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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-11-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.19106 of 2015

And

MP No.1 of 2015

Gremaltes Referral Hospital and Leprosy Centre,
Registered under the Tamil Nadu Societies
Registration Act, 1975 (Registration No.18/1978),
Represented by its Director
At No.92, Old No.5),
Gajapathy Street,
Shenoy Nagar,
Chennai - 600 030.

.. Petitioner

vs.

1.The Assistant Engineer,
Operation and Maintenance, Aminjikarai,
Tamil Nadu Generation and Distribution Company,
Chennai Electricity Distribution Circle/West,
110/33/11 KV Sub Station,
Kilpauk Water Works,
New Avadi Road,
Kilpauk,
Chennai - 600 010.

2.The Superintending Engineer,
Chennai Electricity Distribution Circle/West,
Tamil Nadu Generation and Distribution Company,
No.110/33/11 KV, Thirumangalam Sub Station,
Anna Nagar,
Chennai - 600 040.

3.The Tamil Nadu Electricity Board,
Represented by its Chairman,
No.144, Anna Salai,
Chennai - 600 002.

(R-3 impleaded vide order of Court
dated 29.11.2021 made in WMP No.13336 of 2016
in WP No.19106 of 2015)

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Respondents



Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records in respect of the proceedings of the first respondent in letter No.AE/O&M/ AMJ/F.DKT/D81/2015, dated 23.06.2015 and quash the same as violative of Regulations-7 Sub Regulation-9 of the Tamil Nadu Electricity Supply Code 2004 read with Section 56(2) of the Electricity Act, 2003.

For Petitioner : Mr.A.Muthukumar

For Respondents : Mr.L.Jaivenkatesh,
Standing Counsel for TANGEDCO.

O R D E R

The demand notice dated 21.06.2015 issued due to shortfall in audit on account of defective meter, is under challenge in the present writ petition.

2. There are three Electricity Service Connections in the premises of the petitioner. The meter was responded as defective by the Assessor and thereafter the defective meter was replaced by the Electricity Board. Thus, the overall consumption was taken into consideration and accordingly, the demand notice was issued for the recovery of electricity consumption charges.

3. No doubt, the demand notice issued is based on certain facts and circumstances, which is disputable. The petitioner is disputing the demand on various grounds and such grounds require an elaborate adjudication with reference to the facts and circumstances, documents and evidences and such an adjudication cannot be undertaken by the High Court in the writ proceedings under Article 226 of the Constitution of India. The petitioner has to establish his case and the Electricity Board also is bound to produce documents to establish that the demand is justified. This being the factum and the issues to be considered, the petitioner is bound to approach the Competent Forum constituted under the Tamil Nadu Supply Code for redressal of his grievances.

4. The learned counsel for the petitioner made a submission that the petitioner has no other remedy. Thus, the petitioner is constrained to move the present writ petition.

5. The leaned counsel appearing on behalf of the petitioner submitted that the Consumer Grievance Redressal Mechanism constituted under Regulation 18 of the Tamil Nadu



Electricity Supply Code is not applicable in respect of demand notice issued by the second respondent based on the audit objections.

6. It is further referred that under the Regulations for Consumer Grievance Redressal on the Electricity Ombudsman, the Forum constituted cannot adjudicate the issues relating to demand notice on audit objections. Under the said Regulation, unauthorised use of electricity as detailed under Section 126 and offences and penalties as detailed under Sections 135 to 141 of the Electricity Act, 2003, are excluded from the purview of this Forum. Therefore, the Forum constituted is not competent to entertain an application with reference to the grievances raised by the petitioner in the present writ petition.

7. The learned Standing Counsel, appearing on behalf of the TANGEDCO, disputed the said ground by stating that the Forum constituted under the Regulations for Consumer Grievance Redressal Forum and Electricity Ombudsman is empowered to adjudicate certain nature of disputes. In respect of consumer grievance redressal mechanism provided under the Regulation 11 of the Tamil Nadu Electricity Supply Code Forum is empowered to adjudicate the issues as contemplated under the said Regulations. Therefore, the petitioner has to approach the Consumer Grievance Redressal Forum provided under Regulation 18 of the Tamil Nadu Electricity Supply Code.

8. This Court has to consider the scope of Tamil Nadu Electricity Supply Code at the first instance.

9. Regulation 2(g) defines 'Consumer' means "any person who is supplied with electricity for his own use by a Licensee, the Government or by any other person engaged in the business of supplying electricity to the public under the Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a Licensee, the Government or such other person, as the case may be".

10. Regulation 2(pp) defines " 'Person' shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person".

11. Regulation 2(r) denotes " 'Supply', in relation to electricity, means the sale of electricity to a Licensee or Consumer".



