

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. Nos.2573 and 2574 of 2012 and
M.P. Nos.1 and 1 of 2012

Sardar Beevi .. Petitioner in W.P. No.2573 of 2012

S.E.R.Abdul Rehman .. Petitioner in W.P. No.2574 of 2012

-vs-

The Assistant Executive Engineer,
Operation and Maintenance,
Anna Salai,
Chennai Electricity Distribution Circle (Central),
Chennai-2. .. Respondent in both the petitions

Prayer in both the petitions: Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari calling for the records of respondent in Lr.No.2:AEE/Annasalai/F.Theft of energy/D.Mukam 2012 dated 23.01.2012 demanding payment of a sum of Rs.1,89,362/-, Rs.1,09,385/- & Rs.96,607/- and Rs.38,391/- respectively in respect of S.C. Nos.103-045-82, 103-045-83 & 103-045-109 and 103-045-68 quash the same as illegal, arbitrary and as against the provisions of the Electricity Act, 2003 and the Regulations of the Supply Code, 2004.

For Petitioners : Mr.D.Nellaiappan

For Respondent : Mr.P.R.Dhilipkumar,
Standing Counsel

COMMON ORDER

The writ petitions have been filed challenging the impugned order passed by the respondent in Lr.No.2:AEE/Annasalai/F.Theft of energy/D.Mukam 2012 dated 23.01.2012 demanding payment of the sum of Rs.1,89,362/-, Rs.1,09,385/- & Rs.96,607/- and Rs.38,391/- respectively in respect of S.C. Nos.103-045-82, 103-045-83 & 103-045-109 and 103-045-68.

2.For the sake of convenience, the petitioners are hereinafter referred to as wife and husband respectively.

3.Learned counsel appearing for the petitioners would submit that on 23.01.2012 at about 16.00 hours, the respondent along with the APTS Squad accompanied by policemen, has inspected the service connections and alleged theft of energy on the ground that the security seals provided in the service connection in S.C. No.103-045-109 were tampered and supply was extended and used and thereby, the petitioners committed theft of energy by bypassing the meters provided in service connection bearing Nos.103-045-82 and 103-045-83. According to the learned counsel appearing for the petitioners, the Manager Mr.Selvaraj, who was present during the inspection, intimated the said event to the husband and therefore, he rushed to the premises. Thereafter, he explained that he has not tampered the seal and has not committed any theft or not violated the terms and conditions of the Electricity Supply provided by the respondent, but, without hearing the explanation offered by the husband, the respondent forced the petitioners to pay the compounding charges of Rs.20,000/-, Rs.12,000/- and Rs.12,000/- towards three service connections to avoid arrest and criminal prosecution. Since the respondent accompanied by a Sub Inspector of Police threatened that the petitioners will be arrested and electricity supply will be disconnected immediately if payments are not paid, the petitioners, by pledging the jewels and borrowing money from their friends, paid a total sum of Rs.44,000/- towards compounding charges and a total sum of Rs.3,95,354/- towards extra levy, due to coercion made by the respondent. Moreover, the respondent also obtained a letter from the petitioners forcibly to the effect that security seals provided in the meter were damaged and theft of energy was committed by the lessee to whom the petitioners have leased out the premises for running a lodge. Subsequently, the respondent has issued a provisional assessment order on 23.01.2012 showing that theft of energy was committed in the service connections that would amount to an offence punishable under Section 135(b) and (e) of the Electricity Act 2003. Thereafter, the respondent has assessed the loss said to have caused to them due to the alleged dishonest abstraction for 365 days and two times the tariff applicable to the service connections. Learned counsel appearing for the petitioners pleaded that as the respondent has issued the provisional assessment order without any prior notice to the petitioners, the same is liable to be set aside.

4.By way of filing a common counter affidavit, learned Standing Counsel appearing for the respondent would submit that the writ petitions are liable to be dismissed for the following reasons: Firstly, the respondent herein, before intending to inspect the service connections and the premises, has issued

notice to the petitioners requesting them to co-operate in this regard and the same was acknowledged by the representative of the petitioners, namely, Thiru P.Selvaraju, the Manager of New Guardian Guest House. In the course of inspection, it was noticed that the protection seals provided in the energy meter in S.C. No.103-045-109 were tampered and the recording of the energy in the meter was abstracted and the energy was utilised for various appliances including air conditioner, which is an offence under Section 135(1) of the Electricity Act, 2003. Secondly, in the course of inspection, it was found that the service connection in S.C. No.103-045-68 stands in the name of the husband, which is provided for domestic usage, was utilised for the above New Guardian Guest House. As there is a provision in Section 152 of the Electricity Act, 2003 to compound the said offence, the petitioners were informed of the same vide letter dated 23.01.2012. The husband on his behalf and on behalf of his wife, by letter dated 23.01.2012, has accepted the commission of offence under Section 135(1) of the Electricity Act and came forward to compound the offence by paying the amount specified in the Act. When the petitioners alleged that the respondent only forced the petitioners to pay the compounding charges, it is not known as to why the petitioners have not even given any reply to the provisional assessment order dated 23.01.2012. As the same was issued giving 7 days sufficient time to the petitioners to give reply, nothing prevented them from giving reply, if they had a fair case. But till date they have not come forward to give any reply whatsoever. Therefore, the arguments advanced by the petitioners that there was no notice before issuance of the impugned provisional assessment order is wholly illegal and untenable.

