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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P. 37573 of 2002

A.Dhanasekaran
rep. by his power agent
Mr.Amrit Lal V.Shah

... Petitioner

Vs

1. The Executive Engineer,
Egmore/CEDC/Central,
Tamil Nadu Electricity Board,
No.123, Briclinkkin Road,
Chennai-600 007.

2. The Superintending Engineer,
CEDC/Central,
Tamil Nadu Electricity Board,
Chennai-600 034.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondents 1 and 2 relating to the order No.Lr.No.EE/EGM/AE/CAUP/F.PTE/01/D.No.303/2001 dated 08.11.2001 passed by the 1st respondent confirmed in appeal by order No.Lr.No.SE/CEDC/Central/AEE/GI/T1/F.Doc/D2448/02 dated 18.09.2002 passed by the 2nd respondent and quash the same.

For Petitioner : Mr.C.Saravanan

For Respondents : Mr.P.R.Dhilipkumar

O R D E R

The petitioner has filed this Writ Petition challenging the impugned order of the respondents 1 and 2 and quash the same.

2. The case of the petitioner is that the petitioner is a tenant in premises at No.15, Choolai High Road, Chennai-600 112 and running a plastic industry. On 17.04.2001 at about 01.30 p.m. some persons claiming to be the employees of Tamil Nadu Electricity Board inspected the premises alleging that there was a theft of electricity connection. Thereafter, they have



registered a criminal case against the petitioner and apart from the criminal case, they have issued a show cause notice for civil liability. The petitioner had faced the criminal case and the said case is ended in acquittal and the petitioner also challenged the civil liability before the original authority as well as the appellate authority. The original authority and the appellate authority without application of mind had passed the impugned order directing the petitioner to pay a sum of Rs.4,00,886/- towards compensation amount for theft of energy. Against the said order, the present Writ Petition has been filed.

3. Mr.C.Saravanan, learned counsel appearing for the petitioner would submit that though the criminal case ended in acquittal in favour of the petitioner, each and every points raised before the original authority, the original authority without considering the objections of the petitioner, it has mechanically arrived a conclusion without any basis and the appellate authority has also committed an error on the face of record without considering the evidence recorded in adjudication proceedings and simply confirmed the order of original authority, which is a non-speaking order. The learned counsel would further submit that the Division Bench of this Court held in similar type of case upheld civil liability, and hence, this Court has shown some leniency in waiving the belated payment and the penal interest and permitted the petitioner to pay the demand amount. In fact, already the petitioner has paid a sum of Rs.2,40,522/- out of Rs.4,00,868/- and hence, the petitioner may be permitted to pay the balance amount of Rs.1,60,344/-.

4. Mr.P.R.Dhilipkumar, learned counsel appearing for the respondents has conceded the request made by the learned counsel appearing for the petitioner.

5. The above 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



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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 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



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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 unauthorisedly 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.

6. In view of the above decision held by the Division Bench of this Court in batch cases, this Court is inclined to direct the petitioner to pay the balance amount of Rs.1,60,344/-, without BPSC and penalty, since the petitioner has already paid a sum of Rs.2,40,522/- out of Rs.4,00,866/- within a period of eight weeks from the date of receipt of the copy of this order.

7. With the above direction, this writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpp

To

1. The Executive Engineer,
Egmore/CEDC/Central,
Tamil Nadu Electricity Board,
No.123, Briclinkkin Road,
Chennai-600 007.



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2. The Superintending Engineer,
CEDC/Central, Tamil Nadu Electricity Board,
Chennai-600 034.

+1cc to M/s.A.Naveenkumar, Advocate Sr.52657
+1cc to Mr.P.R.Dhilipkumar, Advocate Sr.52730

W.P. 37573 of 2002

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srg 05/08/2019