

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.21382 of 2011

and

M.P.No.1 of 2011

P.Perinbaraj

...Petitioner

Vs.

1.The Chairman
Tamilnadu Electricity Board
Anna Salai, Chennai 600 002

2.The Assistant Executive Engineer,
Tamil Nadu Electricity Board,
O & M/Usman Road,
T.Nagar, C.E.D.C/Central,
Chennai 600 017.

... 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 relating to the order passed by the second respondent in his Letter Lr.No.AEE/O&M/ Usman Road/ F.BOAB / D.515/11 dated 05.09.2011, quash the same.

For Petitioner : Mr.G.Vasudevan for
Mr.T.R.K.Kumarasingh

For Respondents : Mr.P.R.Dilipkumar

O R D E R

The petitioner filed this Writ Petition, to issue a writ of Certiorari, to call for the records relating to the order passed by the second respondent in his Letter Lr.No.AEE/O&M/ Usman Road/ F.BOAB / D.515/11 dated 05.09.2011, quash the same.

2. The case of the petitioner is that the petitioner is enjoying the Electricity Service Connection bearing Account No. 181 034 594 in respect of premises bearing Door 37, Rameswaram Road, T.Nagar, stands in the name of the petitioner brother namely Pattu Jebaraj, a co-owner of the entire property. The petitioner was regularly paid the electricity charges to the department without any default. While being so, the second

respondent issued the impugned letter in Lr.No.EE/O&M/T.Nagar/ATO/FSF/D/No.522/11, dated 05.09.2011 and it was served by hand delivery to the representative to the petitioner on 09.09.2011, demanding that there is a short fall of Rs.90,782/- for the period from 2004-2005, for the reason "point out for the short levy is due to non-adoption of correct average consumptions/due to non collection of CC Charges", and it should be paid within 15 days. Immediately, thereafter, the petitioner gave a representation to the second respondent on 10.09.2011 and raising objection for the illegal demand made in the tune of Rs.90,782/- that too assessed for the period from 2004-2005, which is bad in law and the demand is contrary to the provision under Section 56(ii) of the Electricity Act, 2003. Further, the impugned demand with refers to Audit Slip No.30, was not provided to the petitioner and hence, the details of the levy was not made known to the petitioner, which is illegal and unreasonable.

3. Aggrieved by the said illegal demand, the petitioner filed this present Writ Petition.

4. The learned counsel appearing for the petitioner would submit that the respondents are threatening to disconnect the power supply, if the petitioner fail to pay the unjustified demand of alleged short fall amount worked out to a sum of Rs.90,782/-. The second respondent has directed the petitioner to pay the above illegal levy along with the regular C.C.Charges, failing which service connection would liable to disconnect. Accordingly, the impugned order has been passed on 05.09.2011 directing the petitioner to pay a sum of Rs.90,782/- towards extra levy along with BPSC 1.5% till the date of payment. The petitioner approached this Court and at the time of admission, this Court passed an interim stay of the order with the condition to pay 50% of the impugned demand within a period of four weeks. Accordingly, the petitioner deposited the said amount. Hence, the 50% of balance amount is liable to be paid by the petitioner. Subsequently, the Division Bench of this court has passed an order in similar writ petitions to proceed with the civil liability. Hence, the petitioner may be permitted to deposit the remaining amount without any BPSC charges and penalty and requests this Court to grant some reasonable time to deposit the same. The petitioner himself come forward and ready to pay the 50% of balance amount without any BPSC charges and penalty.

5.The learned counsel appearing for the respondent Board admitted the fact that the petitioner has paid some portion of the amount and this court may pass appropriate orders.

6.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 reads as follows:

"38. The yet another contention raised by the Petitioners that there should not be any determination of civil liability either by the Special Court or by the Authorities concerned, in the event of the offence being compounded, has no legs to stand. As long as the Act does not stipulate that when there is a compounding of the offence, the Civil Liability will also come to a standstill, it cannot be said in the air that no proceedings under Section 126 can be initiated nor notice be issued.

39. A bare reading of Section 154 (5) of the Act, 2003 in conjunction with the explanation to the provision goes to show that the said provision enables the Special Court to determine the civil liability in terms of money in case guilt is established, is for theft of energy after full fledged trial. If the accused is acquitted, Civil Court has no jurisdiction to decide/foist civil liability and in that event the Board will have to fall back upon Section 126 of the Act, 2003. For the sake of brevity, Section 154 is extracted hereunder: "Section 154. (Procedure and power of Special http://www.judis.nic.in Court):

(5) The Special Court shall determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft if determined whichever is less and the amount of civil liability so determined shall be recovered as if it were a decree of civil court.

Explanation. - For the purposes of this section, "civil liability" means loss or damage incurred by the Board or licensee or the concerned person, as the case may be, due to the commission of an offence referred to in sections 135 to 139.

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 <http://www.judis.nic.in> 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. "

7. Considering the facts and circumstances of the case and the above decision held by the Division Bench of this Court in batch cases, this Court is inclined to direct the petitioner to pay the amount as demanded in the impugned notice dated 05.09.2011 after adjusting the amount already paid if any without BPSC and penalty within a period of four weeks from the date of receipt of a copy of this order.

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

Sd/-

Assistant Registrar(CJ Conf)

//True copy//

Sub Assistant Registrar

vkr

To

1.The Chairman
Tamilnadu Electricity Board
Anna Salai, Chennai 600 002

2.The Assistant Executive Engineer,
Tamil Nadu Electricity Board,
O & M/Usman Road,
T.Nagar, C.E.D.C/Central,
Chennai 600 017.

+1cc to Mr.P.R.Dilipkumar, Advocate SR.No.74372

+1cc to Mr.G.Vasudevan, Advocate SR.No.74425

W.P.No.21382 of 2011
and
M.P.No.1 of 2011

MR(CO)
GMY(11/10/2019)