

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.8991 of 2011
and
M.P.No.2 of 2011

P.V.Rajkumar

...Petitioner

.Vs.

1.The Assistant Executive Engineer
Tamil Nadu Electricity Board,
Thudiyalur (South),
Coimbatore District.

2.The Executive Engineer (Distribution),
Tamil Nadu Electricity Board (North),
Vadamadurai, Thudiyalur,
Coimbatore.

3.The Superintending Engineer,
CEDC/N/Coimbatore,
Tamil Nadu Electricity Board,
Tatabad, Coimbatore

... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records on the file of the first respondent and quash the proceedings in Lr.No.AEE/TDLR/F.Dkt/D 162/11 dated 15.03.2011 issued by the first respondent and directed him to consider the reply given by the petitioner on 14.03.2011 after giving sufficient opportunity to defend his case.

For Petitioner : Mr.Ponnambalathiagarajan

For Respondents: Mr.S.K.Raameshuwar for TNEB

O R D E R

The petitioner filed this Writ Petition, to issue a writ of Certiorarified Mandamus, to call for the records on the file of the first respondent and quash the proceedings in Lr.No.AEE/TDLR/F.Dkt/D 162/11 dated 15.03.2011 issued by the first respondent and directed him to consider the reply given by

the petitioner on 14.03.2011 after giving sufficient opportunity to defend his case.

2.The petitioner obtained electricity service connection from the respondent Board on 05.03.2011. The respondent board inspected the petitioner premises and found that the petitioner has committed an offence of theft of energy by unauthorizedly extending the Service Connection No. 530 TF IV was initially effected at SF 62/4 Nanjundapuram village for a load of 10 HP in the name of one Natarajan. Now the service is found at the well situated for the borewell at S.No.127/1.

3.Accordingly, theft of energy was registered against the petitioner. He further submitted that the offence was compounded. However, the petitioner has not paid the compounding fee. Earlier, in order to continue the service connection, this Court directed the petitioner to pay the entire amount. The amount was paid and the service connection was effected in favour of the petitioner. In respect of theft of electricity, the consumer has to pay the compensation amount to the electricity board.

4. 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.

5.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 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 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 unauthorizedly have to be punished.

6. In view of the above decision held by the Division Bench of this Court in batch cases, since the petitioner himself paid the entire amount and service connection was effected in favour of the petitioner. Therefore, nothing survives for further adjudication in this writ petition.

7. In view of the same, the writ petition stands closed. No costs. Consequently, connected miscellaneous petition is also closed.

vkrr

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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Kak(22/10/2019)