



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.04.2018

CORAM:

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THE HONOURABLE MR. JUSTICE A.M.BASHEER AHAMED

C.M.A. (MD) No.229 of 2013

S.Navarathinam

... Appellant/Petitioner

Vs.

1.The Executive Engineer (Distribution)
Tamil Nadu Electricity Board,
Tiruchendur.

2.The Superintendent of Engineer,
Thoothukudi Electricity Distribution Circle,
Thoothukudi.

3.The Chairman,
Tamil Nadu Electricity Board,
800 Annasalai,
Chennai 600 002.

... Respondents/Respondents

PRAYER: The Appeal is filed under Section 27 of the Electricity Regulatory Commission Act, against the order in Electricity O.P.No.247 of 2009 dated 19.11.2012 passed by the Principal District Judge at Tuticorin (exercising The Special Jurisdiction under Section 154 of the Electricity Act as a Special Court).

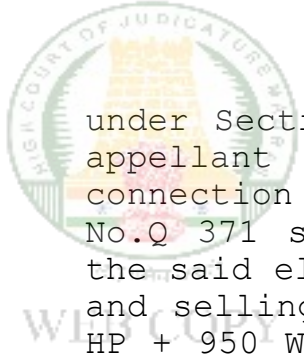
For Appellant : Mr.N.L.Raja, Senior Counsel for
Mr.C.S.krishnamoorthy

For Respondent : Mr.R.Senthil Kumar
1 & 2 For Mr.M.Mohan Babu

JUDGMENT

This Civil Miscellaneous Appeal is filed under Section 27 of the Electricity Regulatory Commission Act, against the order dated 19.11.2012 passed in Electricity O.P.No.247 of 2009 by the Principal District Judge at Tuticorin (exercising The Special Jurisdiction under Section 154 of the Electricity Act as a Special Court).

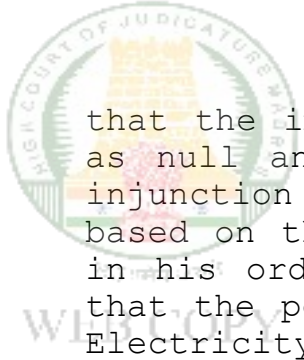
2.Admittedly, the appellant herein is the petitioner in Electricity O.P.No.247 of 2009 and the respondents herein are the respondents in the said petition on the file of the Principal District Judge at Tuticorin (exercising The Special Jurisdiction



under Section 154 of the Electricity Act as a Special Court). The appellant / petitioner is the consumer of the electric service connection bearing Old No.D 879 / Tariff III B Trichendur and new No.Q 371 situated at Door No.34, Paramakudi Road, Tiruchendur and the said electric service connection is being used for manufacturing and selling of ice bars from water and total sanctioned load is 53 HP + 950 Watts. When there an inspection was conducted on various dates viz., on 25.08.2001, 04.09.2001, 17.09.2001, 10.10.2001 and finally on 23.10.2001, it was found that the original seals, fixed in the left and right side of the electric meter, had been removed and a bogus seals had been fixed in the said meter and further, the front cover of the meter had also been opened and thereby, there was an interference in functioning of the meter and hence, there was a theft of energy and therefore, on 31.10.2001 the respondents / Board issued a show cause notice to the appellant / petitioner, calling upon him to explain as to why the respondents / Board should not recover the loss by imposing extra levy against the petitioner in accordance with the terms and conditions of supply of electricity. For which, the appellant had submitted his explanation and thereafter, an enquiry was conducted and thereafter, the first respondent passed the impugned order dated 02.01.2002, confirming the theft of electricity energy in LT service bearing D 879 / Tiruchendure and directed the appellant to pay extra levy amount of Rs.20,03,647/- to the respondents / Board.

3.The appellant challenged the said order by way of filing a Writ petition in W.P.No.335 of 2002 before the Principal Bench of this Court to issue a Writ of Certiorari, calling for records relating to the impugned order, dated 02.01.2002 and quash the same. After passing of the impugned order, the Electricity Act, 2003 has come into force and hence, as per the said Act, an appeal would lie under Sections 153 and 154 of the said Act, 2003 before the District and Sessions Court of the concerned district, in which, the alleged theft of electricity has been committed by the consumer and accordingly, a notification was also issued in accordance with the said provisions of the Act, 2003 and any proceedings in respect of the dispute regarding the recovery of money the provisions of the Electricity Act, 2003 will have preference as per the judgment of the Hon'ble Supreme Court in the Judgment in Gujarat Urja Vikas Nigam Ltd., Vs. Essar Power Ltd., reported in (2008(4) CTC 539) , and the Principal Bench of this Court, vide order dated 19.06.2009, directed the Writ petitioner to work out his remedy in accordance with Section 154 of the Electricity Act, 2003 by filing an appropriate application by way of an appeal before the concerned District Court within a period of 4 weeks from the date of receipt of a copy of the order.

