

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2018

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

Writ Petition No.623 of 2010
and
MP.No.2 of 2010

Harrisons Malayalam Ltd
Mayfield Estate
Nilakotta Post,
Gudalur Taluk
Nilgiris represented by
MVH Menon Manager - Legal Petitioner

Vs.

- 1.Tamil Nadu Electricity Board
rep.by its Chairman and Managing Director,
Mount Road, Chennai - 600 002.
- 2.The Superintending Engineer,
TNEB, Nilgiris Electricity Distribution Circle,
Udhagamandalam,
Nilgiris District.
- 3.The Executive Engineer/O&M
Authorised Officer,
Tamil Nadu Electricity Board,
Udhagamandalam,
The Nilgiris.
- 4.The Executive Engineer/Distribution (in-charge)
Tamil Nadu Electricity Board,
Nilgiris Electricity Distribution Circle,
Udhagamandalam. ... Respondents

Petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus to call for the records relating to the Final Assessment Order Lr.No.EE/O&M/O/F.theft of energy/D.16/09 dated 06.01.2010 issued by the 3rd respondent, to quash the same and consequently, restrain the respondent from interfering with the electricity supply to the petitioner's premises at Gudalur.

For Petitioner : Mr.T.Mohan
For Respondents : Mr.S.K.Rameshwar

ORDER

This writ petition has been filed to quash the final assessment order dated 06.01.2010 passed by the third respondent, in and by which, the petitioner was directed to pay a sum of Rs.30,81,102/- towards the balance of alleged loss caused by them due to dishonest abstraction of electricity supply. By the impugned order, it was further informed to the petitioner that the loss caused by the petitioner was assessed at Rs.35,81,102/- in accordance with the regulation of the Tamil Nadu Electricity Supply Code (for brevity, "the Code"), out of which, the petitioner has already paid a sum of Rs.5,00,000/- as per the order of this Court.

2.The factual exposition as has been delineated in the writ petition is that the petitioner is a plantation company owning tea and rubber estates in the State of Kerala and in the State of Tamil Nadu. Mayfield Estate is one such tea division in the Wentworth Estate of the petitioner company situated in Gudalur Taluk of the Nilgiris District and it is supplied with electricity from the respondent Board and has been given consumer number HT SC No.18, Tariff I. The petitioner has been remitting the electricity charges without any default. While so, on 10.09.2009, about 2.30 pm, the said electricity meter was inspected by the fourth respondent in the presence of one P.Joeman, who is a Tea Maker in the petitioner company, during the course of which, it was found that the petitioner committed an offence of theft of energy by providing bogus seals viz., seal no.6 meter terminal cover seal No.270617 and seal no.7, which is fixed on the left side of the meter fixing plate seal No.270616, thereby dishonestly abstracted, consumed and used energy with the intention to defraud the licensee, which is punishable under Section 135 of the Electricity Act, 2003 (for brevity, "the Act"). Pursuant to the same, a notice dated 10.09.2009 came to be issued, calling upon the petitioner to pay the compounding amount of Rs.10,25,000/- as per Section 152 of the Act, to which, the petitioner sent its reply in detail on 11.09.2009 itself. However, the respondent Board, without considering its reply and without any further intimation to the petitioner, disconnected the electricity service connection to the petitioner, which compelled them to file WP.No.18914 of 2009, in which, this Court, vide interim order dated 15.09.2009, directed the respondent Board to restore the electricity service connection on payment of Rs.5,00,000/- by the petitioner. During the pendency of the said writ petition and while the interim order was in force, the respondent issued a provisional

assessment order dated 12.09.2009 demanding the petitioner to pay a sum of Rs.32,49,002/- within a period of seven days. The petitioner filed its explanation in detail to the respondent. However, the respondent Board issued a revised provisional assessment order dated 19.09.2009, demanding the payment of Rs.35,81,102/- by the petitioner. In the mean time, W.P.No.18914 of 2009 came to be dismissed on the ground that the petitioner was having the remedy under Section 135(1A) of the Act. Following the same, the respondent Board issued a final assessment order dated 06.01.2010, which is impugned in this writ petition.

3. Upon notice, the respondent Board filed a detailed counter affidavit, wherein, at para 5, it has been specifically averred as follows:

"It is respectfully submitted that during the course of inspection, it was found that the petitioner has replaced 2 Nos. original MRT protection seals (one at meter terminal cover and other at top panel meter door) with bogus seals and thereby thieved energy besides committing the offence of theft of energy under Section 135 of the Electricity Act, 2003. In as much as the offence committed by the petitioner company is a compoundable one, the petitioner was informed of the same. However, the petitioner company has not come forward to compound the offence. Hence, a complaint was lodged before the Sub Inspector of police, Nilakottai Police Station and the same was registered as Crime No.67 of 2009. In order to realize the loss caused by Board due to the act of theft of energy committed by the petitioner, a provisional assessment order was issued by the third respondent herein, provisionally assessing the quantum of loss as Rs.32,49,002/- as per the provisions of the Tamil Nadu Electricity Supply Code. A detailed working sheet was provided to the petitioner company immediately after the inspection and also with the provisional assessment order. In the said provisional assessment order, the petitioner company was called upon to file its objections, if any, against the provisional assessment order and to send their explanation to the third respondent within seven days from the date of receipt of the provisional assessment order along with relevant documents and to attend enquiry. But, the petitioner without making any explanation or submission to the

said provisional assessment order or to attend enquiry, has rushed to this Hon'ble Court by way of this writ petition without availing the statutory remedies available under law."

