



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:16.04.2018

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P (MD) .No.7646 of 2018

and

W.M.P (MD) .Nos.7269 & 7270 of 2018

E.Balasubramanian

... Petitioner

vs.

1. The Superintending Engineer,
Tamil Nadu Electricity Generation and Distribution
Corporation Circle (TANGEDCO),
Tirunelveli District.
2. The Executive Engineer,
Distribution / TANGEDCO,
Tirunelveli District.
3. The Assistant Executive Engineer,
Distribution / TANGEDCO,
Tirunelveli District.
4. The Assistant Engineer,
Distribution / TANGEDCO,
Thachanallur,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned order passed by the fourth respondent in Lr.No.AE/D/U/Tch/CI/F.Doc/D.No.075/18, dated 19.03.2018 and quash the same and further direct the respondents to provide New Electricity Service Connection to the purchased textile mill at Door Nos.277 to 284, Subburaj Mill Colony, Ward No.10, Shankar Nagar, Madurai Road, Tirunelveli District as expeditiously as possible within the time stipulation as prescribed by this Court.

For Petitioner : Mr.Ajmal Khan
Senior Counsel for Mr.B.Vinoth Balan

For Respondents : Mr.Kasinatha Durai
Standing counsel for TNEB

**ORDER**

The petitioner has come forward with this writ petition seeking issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned order passed by the fourth respondent in Lr.No.AE/D/U/Tch/CI/F.Doc/D.No.075/18, dated 19.03.2018 and quash the same and further direct the respondents to provide New Electricity Service Connection to the purchased textile mill at Door Nos.277 to 284, Subburaj Mill Colony, Ward No.10, Shankar Nagar, Madurai Road, Tirunelveli District as expeditiously as possible within the time stipulated by this Court.

2.Heard Both sides.

3.The petitioner had purchased the Textile Mill namely Subburaj Spinning Mill at Subburaj Mills Colony, Madurai Road, Shankar Nagar, Tirunelveli District, through the auction conducted by State Bank of India under SARFAESI proceedings and a registered sale certificate dated 12.12.2017 was issued. The service connection which stood in the name of the defaulted company under S.C.No.177, came to be disconnected, even prior to the auction. As per the sale certificate the said property was declared to be free from all encumbrances. When the petitioner had applied for new electricity service connection with the fourth respondent, the fourth respondent herein had passed the impugned order dated 19.03.2018, directing the petitioner to pay a sum of Rs.1,26,57,690/-, claiming the amount to be the outstanding arrears by the defaulter with the State Bank of India.

4.According to the learned senior counsel, the sale certificate connected with the said property was free of encumbrances and as such, there was no charge over the property. In the absence of the charge over the property or any other understanding or contract between the parties, the fourth respondent is not empowered to demand the arrears of the defaulter from the petitioner, who is a bonafide purchaser. The learned senior counsel further submitted that under the amended Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions Act, 2016, the bank, as a Secured Creditor is given priority over all the Government dues and the petitioner being the purchaser from the Secured Creditor, the fourth respondent is not empowered to claim the arrears from them. In support of this contention, the learned senior counsel also relied upon a judgment in **KTV Health Foods (P) Limited Vs. The Chairman, Tamil Nadu Electricity Board, 800, Electricity Avenue, Anna Salai, Chennai - 2** reported in **2014 (2) CWC 547**.

5.The learned standing counsel for the respondents, on the other hand made his submissions on the ground that the original



outstanding arrears are from the defaulter and they were justified in claiming it from the petitioner. According to the learned standing counsel for the respondents, the sale certificate does not mention about the electricity outstanding arrears and therefore the petitioner is bound to make payment.

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6.I have given careful consideration to the submissions made by the respective counsel.

