

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2020

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.9170 of 2020
and WMP.No.11185 & 11186 of 2020

Mrs. M. Haseena Begum,
W/o. Mohammed Ali,
No.13/26, Dr. Ambedkar Nagar Third Street,
Korukkupet, Chennai - 600 021. ... Petitioner

Vs

1. The Chairman,
Chennai EDC/North,
Tamil Nadu Electricity Board (TANGEDCO),
No.144, Anna Salai, Chennai - 600 002.
2. The Assistant Engineer (O & M - Stanely),
Tamil Nadu Electricity Board (TANGEDCO),
No.18, Old Jail Road, Mint,
(Near Stanely Hospital) Chennai - 600 001. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus in the nature of a writ directing, to call for the records of the second respondent herein vide letter No. Ka. No.Vu. Po/E & Pa/Stanely/Ko.Thani/Aa.No.064 dated 11.03.2020 and quash the same and consequently direct the respondents herein to restore the Electricity Service Connection No.017-004-70 & 017-004-652 to the petitioner's House situated at No.13/26, Dr.Ambedkar Nagar Third Street, Korukkupet, Chennai - 600 021 immediately.

For Petitioner :Mr. R. Ramesh
For Respondent :Mr. Dilip Kumar
Government Advocate

O R D E R

The present writ petition has been filed to quash the impugned notice issued by the second respondent dated 11.03.2020 and for consequential direction to direct the respondents to retain the electricity service connection in the residence of the petitioners.

2. The case of the petitioner is that he is the owner of the property and he was given electricity connection in the year 2014 by the respondents. Thereafter the electricity connection was disconnected in the year 2016. The further case of the petitioner is that she was residing with her daughter and she was taking treatment for her ailment. After recovering from the ailment, the petitioner made a representation to the second respondent during March 2019, seeking to restore the electricity service connection. Since there was no response, the petitioner approached this Court and filed W.P.No.6420 of 2020 and when the writ petition was pending, it was informed by the learned counsel appearing on behalf of the respondent that notice has already been served on the petitioner directing the petitioner to pay the pending dues towards the consumption of electricity. Recording the said submission, the writ petition was closed by order dated 12.03.2020 and the petitioner was granted liberty to question the notice issued by the second respondent, if she is aggrieved. Accordingly, the present writ petition has been filed challenging the impugned notice issued by the second respondent.

3. The learned counsel for the petitioner submitted that the second respondent has arbitrarily calculated the units and has fixed a very high sum towards consumption of electricity when admittedly the electricity connection itself was disconnected in the year 2016. The learned counsel further submitted that the respondent is not entitled to the accrued amount due for a period of two years as per Section 56(2) of the Electricity Act, 2003. For this purpose, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in Civil Appeal No. 1672 of 2020, dated 18.02.2020. The learned counsel further submitted that the respondent has proceeded to calculate the amount due by adding compounding charges and penalty, even without giving opportunity to the petitioner. Therefore, the learned counsel sought for quashing of the impugned notice issued by the second respondent.

4. Per contra, Mr.Dhilip Kumar, learned counsel appearing on behalf of the respondent submitted that the electricity connection was disconnected in the year 2016 due to non-payment of consumption charges. The learned counsel further submitted that when the officials belonging to the Electricity Department went to the premise in the year 2020 for the purpose of dismantling the electricity meter, to their shock they found that the petitioner was involved in tampering with the electricity illegally and there was theft of electricity. It was found that in one of the connection, the petitioner had consumed 27,909 units and in another connection the petitioner had consumed 4096 units. Therefore, the respondent proceeded further to take action against the petitioner for the theft of

electricity. Accordingly, the compounding charges were added and the petitioner is due and payable a sum of Rs.4,53,066/- (Rupees Four lakhs fifty three thousand and sixty six only). The learned counsel therefore submitted that there is absolutely no ground to interfere with the notice issued by the second respondent and therefore the present writ petition must be dismissed.

5. This court has carefully considered the submissions made on either side and the materials available on record.

6. There is no dispute with regard to the fact that the petitioner was provided with the electricity connection and the same was disconnected in the year 2016. The case of the petitioner is that she was not staying in the premises and she was staying with her daughters and was taking treatment for her ailment.

