminally. Therefore, there was no basis for the petitioner to think that the entire matter had been given quietus on payment of Rs. 20,000/- initially.

7. Further, the learned Senior Counsel appearing for the respondent Board would submit that as on date, the petitioner is due and liable to pay a sum of Rs. 1,04,570/-. In view of the levy for belated sur-charge of Rs. 69,690/- up to 31.10.2017, although the demand was only a sum of Rs. 69,880/-, when the writ petition was admitted, the petitioner was directed to make payment for a sum of Rs. 25,000/-. After giving credit to the same, the original amount remains to be paid is only Rs. 34,880/-.

8. The learned counsel for the petitioner would request this Court that the petitioner may be permitted to make good the remaining amount of Rs. 34,880/- alone, since the writ petition was pending before this Court for final disposal. Alternatively, the learned counsel would submit that the petitioner may be permitted to make a representation in this connection and the authorities concerned may be directed to dispose of the representation by considering whether the amount towards sur-charge can be waived in favour of the petitioner.

9. This Court has given anxious consideration to the rival submissions of the learned counsel and perused the materials and the pleadings placed on record. Although, this Court is of the view that the entire demand has to be complied with by the petitioner, however, taking note of the fair submission made by the learned counsel for the petitioner that when the original remaining amount of Rs. 34,880/- is to be paid when the petitioner was willing to pay the original demand of Rs. 69,880-25,000/- already paid, this Court is of the view that the respondent/ Board may consider any request in this regard made by the petitioner to waive sur-charge being levied on the belated payment made by him. If, so advised, the petitioner is directed to make a representation to the respondent/Board within a period of two weeks from the date of receipt of a copy of this order and the same shall be considered by the respondent/ Board on merits and in accordance with law. In respect of waiver of sur-charge levied on the petitioner to the tune of Rs. 69,690/-,

the authorities may take pragmatic view in the matter in view of the admission of the petitioner and the payment made by him without resorting to any further litigation. The remaining amount of Rs. 34,880/- shall be paid in two equal installments within a period of two months from the date of receipt of a copy of this order.

10. With the above direction, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.
dn

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

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+1cc to Mr.M.Varunkumar, Advocate Sr.No.81022

W.P.No. 31785 of 2006

sm:7.12.2017