

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P. 23715 of 2010

and

M.P. 1 of 2010

M/s.Kamachi Sponge & Power
Corporation Ltd.,
H.T.Sc.No.1910,
B.R.Kandigai Village,
S.R.Kandigai Post,
Gummidipoondi Taluk,
Thiruvallur District,
rep. by its Director,
Vinod Kothari

... Petitioner

Vs

1. The Chairman,
Tamil Nadu Electricity Board,
144, Anna Salai,
Chennai-600 002.
2. The Executive Engineer,
Chennai Electricity Distribution Circle/
North, Tamil Nadu Electricity Board,
33/11 KV Ponneri S.S.Campus,
Ponneri-601 204.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling upon the records of the 2nd respondent dated 08.10.2010 and quash the same as illegal, arbitrary, and against the provisions of Electricity Act, 2003 and Electricity Supply Code, 2004.

For Petitioner : Mr.AR.L.Sundaresan,
Senior Counsel for
Mr.K.Seshadri

For Respondents : Mr.P.R.Dhilipkumar
Standing Counsel

O R D E R

This Writ Petition has been filed challenging the impugned order of the 2nd respondent dated 08.10.2010 and quash the same as illegal, arbitrary and against the provisions of Electricity Act, 2003 and Electricity Supply Code, 2004.

2.The learned counsel appearing for the petitioner would submit that the matter related to the theft of electricity. During the course of the inspection by the respondent board, they found the petitioner has committed theft of electricity and the 2nd respondent assessed the value of extra levy liable to be paid by the petitioner to the Board as per Section 135 of Indian Electricity Act 2003 and the regulations contained in Tamil Nadu Electricity Supply Code 2004. Accordingly, the impugned order has been passed on 08.10.2010 directing the petitioner to pay a sum of Rs.17,24,653/- 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 extra levy amount demanded in the impugned proceedings, less the amount of compounding, if any paid already within a period of four weeks from the date of receipt of the order copy. Accordingly, the petitioner deposited the said amount. Hence, the 50% of balance extra levy amount liable to be paid by the petitioner as on 26.08.2010. Pending criminal case, the civil liability was imposed against the petitioner and the same was challenged in the present Writ Petition. 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.

3.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. "

4. In view of 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 08.10.2010 after adjusting the amount already paid if any without BPSC and penalty within a period of twelve weeks from the date of receipt of a copy of this order.

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

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

rpp

To

1. The Chairman,
Tamil Nadu Electricity Board,
144, Anna Salai,
Chennai-600 002.
2. The Executive Engineer,
Chennai Electricity Distribution Circle/
North, Tamil Nadu Electricity Board,
33/11 KV Ponneri S.S.Campus,
Ponneri-601 204.

+1cc to Mr. K.Seshadri, Advocate, S.R.No. 62908

W.P. 23715 of 2010
and
M.P. 1 of 2010

PA (CO)
GN (27/08/2019)

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