7.Before going into the grounds raised by the petitioner, it is brought to my notice that there are two other writ petitions in W.P(MD).Nos.22234 and 22239 of 2017. In both the writ petitions, the defaulter in the Sarfaesi Proceedings is the petitioner. In W.P(MD).No.22239 of 2017, the order under challenge was rejection of the defaulter's request for refund of Security Credit available with the TANGED board. On a perusal of the impugned letter, dated, 28.11.2017, in W.P(MD).22239 of 2017, it is seen that the respondent had categorically mentioned that the payment of dues relating to the defaulter's disconnected HT.SC.No.177 has to be included in the defaulter's account, notwithstanding the fact that the service connections are covered under separate agreements in accordance with regulations. While stating so, the fourth respondent had adjusted the entire arrears of HT.SC.No.177 in the Security Credit of the defaulter and had rejected their request.

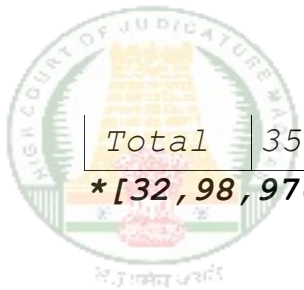
8.In the above background, I am unable to comprehend as to how the fourth respondent herein could be justified in demanding the arrears of the defaulter namely Subburaj Textile Mill, from the petitioner herein, when they had already informed the defaulter that the entire arrears for HT.SC.No.177 has been adjusted out of the security credit of the defaulter. For a clear understanding of the adjustment made by the TANGEDCO in the Security Credit of the defaulter, the relevant portion of their letter, dated 28.11.2017 is extracted as follows:-

"In view of the above, the payment of dues relating to your disconnected HT.SC.No.177 and HT.SC.No.187 has to be included in your HT.SC.No.181 account, notwithstanding the fact that the service connections are covered under separate agreements in accordance with above regulation. Therefore, TANGEDCO may issue proper notice to your HT.SC.No.181 M/s. Subburaj Spinning Mills (P) Ltd for realizing the arrears due for the disconnected HT Services.

ABSTRACT

Arrears payable by the disconnected HT services to TANGEDCO

Sl.No.	Generation Tax [A]	Peak Hour [B]	CC arrears [c]	Total D=A+B+C
187	14,19,193	7,33,397	---	21,52,590



Total	35,15,174	1,15,10,658	17,92,579	1,68,18,411=E
*[32,98,976 - 25,65,579] Less: Self Generation Tax				
which cannot be demanded				= Rs.35,15,474[F]
(Court case)				

be collected [E-F]=G=Rs.1,33,03,237

From the above, your HT service connection No.181 has to pay the arrears amount of Rs.1,15,10,658/- towards evening peak hour penalty, towards energy and demand charges in respect of your disconnected HT.SC.Nos.177 and 187, besides your HT.SC.No.181 is liable to pay, the CC arrears of the disconnected service HT.SC.No.177 is Rs.17,92,579/-."

9.It is rather unfortunate that TANGEDCO has made two demands, one with the defaulter and subsequent demand with the purchaser, for the same arrears. As a matter of fact from their letter dated 28.11.2017, it is seen that they had already collected the arrears amount, by indicating to the defaulter that the amount due for HT.SC.No.177 has been adjusted out of the Security Credit. While that being so, there was absolutely no justification on the part of TANGEDCO to issue the impugned order to the petitioner herein in the instant case. Hence, the impugned order is not only illegal, but also highly arbitrary and without any application of mind.

10.While the factual position remains thus, it is further seen that the petitioner herein had purchased the property free of all encumbrance. Admittedly, there is no charge over the property either from TANGEDCO or from any other Government Department. While there is no charge over the property, the petitioner was entitled to purchase the same in the court auction and valid sale certificate has also been issued to him. There was no service supply at the time when the petitioner had purchased the property and therefore he has sought for a fresh service connection at which point of time, the impugned order came to be slapped on him. Hence, the petitioner can never be termed as a debtor of TANGEDCO.

