

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.15915 of 2008

P.Rajaram

...Petitioner

Vs.

1.The Superintending Engineer
Tamil Nadu Electricity Board
Olimmohammedpet
Kancheepuram

2.The Junior Engineer
Tamilnadu Electricity Board
Vishnu Kanchi
Kancheepuram

... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call records of the second respondent in Lr.No.JE/O &M/VishnuKanchi/KOT/Lr.No.100/08 dated 23.06.2008 and quash the same.

For Petitioner : Mr.C.S.Krishnamoorthy
For Respondents : Mr.S.K.Rameshwar

O R D E R

The petitioner filed this Writ Petition, to to issue a writ of Certiorari, to call records of the second respondent in Lr.No.JE/O &M/VishnuKanchi/KOT/Lr.No.100/08 dated 23.06.2008 and quash the same.

2.The brief facts of the case is that the petitioner is running a textiles shop at Kancheepuram. The service connection No.351 comes under the category of low tension service. The petitioner was paying the consumption and other charges regularly to the respondent without any default. On 28.06.2001 there was inspection by the officials of Electricity Board and they alleged pilferage of electricity. The main allegation being that the MRT seals has been loosened, there is a gap between upper and lower part of the meter thereby there are possibilities in "thieving the energy". Hence, a show cause

notice was issued on 27.11.2003 and an assessment order was passed on 22.09.2004 by the Executive Engineer, TNEB, Kancheepuram. Aggrieved by the said assessment order, the petitioner preferred an appeal before the Appellate Authority on 11.01.2005. Long after the enactment of Electricity Act 2003, it came into force from 10.06.2003. The Appellate Authority mechanically confirmed the assessment order passed by the Executive Engineer. Out of the total assessment amount of Rs.3,62,004/-, the petitioner paid Rs.1,01,364/- towards compliance. Thereafter, the petitioner challenged the above said confirmation assessment order by filing a writ petition in W.P.No.3969 of 2005. One of the preliminary objections being that the Authorities ought to have followed the new Electricity Act, 2003. The new Act repealed the earlier Acts namely Electricity (Supply) Act, 1948 and Electricity Act, 1910 and there is no saving clause in the new Act. Apart from the above, the respondents have also registered a criminal case against the petitioner in Crime No.443/2001. The said criminal case was ended in acquittal and no appeal has been preferred against the acquittal. In the meanwhile, the writ petition in W.P.No.3969 of 2005 has been allowed on 19.03.2005 and this Court directed the respondent to proceed under Section 126(5) & (6) of the Electricity Act, 2003. Aggrieved by the above said order, the respondent preferred a Writ Appeal in W.A.No.1736 of 2005. When that being so, the 2nd respondent issued a letter dated 23.06.2008, directing the petitioner to pay the balance assessment amount of Rs.2,60,640/- with belated surcharge within 15 days, failing which, the supply would be disconnected, challenging the same, the present writ petition has been filed.

3.The learned counsel for the petitioner would submit that this Court while entertaining this petition, granted interim stay on condition to pay a sum of Rs.1,00,000/-. The petitioner also complied with the order of this Court and paid a sum of Rs.1,00,000/-. The balance is only Rs.1,60,639/- and subsequently the Division Bench of this court has passed an order in similar writ petitions to proceed with the civil liability. Hence, this Court shall permit the petitioner to pay the balance amount of Rs.1,60,639/- without belated surcharge charges and without any penalty and requests this Court to grant some reasonable time to deposit the same.

4.Considering the limited request made by the learned counsel for the petitioner and also considering the fact that the same issue has also 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 fall 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 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 unauthorizedly have to be punished.

5.In view of the above decision held by the Division Bench of this Court in batch cases, this Court is inclined to direct the petitioner to pay the balance amount of Rs.1,60,639/- without belated surcharge and penalty 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 petition if any is closed.

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Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

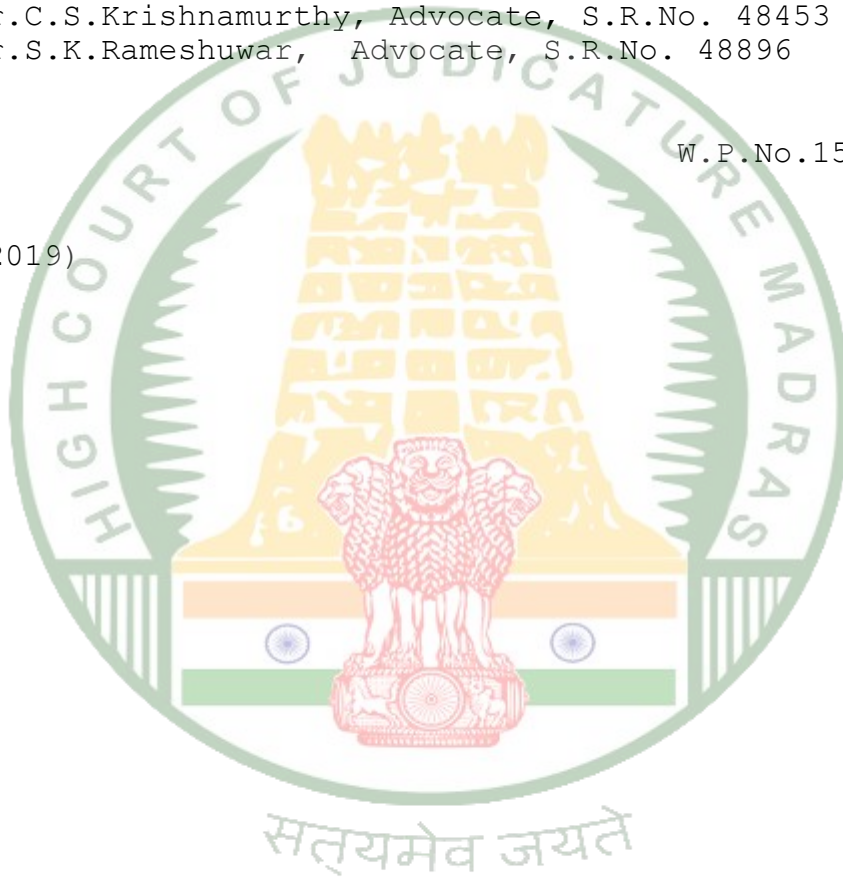
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+1cc to Mr.C.S.Krishnamurthy, Advocate, S.R.No. 48453
+1cc to Mr.S.K.Rameshuwar, Advocate, S.R.No. 48896

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NRJK (CO)
GN (23/07/2019)



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