



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :10.06.2019

CORAM
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.18476 of 2007

D.Ravichandran

..Petitioner

Vs

1.Tamil Nadu Electricity Board,
Rep. by its Chairman,
Electricity Consumer Re-dressal Forum,
Erode Electricity Distribution Circle,
No.948, EVN - Road,
Erode - 638 009.

2.The Superintending Engineer,
Erode Electricity Distribution Circle,
No.948, EVN - Road,
Tamil Nadu Electricity Board,
Erode - 638 009.

3.The Executive Engineer,
Erode-Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Erode - 638 009.

4.The Junior Engineer, (Town),
Erode-Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Erode - 638 009.

.. Respondents

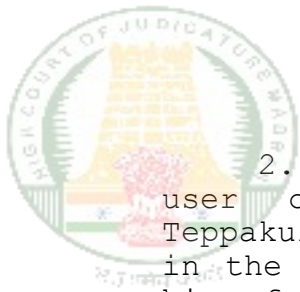
Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for records relating to the impugned proceedings of the first respondent in Ka.No.vu.Se Po / valarchie / va vu / ko. Mi.nu.ku.ma / No.326/07, dated 30.04.2007, quash the same.

For Petitioner : Mr.D.Balachandran

For Respondents : Mr.P.R.Dhilipkumar

O R D E R

The prayer sought for herein in this Writ Petition is for issuance of a Writ of Certiorari, to call for records relating to the impugned proceedings of the 1st respondent in Ka.No.vu.Se Po/ valarchie/ va vu/ ko. Mi.nu.ku.ma/No. 326/07, dated 30.04.2007 and quash the same.



2. The case of the petitioner is that the petitioner is an user of the electricity service connection number: 25, Teppakulam Distribution, Erode. The said service connection is in the name of the petitioner's father and after the demise of his father, the petitioner is enjoying the said service connection and he has paid the consumption charges and all the charges regularly that are to be paid to the Tamil Nadu Electricity Board. The petitioner had fixed (L & T) meter on 27.02.2004, as per the direction of the 4th respondent and thereafter, in order to maintain the power factor, the petitioner was directed to fix a capacitor (12KB), and the same was duly affixed by the petitioner. However, on 15.07.2004, the Additional Divisional Engineer (ADE) and the 4th respondent herein had inspected the meter and the capacitor and had signed for approval and thereafter, the respondent Tamil Nadu Electricity Board was regularly assessing the consumption as per the meter reading and the petitioner had also promptly paid the amount raised in the bill.

3. However, on 29.12.2005, the 4th respondent herein had raised the penalty for the first time, in the bill and the same was waived by the third respondent. On 25.01.2007, the petitioner had received a communication from the Junior Engineer, the 4th respondent herein demanding a sum of Rs. 1,21,246/- as penalty for the period from June 2004 to December 2005, for not maintaining the low power factor. Challenging the same, this writ petition is filed.

4. The learned counsel appearing for the respondents would submit that the above issue has been already settled before this Court in W.P.Nos. 7988 of 2001, 7989 of 2001 etc. in the case of Solaiyappa Sami Modern Rice Mills Rep By its Proprietor R.Balakrishnan and The Superintending Engineer, CEDC/West Anna Nagar, Tamil Nadu Electricity Board, Chennai and others, wherein, the learned Judge has observed inter alia as under:

" The contention to the effect that the provisions contained in the Electricity Act and the Electricity Supply Act do not contemplate any such imposition is untenable as the Regulatory Commission is empowered to go into all the relevant factors to fix the tariff. Therefore, the contention to the effect that there is no authority either to levy low power factor penalty does not appear to be sustainable.

It is contended on behalf of some of the petitioners that it is impossible to maintain the power factor as indicated by the Government/Regulatory Commission. It is



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obvious that the Government has taken a decision on the basis of the advice of experts. Similarly, subsequent decision taken by the Regulatory Commission, which includes experts in the filed, is also apparently on the basis of the opinion of the experts. It is difficult for a writ court to come to any conclusion different from the experts, unless specific materials are put-forth before the Court. Since the Regulatory Commission is empowered to consider the matter as an on-going process, it would be always open to the petitioners to bring these aspects to the notice of the Regulatory Commission during its future deliberations and it goes without saying that all the relevant aspects should be taken into consideration by the Regulatory Commission in future and if necessary instructions can be issued modifying the parameters.

A contention was raised that no penalty can be levied as there is no wilful violation by the consumer. According to the learned counsel for the Tamil Nadu Electricity Board the maintaining of the power factor at higher levels is itself an incentive as it benefits the consumers in terms of a stable voltage operation and reduces the chances of damage to consumers equipment due to fluctuations and moreover it also leads to cost saving to the consumers through a lower energy charge. On the other hand, the Tamil Nadu Electricity Board is required to put up capacitor banks and other infrastructure services to correct the low power factor in the system. Hence, there is justification to charge suitable amount from the consumer, which is more or less compensatory in nature, though described at times as power factor penalty. In my considered opinion, such submission made by the learned counsel for the Board is acceptable and even though at times such imposition is described as penalty, it is apparent that the amount demanded by the authorities is only compensatory and should not be considered as penalty in the normal sense such penalty is understood.

For the aforesaid reasons, the general contentions in the writ petitions cannot be



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accepted. However, it is clarified that if there has been any specific complaint/representation by any of the consumer regarding defect in the electronic meter, at any point of time, obviously, such complaint is required to be considered by the appropriate authority. But, assuming that there has been some defect in some meters, for that reason the power to levy low power factor penalty cannot be denied. An individual grievance if any can be considered by the appropriate authority in accordance with law by raising appropriate dispute.

Therefore, while upholding the right to levy low power factor penalty, the writ petitions are disposed of with the observation that if there has been or is any individual grievance, such individual grievance is required to be considered, in accordance with law."

5. On a perusal of the above decision, this Court is of the opinion that the present Writ Petition is covered by the above said decision and therefore, this writ petition is also disposed of, on the same terms of the above decision. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

kmm

To

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+lcc to Mr.D.Balachandran, Advocate, S.R.No.46706

W.P.No.18476 of 2007

MP (CO)

RRS (02/08/2019)

RRS (27/08/2019)