

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2019

CORAM

THE HON'BLE Mr. JUSTICE M.DHANDAPANI

W.P.No.12380 of 2004
W.P.M.P.No.14469 of 2004

M.Deivendran

...Petitioner

vs

1. The Executive Engineer/O&M
MEDC/South/TNEB,
Tambaram,
Chennai 600 045.

2. The Assistant Executive
Engineer/O&M/
Tambaram Sub Division,
CEDC/South,
Tambaram, Chennai.600 045.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the Executive Engineer/O&M, Tambaram, the first respondent herein made in his office Letter No.EE/TBM/AE/R-46/F/D10/D.CAMP/04 dated 08.04.2004 quash the same and forbear the respondents herein from proceeding further in the matter and direct the respondents herein to refund the amount recovered from the petitioner.

For Petitioner : Mr.K.Raj Kumar

For Respondents : Mr.S.K.Rameshwar
for R1 and R2.

O R D E R

The case of the petitioner is that he is a consumer of Electrical Energy in S.C.No.250/456/99 TF V. In respect of his shopping premises, he has been issued with an assessment order for the violation of clause 8.05 of Schedule I of terms and conditions of supply of electricity, without affording sufficient opportunity as contemplated under rules. The petitioner has already paid a sum of Rs.10,235/- on 08.04.2003

being the first installment on compulsion, apart from the compounding amount of Rs.49,924/-.

2. The petitioner has stated in the affidavit that the Assistant Executive Engineer Tambaram Sub Division issued a show cause notice on 08.04.2004 for reverse connection in the Meter Terminal and arrived at the approximate loss as Rs.51,173/-. Simultaneously, the Assistant Executive Engineer has also collected a sum of Rs.49,924/- being the amount towards compounding of the alleged offence under Section 50B of the State amended provision under the Indian Electricity Act. The petitioner further stated that the Executive Engineer in his office Letter No.EE/TBM/AE/R-46F/D10/D-Camp/04, dated 08.04.2004, assessed the loss of energy and fixed the quantum at Rs.51,173/- to be remitted by the petitioner in five instalments and forced to collect the first instalment amount of Rs.10,235/- on 08.04.2004 vide D.D.No.164013 of Union Bank of India Tambaram. Challenging the impugned order, the present writ petition is filed.

3. The learned counsel appearing for the petitioner would submit that he has already remitted a sum of Rs.10,235/- being the first instalment amount of the total amount of Rs.51,173/-, besides paying in cash a sum of Rs.49,924/-, being the amount towards compounding of the alleged offence. Hence, in the absence of affording sufficient opportunity to the payment of demand amount made. The learned counsel further submitted that it is clear violation of principles of natural justice. Accordingly, prayed for allowing the writ petition.

4. The learned counsel appearing for the respondents would submit that the said service was inspected by the second respondent along with the Enforcement Wing of the TNEB on 08.04.2004. At that time, it was noticed that the petitioner has meddled with the energy meter provided in the said service connection by giving reverse connection in a phase(i.e., Yellow Phase) and thereby prevented the energy meter from properly recording the energy actually consumed in that phase, which is a theft of energy and an offence under the Electricity Laws. The petitioner was informed of the option to compound the offence. Simultaneously, show cause notice was issued to the petitioner, explaining the occurrence in detail, as to why the extra levy should not be levied on him. The petitioner has come forward to compound the offence and paid the compounding charges and as such, a complaint was not lodged before the police.

5. While so, after considering the representation of the petitioner, the first respondent issued the final assessment order, directing the petitioner to pay a sum of Rs.51,173/- being the loss caused to the TNEB, in five monthly instalments, commencing from 08.04.2004 to 08.08.2004. The petitioner has paid a sum of Rs.10,235/- being the first instalment of the

extra levy assessed. The respondents stated in the affidavit that the petitioner was provided with an opportunity, by issuing show cause notice, and thereafter only, the final assessment order was issued. The petitioner, after having accepted the commission of offence and compounding the same, is estopped to dispute the final assessment order.

6. A perusal of the records clearly shows that on 08.04.2004, during the inspection, it was found that there was theft of energy/unauthorized reconnection of the disconnected service, as detailed in the show cause notice dated 08.04.2004 and further, on the same day, the petitioner accepting the guilt paid the compounding charges. The show cause notice was issued by the Assistant Executive Engineer/O&M/Tambaram, vide letter under Show cause notice No.306 dated 08.04.2004 and called upon to explain as to why the Board should not recover the loss by imposing against the petitioner, the extra levy is levied in accordance with terms and conditions of supply of electricity. The respondents stated that based on the representation of the petitioner dated 08.04.2004, the final assessment order was issued by the first respondent and the extra levy payable by the petitioner or the energy stolen is worked out under Clause 82 of the Schedule as Rs.51173/- (Rupees Fifty One thousand One Hundred and Seventy Three Only). The writ petition relates to demand pursuant to theft of electricity and the very same issue was decided by the Division Bench of this Court 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, the relevant paragraph Nos.29, 38, 39 and 41 are extracted hereunder:

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'.

38. The yet another contention raised by the Petitioners that there should not be any determination of civil liability either by the Special Court or by the Authorities concerned, in the event of the offence

being compounded, has no legs to stand. As long as the Act does not stipulate that when there is a compounding of the offence, the Civil Liability will also come to a standstill, it cannot be said in the air that no proceedings under Section 126 can be initiated nor notice be issued.

39. A bare reading of Section 154 (5) of the Act, 2003 in conjunction with the explanation to the provision goes to show that the said provision enables the Special Court to determine the civil liability in terms of money in case guilt is established, is for theft of energy after full fledged trial. If the accused is acquitted, Civil Court has no jurisdiction to decide/foist civil liability and in that event the Board will have to fall back upon Section 126 of the Act, 2003. For the sake of brevity, Section 154 is extracted hereunder:

"Section 154. (Procedure and power of Special Court):

(5) The Special Court shall determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft if determined whichever is less and the amount of civil liability so determined shall be recovered as if it were a decree of civil court.

Explanation. - For the purposes of this section, "civil liability" means loss or damage incurred by the Board or licensee or the concerned person, as the case may be, due to the commission of an offence referred to in sections 135 to 139."

41. This Bench, while dealing with an issue falling under the purview of Electricity Act in the case of M/s.Sri Radhakrishna Multiple Industries (P) Ltd., Madurai vs. The Tamil Nadu Electricity Regulatory Commission, Chennai [W.P.No.14924 of 2008] decided on 26.03.2019, has made a passing remark that the Special Court has the power to prosecute under Section 135 of the Act, 2003 and proceed further with regard to determination of civil liability, in case it comes to the conclusion that offence is made out by the accused. Further, it went on to add that in the event of acquittal from the criminal case, it will not preclude the Electricity Board from invoking Section 126 of the Act, 2003.

7. In view of the above decision, I do not find any illegality or infirmity in the order passed by the first respondent. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

ssb

To

1. The Executive Engineer/O&M
MEDC/South/TNEB,
Tambaram,
Chennai 600 045.

2. The Assistant Executive
Engineer/O&M/
Tambaram Sub Division,
CEDC/South,
Tambaram, Chennai.600 045.

+1 cc to M/s.K.Raj Kumar, Advocate, S.R.No.52693

+1 cc to M/s.S.K.Rameshwar, Advocate, S.R.No.52732

W.P.No.12380 of 2004
W.P.M.P.No.14469 of 2004

VG-II(CO)
SSM(28/08/2019)

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