11.In identical circumstances, this Court had an occasion to deal with a situation on the preposition as to whether a subsequent purchaser would be bound to pay the arrears of electricity dues of the erstwhile owner. The relevant portion of the said order quoted in 2014 (2) CWC 547 is as follows:

"11.Exactly, similar issue came up for consideration before me in **Shajahan v. Superintending Engineer, TNEB's case** (cited supra) wherein also, a demand was made from the subsequent purchaser who had purchased the property in an auction sale. The Tamil Nadu Electricity Board took shelter under Clause 6.10 of the Terms and Conditions. But, when I heard the said matter, a judgement of Division Bench of this Court in



W.A.No.646 of 2003 dated 23.02.2007 was made reliance by the learned counsel for the petitioner therein. The Division Bench in the said judgement, had an occasion to consider the scope of Clause 6.10 of the Terms and Conditions of Supply of Electricity and the definition of the terms debtor and dues very extensively. After having considered the same, the Division Bench has held that the subsequent purchaser is not a debtor and therefore, Clause 6.10 cannot be enforced against the petitioner therein. Following the same, in paragraph Nos.11 and 12 of the judgement in **Shajahan v. Superintending Engineer, TNEB's case** (cited supra), I had an occasion to hold as follows:-

11.Clause 6.10 of the Terms and Conditions of Supply of electricity Act is sought to be used against the petitioner. In my considered opinion, the said attempt has to necessarily fail. Clause 6.10 can be enforced only against a person, who is a debtor. Suppose the purchaser of the property, either in public auction or at least by private auction also falls within the definition of debtors defined in Section 2(3) of the Act and surely Clause 6.10 will be applicable against him. Clause 6.10 therefore, cannot be read independently. The definition of the term 'debtor' as found in section 2(3) of the Act should be read into Clause 6.10 as per the terms and conditions of supply of electricity. Clause 6.10 should be understood in such a way that if there is any charge created over the property, then as per this clause, unless the purchaser clears off the arrears, he will not be entitled for service connection. To put it differently, if there had been no charge over the property, since the purchaser is not a debtor as defined in Section 2(2) of the Act, Clause 6.10 of the Terms and Conditions of supply of electricity cannot be applied against him at all.

12.In the Division Bench judgement in W.A.No.646 of 2003 dated 23.02.2007 referred to above, precisely, the Division Bench went into Clause 6.10 of the Terms and Conditions of Supply of Electricity and the definition of the terms 'debtor' and 'dues' extensively and has held in para 6 that in the absence of any specific provision creating charge over the property, the contention of the appellant that the subsequent purchaser should clear off the dues from the erstwhile owner cannot be accepted. As per the said view taken by the Division Bench, I have no doubt that in the case on hand, the petitioner is not a debtor and therefore Clause 6.10 cannot be enforced against him.



12. Thereafter, reliance was made on the **Isha Marbles v. Bihar State Electricity Board** case of the Hon'ble Supreme Court referred to above. That was a case where the Hon'ble Supreme Court held that unless, there is a charge created over the property, the property shall stand transferred to the subsequent transferee free of any encumbrance. Relying on the same and relying on yet another judgement of the Hon'ble Supreme Court on the same point in **Paschimanchal Vidyut Vitram Nigam Limited v. DVS Steels and Alloys Private Limited** (2009(2) MLJ 755 (SC)), I had an occasion to hold that the subsequent transferee is not at all liable to pay the dues of the erstwhile owner.

13. In the case on hand also, admittedly, there was no charge created over the property in question. It is also not as though the petitioner was put on notice about the dues from the erstwhile lessee by the Tamil Nadu Electricity Board. The petitioner is an innocent transferee in the auction sale held by the Debts Recovery Tribunal, Chennai. Therefore, as per the view taken in **Shajahan v. Superintending Engineer, TNEB's case** (cited supra), in the present case also, the petitioner is not liable to pay the amount which is due actually from the erstwhile lessee namely M/s. Pearl Biscuits and Confectioneries Private Limited.

14. Similar view has been taken by the Hon'ble Supreme Court in **Haryana State Electricity Board v. Hanuman Rice Mills** (cited supra) wherein, in paragraph Nos. 12 to 14, it has been held as follows:-

12. The position therefore may be summarised thus:

(i) Electricity arrears do not constitute a charge over the property. Therefore in general law, a transferee of a premises cannot be made liable for the dues of the previous owner/occupier.

(ii) Where the statutory rules or terms and conditions of supply which are statutory in character, authorise the supplier of electricity to demand from the purchaser of a property claiming reconnection or fresh connection of electricity, the arrears due by the previous owner/occupier in regard to supply of electricity to such premises, the supplier can recover the arrears from a purchaser.

