

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 05-08-2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.A.No.1705 of 2014

1.The Superintending Engineer,
Tamil Nadu Electricity Board,
Namakkal Electricity Distribution Circle,
Namakkal.

2.The Chief Engineer,
Tamil Nadu Electricity Board,
Erode Region,
Erode.

3.The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai.

.... Appellants
(Cause titile accepted vide order of court dt 15.12.201 made in
mp1/2014 in WA SR85565/2014.)

-vs-

Rasipuram Textiles (P) Ltd.
(Renamed as M/s.Sakthi Aiswarya
Spinning Mills Ltd.)

.... Respondent

(1st Respondent name substituted vide order of this court
dt.08/03/2018 made in cmp no.4378/2018 in WA No.1705/2014)

Appeal under Clause 15 of the Letters Patent against
the Order, dated 08.09.2014, passed in W.P.No.21113 of 2004 on
the file of this Court.

WP.NO.21113/2004: Writ petition file under Article 226 of the
constitution of India for a writ of certiorari, to call for the
records of the first respondent in his Letter
No.SEM/AEEG/CHD/F.RPMT/TF 13/95/D.1720/2002, dated 05.08.2002
and quash the same.

For Appellants : Mr.S.K.Rameshwar
For Respondent : Mr.Sathish Parasaran,
Senior Counsel,
for Mr.Vignesh Venkat.

JUDGMENT
(By Dr.Vineet Kothari,J.)

This Writ Appeal is filed by Tamil Nadu Electricity Board through its Superintending Engineer, Namakkal , aggrieved by the order, dated 08.09.2014, passed by the learned Single Judge in W.P.No.21113 of 2004, by which, the Writ Petition filed by the respondent-Assessee, namely, Rasipuram Textiles (P) Ltd. (Renamed as M/s.Sakthi Aiswarya Spinning Mills Ltd.), Namakkal, was allowed and the impugned demand of Rs.4,62,64,027/- raised by the Superintendent Engineer, MEDC, Metturdam-1, on the ground of alleged theft of energy by the respondent Company for the period from 27.04.1995 to 11.05.1995 vide the Show Cause Notice, dated 24.05.2002, issued to the respondent Company, was quashed.

2. The learned Single Judge has allowed the Writ Petition of the respondent Company mainly on the ground that the criminal case filed for the alleged theft of energy against the respondent Company ended in acquittal at the hands of the competent Court and, therefore, in the absence of the appellant Board proving the theft of energy before the Criminal Court, the demand raised for the alleged theft was unjustified.

3. Having heard the learned counsel for the parties, we are of the clear opinion that the order of the learned Single Judge cannot be sustained, as the parameters for the trial in a criminal case for the alleged theft of electricity and the assessment of charges payable for the alleged theft of power are different. While the yardstick for criminal law is proving the theft of energy beyond reasonable doubt in a competent Court, the assessment of charges in civil law is based on preponderance of probability and assessment of the Units of power consumed during the theft.

4. The assessment by the competent authority of the Electricity Board under the provisions of the Indian Electricity Act,1910, is admittedly subject to further appellate remedies under the said Act.

5. It seems that the respondent Company approached the Writ Court without exhausting the alternative remedy available to it under the provisions of the Act and the impugned demand came to be quashed on a wholly erroneous premise by the learned

Single Judge.

6. Learned counsel for the Appellant Board has also raised an objection that appellate and revisional remedies were available to the respondent consumer.

7. Therefore, while allowing this Writ Appeal of the appellant-Electricity Board, we relegate the respondent Company-writ petitioner back to the appellate remedy provided under the Indian Electricity Act, 1910, against the order of Assessment, dated 05.08.2002, passed by the Superintending Engineer, even now. If such an appeal is filed by the respondent Company within a period of thirty days from today, the Appellate Authority concerned, namely, the Chief Engineer of the particular Region, having jurisdiction over the respondent Company, shall decide the same on merits, without raising any objection as to limitation in filing such an appeal. The said authority shall provide reasonable opportunity of hearing to both the sides and decide the appeal in accordance with law, uninfluenced by any of the observations made by the learned Single Judge. The respondent Company-Assessee-writ petitioner will be free to rely upon the relevant Regulations and produce evidence in support of its case, so also the Assessing Authority.

8. Writ Appeal is thus disposed of. No costs. Consequently, the connected M.P.Nos.1 of 2014 and 1 of 2015 are closed.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

dixit

TO

1.The Superintending Engineer,
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Namakkal Electricity Distribution Circle,
Namakkal.

2.The Chief Engineer,
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Erode Region,
Erode.

3.The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai.

+1cc to Mr.Vignesh Venkat. Advocate, S.R.No.66772
+1cc to Mr.S.K.Rameshwar Advocate, S.R.No.66981

EV(CO)
CB(25/09/2019)

W.A.No.1705 OF 2014



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