



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.08.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.5511 of 2020

and

W.M.P.(MD)Nos.4805 4807, 4811 and 7115 of 2020

S.Vijayalakshmi

... Petitioner

Vs.

1.The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Ltd.,
Dindigul District, Dindigul.

2.The Executive Engineer,
North Division,
Tamil Nadu Generation and Distribution
Corporation Ltd.,
Dindigul District, Dindigul.

3.The Assistant Executive Engineer,
North Division,
Tamil Nadu Generation and Distribution
Corporation Ltd.,
Dindigul District, Dindigul.

4.The Assistant Engineer,
Tamil Nadu Generation and Distribution
Corporation Ltd.,
N.G.O.Colony,
Dindigul District, Dindigul.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent in his proceedings க.என்./செவா/வ/திகல்/கோ.கட்டு/அ.என் .151/2020 dated 15.02.2020 and quash the same and consequentially forbear the second respondent from making any recovery of the amount in a sum of Rs.1,07,66,222/- as quoted in his proceedings above.



For Petitioner : M/s.S.Devasena

For Respondents : Mrs.S.Srimathy,
for Mr.S.M.S.Johny Basha
Standing Counsel

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O R D E R

Heard the learned counsel appearing for the writ petitioner and the learned Standing Counsel appearing for the respondents.

2. The petitioner's husband, Sagadhevan was running a plastic company in the name and style of M/s.Vijayalakshmi Plastic Company at No.331, Govindaraj Nagar, Siluvathur Road, Balakrishnapuram, Dindigul-5. The company was enjoying the service connection in S.C.No.1811 TN III-B. An inspection was held on 09.02.2000 and it was alleged that there was theft of energy in respect of the said service connection. In this regard assessment proceedings were initiated against the consumer. Criminal prosecution was also launched.

3. The learned Standing Counsel would categorically state that the assessment order was passed on 01.04.2000 quantifying the liability of the consumer at Rs.24,85,469/-. Since the said amount was not paid, the electricity connection was also cut off. It is not in dispute that the civil proceedings initiated by the petitioner's husband seeking restoration of supply of electricity, ended against him. But interestingly, O.S.No.321 of 2000 filed by the Board for recovery of the assessment amount also suffered dismissal on 31.03.2009.

4. The Fast Track Court, Dindigul dismissed the renumbered suit in O.S.No.23 of 2005 as premature. In paragraph 18 of the said judgment, it has been specifically found that proper procedure was not followed and that therefore, assessment order passed against the said consumer cannot be enforced. Liberty was, however, given to the Board to issue show cause notice to the consumer and pass fresh orders after holding due enquiry.

5. The learned Standing Counsel states that the judgment, dated 31.03.2009 passed by the Fast Track Court, Dindigul dismissing the suit filed by the Board was challenged before the First Appellate Court. But then, the First appeal does not appear to have been pursued.

6. In the meanwhile, the prosecution initiated against the petitioner's husband also ended in acquittal vide judgment dated 05.01.2010 in S.C.No.3 of 2009 on the file of the Principal District



Court, Dindigul. While so, purporting to act in terms of the liberty given by the learned trial judge, enquiry notice was issued on 23.01.2020. The petitioner's husband is said to have taken part in the enquiry held by the second respondent. Thereafter the impugned order dated 15.02.2020 was passed by the second respondent calling upon the consumer to pay a sum of Rs.1,07,66,222/-. The petitioner's husband is said to have passed away the very next day. The petitioner challenged the impugned order dated 13.02.2020, whereby the petitioner's husband had been called upon to pay a sum of Rs.1,07,66,222/-. The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition.

7. Per contra, the learned Standing Counsel submitted that the order impugned in the writ petition ought not to be interfered with. She pointedly contended that though the suit filed by the Electricity Board in O.S.No.321 of 2000 was eventually dismissed, liberty was given to issue show cause notice and determine the liability of the consumer. Only by availing the said liberty, the order impugned in this writ petition was passed. She drew my attention to the fact that proper enquiry was held and the petitioner's husband, in whose name the connection stood, was given full opportunity. She also submitted that the point of limitation will not arise in this case. She drew my attention to the judgment passed by the Hon'ble Supreme Court in **C.A.No.1672 of 2020 [Assistant Engineer (D1), Ajmer Vidyut Vitram Nigam Limited and another vs. Rahamatullah Khan alias Rahajulla]** dated 18.02.2020. The stand of the learned Standing Counsel is that Section 56(2) of the Electricity Act, 2003 will only bar the power of the TANGEDCO to effect disconnection after two years but not other modes of recovery. The assessment of quantification of the liability cannot be questioned.

8. I carefully considered the rival contentions.

9. Since the occurrence had taken place in February 2000, that is before the promulgation of the Electricity Act, 2003, the position that obtained earlier to that alone will govern. The decision relied on by the learned Standing Counsel in C.A.No.1672 of 2020, pertains to interpretation of Section 56(2) of the Electricity Act, 2003. When the Electricity Act, 2003 was not even in the statute book when the cause of action took place, it is futile on the part of the respondent to fall back on its provision.

10. I must straight away observe that the impugned order, dated 15.02.2020 is a mere narration of the antecedent facts. The learned trial Judge in O.S.No.321 of 2000 had completely undermined the entire assessment proceedings initiated by the Board. Therefore, though liberty was given by the learned trial Judge, it only meant that the Board has to determine the liability of the



consumer afresh. I carefully read the impugned order. I am not able to anywhere discern any such determination. When the assessee/consumer is called upon to pay a huge sum as compensation on the ground of energy theft, this Court would expect the Authority to adopt a quasi-judicial approach. In this case, except a bare narration of the events leading to the impugned order, there is virtually nothing else. I can only characterise the impugned order as a non-speaking order. Therefore, the order impugned in the writ petition deserves to be quashed on this sole ground.

11. The learned Standing counsel wanted me to remand the matter for fresh consideration. It is true that the learned trial Judge gave liberty to the respondents. The liberty was given way back on 31.03.2009. I find it very strange that notice had been issued purporting to avail such liberty in January 2020. In other words, a full 11 years have elapsed in the meanwhile. The respondent is not a private individual. It is a public utility and in that sense, a State instrumentality. Therefore, it is expected to behave in a fair and reasonable manner. The respondents cannot take their own sweet time to initiate proceedings. If one takes into account the original cause of action, one can see that the impugned proceedings have been initiated after a gap of 20 years. As already pointed out, the occurrence took place in February, 2000. The order impugned in the writ petition has been passed in February, 2020. As held by the Hon'ble Supreme Court in Joint Collector Ranga Reddy District Vs. D.Narsing Rao ((2015) 3 SCC 695), even where there is no period of limitation prescribed for exercise of any power, such power must be exercised within a reasonable period. The time taken in this case is not at all reasonable. Hence, the question of remand does not arise.

12. Therefore, in this view of the matter, the order impugned in this writ petition stands quashed and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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+1 CC to M/s.S.M.S. JOHNNY BASHA, Advocate (SR-13615[F] dated
05/08/2020)

+1 CC to M/s.S. DEVASENA, Advocate (SR-13690[F] dated 05/08/2020)

W.P. (MD)No.5511 of 2020
04.08.2020

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