



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.09.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.20546 of 2015

and

M.P.(MD)No.1 of 2015

S.Rajeshkumar

... Petitioner

Vs.

1.The Assistant Executive Engineer,
Operation & Maintenance,
Tamil Nadu Electricity Board,
Chinnadharapuram,
Karur.

2.The Assistant Engineer,
Operation & Maintenance,
Tamil Nadu Electricity Board,
K.Paramathi,
Karur.

... Respondents

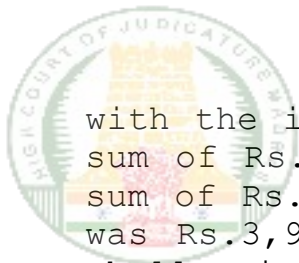
Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the the records relating to the proceedings of the 1st respondent dated 21.09.2015 made in Na.Ka.No.USEPO/EEKa/Seethapuram/Co.Thani/No.220-2/15 and quash the same as illegal, arbitrary without authority of law and against the provisions of Electricity Act, 2003 and the Electricity Supply Code and consequently directing the 1st respondent to refund or adjust Rs.1,50,000/- already paid by the petitioner towards the provisional assessment.

For Petitioner : Mr.K.P.S.Palanivel Rajan
For Respondents : Mrs.S.Srimathy
For Mr.S.M.S.Johnny Basha

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 writ petitioner is a consumer of electricity He has been granted LTCT 108/3B. The petitioner is running a stone crusher unit in Survey No.607/1 and 608/1 at Karudayampalayam Village, Arakkurichi Taluk. The petitioner had been visited



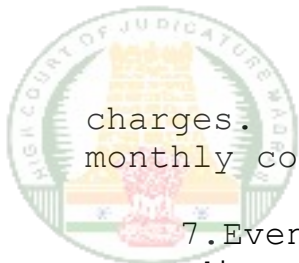
with the impugned demand whereby he had been called upon to pay a sum of Rs.5,42,000/-. It appears that the petitioner had paid a sum of Rs.1,50,000/- immediately and the demand on the petitioner was Rs.3,92,000/-. When the petitioner filed this writ petition challenging the same, he was put on terms and directed to pay 50% of the said amount. Thus as against the original demand of Rs.5,42,000/-, the petitioner had so far paid a sum of Rs.3,25,000/-. Even before commencing his argument, the petitioner's counsel submitted that even if the writ petition is allowed, the petitioner will not ask for any refund of the said amount. This submission made by the petitioner's counsel is recorded.

3.The case of the respondents is that they received a letter from the writ petitioner stating that the reading meter has been damaged and it is not functioning. When the respondents inspected the petitioner's premises, they noted that the meter had been damaged. Therefore, the same was sent to MRT authority. The MRT authority gave a report that the meter reading has not been recorded and that it is showing error message. The outer glass had been broken and the front portion in the meter was completely damaged. Therefore, the consumption of power and other details could not be retrieved. The stand of the respondents is that the nature of damage indicate that the damage is not due to accident but a deliberate act done with the help of a weapon. A similar report had been received from the Electrical Inspector also.

4.The learned standing counsel for the respondents took me through the impugned order and submitted that the reasons set out in the impugned order cannot be faulted. She would state that the respondents have not calculated for the preceding 12 months but only for the period of 37 days. Therefore, she submitted that the impugned order does not deserve to be interfered with.

5.I carefully considered the rival contentions and went through the materials on record. Even according to the respondents, the damage to the meter was not discovered by them. On the other hand, it was the petitioner, who intimated the respondents about the damage to the meter. In this regard, an FIR has also been registered. The respondents have treated the case as one of energy theft. Section 135 of the Electricity Act, 2003, defines what is theft of electricity. The purpose of such damage should be to abstract or consume or use electricity in a dishonest manner.

6.I wanted to know as to what was the monthly billing of the writ petitioner during the relevant period. The petitioner's counsel on instructions states that on an average the petitioner used to pay a sum of Rs.1,50,000/- towards monthly consumption



charges. Even now, he is paying only a sum of Rs.2,00,000/- as monthly consumption charges.

7. Even the respondents have not chosen to levy for the preceding 12 months. They have levied only for a period of 37 days. The petitioner had already paid a sum of Rs.3,25,000/- which is the twice usual monthly bill amount paid by the petitioner herein.

8. There is nothing on record to indicate that the damage to the meter was caused with a dishonest motive. Even according to the respondents, the respondents had posed only one question to themselves that is whether the damage was accidental or deliberate. In my view, this is a wrong question to pose. The respondents ought to have posed a question as to whether there was any act of dishonesty on the part of the petitioner. In this case, such a finding has not been given. Therefore, I am of the view that the respondents erred by approaching the matter as if it is case of energy theft. In this view of the matter, the order impugned in this writ petition is quashed. The writ petition is allowed. However, as undertaken by the petitioner, the petitioner will not ask for refund of the amount already paid by him. In other words, since the petitioner had already paid a sum of Rs.3,25,000/-, the matter stands closed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CRL SIDE)

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Sub Assistant Registrar(CS)

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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.

TO

1. The Assistant Executive Engineer,
Operation & Maintenance,
Tamil Nadu Electricity Board,
Chinnadharapuram,
Karur.



2.The Assistant Engineer,
Operation & Maintenance,
Tamil Nadu Electricity Board,
K.Paramathi,
Karur.

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+1 CC to M/s.K.P.S. PALANIVELRAJAN, Advocate (SR-15648
[F] dated 02/09/2020)

W.P. (MD)No.20546 of 2015

SCR(CO)

TR(07.09.2020) 4P 4C