

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.08.2019

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.15638 of 2011

and

M.P.No.1 and 2 of 2011

Sri Vidhya Academy
International Residential School,
A Unit of Vidhya Educational Trust,
School at Chokanallur, Pattabiram Road,
Kolappanchery,
Chennai 600 072 rep.by its Chairman
Mr.Nanjil R Kennedy

... Petitioner

..Vs..

The Assistant Executive Engineer,
O & M/CEDC/South
Avadi Road,
TANGEDCO
Poonamallee,
Chennai 600 056.

... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records in respect of the impugned order of the respondent in his proceedings in Lr.No.AEE/O & M/PML/F-APTS1033/2011-2012 dt.23.06.2011 and quash the same.

For Petitioner : Mr.A.Thirumurugan

For Respondent : Mr.S.K.Rameswar
Standing Counsel

ORDER

The learned counsel appearing for the petitioner would submit that the petitioner is the reputed Educational Institution and the law abiding citizen and as per the alleged inspection, the petitioner was forced to pay the compounding fee, as if the petitioner Institution committed the theft of electricity. To avoid disconnection, the petitioner has paid 50% of compounding fee. However without affording any opportunity to defend their case, the respondent has passed the impugned order dated 23.06.2011 and hence it is unsustainable.

2. He would further submit that the Division Bench of this court has passed an order in similar writ petitions to proceed with the civil liability. Hence, the counsel on instructions would submit that the petitioner may be permitted to deposit the remaining amount without any BPSC charges and penal interest and requests this Court to grant some reasonable time to deposit the same.

3.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.

4.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has been initiated only after the Act, 2003 came into existence and no proceedings initiated under the Old provisions / Repealed Act cannot be continued.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 vague as on the date of initiation of proceedings, the Old Act got repealed and the Act 2003 had came 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 x3: 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.

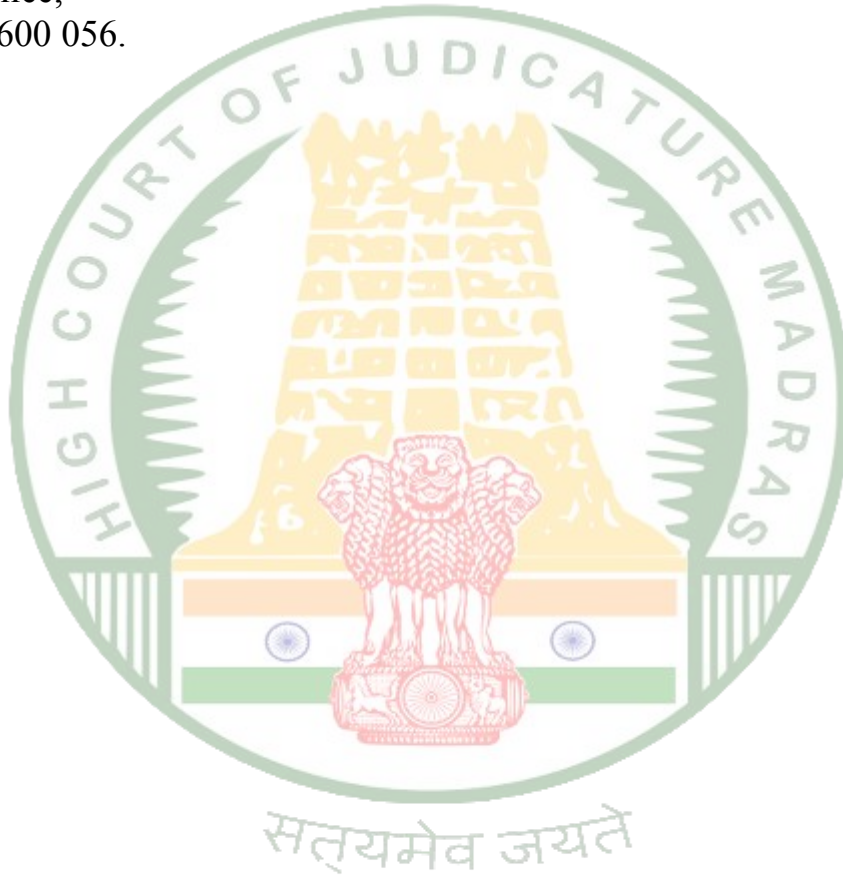
5. In view of the decision held by the Division Bench of this Court and also considering that the petitioner has accepted the Provisional Assessment Order and they have also paid substantial amount towards compounding fee and agreed to pay the remaining amount without BPSC and penal interest, this Court is inclined to direct the petitioner to deposit the entire due without BPSC and penal interest 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.