12. Chapter II of the Tamil Nadu Electricity Supply Code deals with electricity charges, billing and recovery.

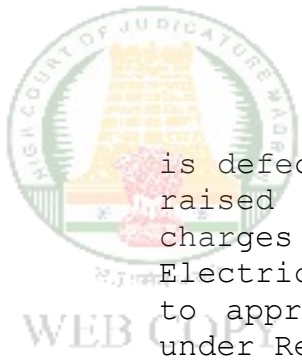
13. Regulation 3 stipulates 'Categories of supply'. Regulation 4 deals with 'charges recoverable by the Licensee'. Regulation 5 speaks about the 'miscellaneous charges'. Regulation 6 provides 'Minimum charges'. Regulation 7 denotes 'Installation of Meter'. Regulation 8 stipulates 'Meter reading, billing and intervals'. Regulation 9 contemplates 'Meter readings when there is changes in sanctioned demand, etc.'. Regulation 10 deals with 'Inaccessibility of meter for reading'. Regulation 11 speaks about 'Assessment of billing in cases where there is no meter or meter is defective'. Regulation 12 denotes 'Errors in billing'. Regulation 13 speaks about 'Servicing of bills'. Regulation 14 contemplates 'Due dates and notice periods'. Regulation 15 speaks about 'Mode of payment'. Regulation 16 contemplates 'Option to pay charges in advance'. Regulation 17 denotes 'Agreement with respect to supply : Issues on recovery of charges. Regulation 18 speaks about 'Consumer Grievance Redressal'.

14. Regulation 18 contemplates " 'Consumer Grievance Redressal'.--All grievances of the consumers, relating to the provisions under Regulations 3 to 17 of this Code shall be referred by the consumer to the respective Consumer Grievance Redressal Forum constituted under the Act".

15. Therefore, in respect of Tamil Nadu Electricity Supply Code, the Consumer Grievance Redressal Forum is constituted under Regulation 18 of the Tamil Nadu Electricity Supply Code. As per the above provision, all grievances of the consumers relating to the provisions under Regulations 3 to 17 of the Tamil Nadu Electricity Supply Code shall be referred by the consumer to the respective Forum. Therefore, any consumer aggrieved from and out of the actions initiated, which all are falling under the Tamil Nadu Electricity Supply Code, more specifically, under Regulations 3 to 17 are entertainable by Consumer Grievance Redressal Forum constituted under Regulation 18 of the Tamil Nadu Electricity Supply Code.

16. Providing of electricity service connection, supply of electricity meter reading, bills, defects, non-payment recovery, all these aspects are falling under Regulations 3 to 17 of the Tamil Nadu Electricity Supply Code.

17. In the present case, the case of the petitioner is that the demand notice falls under Regulation 11 i.e., 'Assessment of billing in cases where there is no meter or meter



is defective'. In the case of the petitioner, audit objection was raised in respect of the meter reading and the consumption charges are determined by the Authorities under the Tamil Nadu Electricity Supply Code. Therefore, the petitioner is at liberty to approach the Consumer Grievance Redressal Forum constituted under Regulation 18 of the Tamil Nadu Electricity Supply Code.

18. The contention of the petitioner that the Forum created under Regulations for Consumer Grievance Redressal Forum and Electricity Ombudsman is under different context and therefore, the Forum created under the above Regulations may not be applicable in the case of the petitioner. In the case where the Forum is created under the above Notification dated 08.01.2004, the kind of grievances are explained in Regulation 5. Therefore, those Regulations referred is inapplicable with reference to the case of the petitioner, as the petitioner's case falls under the Tamil Nadu Electricity Supply Code and more specifically, the impugned demand notice was issued by exercising the powers under the Tamil Nadu Electricity Supply Code. Each case is to be considered with reference to the facts and circumstances along with the Regulations applicable.

19. The demand notice when issued based on the audit objections on the ground that the meter was defective, the case falls under Regulation 11 and therefore, the petitioner has to approach the Consumer Grievance Redressal Forum constituted under Regulation 18 of the Tamil Nadu Electricity Supply Code and not under the other Regulations.

20. Two different Regulations provide redressal mechanisms and the each such Forum or mechanism constituted under the Regulation must entertain the grievances of the consumer in respect of the powers conferred on such Forums. It is unnecessary to raise confusion in such matters, when the subject matters of adjudication are enumerated in the Regulation itself. In the Tamil Nadu Electricity Supply Code, the subject matters are defined and Regulation 18 also stipulates that the grievances falling under Regulations 3 to 17 shall be adjudicated before the Consumer Grievance Redressal Forum constituted under Regulation 18 of the Tamil Nadu Electricity Supply Code. This being the scope of the provisions, the petitioner is bound to exhaust the alternate remedy provided under the Tamil Nadu Electricity Supply Code.

