

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.23192 of 2009

and

M.P.No. 1 of 2009

S.P.Anthonysamy

Chairman

Parisutham Institute of Technology
and Science, Inathukampatti

Thanjavur.

...Petitioner

Vs.

1. The Secretary to Government
Energy Department
Ministry of Energy
Union of India
Central Secretariat
New Delhi.

2. The Secretary to Government
Energy Department
State of Tamil Nadu
Secretariat
Chennai.

3. The Chairman
Tamil Nadu Electricity Board
Chennai.

4. The Executive Engineer (O&M)
Tamil Nadu Electricity Board
Thanjavur Rural
Thanjavur.

5. The Superintending Engineer
Tamil Nadu Electricity Board
Thanjavur.

... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the entire records of the proceedings in Lr.No.EE./O&M/TJR/F-APTS/D.No./2009 dated 05.11.2009 on the file

of the 4th respondent to quash the same as it is illegal, against law and not sustainable under law.

For Petitioner : Mr.C.Jagadish

For Respondents: Mr.M.L.Ramesh,
for R1.

Mrs.K.Bhuvaneswari,
for R2.

Mr.P.Gunaraj,
for R3 to R5.

O R D E R

The petitioner has filed this Writ Petition to set aside the proceedings in Lr.No.EE/O&M/EGMORE/AE/CAUP/F.SWPT/D.No: 741/06/07 dated 29.11.2006 and as confirmed by the order of the 1st respondent by Lr.No.EE./O&M/TJR/F-APTS/D.No. / 2009 dated 05.11.2009 on the file of the 4th respondent.

2. The learned counsel appearing for the petitioner would submit that the matter relates to theft of electricity. The petitioner is the Parisutham Philiminal Educational and Charitable Trust running Parisutham Institute of Technology & Science, an Engineering College. On 15.10.2009 at 4.00 P.M., an exclusive team from the TNEB came for inspection of the property and found that the petitioner has misused the electricity power and a Criminal case was lodged against the petitioner and he was forced to pay the compounding fee for a sum of Rs.2,87,740/- to avoid disconnection of electricity. Challenging the impugned order dated 05.11.2009, the present writ petition is filed.

3. The learned counsel appearing for the petitioner would submit that the entire dues have been paid to the Electricity Board to avoid the restraint order. Further, the petitioner has preferred an appeal against the impugned order before the Appellate Authority. However, the Appellate Authority has not disposed of the matter, citing the reason of pendency of the present writ petition. This Court, while entertaining the writ petition, has granted interim stay. As against the interim order passed by this Court, the Electricity Board filed a writ appeal and thereafter, the same has been withdrawn by the respondent Board.

4. The learned counsel appearing for the respondent Board would submit that the respondent Board has withdrawn the appeal preferred as against the interim order since the petitioner has paid the entire demand as demanded by the Respondent Board in the impugned order. Hence, nothing survives for further adjudication and there is no legal impediment for the Appellate Authority to entertain the appeal preferred by the petitioner.

5. After considering the case on merits and after perusal of the records, this Court is of the view that the said issue has 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 and the relevant portion of the order extracted hereunder:-

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 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, 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.

6. In view of the decision of the Division Bench of this Court cited supra and also that the petitioner has already paid the entire Civil liability to the Electricity Board and as against the impugned order, statutory appeal is also pending before the Appellate Authority, nothing survives for adjudication in the present writ petition. However, this order will not in any way interfere with the order passed by the Appellate Authority.

7. Accordingly, the present writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

kmm

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government
Energy Department
Ministry of Energy
Union of India
Central Secretariat
New Delhi.

2. The Secretary to Government
Energy Department
State of Tamil Nadu
Secretariat
Chennai.

3. The Chairman
Tamil Nadu Electricity Board
Chennai.

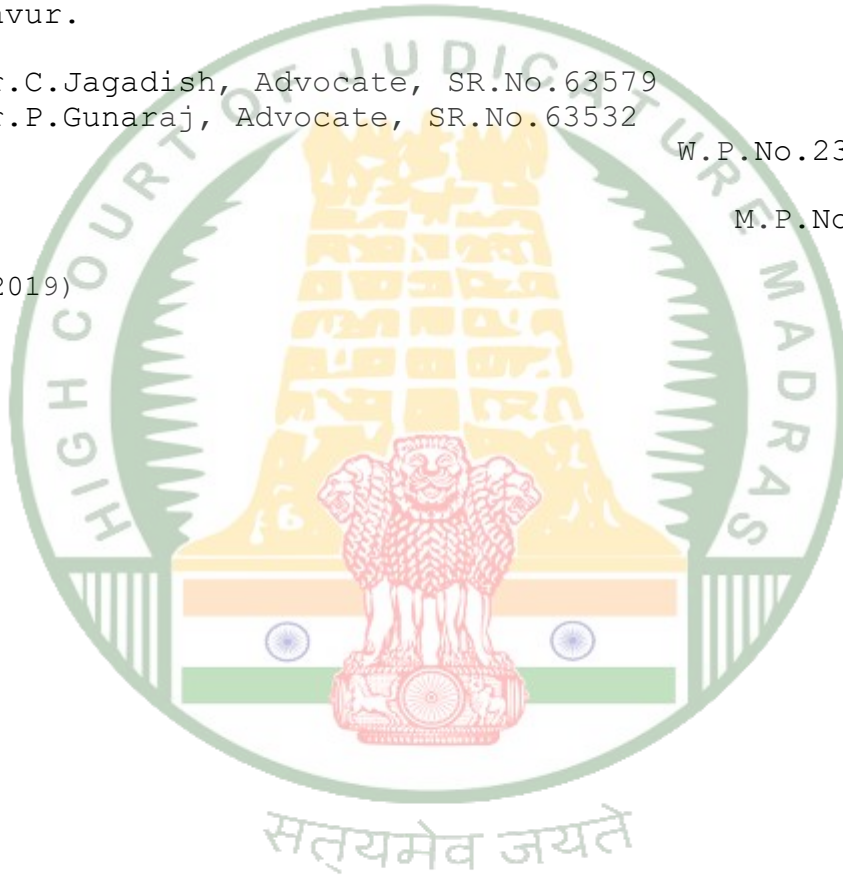
4. The Executive Engineer (O&M)
Tamil Nadu Electricity Board
Thanjavur Rural
Thanjavur.

5. The Superintending Engineer
Tamil Nadu Electricity Board
Thanjavur.

+1cc to Mr.C.Jagadish, Advocate, SR.No.63579
+1cc to Mr.P.Gunaraj, Advocate, SR.No.63532

W.P.No.23192 of 2009
and
M.P.No. 1 of 2009

Kak(15/10/2019)



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