

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.03.2019

Pronounced on : 08.03.2019

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No.12747 of 2012

O.Mangalavinayagam

...Petitioner

.Vs.

1.The Tamil Nadu Electricity
Ombudsman,
19-A, Rukmani Lakshmipathy Salai,
Egmore, Chennai - 600 008.

2.The Executive Engineer/O & M,
Chennai Electricity Distribution Circle/North,
TANGEDCO,
No.75, Paper Mills Road,
Perambur, Chennai - 600 001.

3.The Chairman/Superintending Engineer,
Chennai Electricity Distribution Circle (North),
791, Anna Salai,
Electricity Avenue,
Chennai - 600 002.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the entire records of the 1st respondent herein in his order passed in Petition No.92 of 2011, dated 09.03.2012 and quash the same as far as confirming the action of the 2nd respondent in collecting charges of Rs.1,000/- for restoration of cheque facility with regard to Petitioner's Electricity Connection in S.C.No.071-006-9 and 071-006-2600 and direct the 2nd respondent herein to refund the said sum of Rs.1,000/- to the Petitioner.

For Petitioner .. Mr.R.Ravi

For RR2 & 3 .. Mr.P.R.Dhilipkumar

ORDER

The Writ Petition had been filed by O.Mangalavinayagam, a senior citizen aged 84 years at the time of filing of the Writ Petition in the year 2012, against the Tamil Nadu Electricity 'Ombudsman', the Executive Engineer / O&M, Chennai Electricity Distribution Circle/North, and the Chairman/Superintending Engineer, Chennai Electricity Distribution Circle/North, in the nature of Certiorari, calling for the records of the first respondent with respect to his order dated 09.03.2012, in the Petition No.92 of 2011, and quash the same in so far as confirming the action of the second respondent in collecting charges of Rs.1,000/- for restoration of cheque facility with regard to the petitioner's Electricity Connection in S.C.No.071-006-09 and 071-006-2600 and direct the second respondent to refund the said sum of Rs.1,000/- to the petitioner.

2.In his affidavit, the petitioner, O.Mangalavinayagam, as stated that he had availed payment of Electricity Consumption charges through cheque for the bi-monthly current consumption. He had issued a cheque bearing No.984656, dated 03.04.2008, for Rs.500/- for the two service connections bearing No. 071-006-09 and 071-006-2600, on 03.04.2008. Even though, the account was alive, the State Bank of India, Jawahar Nagar Branch, had erroneously returned the cheque for the reason, "Account Closed". This was informed to the petitioner by the Assistant Engineer, O & M of the Electricity Board and the petitioner, to avoid further penal action was called to pay a sum of Rs.1,100/- which included Rs.600/- for banking and miscellaneous charges by 16.04.2008.

3.The petitioner claimed that he immediately paid by cash the amount demanded. The petitioner then took up the issue with his bank, and the banker also, realised their mistake and addressed the Superintendent Engineer, TNEB, on 13.08.2008 and clarified that the account of the petitioner bearing SB.No.10156202154 was alive and that the cheque was erroneously returned.

4.The respondent, however, insisted that the consumer charges should be paid by cash for three consecutive bi-monthly bills and that they would thereafter permit him to avail the facility of payment by cheque. The petitioner again complied with the said requirements.

5.The petitioner then addressed the Accounts Officer, EB Perambur, and the Superintending Engineer, CEDC, by letter dated 14.08.2008. When the bill appeared to be above normal, the petitioner was informed that it included Rs.1000/- towards charges for restoration of cheque facility. The petitioner then addressed a detailed letter on 25.06.2009, to the Tamil Nadu Electricity Regulation Commission, which was redirected to the Chairman, Consumer Grievance Redressal Forum. Since there was no further development, the petitioner gave a further representation to the first respondent on 02.04.2011.

6.The first respondent converted the representation into a common appeal and issued notice to the second respondent in Appeal Petition No.92 of 2011 on 05.04.2011. The first respondent then passed the order dated 09.03.2012, which is impugned in the present Writ Petition, rejecting the claim of the petitioner for refund of charges imposed for restoration of cheque facility by the second respondent. It is under these circumstances, that the writ petition came to be filed.

7.The second respondent filed a counter on his behalf and on behalf of the third respondent. It was stated that the writ petition was not maintainable and it was further stated that the respondents followed the Regulation as per Clause 15.3 of the Tamil Nadu Electricity Supply Code 2004. It was further stated that the remedy of the petitioner lay with the Bank for deficiency in service. It was stated that the writ petition should be dismissed.

8.Heard arguments advanced by Mr.R.Ravi, learned counsel for the writ petitioner and Mr.P.R.Dhilipkumar, learned counsel for the second and third respondents.

9.The first respondent had chosen not to participate in the judicial proceedings even though they were served on 25.05.2012.

10.The writ petitioner is a senior citizen who has come to Court agitated with the order passed by the first respondent dated 09.03.2012 in A.P.No.92 of 2011, whereby, the first respondent had negatived his claim for refund of a sum of Rs.1,000/- collected towards restoration of cheque facility on the ground that since a cheque issued by the petitioner had been dishonoured, additional service charges can be levied under Clause 15.3 of the Tamil Nadu Supply Code, 2004.

