

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

C.M.Kamaraj Vs. ... Petitioner

1. The Executive Engineer (O&M)
Tamilnadu Electricity Generation &
Distribution Corporation
Pollachi, Coimbatore Dist.
2. The Joint Engineer (O&M)
Udumalai Electricity Distribution Circle
Tamilnadu Electricity Generation &
Distribution Corporation
Pollachi, Coimbatore Dist.
3. The Assistant Accounts Officer
Revenue Branch
Tamilnadu Electricity Generation &
Distribution Corporation
Pollachi, Coimbatore Dist.

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records relating to the notice of demand bearing K.No.JE/V/M. Puram/K.Court case /V.14/12 dated 23.01.2012 on the file of the second respondent and quash the same.

For Petitioner : Dr.S.R.Kalyani
For Respondents : Mr.M.Vijay Mehanath
For Mr.N.Damodaran

Heard Dr.S.R.Kalyani, learned counsel for the petitioner, and Mr.M.Vijaymehanath for Mr.N.Damodaran, learned Standing Counsel for the Respondents.

2. This Writ Petition has been filed challenging the order passed by the second respondent dated 23.01.2012 calling upon the petitioner to pay within a period of 15 days from the receipt of the order a sum of Rs.73,13,197/- being the electricity consumption charges. The proceedings which led to the impugned order can be briefly set out as hereunder.

3. The respondents applied LT Tariff III in respect of the petitioner premises, which is a hotel and demanded payment of electricity consumption charges. The petitioner filed suit in O.S. No. 644 of 1995 on the file of the District Munsif Court, Pollachi praying for declaration that the petitioner hotel falls under the definition of industry as declared by the Government of Tamil Nadu and entitled to get Tariff concession under Tariff IV and for permanent injunction, restraining the defendant / Electricity Board from demanding or collecting current consumption charges for service connection Nos. 5339, 14129, 14130 and 12589 under Tariff IX or from disconnecting the service connections.

4. The respondent-Board, which was impleaded as defendant resisted the suit by contending among other things that the service connections bearing Nos. 14129 and 14130 had been charged to Tariff IX from Tariff IV with effect from 1st May 1995 and the other two service connections given to the Hotel come under Tariff IX in terms of G.O.Ms.No.29, Energy (A2) Department dated 30.01.1995 and the plaintiff also remitted the consumption charges for all four service connection under Tariff IX. Further, it was contended that the petitioner hotel does not come under any one of the categories, which as stipulated in the above said Government order and therefore, they are liable to pay current consumption charges only under Tariff IX and prayed for dismissal of the suit. The suit was dismissed by the judgment and decree dated 12.03.1997. The petitioner preferred an appeal before the Sub Court, Udumalpet in A.S. No. 16 of 1997. The lower appellate court found that the petitioner hotel belongs to "1 Star" category, and it comes within the ambit of industry and therefore, entitled to get tariff concession under Tariff IV and accordingly, reversed the judgment and decree passed by the trial court and allowed the appeal and thereby, decreed the suit for the judgment and decree dated 31.07.1998. Aggrieved by the same, second appeal was preferred by the Electricity Board in Second Appeal No. 1641 of 1998. The Second Appeal was admitted on the following substantial questions of law:-

(i) whether the first appellate court erred in law in granting the relief of declaration that the plaintiff's hotel falls under the definition of industry as declared by the Government of Tamil Nadu

and entitled to get the tariff concessions under Tariff IV as prayed for para 10 (a) of the plaint?

(ii) Whether the first appellate court erred in law in granting the relief of permanent injunction as prayed for in para 10 (b) of the plaint?

(iii) Whether the lower appellate court erred in law in not considering the fact that once the distribution system is acquired by TNEB, then the consumers are bound by the respective terms and conditions of supply and also various G.O.s and Board proceedings issued by the TNEB from time to time and as such the respondent /plaintiff herein is bound by the terms and conditions of supply and G.O.No.29 dated 31.01.1995?

