IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 03.11.2017

Delivered on : .11.2017

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.18581 of 2006
M.P.Nos.1 & 2 of 2013

Tmt.Saroja Goyal .. Petitioner

versus

1. The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai-600 002.

2. The Executive Engineer/O&M,
Chennai Electricity Distribution Circle/North,
Tamil Nadu Electricity Board,
805, T.H.Road,
Chennai-600 021.

3. The Assistant Executive Engineer/Distribution,
Tondiarpet,
Tamil Nadu Electricity Board,
Chennai-600 081. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the second respondent in his Lr.No.EE/O&M/TPT/AE/R46/F/DOC/D53/2006 dated 2.6.2006, quash the same as illegal, arbitrary and against the provision of Electricity Act 2003 and Tamil Nadu Electricity Supply Code dated 1.9.2004 and consequently, direct the respondents to act in accordance with the Electricity Act 2003.

For Petitioner : Mr.K.Seshadri

For Respondents: Mr.P.R.Dilipkumar,
Standing counsel for TNEB

ORDER

The present writ petition has been filed, seeking for the following reliefs:

" To issue Writ of Certiorarified Mandamus, to call for the records of the second respondent in his Lr.No.EE/O&M/TPT/AE/R46/F/DOC/D53/2006 dated 2.6.2006, quash the same as illegal, arbitrary and against the provision of Electricity Act 2003 and Tamil Nadu Electricity Supply Code dated 1.9.2004 and consequently, direct the respondents to act in accordance with the Electricity Act 2003.

2. The petitioner is a Proprietrix concern, involved in trade of plastics for their plastic unit, located at the address mentioned in the cause title above. There was a L.T.Service connection for running the plastic unit. According to the petitioner, the monthly electricity consumption charges have been regularly paid as per the recording of the meter. According to the petitioner, in respect of the said service connection, an electronic meter was installed for the said unit to record the monthly electricity consumption charges. Every month, a reading is taken up from the said electronic meter and on the basis of the reading, a demand is made for payment of the consumption charges. According to the petitioner, since it is an electronic meter, tampering or pilferage of energy is almost impossible.

3. While so, on 4.5.2006, the third respondent official along with his personnel, had inspected the service connection and allegedly found tampering of the seals of the meter for which, a police complaint was lodged against the petitioner. An F.I.R. was registered in Crime No.333 of 2006 under various provisions of the Electricity Act, 2003. Apart from criminal action, the third respondent also issued a show cause notice on 4.5.2006, directing the petitioner to explain within 7 days as to why the loss caused to the respondents due to short circuiting and non-recording of a portion of consumption in one of three phases should not be recovered and as per assessment, the loss was to the tune of Rs.17,45,834/-.

4. In response to the show cause notice, a detailed reply was sent on behalf of the petitioner, denying tampering of the meter. In the reply, it was contended on behalf of the petitioner that the civil liability in terms of the demand made by the third respondent would have to be decided only by the Special Court constituted under Section 154 of the Electricity Act, 2003 which according to the petitioner, came into force from 10.6.2003. Therefore, it was contended on behalf of the petitioner that the show cause notice was not maintainable. According to the petitioner, he was not heard when an enquiry was held in respect of the show cause notice. Subsequently, an order was passed on 2.6.2006 which being the assessment order of the theft of energy, directing the petitioner to pay Rs.17,45,834/-. A detailed working sheet was also enclosed along with the communication dated 2.6.2006. The said communication is impugned in this Writ Petition.

5. By order dated 20.6.2006, while admitting the Writ Petition, this Court granted interim stay in respect of the impugned order.

6. Upon notice, Mr.P.R.Dilip Kumar, learned standing counsel for the respondents entered appearance and filed a counter affidavit.

7. At the out set, the learned counsel appearing for the petitioner would submit that the impugned notice dated 2.6.2006 issued by the second respondent suffers from want of jurisdiction in view of the specific provision, namely, Section 154 of the Electricity Act, 2003. The said provision provides for constitution of Special Court including determination of civil liability against consumer or a person in terms of money for theft of energy. The learned counsel particularly draw the attention of this Court to sub-clause 5 of Section 154 of the Electricity Act, 2003, which reads as under:

> "154. Procedure and power of Special Court:
> (1) to (4) ....
> (5) The Special Court shall determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of of twelve months preceding the date of detection of theft of energy or the exact period of theft if determined whichever is less and the amount of civil liability so determined shall be recovered as if it were a decree of Civil Court."

