

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2019

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.1579 of 2012
& MP.No.1 of 2012

S.M.Arumugam Polytechnic College,
rep. by its Chairman,
S.M.A.Venkatesan,
Adhiyamaan Bye Pass Road, Dharmapuri-5

.. Petitioner

Vs.

1.The Executive Engineer(O & M),
Tamil Nadu Electricity Board,
Adhiyamaankottai, Dharmapuri District.

2.The Assistant Executive Engineer(O&M),
Tamil Nadu Electricity Board,
Adhiyamaankottai, Dharmapuri District.

3.The Junior Engineer,
Tamil Nadu Electricity Board,
Adhiyamaankottai,
Ilakkiyampatti-Vennampatti Distribution,
Dharmapuri District

... Respondents

Petition filed under Article 226 of The Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order dated 31.12.2011, signed on 02.01.2012 in Letter No.Se.Po/EP/KO/AP.DS/No.779/2011 passed by the first respondent and consequently, direct the respondents to refund the amount of Rs.38,606/- paid by the petitioner based on the conditional order passed by this Court in WP.No.11920 of 2010 within the stipulated time.

For Petitioner .. Mr.V.Thillaisamy
For Respondents .. Mr.Varunkumar

ORDER

This writ petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order dated 31.12.2011, signed on 02.01.2012 in Letter No.Se.Po/EP/KO/AP.DS/No.779/2011 passed by the first respondent and consequently, direct the respondents to re-fund the amount of Rs.38,606/- paid by the petitioner based on the conditional order passed by this Court in WP.No.11920 of 2010 within the stipulated time.

2.The petitioner college has got an electricity connection bearing Connection NO.2725/IIB. On 02.06.2010, the Assistant Executive Engineer, Enforcement/Vigilance, TNEB, Dharmapuri inspected the premises and allegedly found that the petitioner college misused the connection for non-college purpose and made a demand to pay a sum of Rs.10000/- to compound the issue and under compelled circumstances, the petitioner paid Rs.10000/- vide Bill No.719958 dated 02.06.2010. According to the petitioner, it was not indulged in mis-use of electricity connection for non-college purpose. However, on 03.06.2010, the third respondent disconnected the electricity connection. The petitioner made a request on 04.06.2010, to restore the connection. On 05.06.2010, the second respondent issued a notice dated 03.06.2010, alleging that electricity connection was misused for the purpose of construction work and thereby the petitioner violated Rule 135(1)(c) of Indian Electricity Act and the Rules of Electricity Distribution Code and thereafter, the second respondent assessed loss at Rs.1,21,087/- as additional charges for consumption of electricity. Thereafter, the petitioner, challenging the notice dated 03.06.2010, filed a writ petition in WP.No.11920 of 2010 before this Court wherein, an interim order was passed by this Court on 08.06.2010, directing restoration of electricity connection subject to payment of 25% of the demand. Subsequently, the said order was complied with by the petitioner. Whileso, the first respondent by order dated 31.12.2011 confirmed the liability of the petitioner to pay a sum of Rs.1,21,087/- and directed the petitioner to pay the same after deducting the amount already paid by the petitioner. Aggrieved by the same, the petitioner has filed the present writ petition.

3.The learned counsel appearing for the petitioner would submit that the matter related to the theft of electricity. At the time of identifying the theft, the authorities initiated proceedings under Section 135 of the Act and proceeded with the civil liability by imposing penalty and in the mean time, the

Respondent Board also registered a criminal case. The petitioner paid the compounding fee of Rs.10,000/- Subsequently, 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.

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 unauthorizedly 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.10,000/- 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 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Executive Engineer (O & M),
Tamil Nadu Electricity Board,
Adhiyamaankottai, Dharmapuri District.
2. The Assistant Executive Engineer (O&M),
Tamil Nadu Electricity Board,
Adhiyamaankottai, Dharmapuri District.
3. The Junior Engineer,
Tamil Nadu Electricity Board,
Adhiyamaankottai,
Ilakkiyampatti-Vennampatti Distribution,
Dharmapuri District

+1 cc to M/s. Varunkumar, Advocate Sr.No. 80347
+1 cc to Mr. Thillaisamy, Advocate Sr.No. 80835

AKM/28.11.19/5P-6C /

W.P.No.1579 of 2012