IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.27787 of 2004
and
W.P.M.P.No.33795 of 2004

Hamid Mansion
By a.M.P.Ifnu Majeet
103, C.N.K.Road
Triplicane, Chennai 600 005

...Petitioner

Vs.

1.The Superintending Engineer
Tamilnadu Electricity Board
CEDC Central
Valluvar Kottam
Chennai 600 034

2.The Executive Engineer / O & M
Tamilnadu Electricity Board
6, Lanfond Street
Chintadripet
Chennai 600 002

... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records of the first respondent pertaining to his order No.SE/CEDC/C/ AEE/GL/T1/F.Doc/D 2210/04 dated 21.09.2004 confirming the assessment order of the second respondent in his letter No.EE/O&M/ AS/AE/CAUP/P/F.TOE/D.No.279/04 dated 13.02.2004 and quash the same.

For Petitioner : Mr.D.Nellaiappan

For Respondents: Mr.P.R.Dhilipkumar

O R D E R

The petitioner filed this Writ Petition, to issue a writ of Certiorari, to issue a writ of Certiorari, to call for the records of the first respondent pertaining to his order

No.SE/CEDC/C/ AEE/GL/T1/F.Doc/D 2210/04 dated 21.09.2004 confirming the assessment order of the second respondent in his letter No.EE/O&M/ AS/AE/ACU/P/F.TOE/D.No. 279/04 dated 13.02.2004 and quash the same.

2.The learned counsel appearing for the petitioner would submit that the matter relates to the theft of electricity. At the time of identifying the theft, the authorities initiated proceedings under Section 135 of the Act and proceeded with the civil liability by imposing penalty and in the mean time, the Respondent Board also registered a criminal case. The petitioner at the time of obtaining anticipatory bail, this Court imposed a condition to deposit a sum of Rs.51,200/- to the credit of the Crime Number and said conditional amount was already deposited. The learned counsel on instructions would submit that the petitioner may be permitted to deposit the remaining amount after adjusting the amount already deposited before the Court without any BPSC charges and penal interest and requests this Court to grant some reasonable time to deposit the same.

3.The learned counsel appearing for the respondent Board would submit that the conditional amount of Rs.51,200/- deposited by the petitioner at the time of obtaining anticipatory bail was already transferred to the Electricity Board's account and this court may pass appropriate orders.

4.The said issue has also 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, as follows:

> 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 vague as on the date of initiation of proceedings, the Old Act got repealed and the Act 2003 had came 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 fail 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 if 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 unauthorizedly 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.

5.In view of the decision held by the Division Bench of this Court and also considering the fact that the petitioner has accepted the Provisional Assessment Order and he has also paid the substantial amount to the tune of Rs.51,200/- and agreed to pay the remaining amount without BPSC and penal interest, this Court is inclined to direct the petitioner to deposit the entire due after adjusting the amount already paid by him within a period of 12 weeks from the date of receipt of a copy of this order.

6.With the above direction, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Superintending Engineer
Tamilnadu Electricity Board
CEDC Central,
Valluvar Kottam,
Chennai 600 034.

2.The Executive Engineer / O & M
Tamilnadu Electricity Board,
6, Lanfond Street,
Chintadripet,
Chennai 600 002.

+1cc to Mr.P.R.Dhilipkumar, Advocate Sr.54746
+1cc to Mr.S.Nellaiappan, Advocate Sr.54636

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and
W.P.M.P.No.33795 of 2004

sj[co]
srg 24/07/2019