

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.7912 of 2002

M/s.S.S.R.Mills

Rep. by its Partner L.B.S. Yadav (Died)

22-A, Alappakkam Road

Maduravoyal, Chennai 602 102

2.Dhiraji Devi

3.Satyanarayan Yadav

(P2 & 3 are substituted as LRs of the deceased

P1 vide court order dt. 23.11.2018, made in

W.M.P.No.36071/18 in W.P.7912/02 by SMSJ)

...Petitioners

Vs.

1.The Chief Engineer (Distribution)

800 Anna Salai

Chennai 600 002

2.The Superintending Engineer

CEDC /West/AEE/G1

Ambattur Division

Chennai 600 053

3.The Executive Engineer / O & M

Anna Nagar Division / CEDC/West

Chennai 600 040

... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records from the 2nd respondent relating to Lr.No.SE/CEDE/ W/GI/AEE/AE2/F S.S.R.Mills Ltd.,/ D2028/01 dt. 15.11.2001 in respect of service connection No.LTAC/166/78/19 and quash the same and direct the respondents to consider the letter of the Superintending Engineer regarding the consumption patterns for the period 31.12.1997 to 27.02.1999 and to pass fresh assessment order on the material furnished and also to direct the respondents not to disconnet the service

connection bearing No.LT.No.A/c.166/78/19 to S.S.R.Mills, 220A, Alapakkam Road, Maduravoyal, Chennai.

For Petitioners : Mr.M.Gnanasekar

For Respondents : Mr.P.R.Dhilip Kumar (TNEB)

O R D E R

The writ petition has been filed by the petitioner for issuance of a writ of Certiorarified Mandamus, to call for the records from the 2nd respondent relating to Lr.No.SE/CEDE/W/GI/AEE/AE2/F S.S.R.Mills Ltd.,/ D2028/01 dt. 15.11.2001 in respect of service connection No.LTAC/166/78/19 and quash the same and direct the respondents to consider the letter of the Superintending Engineer regarding the consumption patterns for the period 31.12.1997 to 27.02.1999 and to pass fresh assessment order on the material furnished and also to direct the respondents not to disconnet the service connection bearing No.LT.No.A/c.166/78/19 to S.S.R.Mills, 220A, Alapakkam Road, Maduravoyal, Chennai.

2.The case of the petitioner is that the petitioner is running a Mill in the name of S.S.R.Mills for the past 12 years without any blemish dealing with steel rolling by purchasing scrap iron from outside. The said mill is registered with the TNGST, Central Sales Tax, Excise and with the Small Scale Industries. The petitioner's mill was supplied with electricity power vide Account No.166:178:19 Low Tension by the TNEB for the factory since 1998. The MRI, Ambattur replaced the meter for the above supply on March 1998. The replacement was done by the Electricity Board without any request from the Consumer. As per the Rules, the specimen of the seals affixed on the meter box has to be stated in the consumer card maintained by the consumer and the signature of the representative of the consumer has to be obtained. Further, in the present case, the Electricity Board has arrived to a conclusion that the petitioner's mill had committed the theft of energy, however, no criminal case filed as against the petitioner and have only initiated proceedings and claimed a compensation under the civil liability. Therefore, the Original Authority passed the provisional assessment order in terms of the Old Act 48 of Indian Electricity Act, 1910. Challenging the said Assessment Order, the petitioner is before this Court.

3.The learned counsel appearing for the petitioner would submit that the respondent Board without conducting enquiry in respect of the theft of energy, the mill was shut down from 21.03.1998 to 30.12.1998. Further, the Original Authority

arrived to a conclusion without Industrial Dispute records that the theft of energy has been committed and approved the closure of mill and directed the petitioner to pay the compensation amount. Immediately, the petitioner paid some portion of amount i.e. Rs.5,63,000/-. The learned counsel would further submit on instructions that he is ready to deposit the balance amount and reasonable time may be granted to the petitioner to deposit the same without any BPSC and penal interest.

4.The learned counsel appearing for the respondent Board admitted the fact that the petitioner has paid some portion of the amount and this court may pass appropriate orders.