6. With the above direction, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

16.08.2019

Index : Yes / No
Internet : Yes / No
sk

To
The Assistant Executive Engineer,
O & M/CEDC/South
Avadi Road,
TANGEDCO
Poonamallee,
Chennai 600 056.



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M.DHANDAPANI, J.



W.P.No.15638 of 2011

21.08.2019

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W.P.No.15638 of 2011 & W.P.Nos.1 and 2 of 2019**M.DHANDAPANI,J.**

Today, the above writ petition is listed under the caption 'for being mentioned', at the instance of the learned counsel appearing for the petitioner.

2. The learned counsel for the petitioner submitted that the petitioner is the reputed Educational Institution and the law abiding citizen and as per the alleged inspection, the petitioner was forced to pay the compounding fee as if the petitioner Institution committed the theft of electricity. To avoid disconnection, the petitioner has paid 50% of compounding fee. However, without affording an opportunity to defend their case, the respondent has passed the impugned order dated 23.06.2011, which is unsustainable. He further submitted that the petitioner on protest has paid the compound fee and therefore, para-2 in the order dated 16.08.2019 may be deleted.

3. In view of the above submissions made by the learned

counsel for the petitioner, para-2 of the order of this Court dated 16.08.2019 made in W.P.No.15638 of 2011 is hereby deleted. In view of deletion of para-2, para-3 has to be read as para-2 and the Registry is directed to put paragraph numbers in order.

4. The following paragraph should be typed before para-4 i.e. before 'The said issue..' in the order dated 16.08.2019 (now para-3):

"3. Considering the facts and circumstances of the case, the petitioner Institution has admitted their guilt and paid the compound fee without any protest. Though the petitioner has admitted their guilt and paid the compound fee, thereafter, they turned up to say that they were forced to pay the compound fee. However, if the petitioner is having any grievance as if they were forced to pay the compound fee, the petitioner can file an appropriate petition before the concerned authority. However, till date, the petitioner has not challenged the criminal case. Therefore, argument advanced by the learned counsel for the petitioner is not substantiated."

The remaining paragraphs in the order dated 16.08.2019 shall stand unaltered.

27.09.2019

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Note:

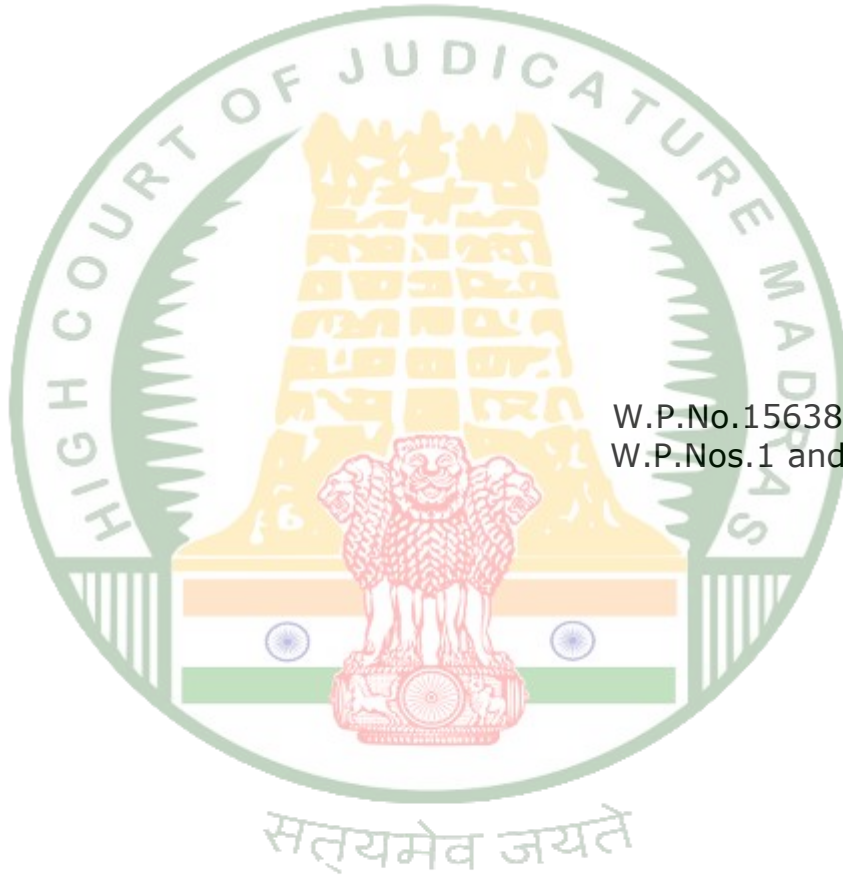
Registry is directed to carry out the above corrections in the order dated 16.08.2019 and issue fresh order copy.



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M.DHANDAPANI,J.

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27.09.2019