

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI  
W.P. 27876 of 2008  
and  
M.P.s 1 & 2 of 2008

N.Sampath Raj ... Petitioner  
Proprietor:Hotel Nala Residency,  
No.2 Annasalai, Thiruvannamalai

Vs

1. The Assistant Executive Engineer/  
Town TNEB,  
Tamil Nadu Electricity Board,  
Tiruvannamalai-606 601.
  2. The Assistant Executive Engineer,  
Tamil Nadu Electricity Board,  
Operation and Maintenance,  
Tiruvannamalai.
  3. The Assistant Executive Engineer,  
Enforcement and Emergency Squad,  
Tamil Nadu Electricity Board,  
Villupuram.
  4. The Assistant Engineer (Operations &  
Maintenance/Town (East),  
Tamil Nadu Electricity Board,  
Tiruvannamalai.
- ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records relating to the 1<sup>st</sup> respondent's letter No.AEE/O&M/Town/TL/DOC/D.No.288/8, dated 17.11.2008 and AEE/T/TL/F.DOUA/dated/288/09, dated 17.11.2008 and the letter of the 4<sup>th</sup> respondent vide No.TNEB/Town/East/ Thiruvannamalai/ K/P.No.278/11, dated 18.11.2008, demanding a sum of Rs.15,70,586/- from the petitioner with reference to electricity supply of service connection in SC No.201-011-146, located at Door No.21, Anna Salai, Tiruvannamalai and to quash the same.

For Petitioner : Mr.S.Govindraman

For Respondents : Mr.M.Varunkumar

O R D E R

This Writ Petition has been filed challenging the impugned order of the 1<sup>st</sup> respondent and the letter of 4<sup>th</sup> respondent demanding a sum of Rs.15,70,586/- from the petitioner with reference to electricity supply of service connection at Door No.21, Anna Salai, Tiruvannamalai and to quash the same.

2. The case of the petitioner is as follows :-

The petitioner is the Proprietor of a hotel, functioning in the name and style of Hotel Nala Residency. The said hotel consist of 22 rooms and a restaurant is situated in the ground floor. Initially, the tariff in respect of the rooms were charged below Rs.500/- per month from April 2007 and from the month of April 2008, the tariff was increased above Rs.500/- for non A/c. And Rs.750/- with A/c. The petitioner has further averred that the commercial tax would attract only with the tariff of lodging facility is provided at the tariff of charging more than Rs.500/-. Thereafter, the petitioner has furnished a statement before the Commercial Tax Officer, Tiruvannamalai applying for this purpose and the said office had issued a certificate in Form-X vide dated 13.02.2008. While being so, on 17.11.2008, by 08.30 p.m., the Assistant Executive Engineer, Enforcement and Squad, Tamil Nadu Electricity Board, Villupuram, the 3<sup>rd</sup> respondent and the Assistant Executive Engineer (Operations & Maintenance), Tiruvannamalai, the 2<sup>nd</sup> respondent herein had come to the hotel and orally informed that they received certain allegations against the hotel. Thereafter, they have inspected the hotel premises and alleged that the electricity was drawn from the main line, by tampering certain connection points bypassing the meter box and thus, the offence of theft of electricity was registered. Thereafter, a criminal case was lodged against the petitioner and in order to compound the criminal case, the petitioner has paid the compounding fee of 2,24,000/-. Apart from that, the 3<sup>rd</sup> and 4<sup>th</sup> respondents have issued a final assessment order demanding to pay a sum of Rs.15,70,586/- towards penal levy. Challenging the said order, the present Writ Petition has been filed by the petitioner.

3. Mr.S.Govindraman, learned counsel appearing for the petitioner would submit that though the Division Bench of this Court has held that apart from the compounding fee, the Electricity Board has right to collect the penal levy as civil liability. However, in the present case, without giving any opportunity and without assessing the provisional assessment order, the final assessment order was issued, in which the respondents themselves have conceded the same in their counter affidavit in para 11, which reads as

follows :-

"11. In fine, it is respectfully submitted in the facts and circumstances of the case narrated above and in the interest of justice, the petitioner has to be directed to make objection etc., if any, pursuant to the provisional assessment order issued on Lr.No.AEE/O&M/Town/TL/F. Doc.288/08 dated 17.11.2008 in accordance with law by considering the assessment order inadvertently issued in letter dated 17.11.2008, as null and void so as to enable this respondents to consider such representation/ objection, if any and to pass a final assessment order in accordance with law. It is further respectfully submitted that in the interest of justice, the interim directions passed by this Hon'ble Court dated 21.11.2008 in M.P.Nos.1 and 2 of 2008 in the above Writ Petition has to be vacated and the main writ petition has to be disposed of. By doing so, no prejudice will be caused to the petitioner and the Board would be able to realise the amount of loss caused by the petitioner due to the theft of energy committed by him. The balance of convenience is also in favour of the respondents."

