

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.10610 of 2011

L.Madhavan

.. Petitioner

-vs-

The Junior Engineer
Tamil Nadu Electricity Board/TANGEDCO
Rural North, Arakkonam
Vellore District

.. Respondent

Petition under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the proceedings of the respondent dated 23.12.2010 made in Ka.No.29 Pa/U/E/Arak/Ko/A No.247/2007 and as reiterated in Ka.No.E Mi./U Va/Arak/KaNo/Ke.Va.P/ dated 24.1.2011 D276 dated 25.1.2011 and quash the same.

For Petitioner :: Mr.Y.Ramanaiah

For Respondent :: Mr.M.Varun Kumar
Standing Counsel

ORDER

This writ petition has been directed against the impugned orders dated 23.12.2010 and 25.1.2011 passed against the petitioner raising a demand of Rs.1,44,797/- towards interest for the belated payment.

2. Learned counsel for the petitioner, assailing the impugned order, submitted that the petitioner is the owner of Jayam Modern Rice Mill and eking out his livelihood from the income derived from the mill. The respondent-Electricity Board extended the service connection for the supply of electricity in S.C.No.409 and the consumption of electricity was also duly recorded through the L.T.C.T. Meter and the tariff has also been charged under IIIB. Accordingly, the petitioner used to pay the current

consumption charges recorded by the respondent in the meter card. While so, all of a sudden, the respondent issued the letter dated 7.3.2009 raising a demand of Rs.1,92,614/- towards low power factor charges for the period from September, 2002 to February, 2009. Continuing his arguments, it is contended that when the said demand was raised without extending any opportunity and also without giving him any prior notice, ignoring the fact that the levy imposed against the petitioner from September 2002 to February, 2009 is barred by time, W.P.No.43642 of 2002 was filed and an interim order was also obtained. Pending the writ petition, the petitioner also approached the respondent with a request to make the payment in installments. Accordingly, the respondent, in their letter dated 26.6.2009, permitted the petitioner to make the payment in ten installments starting from 29.6.2009 to 29.3.2010 on payment of Rs.20,000/- per month upto 29.2.2010 and the final installment of the balance amount of Rs.19,647/- on 29.3.2010. The learned counsel for the petitioner also stated that the said amount was duly paid without committing any default. But, surprisingly, the respondent, in their letter dated 23.12.2010, has demanded a further sum of Rs.1,44,797/- towards interest for the belated payment. When the petitioner approached the respondent seeking for details, it was informed by the respondent in the proceedings dated 24/25.1.2011 that the levy of interest was made on the belated payment, when Regulation 5(4)(viii) of the Tamil Nadu Electricity Supply Code, 2004 clearly shows that the levy of interest on the belated payment is not permissible. Therefore, when the respondent had issued the letter dated 7.3.2009 raising a demand of Rs.1,92,614/- towards the levy of low power factor charges for the period from September, 2002 to February, 2009, writ petition was filed and an interim order was also obtained on the ground that the said proceeding was issued without prior notice. However, during the pendency of the writ petition, the petitioner, showing his bona fides, instead of enjoying the interim order granted in his favour, rightly approached the respondent seeking time to clear the entire amount by way of installments and the respondent also, accepting the genuine request made by the petitioner, granted ten installments by directing the petitioner to pay a sum of Rs.20,000/- every month for nine months and the last installment of Rs.19,647/- between 29.6.2009 and 29.3.2010. When the petitioner, without committing any single default, had paid back the entire amount, Regulation 5(4)(viii) of the Tamil Nadu Electricity Supply Code would come into operation

against the respondent. Therefore, the impugned orders are liable to go, he pleaded.

3. A counter affidavit has been filed opposing the above arguments. The learned standing counsel for the respondent submitted that as per Regulation 4(iii) of the Tamil Nadu Electricity Supply Code, every consumer shall maintain a power factor in case of LT supply 0.85 lag and in case of HT supply 0.90 lag, failing which he shall be liable to pay compensation charges by way of disincentive at such rates as the Commission may declare from time to time. Therefore, as per the tariff order T.P.No.1/2002 dated 15.3.2003, penalty was levied and it came into effect from 16.3.2003. Hence, the petitioner is bound to pay the power factor surcharge. Although the petitioner has paid the same in installments, he is still liable to pay the belated payment surcharge as per Regulation 5(4) of the Tamil Nadu Electricity Supply Code.