5. The Hon'ble Court after considering the submissions made before it and also taking note of various documents which were accepted during trial held that the petitioner is liable to be charged only under LT Tariff IX and not under LT Tariff IV. Thus, the stand taken by the respondent-Board was upheld and the questions of law were answered in favour of the respondent / Board and the second appeal was allowed by judgment and decree dated 19.10.2011 and consequently, the suit was dismissed. After the dismissal of the second appeal, the impugned demand has been issued. A plain plea has been raised in the affidavit filed in support of the writ petition under ground No.(F) stating that the review petition has been filed as against the judgment in S.A. No. 1641 of 1997. However, in the affidavit the case number of the review petition has not been furnished. Though the matter was adjourned to ascertain the status of the review petition, nothing has been placed before this Court to show that the review has been entertained. Thus as on date the judgment and decree in S.A. No. 1641 of 1998 dated 19.10.2011 hold good and if that is so, the respondents are entitled to demand the payment of electricity consumption charges under LT Tariff IX and the petitioner cannot claim where they should be charged under Tariff IX. In fact some of the grounds raised by the petitioner are relating to under which Tariff the petitioner should be charged. However one other contention raised by the petitioner is with regard to the jurisdiction of the second respondent who issued the impugned demand. This has been properly explained by the third respondent in their counter affidavit to the following effect:-

"5. I submit the revenue branch and the Assistant

accounts officer is not a separate unit of Tamilnadu Generation and Distribution Corporation Limited (TANGEDCO) then Operation and Maintenance of Tamilnadu Electricity Board Division. It is actually a part and parcel of division office. Here any type of revenue aspects dealing by the Assistant Accounts officers is an act of Executive Engineer/ Operation and Maintenance Division. On that basis the third respondent has replied. Further the act 1978 and rules 1979 are not applicable to these services since these are still live services.

6. I further submit that the card billing system was introduced by Tamilnadu electricity Board on 1/1/1982 and Bi-monthly card billing had been introduced from 1st October 1987 based on order No.B.P.Ms(FB) No.74 Secretariat Branch dated 25th August 1987. As per the implementation of Bi-monthly card billing, the initial billing of all type of charges related to current consumption charges, belated payment surcharges etc. are dealt with section officer and revenue branch is for post auditing purpose. I please to here in stated that service Nos. 129, 130, 131 and 132 are involved in current consumption arrears and belated payment surcharge demand to the petitioner and process is authenticated based on all orders up to date of TNERC distribution code- chapter 8 and 7 (page No.85) since these services are live services. The Act 1978 and rules 1979 are not matched for para 9A to 9F."

6. The Court is satisfied with the explanation given in the above referred paragraphs and therefore, it is held that there is no error of jurisdiction on the part of the second respondent, who issued the impugned demand. The third and last issue that should be considered is whether the petitioner can raise any objection with regard to the quantum.

7. In the considered view of this Court, since there has been a long drawn civil litigation and all of a sudden the petitioner has been served with the demand notice for current consumption charges at the appropriate tariff rate from October, 1995, this Court deems it appropriate to grant one more opportunity to the petitioner to place any objection which is valid in the eye of law, and after the petitioner disputes the consumption of electricity, then they should be able to prove that such amount of energy was not consumed by them. In other respects, the petitioner has not raised any objection under which they have to be charged, which had already attained finality in S.A. No.1641 of 1998.

8. In the light of the above, the writ petition is disposed of by directing the petitioner to submit his objections within a period of two weeks from the date of receipt of a copy of this order. Only with regard to the quantum of consumption, which has been mentioned in the annexure to the impugned order, objections should be accompanied with proper document and if the same is accompanied with proper documents, then the second respondent shall consider the objections and pass an order on merits and in accordance with law. If the objections are found frivolous and untenable, it is well open to the second respondent to reject the same and proceed with the impugned order. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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+2cc to Mr.S.R.Kalyani, Advocate, S.R.Nos.20414 and 20415
dt.09.03.20

W.P. No. 2805 of 2012

MR(CO)
nvi/29.06.2020