4.In compliance with the said order passed in the said Writ petition, the appellant / petitioner preferred a petition in Electricity O.P.No.247 of 2011 before the Principal District Judge at Tuticorin (exercising The Special Jurisdiction under Section 154 of the Electricity Act as a Special Court) seeking a declaration



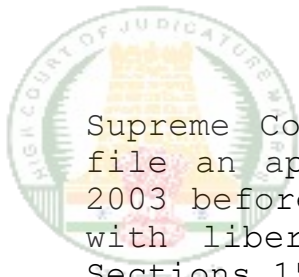
that the impugned order dated 02.01.2002 passed by the respondents as null and void and consequently, granted an order of permanent injunction not to disconnect electricity to the scheduled premises based on the above said impugned order. The learned Special Judge in his order dated 19.11.2012 dismissed the said petition holding that the petition filed by the petitioner under Section 154 of the Electricity Act, 2003 is not maintainable.

5. Aggrieved by the order of dismissal, the appellant / petitioner / consumer filed this Civil Miscellaneous Appeal to set aside the order dated 19.11.2012 passed in Electricity O.P.No.247 of 2009 by the Principal District Judge at Tuticorin (exercising The Special Jurisdiction under Section 154 of the Electricity Act as a Special Court).

6. The learned counsel for the appellant contended that when the High Court gave a specific direction to the appellant to approach the Special Court within a time frame and such order has been complied with by the appellant, the Special Court shall not hold that the said O.P. is not maintainable as it has no jurisdiction. The factum of such direction given by the High Court in the Writ petition filed by the appellant herein against the respondents is not denied and hence, they had neither objected to the matter being referred to the Special Court nor they had filed any appeal against the order dated 19.08.2009 passed by the learned Single Judge in W.P.No.335 of 2002.

7. The learned counsel for the appellant relied the order passed by the High Court in the above Writ petition. The Principal Bench of this Court has decided the same in W.P.No.2754 of 1999 on 09.08.2010 between A.R.Metallurgicals Private Limited Vs. The Chairman, Tamil Nadu Electricity Board and others. The said order was also reported in (2016 Writ L.R.850) which was confirmed in appeal by the Division Bench of Principal Bench of this Court in the Judgment in The Chairman, Tamil Nadu Electricity Board and others Vs. A.R.Metallurgicals Private Limited reported in (2016 Writ L.R. 851), wherein, the Division Bench has held that Section 185 of the Act would go to show that any order passed under the Indian Electricity Act, 1910 (old Act) would be construed to be an order made under corresponding provisions of the present Act, 2003 (new Act).

8. In view of the said provision, "the order impugned in the Writ petition should be construed to be an order made under the corresponding of the present Act and therefore, an appeal should lie before the Special Court taking the view taken by the Learned Single Judge of this Court in W.P.No.335 of 2002 dated 19.08.2009 (S.Navarathinam Vs. The Executive Engineer, Electricity Distribution, Tamil Nadu Electricity Board, Tiruchendure and two others). Relying on the judgment of the Hon'ble Supreme Court in Gujarat Urja Vikash Nigam Ltd., Vs. Essar Power Ltd., reported in (2008(4) CTC 539) and in view of the above legal position the



Supreme Court has held that the remedy for the petitioner has to file an appropriate appeal under Sections 153 and 154 of the Act, 2003 before the Special Court and the Writ petition was disposed of with liberty to the petitioner file an appropriate appeal under Sections 153 and 154 of the Act, 2003.

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9. The Hon'ble Division Bench of the Madras High Court reported in 2016 Writ L.R. 851 (cited supra) it has been held that in coming to the conclusion the Learned Single Judge has relied on the provisions of Section 185 of the Act, 2003 stipulating that any order passed under the old Act, would be construed to be an order made under the corresponding provision of the present Act. In fact the matter in issue is relying on the procedural nature as to where the appeal would lie.

10. The learned counsel for the respondents submitted that the alleged theft of electricity was committed in the service connection of the appellant herein in the year 2001 and the said impugned order was passed by the respondents / Electricity Board on 02.01.2002 before the Electricity Act, 2003 came into force and hence, Section 154 of the Electricity Act, 2003 will not apply for preferring an appeal against the order passed by the respondents herein.