11.The writ petitioner was a retired Deputy Secretary, (Home Department), Tamil Nadu Government. He had two Electricity Service Connections bearing SC No.071-006-9 and SC.No.071-006-2600. He had availed the facility of paying electricity charges

by cheque. He had drawn a cheque bearing No.984656 on 03.04.2008 on State Bank of India, Jawahar Nagar Branch, for a sum of Rs.500/- towards the consumer charges for the two service connections. This cheque was dishonoured by the Bank on the ground "Account is closed/No such account". The petitioner then ran from pillar to post since the account was alive on that date and he had not closed it. Finally, the Branch Manager, State Bank of India, Jawahar Nagar Branch, addressed a letter to SE/CEDC (N), Tamil Nadu Electricity Board, Chennai, stating as follows:

"Dear sir,

Sub: SB Account No.10156202154 Clearing Cheque
Returned - Reg.

With reference to the above our cheque clearing centre had erroneously returned the cheque no.984656 dated 03.04.2008 for Rs.500/- issued by Mr.O.Mangala Vinayagam for the reason account closed / no such account. In this connection we have to state that the Account is live and well maintained.

Yours faithfully,
Branch Manager"

12.The above letter is self-explanatory to anybody who reads it. Unfortunately, the respondents have not understood the spirit and meaning behind the letter. They have also not appreciated the mental agony of a senior citizen who for the first time in his long long life had to encounter an issue of this nature for no fault of his. The cheque was issued in proper form. The signature was correct. The date was correct. The amount was correct. The payee's name was correct. There was no fault committed by the writ petitioner. There was sufficient balance in his account. The account was alive. However, the banker erroneously returned the cheque for the reason 'account closed', which reason is false and has been accepted by the banker to be false and not correct.

13.Even when informed of this fact, the respondents have behaved in a manner prejudicial to the interest of the petitioner. They did not accept the reason. The petitioner complied with the condition imposed to make cash payment for three bi-monthly electricity charges. Imposition of this condition itself is arbitrary exercise of power, since the respondents knew that the cheque was returned for no fault of the petitioner. The petitioner then sought for restoration of cheque facility. This was done, but charges of Rs.1,000/- was levied and collected. The respondents should realise that they should handle each case on a case by case basis and should not exercise power to the prejudice of honest citizens.

14. The order passed by the first respondent runs to more than 30 pages and most irrelevant aspects relating to criminal prosecution of dishonoured cheque, relating to "cut and paste" portions of the entire Sections 92 and 138 of the Negotiable Instruments Act, have been written. Thereafter, further "cut and paste" portions from an unknown source had also been given. After that, Rule 15.3 of the Tamil Nadu Supply Code had been extracted.

15. I hold that the first respondent had completely misdirected himself as to the nature of the grievances of the petitioner. It must be remembered that the dishonour of the cheque of the petitioner was not due to any fault on the part of the petitioner. It was an error on the part of the Bank. The petitioner cannot be mulcted with a torturous procedure as was done in this case by the respondents. To say the least, the respondents have acted with no heart. They do not seem to understand the plight of a senior citizen who has been a dutiful citizen all his life.

16. The impugned order does not convey any reason for imposing the charges of Rs.1,000/- on the petitioner. The fundamental aspect was that the cheque had been dishonoured owing to the negligence by the Bank. This had not at all been discussed in the order. The order had been passed without any application of mind and without appreciating the fact and circumstances of this particular case. Needless to point out, the order does not stand the scrutiny of this Court.

17. This Court places its deep appreciation for the efforts taken by the petitioner to restore his uprightness and also in questioning an illegal and unlawful action on the part of the respondents.

18. Rule 15.3 of Tamil Nadu Electricity Supply Code 2004, gives the right to any consumer to pay the amount by cheque and even though it is mentioned that if a cheque is dishonoured "for any reason whatsoever", the first respondent must examine the facts of each case to determine whether dishonour of the cheque was due to the act of the petitioner or due to the negligence of the Bank outside the control of the petitioner. The expression "for any reason whatsoever" can only mean, dishonour of a cheque for a reason for which the drawer of the cheque is at fault. The negligence by a banker can never be implied to be included in this phrase.

19. I hold that the first respondent had seriously erred in passing the impugned order and consequently, the impugned order of the first respondent dated 09.03.2012 in A.P.No.92 of 2011 is

set aside. The Writ Petition is allowed and the respondents are directed to refund the sum of Rs.1,000/- collected from the petitioner herein within a period of four weeks from this date. No costs.

smv

Sd/-
Deputy Registrar(C.S.)

//True Copy//

Sub Assistant Registrar

To

1.The Tamil Nadu Electricity
Ombudsman,
19-A, Rukmani Lakshmipathy Salai,
Egmore, Chennai - 600 008.

2.The Executive Engineer/O & M,
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3.The Chairman/Superintending Engineer,
Chennai Electricity Distribution Circle (North),
791, Anna Salai,
Electricity Avenue,
Chennai - 600 002.

+1cc to Mr.R.Ravi, Advocate, S.R.No.22446/19

सत्यमेव जयते

W.P.No.12747 of 2012

BR(CO)
Kak(02/04/2019)

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