

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.3.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NO.27106 OF 2008 & MP.NO.1 OF 2011

Rajkumar Mehta

...Petitioner

Vs

1.The Chairman, Tamil Nadu  
Electricity Board, No.800,  
Anna Salai, Chennai-2.

2.The Superintending Engineer,  
Chennai Electricity Distribution  
Circle (North), No.800, Anna  
Salai, Chennai-2.

3.The Executive Engineer,  
Operations & Maintenance,  
Chennai Electricity Distribution  
Circle (North), Vyasarpadi,  
Chennai-39.

...Respondents

PETITION under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records relating to the proceedings of the 2nd respondent in passing order dated 01.10.2001 in letter No.SE/CEDC/N/G1/DM1/F TOE 15/96-97/VPD/R520/2001, which is in the nature of confirming the order of the 3rd respondent dated 12.9.1997 in Letter No.EE/O&M/VPD/AER146/F.NAPTS Theft of energy/D2959/97 and quash the same.

For Petitioner : Mr.B.Jagannath  
For Respondents : Mr.P.R.Dilipkumar

ORDER

I have heard Mr.B.Jagannath, learned counsel for the petitioner and Mr.P.R.Dilipkumar, learned Standing Counsel appearing for the respondents.

2. The writ petition has been filed challenging an order dated 01.10.2001, by which, the second respondent rejected the petitioner's appeal petition and confirmed the order passed by the third respondent demanding penal levy for theft of energy detected in the service connection in question.

3. Earlier, the petitioner filed W.P.No.18770 of 1998 seeking a Declaration to declare the provisions of Section 39 and 44(1)(c) of the Indian Electricity Act, 1910 and Sl.No.37,

Schedule Part I Clauses 8.1, 8.2, 9.1 and 9.2 of the terms and conditions of supply of electricity to be unconstitutional, unenforceable and null and void and a Certiorari Mandamus to quash the order dated 12.9.1997 passed by the third respondent and to forbear him from proceeding with the recovery proceedings.

4. The petitioner challenged the Constitutional validity of the statutory provisions by filing the said writ petition. Along with the main writ petition, the petitioner filed three miscellaneous petitions seeking three interim reliefs namely (i) for an injunction restraining the respondents from disconnecting and interfering the power supply; (ii) to refund various sums of money to the petitioner; and (iii) to restore the service connection. By order dated 30.11.1998 in WMP.No. 28495 of 1998, an order of status quo was granted. However, the respondent Board filed a petition to vacate the order of status quo and a learned Single Judge of this Court took up the matter and while admitting the said writ petition, issued certain directions.

5. Further, in the said writ petition, the learned Single Judge noted that the third respondent had written a communication to the second respondent vide letter dated 25.3.1997 and the second respondent, in turn, had addressed another letter dated 05.5.1997 to the Superintending Engineer, IEMC, I Floor, Western Wing, Tamil Nadu Electricity Board, Anna Salai, Chennai. After taking note of the said two communications, the learned Single Judge noted that the petitioner filed a statutory appeal before the second respondent on 29.9.1997, which was pending. Further, after taking note of the submissions on either side, a direction was issued to the second respondent to dispose of the appeal. The reason for passing such order was on the ground that it was not clear as to whether the third respondent had taken note of the letters dated 25.3.1997 and 05.5.1997, on which, the petitioner placed heavy reliance.

6. The operative portions of the order and directions of this Court dated 17.11.2000 read as follows :

"7. A perusal of the impugned order of the third respondent shows that it is not clear whether he has considered the said letters referred to above (both the letters find place at pages 27 to 30 of the typed set of papers filed by the petitioner).

8. Apart from the above factual information, the petitioner himself has fairly stated that against the impugned order of the third respondent, he has preferred a statutory appeal before the Superintending Engineer, CEDC North on 29.9.1997 and the same is still pending. In para 15 of the affidavit filed in support of WMP.No.28495 of 1998 , it is stated that

'that as against the extravagant order dated 12.9.1997 passed by the respondent No.3 herein, I have preferred a statutory appeal before the Superintending Engineer, CEDC North on 29.9.1997, which is still pending.' It is clear that though the petitioner has filed the writ petition challenging certain provisions of the Indian Electricity Act as well as certain clauses in the terms and conditions of supply of energy and the impugned order of the third respondent dated 29.9.1997, the fact remains that he has also preferred an appeal before the Appellate Authority namely the Superintending Engineer, CEDC North. In such circumstances, I am of the view that it is but proper for the petitioner to pursue the appeal filed by him. Merely because the petitioner is questioning certain provisions of terms and conditions of supply of energy, that does not prevent the Appellate Authority from considering the appeal on merits.

9. In the light of what is stated above and in the light of the submissions made by the learned counsel for the petitioner, I hereby direct the Appellate Authority, Superintending Engineer, CEDC North, Chennai-2, to consider and dispose of the appeal on merits without insisting the usual deposit and pass appropriate orders expeditiously. I am constrained to give the relief dispensing with the compulsory deposit before filing the appeal since the two letters referred to above namely 25.3.1997 of the Executive Engineer, O&M, Vyasarpadi, Chennai-39 and 05.5.1997 of the Superintending Engineer, CEDC North, Chennai-2 to support the stand of the petitioner. For the same reasons, I am of the view that the order of status quo granted by this Court on 30.11.1998 shall be maintained till the final order being passed by the Appellate Authority, Superintending Engineer, CEDC North, Chennai-2."

7. Thus, in terms of the above directions, it was incumbent on the part of the second respondent - Appellate Authority to take note of the said two communications dated 25.3.1997 and 05.5.1997 and afford an opportunity to the petitioner and pass orders. Though the second respondent noted the order and direction issued by this Court in the earlier writ petition, he did not understand the scope of the directions and the impugned order came to be passed by rejecting the appeal petition on the

ground that the request made by the petitioner to refund the penal levy charges was not feasible of consideration. In the opinion of this Court, the manner, in which, the second respondent disposed of the appeal petition is incorrect in the light of the specific directions issued by this Court as referred to supra. Therefore, the second respondent has to necessarily redo the exercise and consider the appeal petition on merits taking note of the directions issued by this Court in the earlier writ petition, pass a speaking order and communicate the same to the petitioner.

8. In the result, the writ petition is allowed, the impugned order passed by the second respondent is set aside and the matter is remanded to the second respondent, who shall issue notice to the petitioner within one week from the date of receipt of a copy of this order, afford an opportunity of personal hearing to the petitioner or his authorized representative and pass fresh orders on merits and in accordance with law bearing in mind the directions issued by this Court in the earlier writ petition referred to supra. No costs. Consequently, the connected MP is closed.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

RS

To

1.The Chairman, Tamil Nadu Electricity Board, No.800,Anna Salai, Chennai-2.

2.The Superintending Engineer, Chennai Electricity Distribution Circle (North),  
No.800, Anna Salai, Chennai-2.

3.The Executive Engineer, Operations & Maintenance, Chennai Electricity  
Distribution Circle (North), Vyasarpadi, Chennai-39.

WP.No.27106 of 2008  
and MP.No.1 of 2011

BR (CO)  
GMY (10/06/2020)