

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Reserved on : 15.04.2019

Pronounced on : 07.08.2019
CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
W.P.No.35981 of 2005
and
WMP.No.38797 of 2005

M/s.Beegee Forge
rep. by its Partner
G.Gopinath,
S/o.D.Gajendra Babu,
Partner M/s.Beegee Forge,
No.45, Sidco Industrial Estate (NP),
Ambattur,
Chennai-600 098. Petitioner

Vs.

- 1.The Chairman,
Tamil Nadu Electricity Board,
No.800, Anna Salai,
Chennai-2.
- 2.The Superintending Engineer,
Chengalpattu Electricity Distribution Circle,
Chengalpattu. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records relating to Lr.No.SE/CEDC/CGL/AEE-GL/AE/F.Apts-538/D.No.622 dated 20.09.2005 issued by the second respondent and to quash the same and direct the respondents to issue new electricity service connection to the petitioner's factory premises at Plot Nos.82 and 84, Sidco Industrial Estate, Thirumazhisai, Chennai, with 1600 watts for lighting and 20 HP for welding power.

For Petitioner : Mr.P.Sukumar
For Respondents : Mr.S.K.Rameshwar
Standing counsel for TNEB

O R D E R

Heard Mr.P.Sukumar, learned counsel for the petitioner and Mr.S.K.Rameshwar, learned Standing counsel for TNEB for the respondents.

2. The brief facts of the case are as follows:

The petitioner had purchased a property at Plot Nos.82 & 84, Sidco Industrial Estate, Thirumazhisai in a public auction conducted by the Tamil Nadu Industrial Investment Corporation Ltd., (TIIC) on 25.07.2005, pursuant to which, a sale deed was executed in their favour on 31.08.2005. When the petitioner had applied to the second respondent for a new electricity service connection of 20 HP, the second respondent demanded the petitioner to remit a sum of Rs.5,23453/- through an impugned letter dated 20.09.2005 for the purpose of extending new service connection. The demand was towards the outstanding of the previous owners of the property namely, M/s.Gurukripa Castings and the outstanding was said to be determined on the basis of an inspection report, whereby, the original consumer was found working with connected load of 191.05 HP as against the sanctioned load of 139.5 HP, which is a violation to Clause 2.02 (viii) of Schedule Part-I of the terms and conditions of supply. The demand included the compensation charges working out to Rs.4,30,999/- and 25% surcharge on the current consumption charges for the preceding months amounting to Rs.92,452/-. Disputing the petitioner's liability to pay the demanded amount, the present Writ Petition has been filed.

3. The learned counsel for the petitioner submitted that since the petitioner was in no way connected with the alleged violation or wrong usage of electricity, the liability imposed upon the erstwhile owner in the year 1996 cannot be fastened upon the petitioner in the year 2005. According to the learned counsel for the petitioner, the respondent do not have statutory powers to demand and recover the unpaid penal amount and that since there was no charge or attachment over the property prior to the auction sale, the demand itself is illegal.

4. Per contra, the learned Standing counsel for the respondents would submit that Clause 6.10 of the terms and conditions of the supply issued under Section 49 of the Electricity Supply Act, 1948, which is Pari-materia to Clause 17.9 of the Electricity Supply Code enables the power to refuse new service connection to an intending consumer till such consumer clears the outstanding dues against the disconnected/dismantled supply to the premises. Since, this is a case where the original consumer had utilised additional connected load over and above the sanctioned load, such a

violation cannot be termed to be 'penal or unauthorised use of that'. By relying on various decisions, the learned Standing counsel submitted that excess consumption will come within the purview of the term "dues" and in view of Clause 6.10 of the terms and conditions of the supply, there is no illegality in the impugned demand.

5. I have given careful consideration to the submissions made by the respective counsels.

6. Two issues that arise for consideration in this Writ Petition are:

a) Whether the compensation charges calculated on the consumption of electricity on additional connected load, over and above the sanctioned load could be construed as "dues" of consumer?

and

b) Whether the new intending consumer is liable to pay the compensation charges for such dues of the original consumer in default?

