

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2018

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P.No.26543 of 2003 and
W.P.M.P.No.32458 of 2003

Mohammed Irfan

...Petitioner

..Vs..

1.The Executive Engineer,
Tamil Nadu Electricity Board,
O&M, Mambalam,
CEDC/Central,
Chennai.

2.Assistant Executive Engineer,
O&M/West Mambalam,
CEDC/Central,
Chennai.

3.The Assistant Engineer-II,
West Mambalam,
CEDC/Central,
Chennai-33.

....Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records comprised in letter No.AEE/O&M/West Mambalam/F.Theft/D.Camp/03dt.8.9.03, on the file of the Assistant Executive Engineer, O&M, West Mambalam, CEDC/Central, Chennai/second respondent and quash the same and consequently direct the second respondent to reimburse the compounding charges paid by the petitioner.

For petitioner : Mr.R.Karthikeyan

For Respondents: Mr.P.R.Dhilipkumar for R1 to R3

ORDER

The prayer sought for in this Writ Petition is for issuance of a Writ of Certiorarified Mandamus to call for the records comprised in letter No.AEE/O&M/West

Mambalam/F.Theft/D.Camp/03 dated 08.09.03 on the file of the second respondent and quash the same and consequently to direct the second respondent to reimburse the compounding charges paid by the petitioner.

2.The short facts which are leading to filing of this Writ Petition are as follows:-

(i)The petitioner is a Manufacturer and Exporter of Textile Garments in the name and style of Spell Bound Fashions in the address (i.e) at No.6, West Govindan Road, West Mambalam, Chennai - 600 033. The petitioner was a tenant under one Mrs.Vijaya Pankajam, the landlord of the premises mentioned above. The petitioner had taken the premises on lease in February 2003 and started operating the garment unit only by the first week of July 2003. The petitioner was in occupation of the first and second floor of the premises, wherein, the portion leased out to the petitioner had a commercial service connection in Service Connection No:272:02:576, under Tariff V.

(ii) While so, since there had been disturbance in the power supply, there was a representation by the petitioner, based on which a new cable at the cost of the petitioner was laid under the supervision of the second respondent in July 2003.

(iii) While so, the second respondent, along with some employees of the respondent-Board, inspected the premises on 08.09.2003 at about 12.15 pm and issued notice to the petitioner that the second respondent had proposed to conduct an inspection in regard to the Service Connection of the garment unit. Pursuant to the inspection, they alleged that they had detected the theft of electrical supply committed by the petitioner by removing two wires from the meter and connecting them directly to avoid the consumption of the electricity being metered.

(iv) Thereafter, a show cause notice was issued for theft of energy calling upon the petitioner to explain as to why criminal action should not be initiated against the petitioner.

3. The second respondent thereafter, through a Mahazar, also levied a penalty of Rs.2,73,500/- and also taken two cheques from the petitioner for Rs.2,66,812/- towards compounding charges and another cheque for Rs.27,350/- towards the first installment of penalty. The said cheques were obtained from the petitioner under coercion and threat otherwise the petitioner has to face criminal case and he will be arrested immediately.

4. In this regard, it is the case of the petitioner that the petitioner is only a tenant and the subject meter which was allegedly tampered, was not in the premises of the petitioner and it is available only within the premises which is under occupation of the owner of the premises and therefore, in this regard, the amount collected from the petitioner, is only under coercion.

5. Subsequently, the impugned notice has been issued on 08.09.2003 to the owner of the premises on the basis of the undertaking obtained coercively from the petitioner. Therefore, challenging the same the petitioner has moved this Writ Petition.

6. On receipt of the impugned notice where the blame was put against the petitioner, he had sent a reply on 11.09.2003 and also requested for restoration of electricity service connection and to return back the amount obtained from him through cheque. However, in spite of the representations given by the petitioner, nothing was forthcoming from the respondents.

7. In this regard, the learned counsel appearing for the petitioner would submit that the petitioner is ready and willing to appear for enquiry and if the same is conducted by giving an opportunity to the petitioner to put-forth his case that he is no way responsible for any alleged theft of energy. Therefore, if an opportunity is given to the petitioner by conducting an enquiry in this regard, the petitioner would be satisfied.

8. I have heard Mr.P.R.Dhilipkumar, the learned counsel appearing for the respondents-TNEB, who would submit that if at all the petitioner wants to take any shelter under the pretext that he is only a tenant and he had no access to tampering the meter, the respondent is ready and willing to give an opportunity to the petitioner to put-forth his case.

9. In view of the said submissions made by both sides, this court is inclined to pass the following order:-

Without expressing any opinion about the view taken by the respondents in the impugned communication, this court is inclined to remit the matter back to the respondents-TNEB for re-consideration. While making such re-consideration process, the respondents shall give an opportunity of hearing to both the petitioner as well as the owner of the premises and after giving such opportunity of being heard, a decision can be taken as to who actually was in fault for tampering of the meter and accordingly, the respondents shall be at liberty to proceed

against the erring person. The aforesaid exercise can be undertaken by the respondents within three months from the date of receipt of a copy of this order.

10. With the above observations and directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

srn/mbi

To

- 1.The Executive Engineer,
Tamil Nadu Electricity Board,
O&M, Mambalam,
CEDC/Central,
Chennai.
- 2.Assistant Executive Engineer,
O&M/West Mambalam,
CEDC/Central,
Chennai.
- 3.The Assistant Engineer-II,
West Mambalam,
CEDC/Central, Chennai-33.

+1cc to Mr.R.Karthikeyan, Advocate Sr.61619
+1cc to Mr.P.R.Dilipkumar, Advocate Sr.62218

W.P.No.26543 of 2003 and
W.P.M.P.No32458 of 2003

ev[co]
srg 26/09/2018