

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.24966 of 2003

Devakiammal

...Petitioner

Vs.

1.The Chairman
Tamilnadu Electricity Board
Anna Salai
Chennai 600 002.

2.The Superintending Engineer
Energy Distribution (Chennai (North)
Tamil Nadu Electricity Board
Anna Salai
Chennai -2.

3.The Executive Engineer
Operations and Maintenance
Vyasarpadi CEDC, North
Chennai 600 039.

4.The Assistant Executive Engineer
Operations and Maintenance
CEDC / North, Madhavaram
Chennai 600 060.

... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records of the second respondent in Letter No.SE/CEDC/North/A.E.E./ GENERAL/DMI/F.T.O.E./D 1213 and quash his order dated 29.05.2003 confirming the order dated 12.05.2001 passed by the 3rd respondent in Letter No.EE/O&M/VPO/AE.CAUP/R46/F.Chairman's Squad/ D1290/01.

For Petitioner : Mr.V.Sairam

For Respondents: Mr.P.R.Dhilipkumar

O R D E R

The petitioner has filed this Writ Petition, to issue a writ of Certiorari, to call for the records of the second respondent in Letter No.SE/CEDC/North/A.E.E./ GENERAL/DMI/F.T.O.E./D 1213 and quash his order dated 29.05.2003 confirming the order dated 12.05.2001 passed by the 3rd respondent in Letter No.EE/O&M/VPO/AE.CAUP /R46/F.Chairman's Squad/ D1290/01.

2.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, show cause notice was issued to the petitioner by the 4th respondent, alleging seals and the Meter Caver was opened and the energy recorded was reduced and thereafter counterfeit seals were affixed and the authorities initiated proceedings under Section 135 of the Act and proceeded with the civil liability by imposing penalty of Rs.5,89,625/-. The petitioner was directed to pay the same in equal monthly instalments. Due to non payment of instalments, the service connection was disconnected. Hence, the petitioner filed petitions in W.P.No.11095 of 2001 and W.P.No.16061 of 2001 to restore the Electricity Connection. Hence, this Court directed the petitioner to pay 40% of the demanded amount to restore the connection. Hence, the petitioner paid a sum of Rs.2,35,850/- and the electricity connection was restored. 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 and her legal heirs shall be permitted to deposit the remaining amount of Rs.3,53,775/- 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 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 if 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 and her legal heirs have accepted the Provisional Assessment Order and they have also paid substantial amount to the tune of Rs.2,35,850/- being 40% of the assessment amount and agreed to pay the remaining amount without BPSC and penal interest, this Court is inclined to direct the petitioner and her legal heirs to deposit the remaining due amount of Rs.3,53,775/- without BPSC and Penal interest after adjusting the amount already paid by them within a period of eight 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 petition if any is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Chairman
Tamilnadu Electricity Board
Anna Salai
Chennai 600 002.

2.The Superintending Engineer
Energy Distribution (Chennai (North)
Tamil Nadu Electricity Board
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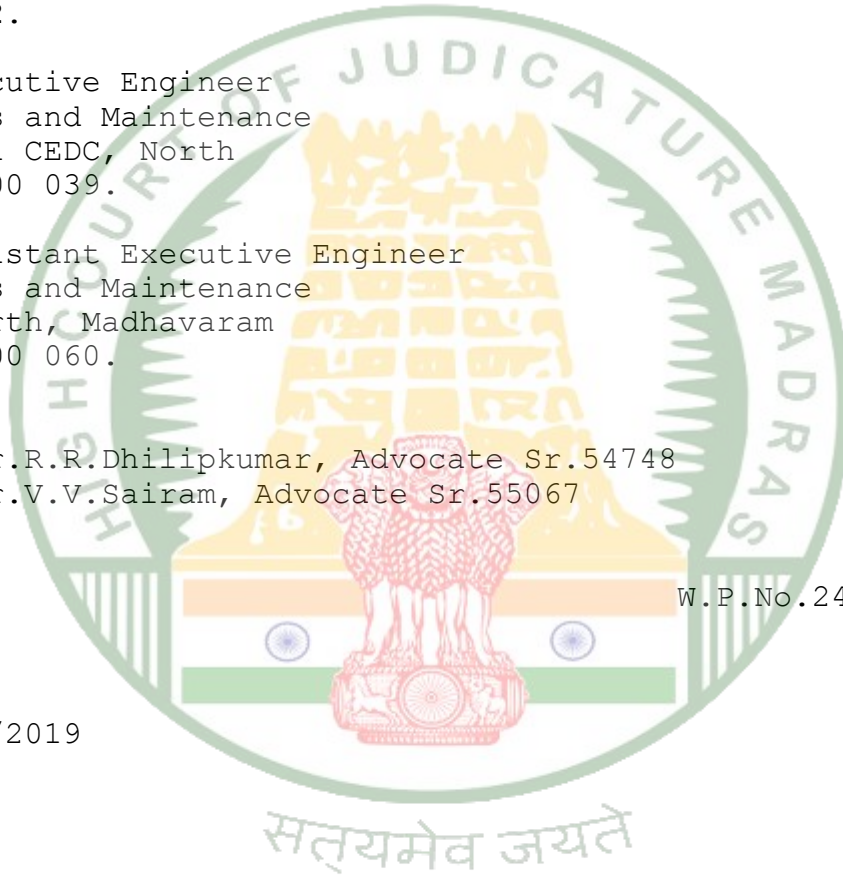
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+1cc to Mr.R.R.Dhilipkumar, Advocate Sr.54748
+1cc to Mr.V.V.Sairam, Advocate Sr.55067

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