

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 09.01.2017****CORAM:****THE HONOURABLE MR. JUSTICE R.SURESH KUMAR****W.P. (MD) No.17699 of 2013**

and

M.P. (MD) Nos.1 and 2 of 2010

M.Syed Ali

... Petitioner

Vs.

1.The Superintending Engineer,
Tamil Nadu Electricity Board,
TANGEDCO, East Main Road, Pudukottai.

2.The Assistant Executive Engineer,
Tamil Nadu Electricity Board,
TANGEDCO, Keeranur
Pudukottai District.

3.The Assistant Engineer (O&M)
Tamil Nadu Electricity Board,
TANGEDCO, Keeranur
Pudukottai District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order issued by the 2nd respondent in Letter No.AEE/O&M/KNR/F theft/D481 dated 23.10.2013 and quash the same and consequently direct the respondents to restore the petitioner's house hold electricity S.C.No.163-004-510 and SC No.163-004-667.

For Petitioner : Mr. M.Saravanakumar

For Respondents : Mr.S.M.S.Johnny Basha

ORDER

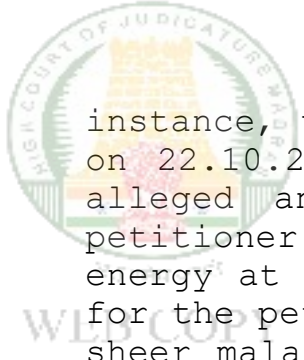
The prayer in the writ petition is for a Writ of Certiorarified Mandamus to call for the records pursuant to the impugned order issued by the 2nd respondent in Letter No.AEE/O&M/KNR/F theft/D481 dated 23.10.2013 and quash the same and consequently direct the respondents to restore the

petitioner's house hold electricity S.C.No.163-004-510 and SC No.163-004-667.

2.It is the case of the petitioner that he was having two service connections in S.C.No.510 and SC No.667 for two portion of his dwelling house. SC NO.667 was disconnected on 11.07.2013 for want of payment of electricity dues by the petitioner. Thereafter, the respondents' team came up for surprise inspection at the petitioner's premises on 23.10.2013 and the said anti power theft squad inspected two house premises of the petitioner's situated at D.No.35, Ezhil Nagar, Keeranur, in the absence of the petitioner and they allegedly found that the theft of energy had been committed by illegally restoring supply to disconnected S.No.667 from the existing S.C.No.510. The team also approximately fixed a sum of Rs.24,657/- as compensation for the loss caused to the respondents due to the theft of energy and also levied Rs.4,000/- as compounding fees for the alleged offence committed by the petitioner. The petitioner, in order to avoid criminal prosecution, under protest, had paid Rs.4,000/- on the same day ie., on 23.10.2013. However, he received the impugned communication dated 23.10.2013, whereby, an amount of Rs.24,657/- was demanded from the petitioner, as 12 months average consumption calculated by the respondents for the said alleged theft of energy at S.C.No.667 through S.C.No.510. Challenging the said order, the petitioner has come out with the present writ petition with the aforesaid prayer.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

4. The learned counsel for the petitioner would submit that the petitioner was having two service connections ie. S.Nos.510 and 667. No doubt, S.C.No.667 was disconnected for having not paid the electricity dues on 11.07.2013. Thereafter, S.C.No.510 was in functional and between 11.07.2013 and 23.10.2013, the meter reading was taken in S.C.No.510 periodically by the respondent Department. When that being so, the question of stealing the energy through S.C.No.510 to S.C.No.667 would not arise at all and if such theft is found, certainly, the respondents men, who came up for taking the reading periodically at S.C.no.510 would have detected the same. The learned counsel for the petitioner submitting an alternative theory for the sudden inspection made at the premises of the petitioner is that the petitioner had filed a complaint before the Electricity Ombudsman regarding certain alleged irregularities against the respondent Department and his complaint was entertained by the Electricity Ombudsman as appeal No.64/2013, wherein, summons were issued by the Electricity Ombudsman to the respondents to appear before the Ombudsmen on 22.10.2013. On the said date, the respondents appeared before the Ombudsman and taking grudge over the said complaint, as the petitioner was the complainant before the Ombudsman, at whose

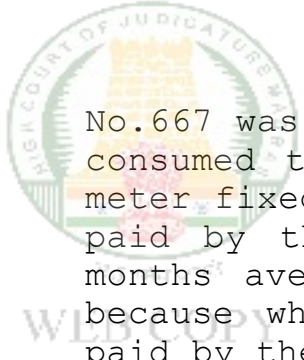


instance, the respondents were summoned by the Ombudsmen to appear on 22.10.2013, suddenly on the next day ie., on 23.10.2013, the alleged anti power theft squad came to the premises of the petitioner and allegedly found this discrepancy of stealing of energy at S.No.667 from S.No.510. Therefore, the learned counsel for the petitioner would submit that the entire action is based on sheer malafide and therefore, the very impugned order given wrong calculation of 12 months alleged usage at S.No.510, as the basis for calculating the amount of compensation and therefore, the figure arrived at by the respondents through the impugned order is totally unjustifiable.

5. Per contra, the learned standing counsel for the respondents would submit that Anti Theft Squad visited the petitioner's premises on 23.10.2013, as usual, as sudden check ups are being undertaken by the Anti Theft Squad in not only the petitioner's premises, but all other consumer premises, wherever doubt arises. At that time, the team found that by connecting S.C.No.667 along with S.C.No.510 through the loop line, the petitioner consumed electricity, even though S.C.No.667 already been disconnected for want of payment of dues. Therefore, it was found red handed that the petitioner has involved in theft of energy and therefore, on the day itself, having accepted the misdeed on the part of the petitioner, he has paid compounding fee and subsequently as a follow up action, the respondent has issued the impugned order demanding the said amount as compensation by making the calculation, as has been provided under the Electricity Supply Code. Whoever involved in the theft of energy has to pay the 12 months average as a compensation, apart from their compounding fee, to avoid the punitive action. In the case of the petitioner, though the compounding fee as well as compensation have been levied, the compounding fee had been paid and with regard to the compensation, the petitioner has come out before this Court. Therefore, the impugned order is fully justifiable.

