

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.43915 of 2006 and

M.P.No. 1 of 2006

N.P.S.Pandian

Vs

... Petitioner

1. The Executive Engineer,
Operations and Maintenance
Tamil Nadu Electricity Board,
Mohanur Road,
Namakkal - 637 001.

2. The Chairman,
Tamil Nadu Electricity Board,
Anna Salai,
Chennai 600 002.

.... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari calling for the records pertaining to the impugned order passed by the first respondent in his reference Lr.No.EEN/Va/Vu./Ka.General/No.199/2006, dated 20.10.2006 and quash the same in only so far as it tags the demand in respect of Service Connection No.Z-581 belonging to M/s. N.P.S.Hotel Complex Private Limited with the Service Connection Nos.Z-318, Z-326, X-327, Z-328, Z-329, Z-330, Z-331, Z-1025, Z-1026 and Z-1027 standing in the personal name of the petitioner and proposes to disconnect the said Service Connections for arrears in respect of Service Connection No.Z-581.

For Petitioner : Mr.P.K.Rajagopal

For Respondents : Mr.S.K.Rameshwar
Standing Counsel for TNEB

ORDER

The petitioner filed of the present writ petition challenging the impugned order dated 20.10.2006 wherein the petitioner was directed to pay the electricity consumption under Tariff-IX instead of Tariff-IV.

2.The case of the petitioner is that, petitioner is a Managing Director of a Private Limited Company incorporated under the Companies Act. Petitioner established a 'Two Star Hotel' under the name and style of 'Pandian' at the cost of Rs.98.64 lakhs in the year 1992-93. Initially the petitioner's hotel applied for electricity service connection and the supply was effected by the Tamil Nadu Electricity Board under the service connection No.Z-581 under Tariff IV (Industrial). Subsequently, the Board unilaterally converted the Tariff IV (Industrial) to Tariff IX (Commercial). Since the tariff had been changed unilaterally from industrial to commercial there had been communications between the petitioner's hotel and the Electricity Board which resulted in filing of suit in O.S.No.601 of 1994. However, the suit came to be dismissed and thereafter, the appeal, second appeal were also dismissed. After dismissal of the Second Appeal, the Electricity Board sent a communication dated 05.07.2006 to the petitioner's hotel, demanding a sum of Rs.11,17,799/- being the alleged arrears towards the difference in tariff. It is further stated that the petitioner's hotel had filed SLP, before the Hon'ble Apex Court against the dismissal of the Second Appeal. In the meanwhile, a further communication dated 20.10.2006, had been sent by the Board demanding to pay the arrears amount, hence, the petitioner had come up with the present writ petition.

3. I have heard the learned counsel for the petitioner and the learned Standing counsel appearing for the respondents/Board.

4. The petitioner's hotel had been effected with electricity service connection under Tariff-IV i.e., for industrial purpose based on the undertaking given by the petitioner's hotel that the tariff would be changed based on the audit report of the Board. The said undertaking had been marked as Ex.B1. The very same issue had already been agitated before the competent Civil form and ended till the dismissal of the Second Appeal wherein, while dealing with the same, this Court had given its findings which reads thus:

"On the above contention of the learned counsel on either side, I perused the records. It is seen from the records that the respondents have effected electricity service connection to the appellant's hotel premises with effect from 13.11.1993 under tariff No.

(iv) and on the very same date, the appellant has executed Ex.B1, letter of undertaking agreeing to pay the arrears of amount and also pay the amount, as fixed by the respondents, in case of change of tariff. The said document is self-explanatory that both the parties, at the time of effecting electricity service connection have tentatively agreed to apply tariff No.(iv) and later, the respondents have informed that the appellant is liable to pay the amount as per tariff No. (ix) under Ex.A2, dated 27.06.1994, hence, this Court is of the considered view that the appellant was put on notice even prior to effecting of service connection under tariff No.(iv) and no separate notice, as argued by the learned counsel for the appellant, is required in so far as the facts involved in this case is concerned.

The other argument of the learned counsel for the appellant is that the investment pertaining to the appellant's hotel is less than Rs.100 lakhs, while so, the appellant is not required to pay the amount as per tariff No.(ix). The said argument is not tenable for the reason that the appellant has not placed any document to show that the investment of the hotel is less than Rs.100 lakhs. Merely sending a communication, Ex.A3, dated 07.07.1994 is not sufficient to prove the said averment. Moreover, Ex.A2, which contain the details of the appellant's investment is more than Rs.100 lakhs not challenged by the appellant."

5. Since the issue raised in this writ petition has already been decided by this Court in Second Appeal, I do not find any merit in the writ petition to invoke Article 226 of the Constitution of India, hence, the writ petition fails, ultimately, dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

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Sub Assistant Registrar

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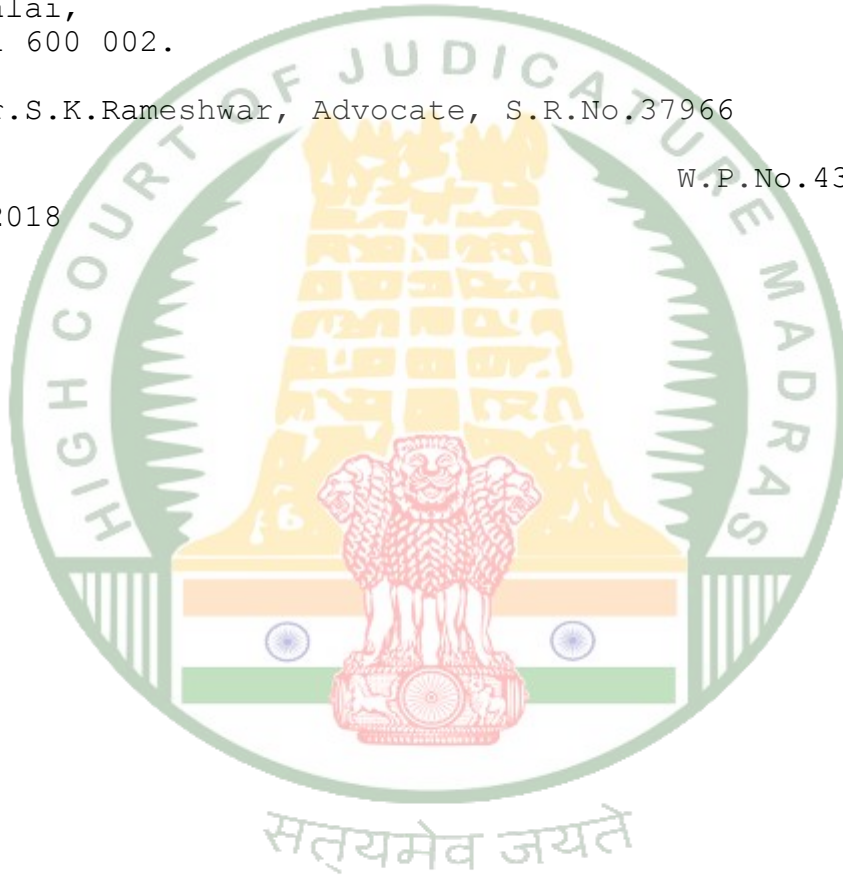
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+1cc to Mr.S.K.Rameshwar, Advocate, S.R.No.37966

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BM 11/07/2018



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