



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, THE CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.NO.417 OF 2020

AND

CMP.NO.6511 OF 2020

J. Madhavan

.. Appellant

-vs-

The Executive Engineer (O&M) North,
Tamil Nadu Electricity Board,
Kancheepuram

.. Respondent

Appeal filed under Clause 15 of the Letters Patent against the order dated 12.12.2019 made in W.P.No.25527 of 2013 on the file of this Court.

W.P.No.25527 of 2013:-

Petition under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the entire records in connection with the impugned Order of the respondent in KA.NO.EE/O & M/VA/KA/P.I/Ko/Madhavan/A.No.022/13 dated 07.08.2013 and quash the same and consequently direct the respondent to conduct an enquiry enabling the petitioner to cross examine the witness and examine witnesses on his side

For Appellant : Mr.R.Sivaraman

For Respondent : Mr.P.Gunaraj
Standing Counsel



JUDGMENT
(Delivered by The Hon'ble Chief Justice)

Having heard learned counsel for the appellant at length, we find that the High Court in several rounds of writ petitions granted indulgence to the appellant in respect of a theft assessment. Learned counsel contends that the theft part stands excluded, inasmuch as the criminal court has exonerated the appellant. If that is so, the consumption or its assessment being a separate proceeding under the Act, the same cannot be affected and it has become final with the orders passed from time to time by the High Court, particularly, the order dated 17.04.2013 followed by the judgment impugned presently dated 12.12.2019. While disposing of the earlier writ petition in W.P.No.16011 of 2003 by order dated 17.4.2013, in paragraph No.10, the High Court had categorically observed that the petitioner shall deposit the entire amount to the Board before invoking appeal provision, if so advised, as the matter was pending since 1999.

2. The appellant had again come up before this Court by filing a writ petition on the ground that inspite of the clear order of the High Court and a direction to conduct fresh enquiry, the demand notice has been set up without conducting an enquiry and in violation of principles of natural justice, inasmuch as the appellant was not given a fair opportunity of hearing by the respondent. In the absence of any compliance of the direction issued by this Court, the prayer is that the learned Single Judge has committed an error in granting only part relief, rather denying the main relief in the main writ petition.

3. We have considered the submissions raised and we find that the entertaining of the writ petition against the assessment order is the cause of this litigation from 1999 onwards and has dragged on for almost twenty years. The learned Single Judge after having considered the submissions, partly allowed the writ petition and limited the liability from the year 2003 after the assessment order dated 26.05.2003. A revised computation was therefore directed by the learned Single Judge and then send a demand notice on such computation. The remedy against such assessment or revised computation or any other liability can be subjected to a remedy under the Act by way of appeal or otherwise, as may be provided. We, therefore, see no reason to entertain this appeal without prejudice to the rights of the appellant to avail of the statutory remedies available under the Act.



4. It is also stated by the learned counsel that an order has been passed on 29.02.2020 imposing surcharge. The said order may be assailed by the appellant in an appropriate statutory proceeding challenging both the consumption charges and the imposition of surcharge. The challenge can be subjected in accordance with the provisions available under the statute itself and the appellant is entitled to avail the same. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sr/sasi

To

The Executive Engineer (O&M) North,
Tamil Nadu Electricity Board,
Kancheepuram.

W.A.No.417 of 2020

JP(CO)
CS/13/07/2020