6. This Court has considered the said rival submissions made by the learned counsel for the respective parties.

7. Insofar as the compounding fee having been paid by the petitioner is concerned, according to the learned counsel for the petitioner, the same was paid under protest and also for the purpose of avoiding further prosecution against the petitioner. Insofar as the compensation claimed by the respondents is concerned, the arguments advanced by the petitioner is that though SC No.667 was disconnected on 11.07.2013, SC No.510 was functional through which, supply was given to the dwelling house as part of the dwelling house between 11.07.2013 and 23.10.2013, the date on which inspection was carried out by the respondents, periodical meter reading has been taken by the respondents and whatever charges based on the meter reading fixed by the department has been paid by the petitioner. Assuming that on 23.10.2013, SC



No.667 was connected through the loop line with SC No.510 what was consumed through SC No.667 line also had been calculated in the meter fixed in SC NO.510. Therefore, the same admittedly has been paid by the petitioner. Therefore, the question of taking 12 months' average as a compensation would not arise in this case, because what was consumed under SC No.510 meter has been fully paid by the petitioner.

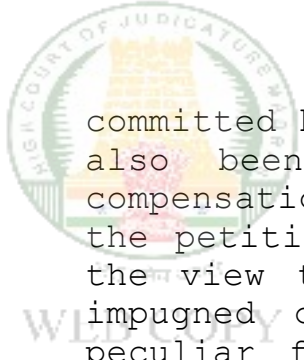
8. However, in this regard, the learned standing counsel appearing for the respondents would contend that the calculated compensation amount has to be made as per the modus operandi provided in Form No.8 of the Electricity Supply Code. The said form gives 5 criteria, which has to be taken into consideration by the authorised officer to arrive at the figure for compensation.

9. The five suggestions are reproduced hereunder:

"The authorised officer may take into account the following and arrive at the least period (duration) of theft:

- i.for the period of twelve months.
- ii.for the period from the date of prior inspection if any by the Enforcement or meter testing wing to the date of detection.
- iii.from the date of service connection to the date of detection.
- iv.wherever electronic meters are installed and the load curves are studied periodically the period of theft could be limited to the exact period as could be determined scientifically.
- v.Based on the document produced by the accused person."

10. The Authorised Officer may take into account the said 5 criteria and the calculation for the period of 12 months, is one among them, the 2nd respondent has chosen the same and accordingly the calculation has been given. This Court, after having considered the said rival submissions as well as the said Form 8, is of the considered view that in case, if there is no meter at all, which was tampered and was not in running condition and based on which, there was no electricity charges paid by the consumer concerned, normally, this 12 months average would be taken. However, in this case, admittedly, SC NO.667 was disconnected only on 11.07.2013 and the inspection was carried out on 23.10.2013. In between only less than 4 months period and for the said period also, the meter reading was taken by the respondent in SC No.510 and the same has been paid. Assuming that on the very date of disconnection of SC NO.667 on 11.07.2013 itself petitioner clandestinely reconnected SC No.667 with SC NO.510 through the loop line, which has been consumed by through SC No.667 would have also shown in the meter fixed at SC No.510 and for which, the entire consumption amount has been paid. For the alleged offence



committed by the petitioner, the compounding fee of Rs.4,000/- has also been paid by the petitioner. Only insofar as the compensation aspect is concerned, now the impugned order demands the petitioner to pay the said sum. Therefore, this Court is of the view that the figure arrived at and has been shown in the impugned order may not be a justifiable one in view of the peculiar facts and circumstances of the case. Therefore, this Court is constrained to set aside the impugned order and to remand the matter back to the respondents for reconsideration.

11. In the result, the impugned order is quashed and the matter is remitted back to the respondents for reconsideration. While doing such reconsideration, the respondents shall issue notice to the petitioner and on receipt of such notice, the petitioner shall give his written explanations as to why such a levy imposed on him for the said amount mentioned in the impugned order should not be levied against the petitioner and on considering such explanation or reply along with satisfactory documents to show that SC No.510 was continuously in assessment through the relevant period, the respondents shall pass a reasoned order and still the respondents feel that some amount has to be levied on the petitioner, not the one, which has been reflected in the present impugned order, the same can be levied on the petitioner.

12. Since the petitioner has already paid 50% of the demand made in the impugned order pursuant to the interim orders of this Court made in M.P No.2/2013, the same shall be taken into account and after completing the assessment as directed above, if any amount to be refunded to the petitioner, out of the 50% already been paid, the same shall be refunded to the petitioner or the petitioner still to pay more, in the result of the reassessment that can also be recovered from him. The service connection, since already been restored, pursuant to the orders of this Court, the same can continue and the service connection in SC No.510 need not be disturbed by the respondents.

With the above observations and directions, the writ petition is disposed of. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar



To

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Tamil Nadu Electricity Board,
TANGEDCO, East Main Road,
Pudukottai.

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TANGEDCO, Keeranur
Pudukottai District.

3.The Assistant Engineer (O&M)
Tamil Nadu Electricity Board,
TANGEDCO, Keeranur
Pudukottai District

+1 cc to MR.M.SARAVANAKUMAR, Advocate SR.No.1559

W.P. (MD) No.17699 of 2013

and

M.P. (MD) Nos.1 and 2 of 2013

09.01.2017

SMA/SKN-RSK/14.03.2017:6P/5C