11. The learned counsel appearing for the respondents also relied on the judgment of the Principal Bench of this Court in D.D.Dhorrairaj Vs. State rep.by Sub Inspector of Police, Saminathapuram Police Station, Dindigul and others reported in (2017 (4) CTC 846) in which, it was held that an offence of theft of electricity committed before enforcement of 2003 Act and the accused prosecuted for offence under Section 39, Police registering the case in 2002 under the Electricity Act, 1910 and such offences are to be tried under the machinery created under 1910 Act and also Section 6 (e) of the General Clauses Act preserves right to prosecute the offenders and determine civil liability under 1910 Act, notwithstanding repeal of such Act by Act, 2003 and Act, 2003 does not extinguish jurisdiction of Magistrates for trial of offences under 1910 Act and the plea of the accused to transfer the matter to Special Court constituted under 2003 Act is rejected.

12. Section 185(5) of Act, 2003 saves Section 6 of the General Clauses Act and there is no evidence to infer with, Act 2003 has extinguished either the jurisdiction of the Magistrates for trial of the offence or the jurisdiction of the authorities for determining the civil liability for the acts that have been taken place prior to the coming into force of the 2003 Act. From a bare reading of the aforesaid provisions of the old and new Act prosecutions under the old Act, are statutorily protected and there is no ambiguity at all to come to a different conclusion as canvassed by the learned counsel for the petitioner. On the contrary, if his submission is accepted, Section 185 (5) of the Act, 2003 would become otiose.



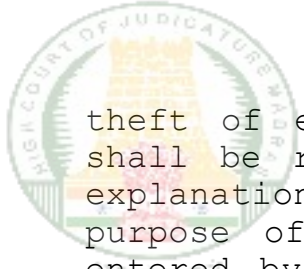
13. The learned counsel for the respondents by relying on the Judgment of the Principal Bench of this Court reported in (2017 (4) CTC 846) dated 20.07.2017 submitted that the alleged theft of energy and also the passing of the impugned order, directing the appellant to pay a sum of Rs.20,03,047/- took place before the Electricity Act, 2003 came into force and hence, the appellant is not having any right to prefer an appeal under Section 154 of the Electricity Act, 2003.

14. The crux of the contentions raised by the learned counsel appearing for the respondents is that the Special Court formed under Sections 153 and 154 of the Act, is not having jurisdiction for determining the civil liability for the act which has taken place prior to the Act, 2003 come into force.

15. As per the Electricity Act, 2003, the Special Court has been empowered not only to try the offences, but also to determine the civil liability against the consumer in respect of theft of energy. The offences under 2003 Act have to be tried only by a Special Court constituted under Section 153(1), especially, in the light of Section 154(2) of 2003 Act, which came into effect from 02.06.2003. The Special Courts under 2003 Act were constituted with the concurrence of the High Court only in 2006 by G.O.Ms.No.102, Energy(B1) Department, dated 05.10.2006.

16. A harmonious reading of Sections 151, 153 and 154 would lead to the conclusion that it is only when the State Government constitutes the Special Courts with the concurrence of the High Court, that all other Courts are denuded of the jurisdiction to try the offence it is only then that the Special Court will have exclusive jurisdiction to try the offences under the 2003 Act. Section 154(2) reads that where it appears to any court in the course of any enquiry or trial that any offence punishable under Sections 135 to 140 & 150 in respect of any offence that the case is one which is triable by a Special Court constituted under this Act, for the area in which such case has arisen, it shall transfer such cases to such special Court and that upon such case shall be tried and disposed of by such special Courts in accordance with the provisions of this Act. Proviso to Section 154(2) says that the Special Court can act on the evidence, if any, recorded by any courts before transfer of the case to any special Court and also it may re-summon any such witnesses, if required for further examination, cross-examination or re-examination, if any.

17. Rule 11 of the Electricity Rules 2005 reads that the jurisdiction of the courts other than the Special Courts shall not be barred under Sub-Section 1 of Section 154 till such time, the Special Court is constituted under Sub-section 1 of Section 153 of the Act. The Special Court constituted under the Act, 2003 has been conferred the power under Section 154(5) to determine the civil liability against the consumer or a person in terms of money for



theft of energy and the amount of civil liability so determined shall be recovered as if it were a decree of civil Court. The explanation given under Section 154(5) reads that further for the purpose of this Section "civil liability" means, loss or damage entered by the Board or licensee or the concerned persons as the case may be due to the commission of an offence referred to in Sections 135 to 140 and Section 150.

