



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A.(MD)No.961 of 2019
and
C.M.P.(MD)No.8627 of 2019

Haji H.Sirrajdeen ... Appellant/Petitioner

Vs.

The Assistant Executive Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Board,
Chinnthamanipatti,
Karur District.

...Respondent/Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letter Patent Act, to set aside the order made by this Court in W.P.(MD)No.10055 of 2009, dated 19.03.2019.

Prayer in WP(MD). 10055/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARI calling for the records relating to the impugned provisional assessment order in Form No.9 passed by the respondent in Letter No. AEE/O & M/CMPT/C.1/F.Theft/D.402 2009 dated 10-09-2009 and the final assessment order in Form No.10 passed by the respondent in No.AEE/O & M/CMPT/C.1/F.Theft/D.433 2009 dated 26-09-2009 and quash the same as illegal without jurisdiction.

For Appellant : Mr.M.Mahaboob Athiff
for M/s.Ajmal Assocaites

For Respondent : Mr.S.M.S.Johny Basha

JUDGMENT

[Judgment of this Court was made by T.S.SIVAGNANAM, J.]

Heard Mr.M.Mahaboob Athiff, learned counsel appearing for the appellant and Mr.S.M.S.Johny Basha, learned counsel, who accepts notice for the respondent. By consent of both parties, this writ appeal is taken up for final disposal.



2. The appellant challenges the order passed by the respondent, by which the appellant was held guilty for committing theft of energy. The learned writ Court, after considering the submissions made, found that there is no error in the order of assessment, dated 26.09.2009. It is the submission of the learned counsel for the appellant that no adequate opportunity was given to the appellant to place materials before the respondent and the Criminal Court has also compounded the offence under Section 152 of the Electricity Act. Further, it is submitted that any computation can be assessed only by the criminal Court and not by the authority.

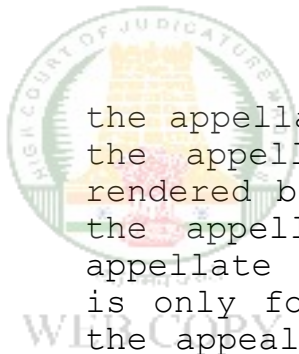
3. In our considered view, if the appellant is questioning the demand of charges for theft of energy and if the appellant states that factually they have got a good case, then the appellant should file an appeal as against the order passed by the respondent as an appeal lies to the Superintendent Engineer. Without exhausting such remedy, the writ petition has been filed.

4. The learned counsel for the appellant faced with this situation seeks liberty to approach the appellate authority under the provisions of the relevant Act. In our considered view, such prayer could be granted as the respondent electricity board is governed by a statute, which provides for appeal remedy, which is not only a statutory remedy but also a right conferred on the appellant. Therefore, we are inclined to permit the appellant to pursue the remedy before the concerned appellate authority.

5. The learned counsel for the appellant submitted that in the year 2009, when the writ petition was entertained, the appellant had deposited 25% of the demand and re-connection of the electricity was also effected and in the event this appeal is dismissed, the respondent will disconnect the supply and the appellant will be put to prejudice.

6. Considering the fact that the writ petition is of the year 2009 and also the fact that the appellant had the benefit of an interim order in the year 2009 subject to compliance of condition, we are inclined to grant liberty to the appellant to file an appeal before the appellate authority and also move for appropriate interim orders. Till then, this Court is inclined to grant an interim protection to the appellant, so that the appellant will not suffer.

7. In the result, the present writ appeal is disposed of holding that the writ petition is not maintainable. Accordingly, the prayer sought for in the writ petition should be rejected on the technical ground of the writ petition being not maintainable. The appellant is directed to file an appeal before the concerned appellate authority within a period of three weeks from the date of receipt of a copy of this judgment. Till then, no coercive action should be taken against the appellant. If the appeal is filed,



the appellant is entitled to seek for appropriate interim order from the appellate authority. It is made clear that the findings rendered by the writ Court in the impugned order stand vacated and the appellant is entitled to raise all the issues before the appellate authority. We make it clear that the interim protection is only for the time limit stipulated by us in this judgment till the appeal is filed before the appellate authority and prayer for interim order is made before the appellate authority. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

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To
The Assistant Executive Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Board,
Chinnthamanipatti,
Karur District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-89186[F] dated 25/09/2019)

ORDER MADE IN
W.A. (MD) No.961 of 2019
23.09.2019

JMN(25.09.2019) 3P : 3C