7. Issue (a):-

a) The few facts, which gave way to the impugned demand are that, on 08.02.1996, the Anti-Power Theft Squad Wing had conducted an inspection of the lower tension service connection No.130/Tariff IV (Industrial) and it was found that M/s.Gurukripa Castings Industries, was found working with connected load of 191.05 HP as against the sanctioned load of 139.5 HP and hence, the compensation charges for the additional connected load of 51.55 HP was worked out to Rs.4,30,999/-. A welding set of 48.01 KVA was also found of being utilised in such power service and hence, 25% surcharge was levied on the current charges for the preceding six months amounting to Rs.92,454/-. On 26.02.1996, a show cause notice was issued on the original consumer namely, M/s.Gurukirupa Castings for violation of the Electricity Supply Rules and an assessment order was issued on 30.03.1996. The original consumer had challenged the assessment order before this Court in Writ Petition in W.P.10299 of 1996. On the basis of the conditional interim order, the original consumer paid a sum of Rs.2 lakhs to the respondents. Thereafter, the Writ Petition came to be disposed on 03.07.2000 by directing the respondents to issue a fresh show cause notice to the consumer and pass final orders. Thereafter, a demand was made and since the original consumer did not pay the service charges and the service connection came to be disconnected/dismantled on 17.04.1997 for non payment of the arrears/charges.

b) After about 8 years, the present petitioner through a letter dated 14.09.2005, informed the respondents that they have purchased the premises through a public auction conducted by

TIIC, to which electricity service connection 130/Tariff IV was effected and therefore, requested for new service connection for lighting load of 1600 watts and welding power of 20 HP. It is in this line of events that the Board had issued the impugned letter dated 20.09.2005, demanding the balance amount of Rs.3,25,453/- as a pre-condition for a new service connection.

8. The learned Standing counsel would submit that the compensation charges made in the impugned order were not penal in nature or unauthorised or theft of energy, but a simple case of excess consumption. By placing reliance on Sections 126 & 135 of the Electricity Act 2003, the learned counsel submitted that, excess consumption, without any overt act, will come within the purview of the term "dues".

9. Under Clause 6.10 of the terms and conditions of the supply, the Board will refuse to supply electricity to an intending consumer, in case of services, which have been disconnected/dismantled for non payment of arrears and if such new service is sought in the same premises, such service will be effected only on clearance of the dues and outstandings of such disconnected/dismantled months.

10. For the sake of convenience, Clause 6.10 of the terms and conditions of the Supply reads as follows:-

"The Board will refuse to supply electricity to an intending consumer who has defaulted in payment of dues to the Board in respect of any other service connection held in his name.

In case of services which have been disconnected/dismantled for non payment of arrears and if the services are to be availed by other parties in the same premises either by purchase or transfer or in auction or on a lease basis then in such cases the services will be effected only on clearance of the dues outstanding against such disconnected/dismantled service by the intending consumers." (emphasis supplied)

11. Invoking the powers under the aforesaid clause in the Terms and Conditions of Tamil Nadu Electricity Board, the respondents have demanded the dues of the original consumer from the intending consumer, as a precondition for effecting a new electricity-service connection.

12. When the original consumer was detected to be working with the additional connected load, compensation charges and surcharge was levied on them and in view of the non payment of

the same, the demand had become overdue, which is now sought to be recovered from the intending consumer, who is the petitioner herein. Clause 6.10 refers to the term "dues" and the incidental question that would arise as to whether such compensation charges and surcharge can be construed to be the dues of the original consumer. In this context, the term "dues" requires to be understood. The term "dues" has not been defined under the Electricity Act. Nevertheless, the Tamil Nadu Electricity Board (Recovery of Dues) Act, 1978, defines "dues" under Section 2(2) as follows:-

"2.Definitions

In this Act, unless the context otherwise requires,-

2) "dues" means any sum payable to the Board on account of,-

(i) consumption of electrical energy supplied; or

(ii) any remuneration, rent, or other charges for hire, inspection, test, installation, connection, repairs, maintenance or removal of any electric meter, electric machinery, control gear, fittings, wires or apparatus for lighting, heating, cooling or motive power or for any other purpose for which electricity can or may be used or any industrial or agricultural machinery operated by electricity; or

(iii) price of any such goods as aforesaid taken on loan but not returned;"

13. The Tamil Nadu Electricity Board (Recovery of Dues) Act has been enacted for expeditious recovery of certain sums due to the Tamil Nadu Electricity Board. As per the aforesaid definition, dues will include the sums payable on consumption of electricity supply or any other charges on such purposes for which electricity can be utilised or price of such goods taken on loan but not returned.

14. The term "dues" as defined above, does not include fines, penalties, compensation charges or any other charges levied against violation of the Rules. It is not in dispute that the dues which is now demanded are not regular arrears of the electricity consumption charges. The show cause notice dated 26.02.1996, the proceedings of the Vigilance Cell dated 30.03.1996, as well as the demand notice dated 04.07.1996 issued to the original consumer namely, M/s.Gurukripa Castings, clearly specifies that a sum of Rs.5,23,453/-, demanded in the impugned order, is towards compensation charges of Rs.4,30,999/- and 25% surcharge on the current consumption charges for violation of Clause 2.02 (viii) of Schedule Part-I of the terms and

conditions of the supply. When the Anti-Power Theft Squad Wing had deducted a violation case in the original consumer premises for unauthorised additional load, this demand of Rs.5,23,453/- was made. As such, there is a clear indication that such consumption charges and the surcharge was only towards the violation detected by the Anti-Power Theft Squad Wing and the consequent demand can never be equated to the regular dues for a legal consumption of electricity by the erstwhile consumer.