18. In this case on hand, the appellant has been charged for the offence of committing theft of energy under Section 39 by tampering the meters / seals and consumed energy illegally under the old Act of India Electricity Act, 1910 (9 of 2010) now repealed and amended as Section 135 Act of 2003, for the offence of theft of electricity, after constitution of the Special Court for trying the offences punishable under Sections 135 to 140 and 150. The criminal case pending against the appellant herein in C.C.No.32 of 2003 on the file of learned Judicial Magistrate, Tiruchendur was transferred to the Principal Sessions Court, Tuticorin, which was notified a Special Court, under the Electricity Act 2003 and the case was taken on file by the said Court, as Special Calender Case No.1 of 2011, which was dismissed by the said Special Court in its Judgment, dated 07.02.2012, acquitting the accused from the charge under Section 135 of the Electricity Act.

19. Admittedly, the appellant filed W.P.No.335 of 2002 challenging the proceedings of the first respondent, dated 02.01.2002, wherein, a demand has been made against the appellant herein by the first respondent on the ground that there was a theft of Electricity resulting in loss of amount due to the respondent.

20. This Court considered the contentions of this appellant in the writ petition filed by the appellant herein and permitted the writ petitioner / appellant herein to work out his remedy in accordance with Section 154 of the Electricity Act, by filing an appropriate application by way of an appeal before the concerned Special Court constituted under the Notification issued in accordance with Sections 153 and 154 of the Electricity Act, 2003. The respondents did not raise any objections regarding jurisdiction of the Special Court to decide the civil liability, under Section 154 of the Electricity Act, 2003 to decide the demand / assessment order, dated 02.01.2002, by way of an appeal before the notified Special Court under the Act. The respondents have not chosen to file any appeal against the findings of this Court in the said writ petition.

21. On compliance of the order of this Court passed in the above writ petition, the appellant / consumer filed the application relating to the impugned order by way of appeal before the Special Court under Section 154(5) of the Electricity Act, 2003, constituted under the Act. The counsel for the appellant would contend by relying the judgment of this Court reported in (2016 Writ LR 850) (cited supra) that similar order was passed, directing the writ



petitioner to file an appropriate appeal under Sections 153 & 154 of the Act, 2003 and such order was also confirmed in the Writ Appeal, reported in (2016 Writ LR 851), cited supra.

22. It is held in the reported cases, the remedy of the writ petitioner is to file an appropriate appeal under Sections 153 and 154 of the Act, before the Special Court. Hence, the findings of the Special Court / Court below stating that the civil liability can be fixed in criminal proceedings under Section 154(5) only it was prayed for the Electricity Board and not by a separate petition by the petitioner / appellant herein, is not sustainable in law.

23. The question of maintainability raised under Section 145 of Act, 2003 by the Court below is also not sustainable in law, since the Court below is a Special Court constituted under the Electricity Act, 2003, empowered to decide the civil liability against the consumer or a person in terms of money for theft of energy under Section 154(5) and not a civil Court to decide the issue.

24. The term used in Section 126 of the Act 'unauthorized use of electricity' which means the usage of Electricity - (I) by any artificial means, or (ii) by a means and authorized by a concerned person or authority or licensee or 3. through a tampered meter or (iv) for the purpose of other than for which the usage of Electricity was authorized or (v). for the premises or areas other than those for which the supply of Electricity was authorized.

25. In this case on hand, the appellant / consumer is charged for theft of energy by tampering the meter, which falls under unauthorized use of electricity mentioned in the above Section. Section 127 of the Act reads that, 'Any person aggrieved by a final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.

26. The Court below accepted the contention of the respondents herein relying Section 145 of the Act in which it has been stated that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in Section 126 or an Appellate Authority referred to in Section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act." and dismissed the petition filed by the appellant. Section 145 of the Act is not applicable to the facts of this case.

27. Considering the above facts and circumstances of the case, this Civil Miscellaneous Appeal is allowed by setting aside

the impugned order of dismissal, dated 19.11.2012, passed by the Special Court / Principal District and Sessions Judge, Thoothukudi in Electricity O.P.No.247 of 2009, dated 19.11.2012 and remand the matter for fresh disposal on merits and in accordance with law, after giving sufficient opportunity to both sides. The Special Court is further directed to dispose the case within three months from the date of receipt of a copy of this order and report the same to this Registry, since the said O.P., is of the year 2009. No costs.

Sd/-
Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

To

- 1.The Principal District and Session Judge
Tuticorin.
- 2.The Executive Engineer (Distribution)
Tamil Nadu Electricity Board,
Tiruchendur.
- 3.The Superintendent of Engineer,
Thoothukudi Electricity Distribution Circle,
Thoothukudi.
- 4.The Chairman,
Tamil Nadu Electricity Board,
800 Annasalai,
Chennai 600 002.

Copy to:

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1cc to M/s.M.Mohan Babu, Advocate, SR.No.63740.

Predelivery judgment made
in
C.M.A. (MD) No.229 of 2013
24.04.2018

MPK/NBJ