5.The said issue has been squarely covered by the decision of the Division Bench of this Court in batch of cases in W.A.Nos.1808, 1811 of 2009, W.P.Nos.29882 of 2004 and 3013 of 2014 and W.P.No.(MD) Nos.2360 and 2361 Of 2008, as follows:

28.It was also stated that Section 185 of the Act, 2003 cannot come to the rescue of the Electricity Board, as the action has been initiated only after the Act, 2003 came into existence and no proceedings initiated under the Old provisions / Repealed Act cannot be continued. Further, the Board cannot initiate proceedings under Clause 8.01 and 8.02 of the Terms and Conditions of Supply of Electricity (Electricity Supply Act 1948) with regard to theft of energy, as those clauses are no longer in vogue as on the date of initiation of proceedings, the Old Act got repealed and the Act 2003 had come into force. Clause 8.01 and 8.02 of the Terms and Conditions of Supply of Electricity (Electricity Supply Act 1948) in the repealed Act reads as follows:

8.00 Theft of Energy and Extra Levy:

8.01 Any consumer who dishonestly abstracts or uses energy shall be deemed to have committed theft within the meaning of Indian Electricity Act, 1910 as amended by the Tamil Nadu Government and the Indian Penal Code and the existence of artificial means for such abstractions shall be prima facie evidence of such dishonest abstraction. Illegal restoration of supply to a disconnected service connection will fail under this category.

8.02 Extra levy for theft of energy by tampering of meters / meter seals will be made at the rates given below:

(a) for a period of twelve months; or

(b) for a period from the date of prior inspection if any by the APTS or MRT wing to the date of detection; or

(c) for a period from the date of replacement of meter to the date of detection; or

(d) for a period from the date of service connection to the date of detection whichever period of the above is less.

For other cases of theft of energy, the extra levy will be made for a period of twelve months or from the date of service connection to the date of detection whichever period is less at the same rates given below:

(i) For Energy:

(a) Low Tension Service Connection : Highest Low Tension tariff rate x 3: The charges arrived at will be rounded off to the next higher rupees.

(b) High Tension Service Connection:

Highest High Tension Tariff rate x 4 the charges arrived at will be rounded off to the next higher rupee

(ii) For maximum demand: (In High Tension Service Connection):

Highest High Tension tariff rate for maximum demand x 4.

Extra levy for illegal restoration of supply to a disconnected service connection will be made for a period of twelve months, immediately preceding the date of detection of the violation or for the period from the date of disconnection of the service connection to the date of detection of the illegal restoration, whichever period is less, at the rates given above.."

29. The above submission made by the learned Senior Counsel for the petitioners cannot be accepted, because once there is a saving clause provided under the New Act, then there is no impediment or bar for the Department to proceed under the Old Act in the absence of proof that it is inconsistent with the provisions of the Act, 2003. More so, quoting a wrong provision of the Act will not entitle a wrong doer to escape from the clutches of law, especially when Section 126 of the Act, 2003 extends power to the Department / Board / Authorities to ensure that the electricity consumed unauthorisedly is calculated and necessary charges are paid by the defaulter. In the decision, Hitech Mineral Industries (P) Ltd., Salem V. TNERC, Chennai, reported in 2010 (3) MLJ 697, it is inter alia, observed that the persons who steal energy or use energy unauthorisedly have to be punished.

6. In view of the decision held by the Division Bench of this Court and also considering that the petitioner has accepted the Provisional Assessment Order and they have also paid substantial amount to the tune of Rs.5,63,000/- and agreed to pay the remaining amount without BPSC and penal interest, this Court is inclined to direct the petitioner to deposit the entire due after adjusting the amount already paid by him within a period of six weeks from the date of receipt of a copy of this order.

7. With the above direction, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition if any is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Chief Engineer (Distribution),
800 Anna Salai,
Chennai 600 002.

2. The Superintending Engineer,
CEDC /West/AEE/G1,
Ambattur Division,
Chennai 600 053.

3. The Executive Engineer / O & M,
Anna Nagar Division / CEDC/West,
Chennai 600 040.

+1cc to Mr.P.R.Dhilip kumar, Advocate Sr.53281

+1cc to Mr.M.Gnanasekar, Advocate Sr.53693

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srg 24/07/2019