4. But this Court is unable to agree with the contentions made by the learned standing counsel for the respondent. The stand taken by the respondent that the case of the petitioner is covered by Regulation 5(4) of the Tamil Nadu Electricity Supply Code is far from acceptance, inasmuch as the claim of the petitioner is squarely covered by Regulation 5(4)(viii) of the Tamil Nadu Electricity Supply Code, 2004, which reads as follows:-

"5(4)(viii) In the case of short assessment permitted to be payable in installments, the surcharge shall accrue only when there is default in the payment schedule and the surcharge shall be worked out from the day following the day on which the installment fell due and shall be payable along with the amount of installment due."

5. A perusal of the above clearly shows that the petitioner, after getting an order dated 26.6.2009 permitting the petitioner to make the payment in ten installments starting from 29.6.2009 upto 29.3.2010 on payment of Rs.20,000/- every month upto 29.2.2010 and the final installment amount of Rs.19,647/- on 29.3.2010, had

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paid the entire amount without committing any default. Therefore, the impugned orders are bad. Accordingly, the impugned orders are set aside and the writ petition stands allowed. Consequently, M.P.No.2 of 2011 stands closed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

SS

To

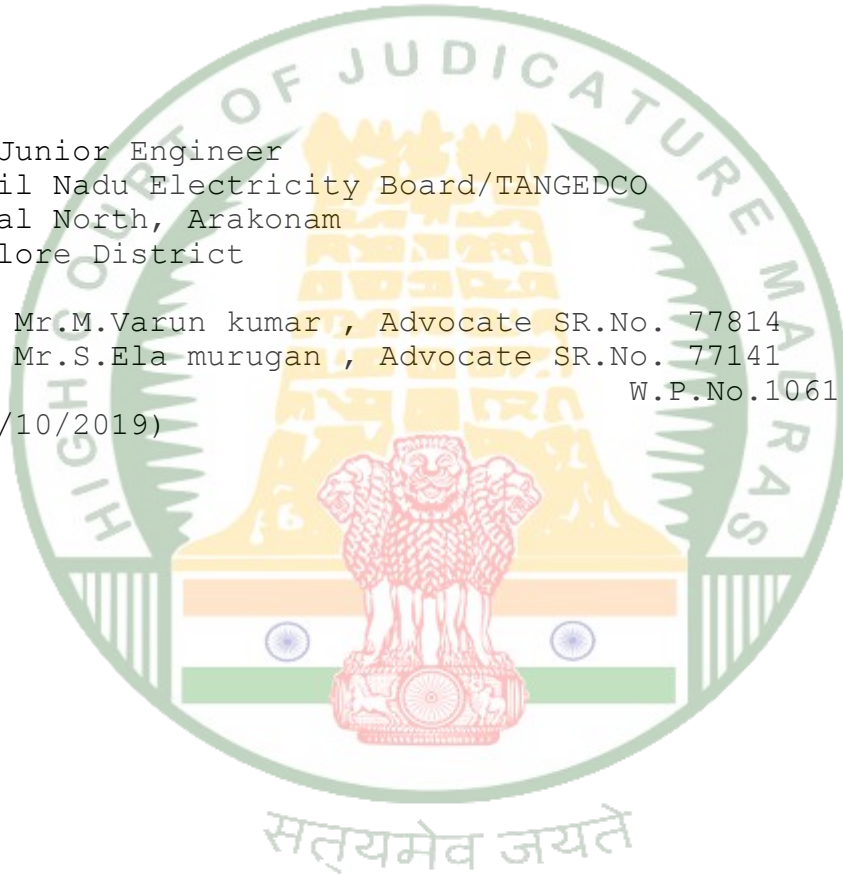
1. The Junior Engineer
Tamil Nadu Electricity Board/TANGEDCO
Rural North, Arakonam
Vellore District

+1cc to Mr.M.Varun kumar , Advocate SR.No. 77814

+1cc to Mr.S.Ela murugan , Advocate SR.No. 77141

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A.SK(17/10/2019)



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