21. The learned counsel for the petitioner states that when the demand is prima facie illegal, the writ petition is entertainable. In this regard, it is to be noted that the demand



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notice is the initiation of action. Any demand notice or show cause notice is issued based on certain determination or based on certain allegations. Demand notice is issued by the Competent Authorities by determining certain issues in accordance with the Statute or Regulations and communicate the decision to the person concerned, who in turn is at liberty to accept the demand or deny the demand and prefer an appeal before the Competent Appellate Authority or the mechanism created under the Statute. Thus the demand notices or show cause notices are issued in different context. The difference between demand notice and show cause notice is that show cause notice is issued based on certain allegations asking the noticee to submit his explanations in respect of the allegations. It is an opportunity provided otherwise. Demand notice is a notice where the Competent Authority decides certain issues or determine the charges or otherwise based on the provisions of the Act or the Rules or based on certain facts and such determination of issues are communicated to the persons concerned, asking his response to the demand. It is left open to the person concerned either to comply with the demand or raise an objection by approaching the Appellate Authority or the Competent Forum created under the Act.

22. Let us now consider whether the High Courts can adjudicate such disputed issues. This Court is of an unambiguous opinion that based on certain defective meter, certain charges are determined. Whether the meter was defective or not, whether the reading made by the Authorities are proper or improper, whether the petitioner has not informed the defects in the meter to the Authorities or not and all the factors, which all are involved in these issues are to be ascertained for the purpose of forming an opinion and the High Court cannot conduct such an elaborate enquiry in the writ proceedings under Article 226 of the Constitution of India.

23. The power of judicial review under Article 226 of the Constitution of India is to scrutinise the processes through which a decision taken by the Authorities in consonance with the provisions of the Law, but not the decision itself. Thus, the High Courts are insisting for exhausting the alternate remedy as the findings of the Appellate Authority or the Forum is of greater assistance for the purpose of exercise of judicial review under Article 226 of the Constitution of India in an effective manner. In the event of venturing into the original adjudication merely based on the affidavit and counter-affidavit filed in the writ petition, no doubt there is a possibility of omission, commission, error or otherwise, which would cause prejudice to either of the parties.



24. Therefore, in all circumstances, the High Court is expected to entertain the writ petition after exhausting the statutory remedies provided under the Act or the Rules or Regulations in order to provide complete justice. Exhausting the statutory remedies are of paramount importance. This exactly is the reason for multiplicity of proceedings. If the writ petitions are entertained in a routine manner against all such show cause notices and demand notices, then thereafter a direction is issued and further writ petition is filed and almost 3 to 4 writ petitions are filed, which is taking years together for the litigants to get justice from the Court of Law, which really causes mental agony to the litigants. Thus, the High Court is expected to exercise restraint in entertaining such writ petitions, wherein the statutory remedies are provided and the very legislative intention for providing such statutory remedies are to ensure that the parties adjudicate the issues and resolve the disputes through such mechanisms. The purpose and object of such remedies can never be undermined and the High Courts must allow such Authorities to exercise their powers contemplated under the provisions of the Act or the Rules or Regulations.

25. This being the principles to be followed, this Court is of an opinion that the petitioner has to adjudicate all such disputed issues before the Competent Forum created under the Tamil Nadu Electricity Supply Code in the manner prescribed. Accordingly, the petitioner is at liberty to approach the Forum and in the event of approaching the Forum, the period during which the writ petition was pending before the High Court is to be taken into consideration for the purpose of condoning the delay if any petition to condone the delay is filed by the petitioner and the issues raised between the parties are to be considered on merits and in accordance with law and as expeditiously as possible.

26. With the abovesaid observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-V)

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Sub Assistant Registrar

Svn



To

- 1.The Assistant Engineer,
Operation and Maintenance, Aminjikarai,
Tamil Nadu Generation and Distribution Company,
Chennai Electricity Distribution Circle/West,
110/33/11 KV Sub Station,
Kilpauk Water Works,
New Avadi Road,
Kilpauk,
Chennai - 600 010.
- 2.The Superintending Engineer,
Chennai Electricity Distribution Circle/West,
Tamil Nadu Generation and Distribution Company,
No.110/33/11 KV, Thirumangalam Sub Station,
Anna Nagar,
Chennai - 600 040.
- 3.The Chairman,
Tamil Nadu Electricity Board,
No.144, Anna Salai,
Chennai - 600 002.

+1cc to Mr.L.Jaivenkatesh, Advocate, S.R.No.62108

WP 19106 of 2015

GPL(CO)
CB(13/12/2021)