4. The learned counsel for the petitioner made the following submissions:

(i) The Final assessment order passed by the third respondent, which is impugned herein, is arbitrary, illegal and against the principles of natural justice, as the contentions raised by the petitioner have not at all been considered by the respondent Board and there is no mention about the objections filed by the petitioner, though the same was sent by Registered Post.

(ii) The respondent Board failed to comply with Regulation 23 (AA) of the Code, which provides the procedure for assessment of electricity charges, disconnection of supply of electricity and removing electric meter in case of theft of electricity.

(iii) The authorised officer, before arriving at a conclusion as to whether tampering has taken place or not, ought to have sent the meter for testing and obtained a report from the meter testing Laboratory, as per Regulation 23(AA) (9) of the Code.

(iv) The respondents failed to comply with the procedure as contemplated under Regulation 23(AA) (7), which envisages that on obtaining a report from the accredited laboratory establishing the tampering, the authorised officer shall assess the quantum of energy consumed for the past 12 months as per the assessment formula and prepare the provisional assessment order at two times of the tariff applicable and passed the impugned final assessment order, without even hearing the petitioner.

(v) The third respondent ought to have seen that as per Regulation 23(AA) (12), after obtaining the reply to the provisional assessment order, the authorized officer is bound to arrange for a personal hearing and for the same, the authorized officer shall serve a three day notice and shall also allow any additional submission of new facts or documents if any and thereafter only, pass the final assessment order.

(vi) The respondents ought to have noted that it was impossible for anyone to tamper with seal nos. 6 and 7 without tampering with at least seal Nos. 1, 2, 3 and 4 and for this reason alone, ought not to have effected disconnection of power supply on the ground of seal tampering. Thus, according to the learned counsel, the order impugned herein and the consequential action of the respondent Board are violative of the provisions of the Act as well as the Code and hence, the writ petition may be allowed by setting aside the impugned order.

5.Reiterating the averments made in the counter affidavit, the learned counsel for the respondent Board submitted that only after a conclusion was arrived at by the authorised officer with regard to the theft of energy, which took place in the HT SC.18 pertaining to the petitioner company, the electricity supply was disconnected, as per Section 135(1A) of the Act; the meter box was removed as per Regulation 23(AA)(3) of the Code and therefore, the action taken by the respondent Board is not illegal as alleged by the petitioner. He further submitted that the authorised officer has issued notice for the compounding charges on 11.09.2009 as per Section 152 of the Act and also issued provisional assessment notice as per the said Regulation on 14.09.2009, in which, the petitioner was requested to file its objection, if any. Further, the petitioner has also been requested to appear in person or through his representative with relevant documents, for enquiry and hence, adequate opportunity has been given to the petitioner as per the provisions of the Act as well as the Code. Thus, according to the learned counsel, the order impugned herein is perfectly right and in accordance with law, which does not call for any interference by this Court.

6.Heard both sides and perused the records.

7.Though the learned counsel for the petitioner raised many a contention attacking the order impugned herein, the main thrust of his arguments is that the petitioner has not been provided adequate opportunity to put forth its case. The same was fairly admitted by the respondent Board in their counter affidavit. Thus, it is manifest that the petitioner's objections have not been taken into consideration before passing of the impugned final assessment order. Hence, in order to provide an opportunity to the petitioner, this Court is inclined to set aside the order impugned herein and remand the matter to the respondent Board for fresh consideration.

8.At this juncture, be it noted that once the demand or assessment order is set aside, there is no liability existing against the petitioner. As such, the respondent Board cannot eternally retain the deposit amount of Rs.5,00,000/- made by the petitioner, as per the order of this Court, which was admitted by the third respondent in the order impugned in this writ petition.

9.Accordingly, the final assessment order dated 06.01.2010 passed by the third respondent is set aside and the matter is remitted to the respondents for fresh consideration, who shall pass a fresh order, on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner, within a period of four weeks from the date of receipt of a copy

of this order. It is made clear that in the event of the respondents deciding the issue one way or other and the liability so arrived at is not subsisting, the respondents are directed to refund the deposit amount forthwith to the petitioner.

10.This writ petition stands allowed to the extent as indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman and Managing Director,
Tamil Nadu Electricity Board
Mount Road, Chennai - 600 002.
- 2.The Superintending Engineer,
TNEB, Nilgiris Electricity Distribution Circle,
Udhagamandalam, Nilgiris District.
- 3.The Executive Engineer/O&M
Authorised Officer, Tamil Nadu Electricity Board,
Udhagamandalam, The Nilgiris.
- 4.The Executive Engineer/Distribution (in-charge)
Tamil Nadu Electricity Board,
Nilgiris Electricity Distribution Circle,
Udhagamandalam.

+ 1 cc to Mr.S.K.Rameshwar, Advocate SR.53539
+ 1 cc to Mr.T. Mohan, Advocate Sr.53431

W.P.No.623 of 2010

RJ(CO)
EU(03/12/2018)

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