

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.08.2019
CORAM
THE HONOURABLE MR.JUSTICE M.DHANDAPANI
W.P.No.33050 of 2005

Green Coconut Resorts
rep. by Managing Partner
J.M. Amanulla
58/1 East Coast Road
Muttukkadu (Kovalam)-603 112
Kanchipuram District.

...Petitioner

Vs.

1. The Chairman
Tamil Nadu Electricity Board
800 Anna Salai, Chennai-2.
2. The Superintending Engineer
Chengalpattu Electricity
Distribution Circle
Chengalpattu.
3. Executive Engineer (O&M)
Maraimalai Nagar
Chengalpattu District.

... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the 3rd Respondent pertaining to his Assessment Order Lr.No.EE/O&M/MMn/AE-PI/F.DKI/D 284/2003 dated 30.06.2003 and records of 2nd Respondent pertaining to his Order No.MePo/CheMiPaVa.U.Se.Po/Podhu/Ko.TE-473/A.No.654/2005 dated 04.10.2005 confirming 3rd Respondent's Order, quash the same and consequently, forbearing Respondents, their representative or anybody on their behalf from proceeding with 3rd Respondent's Assessment Order dated 30.06.2003 and 2nd Respondent's Order dated 04.10.2005 by interfering with Petitioner's peaceful enjoyment of Electricity by disconnection or by claiming the said amounts.

For Petitioner : Mr.AR.L.Sundaresan
for Mr.K.Govi Ganesan

For Respondents : Mr.M.Varunkumar

O R D E R

The petitioner filed this Writ Petition, to issue a writ of Certiorarified Mandamus, to call for the records of the 3rd Respondent pertaining to his Assessment Order Lr.No.EE/O&M/MMN/AE-PI/F.DKI/D 284/2003 dated 30.06.2003 and records of 2nd Respondent pertaining to his Order No.MePo/CheMiPaVa.U.Se.Po/Podhu/Ko.TE-473/A.No.654/2005 dated 04.10.2005 confirming 3rd Respondent's Order, quash the same and consequently, forbearing Respondents, their representative or anybody on their behalf from proceeding with 3rd Respondent's Assessment Order dated 30.06.2003 and 2nd Respondent's Order dated 04.10.2005 by interfering with Petitioner's peaceful enjoyment of Electricity by disconnection or by claiming the said amounts.

2.The learned counsel appearing for the petitioner would submit that the matter relates to theft of electricity. At the time of identifying the theft, the authorities initiated proceedings under Section 135 of the Act. Subsequently, the Division Bench of this court has passed an order in similar writ petitions to proceed with the civil liability. Hence, the learned counsel, on instructions, would submit that the petitioner may be permitted to deposit the remaining amount 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 admitted the fact that the petitioner has paid some portion of the amount and this court may pass appropriate orders.

4.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, 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 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 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 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.

5.In view of the judgement of the Division Bench of this Court and also considering the facts that the petitioner has accepted the Provisional Assessment Order and he has also paid substantial amount to the tune of Rs.2,98,100/- 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 twelve weeks from the date of receipt of a copy of this order.

6.With the above direction, this writ petition stands disposed of, giving liberty to the petitioner to work out the necessary remedy in the manner known to Law. No costs.

Sd/-

सत्यमेव जयते Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

kmm

To

1. The Chairman
Tamil Nadu Electricity Board
800 Anna Salai, Chennai-2.

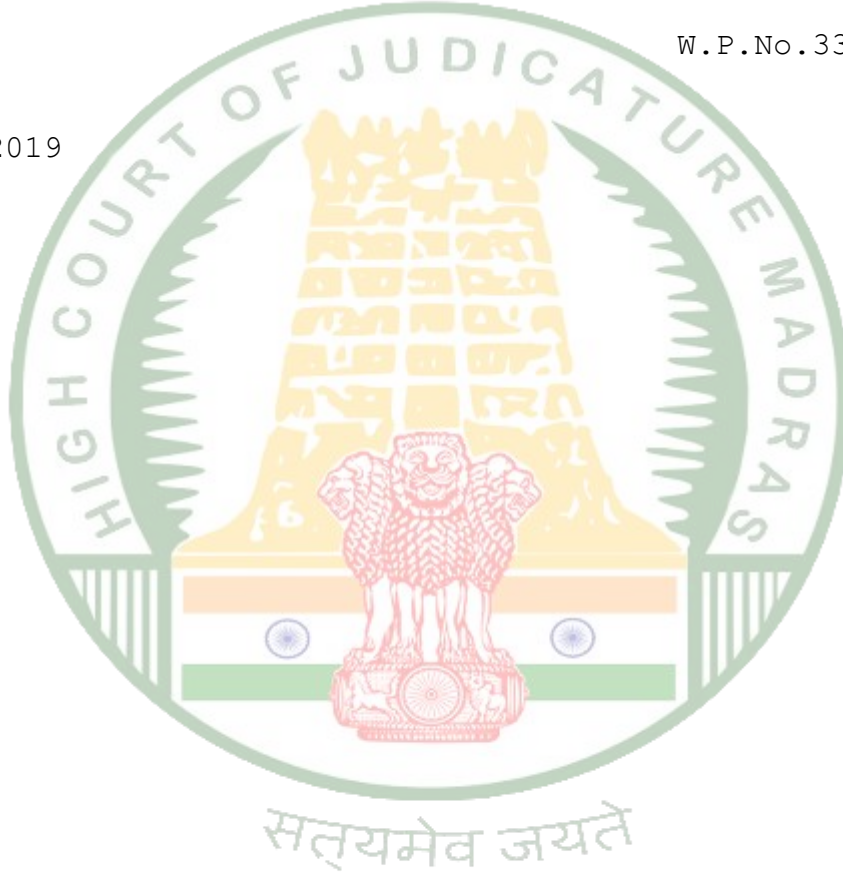
2. The Superintending Engineer
Chengalpattu Electricity
Distribution Circle
Chengalpattu.

3. Executive Engineer (O&M)
Maraimalai Nagar
Chengalpattu District.

+lcc to Mr.T.K.S.Gandhi, Advocate sr.68309

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