7. Before going into the issue that is involved in the present writ petition, it is necessary to take note of the judgment cited by the learned counsel for the petitioner in order to substantiate his submissions that the demand made by the Electricity Department towards consumption of electricity is barred by limitation. The relevant portions in the judgment is extracted hereunder:

"6.2 The present Civil Appeal pertains to the interpretation of Section 56 of the Act which reads as follows : -

"Section 56. Disconnection of supply in default of payment -

(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and

may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -

a) an amount equal to the sum claimed from him, or

b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

(emphasis supplied)

Section 56 provides for disconnection of supply in the case of default in payment of electricity charges. Sub-section (1) of Section 56 provides that where any person "neglects" to pay "any charge" for electricity, or "any sum" other than a charge for electricity due from him to a licensee or generating company, the licensee after giving 15 days' written notice, may disconnect the supply of electricity, until such charges or other sums due, including the expenses incurred, are paid. However, the disconnection cannot continue after the amounts are paid.

6.3 The obligation of a consumer to pay electricity charges arises after the bill is issued by the licensee company. The bill sets out the time within which the charges are to be paid. If the consumer fails to pay the charges within the stipulated period, they get carried

forward to the next bill as arrears.

6.4 The proviso to Section 56(1) carves out an exception by providing that the disconnection will not be effected if the consumer either deposits the amount "under protest", or deposits the average charges paid during the preceding six months.

6.5 Sub-section (2) of Section 56 by a non obstante clause provides that notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, shall be recoverable under Section 56, after the expiry of two years from the date when the sum became "first due", unless such sum was shown continuously recoverable as arrears of charges for the electricity supplied, nor would the licensee company disconnect the electricity supply of the consumer.

The effect of a non obstante clause was explained by this Court in Chandavarkar Sita Ratna Rao v. Ashalata S. Guram.³ It was held that : -

"69. A clause beginning with the expression 'notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract' is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non-obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause would not be an impediment for an operation of the enactment."

(emphasis supplied)

6.6. The liability to pay arises on the

consumption of electricity. The obligation to pay would arise when the bill is issued by the licensee company, quantifying the charges to be paid.

Electricity charges would become "first due" only after the bill is issued to the consumer, even though the liability to pay may arise on the consumption of electricity.

7. The next issue is as to whether the period of limitation of two years provided by Section 56 (2) of the Act, would be applicable to an additional or supplementary demand.

7.1 Prior to the coming into force of the Electricity Act, 2003, the Indian Electricity Act, 1910 governed the law pertaining to the use and supply of electricity in India. Section 24 of the Indian Electricity Act, 1910 read as follows :-

"24. Discontinuance of supply to consumer neglecting to pay charge.

(1) Where any person neglects to pay any charge for energy or any sum, other than a charge for energy, due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days' notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with ally expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer.

(2) Where any difference or dispute which by or under this Act is required to be determined by an Electrical Inspector, has been referred to the Inspector before notice as aforesaid has been given by the licensee, the licensee shall not exercise the powers conferred by this section until the Inspector has given his decision:

Provided that the prohibition contained in this subsection shall not apply in any case in which the licensee has made a request in writing to the consumer for a deposit with the Electrical Inspector of the amount of the licensee's charges or other sums in dispute or for the deposit of the licensee's further charges for energy as they accrue, and the consumer has failed to comply with such request."

The Standing Committee of Energy in its Report dated 19.12.2002 submitted to the 13th Lok Sabha, opined that Section 56 of the 2003 Act is based on Section 24 of the 1910 Act.

The Standing Committee further opined that a restriction has been added for recovery of arrears pertaining to the period prior to two years from consumers, unless the arrears have been continuously shown in the bills. Justifying the addition of this restriction, the Ministry of Power submitted that : "It has been considered necessary to provide for such a restriction to protect the consumers from arbitrary billings."

7.2 In *Swastic Industries v. Maharashtra State Electricity Board*,⁴ this Court while interpreting Section 24 of the Indian Electricity Act, 1910 held that : -

"5. It would, thus, be clear that the right to recover the charges is one part of it and right to discontinue supply of electrical energy to the consumer who neglects to pay charges is another part of it."

(emphasis supplied)

7.3 Sub-section (1) of Section 56 confers a statutory right to the licensee company to disconnect the supply of electricity, if the consumer neglects to pay the electricity dues.

This statutory right is subject to the period of limitation of two years provided by sub-section (2) of Section 56 of the Act.

7.4 The period of limitation of two years would commence from the date on which the

electricity charges became "first due" under sub-section (2) of Section 56. This provision restricts the right of the licensee company to disconnect electricity supply due to non-payment of dues by the consumer, unless such sum has been shown continuously to be recoverable as arrears of electricity supplied, in the bills raised for the past period.

If the licensee company were to be allowed to disconnect electricity supply after the expiry of the limitation period of two years after the sum became "first due", it would defeat the object of Section 56(2).

8. Section 56(2) however, does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of two years. It only restricts the right of the licensee to disconnect electricity supply due to non-payment of dues after the period of limitation of two years has expired, nor does it restrict other modes of recovery which may be initiated by the licensee company for recovery of a supplementary demand.

9. Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September, 2011.

The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired.

Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.

As per Section 17(1)(c) of the Limitation Act, 1963, in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time.

In Mahabir Kishore and Ors. v. State of Madhya Pradesh, 5 this Court held that :-

"Section 17(1)(c) of the Limitation

Act, 1963, provides that in the case of a suit for relief on the ground of mistake, the period of limitation does not begin to run until the plaintiff had discovered the mistake or could with reasonable diligence, have discovered it. In a case where payment has been made under a mistake of law as contrasted with a mistake of fact, generally the mistake become known to the party only when a court makes a declaration as to the invalidity of the law. Though a party could, with reasonable diligence, discover a mistake of fact even before a court makes a pronouncement, it is seldom that a person can, even with reasonable diligence, discover a mistake of law before a judgment adjudging the validity of the law."

(emphasis supplied)

In the present case, the period of limitation would commence from the date of discovery of the mistake i.e. 18.03.2014. The licensee company may take recourse to any remedy available in law for recovery of the additional demand, but is barred from taking recourse to disconnection of supply of electricity under sub-section (2) of Section 56 of the Act.

10. We extend our appreciation to Mr. Devashish Bharuka, Advocate who has very ably assisted this Court as Amicus Curiae.

The present Civil Appeals are accordingly disposed of in the aforesaid terms.

All pending Applications, if any, are accordingly disposed of. Ordered accordingly."

8.A careful reading of the above judgment shows that the Hon'ble Supreme Court was dealing with a case where there was disconnection of supply on the ground of default in payment and the Hon'ble Supreme Court was dealing with the scope of Section 56(2) of Electricity Act. The said provision stipulates that no sum due from any consumer shall be recoverable after a period of two years from the date when such sum became first due unless such sum has been shown continuously recoverable as arrears of charges for the electricity supplied in the bills raised for the past period. While interpreting the said provision, the Hon'ble Supreme Court on the facts of the case found that the recovery was barred by limitation. In the considered view of this Court, the said case will not have any application to the facts of the present case.

9. In the present case, after the electricity was disconnected in the year 2016, it was found by the Electricity Department that the petitioner had managed to consume electricity till the year 2020 and the same came to light when the officials of the electricity department went to the premises in order to dismantle the meter. This is not a case where the electricity department wants to recover the dues. This is a case where the petitioner has managed to consume electricity till the year 2020, even though the supply was disconnected in the year 2016. Therefore, prima facie it is a case of illegally tapping of electricity for which the Electricity Department is entitled to initiate separate proceedings on the ground of theft of electricity. Apart from initiating proceedings, the consumer is liable to pay compounding fees and penalty for the theft of electricity. Therefore, according to the learned counsel appearing on behalf of the Department, the petitioner is liable to pay a sum of Rs.4,53,066/- as on date.

10. The learned counsel for the petitioner in reply to the said submission, stated that the petitioner must be given an opportunity to defend herself against the allegations made by the Electricity Department. The learned counsel submitted that there was no illegal tapping of electricity and there was no theft of electricity on the part of the petitioner.

11. This Court has carefully considered the submissions made on either side and the materials available on record and does not find any ground to interfere with the notice issued by the second respondent dated 11.03.2020. In the said notice, the second respondent has merely stated that if the petitioner wants reconnection of the supply, the petitioner has to pay the amount due as per the readings calculated in both the connections. If the petitioner is aggrieved by the same, the petitioner can give a reply for this notice and put forth her case and the respondent will have to thereafter decide the issue in accordance with law. It also goes without saying that if the petitioner is involved in any theft of electricity, the respondent is always entitled to initiate separate proceedings by giving an opportunity to the petitioner.

12. In view of the above discussion, this Court does not find any ground to interfere with the impugned notice issued by the second respondent. It is left open to the petitioner to give her reply for the notice issued by the second respondent and the second respondent shall thereafter deal with the same in accordance with law.

13. In the result, this writ petition is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mp/kp

To

1. The Chairman,
Chennai EDC/North,
Tamil Nadu Electricity Board (TANGEDCO),
No.144, Anna Salai, Chennai - 600 002.
2. The Assistant Engineer (O & M - Stanely),
Tamil Nadu Electricity Board (TANGEDCO),
No.18, Old Jail Road, Mint,
(Near Stanely Hospital) Chennai - 600 001.

+1cc to Mr.R.Ramesh, Advocate, Sr.No.24657

W.P.No.9170 of 2020
and WMP.No.11185 & 11186 of 2020

VS (CO)
GS (24/08/2020)

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