13. The appellant did not plead in its defence that any statutory rule or terms and conditions of supply authorised it to demand the dues of previous owner from the first respondent. Though the appellant contended in the written statement that the dues of Durga Rice Mills were transferred to the account of the first respondent, the appellant did not specify the statutory provision which enabled it to make such



a claim. The decision in *Paramount Polymers* shows that an enabling term was introduced in the terms and conditions of electricity supply in Haryana, only in the year 2001.

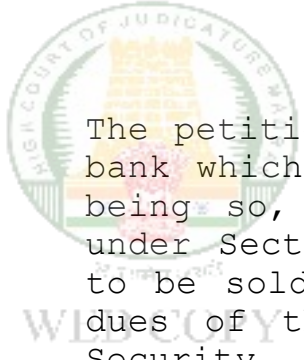
14. The appellant did not demand the alleged arrears, when the first respondent approached the appellant for electricity connection in its own name for the same premises and obtained it in the year 1991. More than three years thereafter, a demand was made by the appellant for the first time on 16.01.1995 alleging that there were electricity dues by the previous owner. In these circumstances, the claim relating to the previous owner could not be enforced against the first respondent.

15. The learned Standing Counsel for TNEB would rely on the judgement of the Hon'ble Supreme Court in **Paschimanchal Vidyut Vitram Nigam Limited v. DVS Steels and Alloys Private Limited** (cited supra). But, a close reading of the judgement in **Haryana State Electricity Board v. Hanuman Rice Mills** (cited supra) would go to show that the judgement in **Paschimanchal Vidyut Vitram Nigam Limited v. DVS Steels and Alloys Private Limited** (cited supra) was taken note of and the views expressed in the said case were also dealt with very elaborately. It is only thereafter, the Hon'ble Supreme Court has summarised the law in paragraph Nos. 12 to 14. In view of the above settled position, the petitioner is not at all liable to pay the amount which is due from the erstwhile lessee namely M/s. Pearl Biscuits and Confectioneries Private Limited. In view of the said position, the impugned notice is liable to be set aside.

12. The aforesaid extract is self explanatory. It is also seen that in Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions Amendment Act of 2016, Section 31(B) came to be inserted which reads as follows:

"31(B). Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority."

13. As per the aforesaid amendment, the bank is given priority over all the Government dues, to collect the arrears of debts and revenues, which includes the arrears of electricity dues also.



The petitioner herein had purchased the subject property from the bank which had a priority over the dues of TANGEDCO. While that being so, the respondent herein cannot override the provisions under Section 31(B) and make a claim over the property that came to be sold in auction by the bank which had a priority over the dues of the TANGEDCO also. When the law itself entitles the Security Creditor to have a priority over the Government departments, the respondent is dis-entitled to make any claim for the outstanding arrears from the subsequent purchaser. In view of the embargo under Section 31(B), TANGEDCO has now attempted to recover the arrears through the impugned letter in order to circumvent the provision and as such, their attempt is per se illegal.

14. In view of the all the above observations, I do not find any justification on the part of the fourth respondent in making the demand and passing the impugned order. Consequently, the impugned order of the fourth respondent in letter No. AE/D/U/Tch/CI/F.Doc/D.No.075/18, dated 19.03.2018, is quashed. The fourth respondent is directed to provide a new electricity connection to the petitioner's property at door No.277 to 284, Subburaj Mill Colony, Ward No.10, Shankar Nagar, Madurai Road, Tirunelveli District, within a period of four weeks from the date of receipt of the copy of this Order. The fourth respondent while effecting such service connection is entitled to collect any other charges which are applicable for a new service connection.

15. Accordingly, Writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

The Executive Engineer,
Distribution / TANGEDCO,
Tirunelveli District.

+ 1 cc TO Mr.B.Vinoth Balan , Advocate in SR No. 61720
+ 1 cc TO Mr.G.Kasinatha Durai , Advocate in SR No. 61582

TM
AE/KKR/SAR1/28.04.2018/8P/4C