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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI
W.P.No.6731 of 2010
and M.P.No.1 of 2010

N.Viswanathan

... Petitioner

Vs

1. The Chairman

Tamil Nadu Electricity Board,
No.800, Anna Salai,
Chennai - 600 002.

2. The Superintending Engineer (CEDC) West

Tamil Nadu Electricity Board,
110 KV Thirumangalam SS,
Thirumangalam, Anna Nagar,
Chennai 600 040.

3. The Executive Engineer (O & M)

Tamil Nadu Electricity Board
No.119/III floor, M.T.H.Road,
Ambattur, CEDC/West,
Chennai 600 053.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying to issue writ of Certiorari to call for the records relating to the order passed by the second respondent dated 16.02.2010 in Lr.No.SE/CEDC/W/AEE/GL/AE2/F.Viswanathan/D.183-1/10, in respect of the petitioner's service connection account No.41-08-591 and quash the same.

For Petitioner : M/s.G.Vasudevan

For Respondents: Mr.P.R.Dhilipkumar

ORDER

The petitioner has filed this Writ Petition, to issue a writ of Certiorari to call for the records relating to the order passed by the second respondent dated 16.02.2010 in Lr.No.SE/CEDC/W/AEE/GL/AE2/ F.Viswanathan/D.183-1/10, in respect of the petitioner's service connection account No.41-08-591 and quash the same.



2. The learned counsel appearing for the petitioner would submit that the matter related 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 paid the compounding fee of Rs.7,11,679/- Subsequently, the Division Bench of this court has passed an order in similar writ petitions to proceed with the civil liability. Hence, the 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 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



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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 x 3: 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.

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"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. "

5. In view of the decision held by the Division Bench of this Court and also considering that the petitioner has accepted the Provisional Assessment Order and they have also paid substantial amount to the tune of Rs.7,11,679/- 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 four months 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 if any is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

dpq

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+1cc to Mr.G.Vasudevan, Advocate sr.60321

+1cc to Mr.P.R.Dhilipkumar, Advocate sr.60484

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and M.P.No.1 of 2010

nrjk(co)
nr 24/09/2019