

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED :27.06.2019  
CORAM  
THE HON'BLE MR.JUSTICE M.DHANDAPANI  
W.P.No.12814 of 2004

Messrs.Kayal Enterprises,  
Rep. by its Manager R.Ravi,  
7, Nungambakkam High Road,  
Chennai - 600 034.

..Petitioner

vs

The Executive Engineer (O&M),  
Tamilnadu Electricity Board,  
Mylapore Chennai Electricity Distribution  
Circle/Central,  
Royapettah, Chennai - 14.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ order or direction in the nature of writ of Certiorari, calling for the records on the file of the respondent herein pertaining to the impugned order Lr.No.EE/O&M/MY1/AE/CAUP/F.TOE/D.127/2004 dated 23.04.2004 passed by the Respondent and quash the same.

For Petitioner : Mr.S.Rajasekar  
For Respondent : 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, calling for the records on the file of the Respondent herein pertaining to the impugned order Lr.No.EE/O&M/MY1/AE/CAUP/F.TOE/D.127/2004 dated 23.4.2004 passed by the Respondent and quash the same.

2. The case of the petitioner is that the petitioner firm is a dealer of Indian Oil Corporation and is having a Petrol Bunk at No.7, Nungambakkam High Road, Chennai - 600 034 for the past 13 years. The premises is owned by the Indian Oil Corporation Limited and the Petitioner is only running the business. On 20.12.2003 at about 18.45 hours, the Assistant Executive Engineer (O&M), Nungambakkam and the Officials from the Respondent Board inspected the Electricity Service Connection Nos.129-05-01 and 129-05-02 (Low Tension Service) belonging to the Petitioner firm and for the alleged pilferage of electricity, they contemplated action. On 01.01.2004, the Assistant Executive Engineer issued a show cause notice alleging

theft of energy. After receipt of the notice, petitioner sent a legal notice on 04.02.2004, denying the allegation and requesting the authorities to conduct a detailed enquiry. Thereafter, the respondent Board without conducting a proper enquiry, passed an Assessment Order dated 30.12.2003 and challenging the said order in W.P.No. 2963 of 2004 has been filed before this Court. This Court by its order dated 16.02.2004, allowed the writ petition and set aside the impugned order and remanded the matter for fresh adjudication.

3. The learned counsel appearing for the respondent submits that the respondent Board conducted an enquiry and the petitioner has also participated in the said enquiry and thereafter, the impugned order came to be passed. The very same issue in the present writ petition has been already dealt with by the Hon'ble Division Bench of this Court reported in the decision of M/s.Emkay Alloys (P) Ltd Vs and batch cases in W.A.Nos. 1808 of 2009 and etc., the relevant paragraph is extracted here under:

"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.

... 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, had 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."

4. The respondent party has already filed a criminal case against the petitioner. The petitioner preferred quash petition before this Court in Crl.O.P.No. 36387 of 2004 and this Court by its order dated 01.12.2004, quashed the original petition and no appeal was preferred. However, on perusal of the above decision, this Court held that even the criminal case ended in acquittal, will not preclude the respondent board from invoking Civil Liability.

5. In view of the above decision, I am not inclined to interfere with the order of the impugned order. However, the petitioner is directed to pay the demand amount without any belated payment charges and belated interest, within a period of 12 weeks from the date of receipt of a copy of this order.

6. Accordingly, the present writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kmm

To

The Executive Engineer (O&M),  
Tamilnadu Electricity Board,  
Mylapore Chennai Electricity Distribution  
Circle/Central,  
Royapettah, Chennai - 14.

+1cc to Mr.S.Rajasekar, Advocate sr.53655  
+1cc to Mr.P.R.Dhilipkumar, Advocate sr.53708

W.P.No.12814 of 2004

nrjk(co)  
nr 23/09/2019