

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.01.2018

CORAM

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.1488 of 2015

T.M.Narasimhan

Sole Proprietor under the name

and style of M/s.Precision

Plastics Packaging

Chennai 600 116

...Appellant/Petitioner

Vs

1.The Superintending Engineer

Tamil Nadu Electricity Board

CEDC/South

110 KVA Complex

K.K.Nagar, Chennai 600 078.

2.The Executive Engineer (O&M)

TNEB/CEDC/South

K.K.Nagar, Chennai 600 078.

...Respondents/Respondents

Prayer:- Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the order passed in W.P.No.39070 of 2002 dated 10.01.2013.

Prayer in WP.No.39070 of 2002: Writ petition filed under Article 226 of the Constitution of India for a writ of Certiorarified mandamus to call for the records pertaining to the order No.SE/CEDC/S/G1.SDM/F.Doc./D.1027/2002 dated 07.10.2002 passed by the first respondent, to quash the same and to forbear the respondents from collecting the penal levy of Rs.37,33,840/- from the petitioner.

For Appellant : Mr.AR.L.Sundaresan,
Senior Counsel
for Mr.T.K.Bhaskar

For Respondents: Mr.S.K.Rameshuwar

JUDGMENT

K.K.SASIDHARAN, J.

This intra court appeal is directed against the order dated 10 January 2013 in W.P.No.39070 of 2002, whereby and whereunder, the learned Single Judge dismissed the writ petition filed by the appellant, challenging the order passed by the appellate authority on the ground that reasons were not given with respect to the finding relating to theft of energy.

2. The premises in the possession of the appellant was inspected by the Assistant Executive Engineer, Valasaravakkam along with a team. The team appears to have detected theft of energy by removing the top cover of the meter and reducing the actual recorded consumption by the appellant. The jurisdictional Engineer preferred a complaint before the police and thereafter, initiated proceedings for collection of the energy charges.

3. The order passed by the competent authority determining the extra levy amounting to Rs.46,66,107 under sub clause 8.02 of clause 37 of Schedule Part-I of the terms and conditions of supply of electricity was challenged by the appellant in W.P. No.6910 of 2001. The Writ Petition was disposed of by the Writ Court, by order dated 09 April 2001 with a direction to the appellant to file an appeal before the appellate authority after paying a sum of Rs.3,11,074/-. The appellant complied with the said direction and filed an appeal. The appellate authority, on consideration of the appeal, passed an order dated 04 June 2001. The said order was put in issue before the Civil Court in C.S.No.986 of 2001 on the ground that the finding was not supported by reasons.

4. When the matter was pending before the Court, the impugned order was withdrawn with liberty to pass a fresh order. Thereafter, the appellate authority passed a fresh order dated 07 October 2002. The said order was challenged before the Writ Court in W.P.No.39070 of 2002 on multiple grounds.

5. The learned Single Judge, after extracting the facts of the case and narrating the arguments advanced on the side of the parties, dismissed the Writ Petition, by way of a very brief order. The order is under challenge in this intra court appeal.

6. The learned Senior Counsel for the appellant, by placing reliance on the impugned order passed by the appellate authority, contended that there was no specific finding with regard to theft of energy in the order under appeal. According to the learned Senior Counsel, the appellate authority proceeded as if the appellant has admitted the theft of energy. The learned Senior Counsel further contended that the appellate authority was expected to consider the entire factual matrix and render a finding with regard to theft of energy. Since no such finding was given by the appellate authority, the order is bad in law.

7. We have also heard the learned Standing Counsel appearing on behalf of TANGEDCO.

8. There is no dispute that the initial order passed by the statutory authority contains a finding with regard to theft of energy. It is also a matter of record that the said order was withdrawn subsequently. This Court, instead of directing the original authority to pass an order, has issued a direction to the appellant to file an appeal before the appellate authority. The appellate authority being the statutory authority, was expected to consider the entire background facts and render a finding with regard to theft of energy. The order passed by the appellate authority indicates that the calculation was made with regard to theft of energy treating as if the appellant agreed for the factual finding with regard to theft of energy. When the appellant has taken up a contention that there was no act of theft of energy and the meter reading was commensurate with the business carried on by the industry, the appellate authority was expected to give a detailed order as to how the statutory authority has arrived at a finding with regard to theft of energy. Since no such finding was given by the appellate authority, we are constrained to set aside the order dated 07 October 2002.

9. In the result, the order dated 07 October 2002 is set aside. The first respondent is directed to consider the appeal afresh after giving a reasonable opportunity of hearing to the appellant. The appellate authority shall give reasons in case the authority is of the view that there was theft of energy. The appellate authority shall also consider all the contentions taken by the appellant in the appeal regarding theft of energy as well as mode of collection while passing final orders. In short, the order should contain reasons in support of the ultimate finding. Such exercise shall be completed within a period of two months from the date of receipt of a copy of this judgment.

In the upshot, we allow the intra court appeal. No costs.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

To

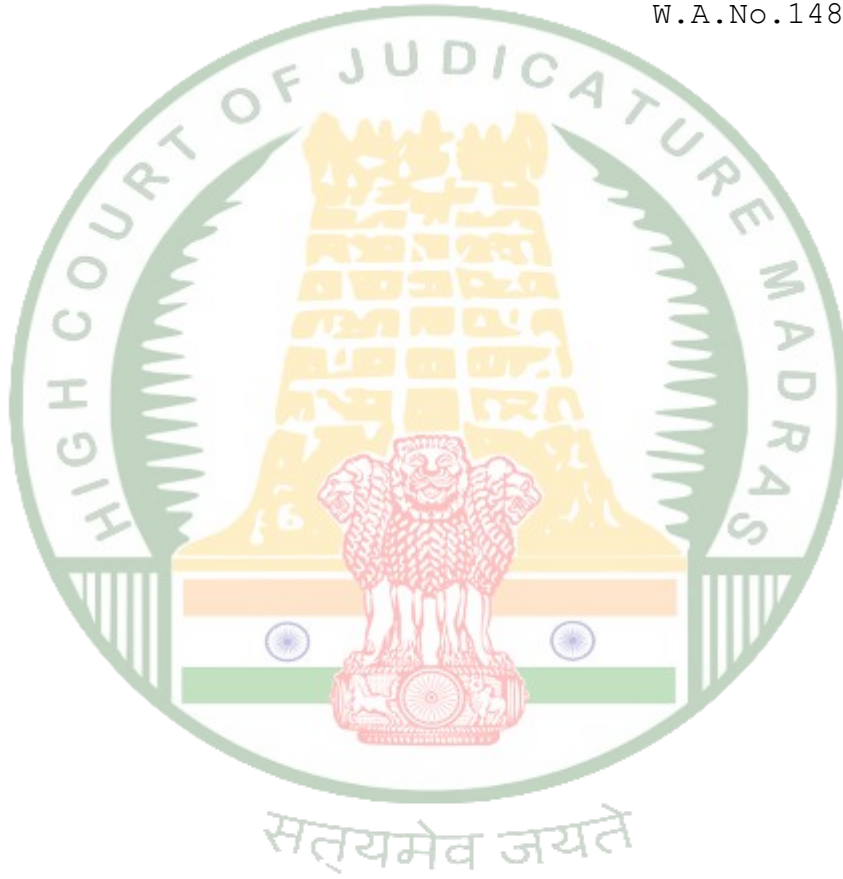
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+1cc to Mr.T.K.Bhaskar, Advocate Sr.No.580
+1cc to Mr.S.K.Rameshuwar, Advocate SR.No.476

NRJK(CO)
sm:25.1.2018

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