15. In view of the definition of 'dues' under the Tamil Nadu Electricity Recovery of Dues Act, which consciously excluded such charges for violations and in view of the facts involved in this case whereby compensation charges and surcharge was levied for additional connected load, over and above the sanctioned load, such a demand cannot be termed to be "dues".

16. As a matter of fact, this demand can be held to be in 'pari materia' to a penalty levied for theft of energy or any other penalties or compensation for violation of terms and conditions of the electricity service connection. A Division Bench of the Patna High Court in the case of Bihar State Electricity Board V. Kishori Devi and others reported in 2003 AIR (Patna) 38 had held in paragraph 21 that, when consumer uses electricity beyond the sanctioned load, such consumption of electricity, beyond the sanctioned load without the consent of the Board, amounts to theft or malpractices adopted by the consumer.

17. In this background, when Clause 6.10 of the terms and conditions of the supply was looked into, it can be held that the Board will not be entitled to seek for payment of the outstanding amount of the original consumer to the petitioner, which charges arises on violation of the terms and conditions of electricity supply. The Inspector General of Police, Vigilance in his letter dated 30.03.1996, addressed to the Superintending Engineer of the Electricity Distribution Circle, has also ratified that the compensation charges and the surcharge should be collected from the original consumer for violation of the terms and conditions of supply. The copy of the said letter dated 30.03.1996 has also been produced before this Court. As such, the impugned demand will not fall under the purview of the definition of "dues" as referred to under Clause 6.10. Consequently, the respondents cannot derive any powers or rights to collect such an amount, by terming it to be "dues to the Board" under Clause 6.10 and thereby the demand itself becomes illegal and the first issue is answered accordingly.

18. Issue (b):-

The learned Standing counsel for the respondents had placed reliance on the following decisions viz., a) Dakshin Haryana Bijlivitran Nigam Ltd., V. Paramount Polymers (P) Ltd., reported in 2006 (13) SCC 101; b) Vidyut Vitran Nigam Limited and others V. DVS Steels and Alloys Private Limited and others reported in 2009 (1) SCC 210; c) Haryana State Electricity Board V. Hanuman Rice Mills, Dhanauri & others reported in 2010 (9) SCC 145; d) M.Rukumani V. The Tamil Nadu Electricity Board, rep. by its Chairman and others dated 17.08.2011 in W.A.No.1896, 2198 of 2001 and 410 to 422 of 2008 and e) M/s.Omni Fusion Technologies rep. by its partner, P.Rajagopalan, Mathur Village V. The Chairman, Tamil Nadu Electricity Board, Anna Salai, Chennai & others reported in 2014 MHC 1465 for the proposition that the Board is entitled to demand the dues of the original consumer from the intending consumer, for the purpose of effecting a new service connection to the intending consumer. In all these decisions cited by the learned Standing counsel for the respondents, the dues referred to, does not include or arise from a claim for violation of the terms and conditions of the Electricity Supply. When the respondents have attempted to substantiate their demand by invoking Clause 6.10 of the Terms and Conditions of the Electricity Supply. In view of the findings rendered by this Court in the earlier paragraphs to the effect that charges levied for violation of the terms and conditions of the supply will not fall under the definition "dues", the very basis where the respondents attempted to derive powers to make the claim, fails and as such, the consequential question of liability on the subsequent purchaser of the premises does not arise. In this background, I do not wish to draw any inference or render a finding on the basis of these decisions cited by the learned Standing counsel for the respondents, which will only be a futile exercise. Therefore, in view of my finding in 'Issue A', this issue can only be answered stating that there is no liability cast on the petitioner herein for the impugned demand made by the respondents.

19. In the light of the above observations, the petitioner is entitled to succeed. Consequently, the impugned demand is quashed. The respondents are hereby directed to effect a new electricity supply to the petitioner's premises at Plot Nos.82 & 84, if not already effected, within a period of 15 days from the date of receipt of a copy of this order, on such other permissible conditions which would normally be made for any intending consumer and without referring or claiming the outstanding dues of the original consumer, viz., M/s.Gurukripa

Castings. The Writ Petition stands allowed. Consequently,
connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Chairman,
Tamil Nadu Electricity Board,
No.800, Anna Salai,
Chennai-2.
- 2.The Superintending Engineer,
Chengalpattu Electricity Distribution Circle,
Chengalpattu.

+1 cc to Mr.Sukumar Advocate sr67789

+1 cc to Mr.Rameshuwar Advocate sr67277

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