8. The learned counsel would submit that without approaching the Special Court which was constituted under the provisions of the Electricity Act, 2003, the demand notice issued by the second respondent is invalid and cannot be countenanced in law. The learned counsel also would submit that although the said demand notice dated 2.6.2006 provides an appeal against the said order to the appellate authority, namely, Superintending Engineer, but such appeal was not envisaged in the scheme of the Electricity Act, 2003, particularly, that the original impugned notice dated 2.6.2006 itself is without jurisdiction and therefore, the question of filing of appeal against the said notice does not arise at all.

9. Learned standing counsel for the respondents would submit that at the time when the notice was issued in June 2006, admittedly no Special Court was constituted, but only in October, 2006 as per Section 154(5) of the Act, Special Court was constituted. Therefore, according to the learned standing counsel, the petitioner ought to have responded to the notice by filing an appeal before the appellate authority during that point of time. Without exhausting the remedy, the petitioner has approached this Court directly and obtained blanket stay order

and by virtue of which, the respondents were unable to collect the amounts due to them as a compensation towards the loss suffered by the department. The learned standing counsel for the respondents would also insist that in case the matter is remanded to the Special Court for adjudication in terms of Section 154 of the Act, the petitioner may be directed to deposit the amount demanded in the impugned notice dated 2.6.2006 since the petitioner all along for more than 11 years had the benefit of interim order and not paid any part of the amount as demanded.

10. At this, the learned counsel appearing for the petitioner would submit that since the impugned notice suffers for want of jurisdiction, the question of payment of amount demanded or any part thereof, does not arise. Moreover, the learned counsel would also contend that the petitioner's explanation was not properly considered and the petitioner was not at all liable to pay the amount as demanded in the notice. According to the petitioner, he was not at all involved in tampering or involved in any theft of energy.

11. Be that as it may, this Court cannot go into the areas of factual controversies as between the petitioner and the respondents and this Court exercising its jurisdiction under Article 226 of the Constitution of judicial review, would not be in a position to render any finding of fact in regard to the claim and counter claim of the petitioner and respondents. Although at the time when the impugned notice issued on 2.6.2006, the Special Court was not in phase as per Section 154 of the Electricity Act, 2003, nevertheless, the same was constituted immediately in October, 2006 and the Special Court had started exercising its jurisdiction from thereon under the provisions of the Electricity Act, 2003. Therefore, it is open to the respondents for proceeding against the petitioner both for civil liability or otherwise by invoking the provisions of the Electricity Act and invoking the jurisdiction of the Special Court in terms of Section 154 of the Electricity Act. In the said circumstances, this Court cannot go into the correctness of the impugned demand made on behalf of the respondents and at the same time, it cannot also accept the case of the petitioner in regard to denial of the liability.

12. However, as balance of convenience would demand that the petitioner having enjoyed the blanket interim order for more than 11 years before this Court, cannot be allowed to disown its liability in toto with reference to the demand made by the impugned communication dated 2.6.2006. Therefore, in the circumstances, to strike the balance between the case of the petitioner and the respondents, it would be appropriate to direct the petitioner to pay half of the amount demanded by the respondents vide impugned proceedings dated 2.6.2006, which payment however, is without prejudice to the rights of proceedings to be initiated by the respondents before the

Special Court. It is always open to the petitioner to come out unscathed before the Special Court and in such event, the respondents shall adjust the payment being made as directed by this Court now, in the recurring consumption charges payable by the petitioner to the respondents.

13. During the course of arguments, the learned counsel for the respondents would submit that the average monthly charges payable by the petitioner would be little more at Rs.88,000/- per month. It is also more reasonable that the petitioner shall be directed to pay Rs.8,00,000/- to the respondents and in the event of charges not proved against the petitioner, the said amount shall be adjusted towards future bills payable by the petitioner.

14. Accordingly, the petitioner is directed to make payment of Rs.8,00,000/- (Rupees eight lakhs only) to the respondents, within a period of six weeks from the date of receipt of a copy of this order. It is made clear that in the event the petitioner is found not guilty of the charges, the amount being paid by the petitioner as directed by this Court, shall be adjusted towards future bills payable by the petitioner. The respondents are also directed to approach the Special Court in terms of Section 154 of the Electricity Act, 2003 and proceed against the petitioner in terms of the said provision.

15. The Writ Petition is disposed of on the above terms. No costs. Consequently, connected MPs are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

Suk

1. The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai-600 002.

2. The Executive Engineer/O&M,
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3. The Assistant Executive
Engineer/Distribution,
Tondiarpet,
Tamil Nadu Electricity Board,
Chennai-600 081.

+ 1 cc to MR.P.R. Dilipkumar, Advocate SR.79798
+ 1 cc to Mr. K. Seshadri, Advocate SR.79690

W.P.No.18581 of 2006

PVS(CO)
EU(30/01/2018)