5.I fully agree with the submission made by the learned Standing Counsel appearing for the respondent. On 23.01.2012, when the respondent along with APTS Squad inspected the service connections, the security seals provided in the service connection in S.C. No.103-045-109 were tampered and the supply was extended and used and as a result, the petitioners allegedly committed the theft of energy. Thereafter, they came forward to pay the compounding charges of Rs.20,000/-, Rs.12,000/- and Rs.12,000/- towards three service connections to avoid criminal prosecution. Secondly, when the provisional assessment order was issued, the petitioners should have made use of the opportunity given to them for giving reply. As the petitioners got an effective and alternative remedy for giving reply to the provisional assessment order, they cannot come to this Court without making any reply to the provisional assessment order and without any good logic or justification. After committing the above offences and accepting the same and thereby, avoiding the criminal complaint and after paying the extra levy, the petitioners have filed the writ petitions on untenable grounds.

Therefore, this Court, finding no merit whatsoever, is inclined to dismiss the same. Accordingly, the writ petitions are dismissed. Consequently, connected M.Ps are closed. No costs.

vga

Sd/-

Assistant Registrar

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Sub Assistant Registrar

To

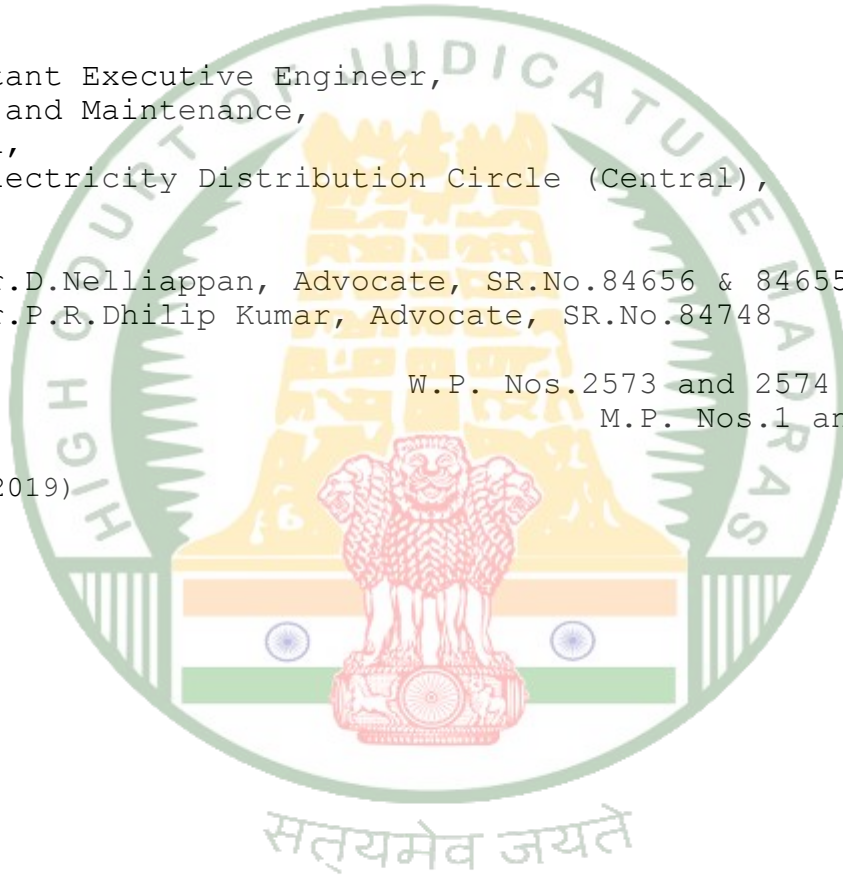
The Assistant Executive Engineer,
Operation and Maintenance,
Anna Salai,
Chennai Electricity Distribution Circle (Central),
Chennai-2.

+2cc to Mr.D.Nelliappan, Advocate, SR.No.84656 & 84655

+1cc to Mr.P.R.Dhilip Kumar, Advocate, SR.No.84748

W.P. Nos.2573 and 2574 of 2012 and
M.P. Nos.1 and 1 of 2012

Kak(18/11/2019)



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