

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.03.2019

Delivered on : 01.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY
W.P.No.8051 of 2006

R.Ramasamy

... Petitioner

Vs.

1.Tamil Nadu Electricity Board,
Rep. by the Chairman,
Anna Salai, Chennai-2.

2.The Chief Engineer,
Distribution,
Tamil Nadu Electricity Board,
Villupuram Region,
Villupuram.

3.The Superintending Engineer,
C.E.D.C.,
Tamil Nadu Electricity Board,
Cuddalore - 607 001.

4.The Executive Engineer,
Tamil Nadu Electricity Board,
Vridhachalam.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari cum Mandamus, calling for the records of the second Respondent dated 28.11.2005 pertaining to his letter No.C.E./Dist./VIII/1105/AC/KaKu) KO 29/2005 dated 21.11.2005 and quash the same and direct him to charge the Petitioner only for actual consumption of electricity for the Petitioner's SC 275 Hospital, SS, Pennadam Section, Vridhachalam Division and return the excess amount paid by him.

For Petitioner : Mr.T.Sezhian

For Respondents : Mr.Varunkumar,
Standing Counsel, (TNEB)

O R D E R

This Writ Petition is filed for a writ of certiorari cum mandamus to quash the order dated 28.11.2005 of the Second Respondent and consequently direct him to charge the Petitioner only for actual consumption of electricity.

2.The Petitioner obtained Service Connection No.275 for Hospital SS at Pennadam Section, Vridachalam Division on 22.02.2002. This connection was obtained by the Petitioner for purposes of construction of a building complex under LT Tariff - V with an applied load of 2090 Watts. According to the Petitioner, he did not realise that he would not require the sanctioned power load when the service connection was applied for. As against the sanctioned power load of 3 KW, he actually used 850 KW and was paying bills regularly.

3.After nearly one year, the revenue intelligence squad of the Respondents inspected the premises and directed the Petitioner to pay for the sanctioned 3KW at Rs.150/- per day. Accordingly, the amount payable by the Petitioner was computed at Rs.45,820/- after giving credit to amounts already paid by the Petitioner. On receipt of notice dated 24.02.2003, the Petitioner paid the amount demanded under protest and sent a representation dated 03.03.2003 to the Second Respondent to charge for actual consumption and not based on the sanctioned load. After several reminders, the Fourth Respondent, by reply dated September 2005, informed the Petitioner that he was required to pay for the sanctioned load and not actual consumption.

4.The Petitioner sent another representation but by reply dated 28.11.2005, the Petitioner's representation was rejected and the Petitioner was called upon to pay the sum of Rs.45,820/-. The said order dated 28.11.2005 is impugned in this writ petition.

5.According to the Respondents, during inspection by the revenue intelligence squad, it was discovered that the Petitioner had utilised power for the purpose of constructing 12 shops for his shopping complex whereas he had obtained the connection for the purpose of house construction under LT Tariff-V. Therefore, according to the Respondents, the use of power by the Petitioner would be classified as temporary supply as per board proceeding B.P. (FB) No.210 Technical Department dated 28.11.2001 issued as

per G.O. Ms. No.95 Energy (A2). Accordingly, the temporary supply rate was applied for the sanctioned load of 3KW and the Petitioner was called upon to pay the sum of Rs.45,820/-. According to the Respondents, this amount was paid in three installments by the Petitioner between 22.05.2003 and 11.10.2004.

6.The Respondents further state that they are entitled to revise bills within three years from the date of original billing as per clause 19. 16 of the Terms and Conditions of Supply of Electricity. The Respondents further state that, as per tariff order issued by the Government in G.O.Ms.No.95 Energy (A2) Department dated 28.01.2001, the rate fixed is Rs.10/- per KWH subject to a minimum of Rs.50/- per KW per day or part thereof. The Respondents also state that the Petitioner filed an appeal dated 08.10.2005 before the Superintending Engineer. Therefore, the Respondents state that the writ petition is liable to be dismissed.

7. At the hearing, both parties made oral submissions reiterating their respective positions. The Petitioner submitted that the Respondents are not entitled to charge anything more than actual consumption charges whereas the Respondents submitted that fixed charges were payable in respect of temporary supply for commercial purposes as per the afore-cited government order.

8.The affidavit, counter affidavit, documents and oral arguments of both parties were duly considered. The only question that arises for consideration is whether the Respondents are empowered to levy fixed charges in the facts and circumstances of the case.

9.The contention of the Respondents that the Petitioner utilized the power for the construction of 10 shops is not denied by the Petitioner. It is very clear from clause 19.16 of the Terms and Conditions of Supply that the Respondents are empowered to revise bills within three years. It is also clear from G.O.Ms. No.95, Energy (A2) dated 28.11.2001, which was issued in exercise of powers conferred by Section 4 of the Tamil Nadu Revision of Tariff Rates on Supply of Electrical Energy Act, 1978 (Tamil Nadu Act 1 of 1979), that the Respondents have the power to levy fixed minimum charges in respect of temporary supply under Part C of G.O.Ms.No.95,Energy(A-2) and the amount demanded was calculated on this basis. It is evident that the Respondents are empowered to do so both under statute and the terms and conditions of supply. In view of the said finding, this Court is not examining the contention on alternative remedy. Accordingly, there is no infirmity in the impugned communication dated 28.11.2005.

10. Therefore, this writ petition is dismissed but there shall be no order as to costs.

Sd/--
Assistant Registrar (CSvi)

//True Copy//

Sub Assistant Registrar

rrg
To

1. The Chairman,
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4. The Executive Engineer,
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Vridhachalam.

+1cc to Mr. Sunramaniam, Advocate SR.No. 31295
+1cc to Mr. Varunkumar, Advocate SR.No. 30935

A.SK (02/05/2019)

W.P.No.8051 of 2006

सत्यमेव जयते

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