4. Mr.M.Varunkumar, learned counsel appearing for the Electricity Board did not dispute the counter as well as the facts submitted by the learned counsel appearing for the petitioner.

5. Therefore, in view of the above, the final assessment order dated 17.11.2008 is set aside and the matter is remanded back to the respondents and the respondent authorities are directed to pass appropriate orders within a period of six weeks from the date of receipt of the copy of this order. Accordingly, the Writ Petition stands disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-  
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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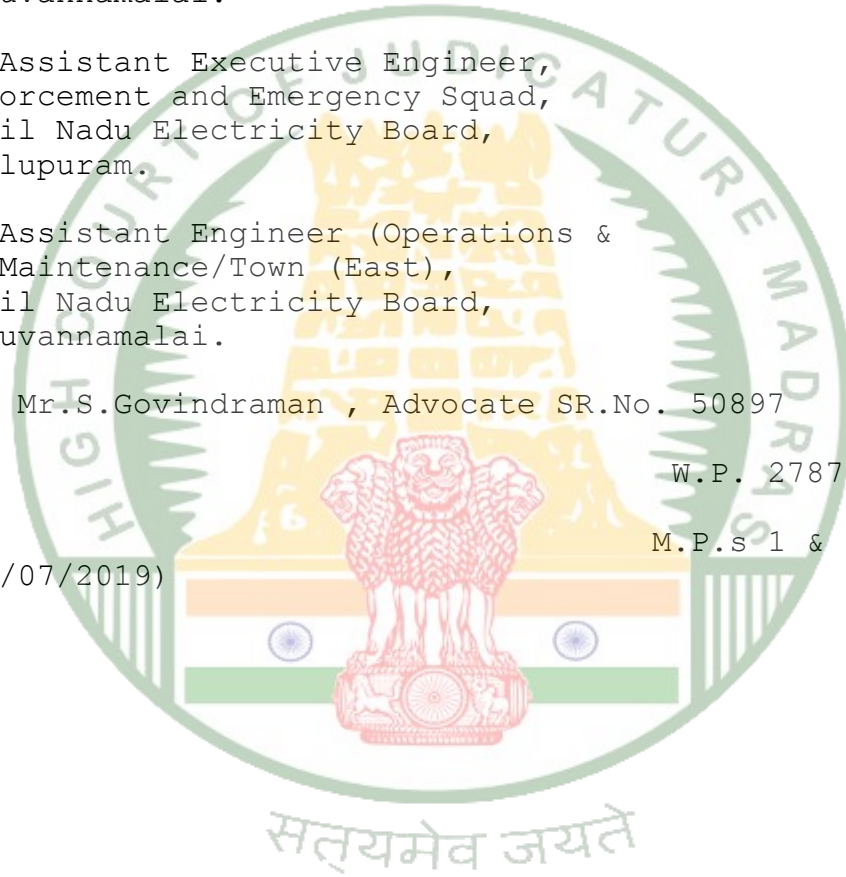
To

1. The Assistant Executive Engineer/  
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Tamil Nadu Electricity Board,  
Tiruvannamalai-606 601.
2. The Assistant Executive Engineer,  
Tamil Nadu Electricity Board,  
Operation and Maintenance,  
Tiruvannamalai.
3. The Assistant Executive Engineer,  
Enforcement and Emergency Squad,  
Tamil Nadu Electricity Board,  
Villupuram.
4. The Assistant Engineer (Operations &  
Maintenance/Town (East),  
Tamil Nadu Electricity Board,  
Tiruvannamalai.

+1cc to Mr.S.Govindraman , Advocate SR.No. 50897

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and  
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A.SK(15/07/2019)



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