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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-11-2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.31287 of 2016

And

WMP Nos.27152 and 27153 of 2016

Mr.V.Karthick

..Petitioner

vs.

1. The Chairman,  
Tamil Nadu Generation and Distribution  
Corporation Ltd.,  
NPKRR Maligai,  
No.144, Anna Salai,  
Chennai - 600 002.
2. The Superintending Engineer cum Chairman,  
Electricity Consumer Redressal Forum,  
Mettur Electricity Distribution Circle,  
Tamil Nadu Generation and Distribution  
Corporation Ltd.,  
Mettur.
3. The Assistant Engineer,  
(Operation and Maintenance),  
Tamil Nadu Generation and Distribution  
Corporation Ltd.,  
Pallakapalayam Division,  
Namakkal District.
4. The Assistant Engineer,  
(Operation and Maintenance),  
Tamil Nadu Generation and Distribution  
Corporation Ltd.,  
Edirmedi - 638 183,  
Namakkal District.

...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 of the fourth respondent in



Letter No.E.B.Gen/Operation/Ethirmedu/R.I/Co-Compt/No.162/16 dated 11.02.2016 and the order of the second respondent in Forum Petition No.05/04.02.2016 dated 18.06.2016 pertaining to petitioner Electricity Service Connection bearing No.171-004-412-TF-V provided at his residence at Katheri Village, Sowdanur, Sangagiri Taluk, Namakkal and quash the same.

For Petitioner : Mr.V.Jayaprakash Narayanan for  
Dr.G.Krishnamurthy

For Respondents : Mr.M.Abdulkalam,  
Standing Counsel for TANGEDCO.

#### O R D E R

The order impugned dated 11.02.2016 passed by the fourth respondent demanding a sum of Rs.2,04,963/- towards electricity consumption charges along with penalty, is under challenge in the present writ petition.

2. The petitioner states that he purchased the agricultural land in the year 2011 to an extent of 4 Hectares and 19 Ares and constructed a small house in the said land at Katheri Village, Sowdanur, Sangagiri Taluk, Namakkal District. The petitioner had dug a bore well in the said land and initially obtained 5 HP Electricity Service Connection under Commercial Category for construction of house on 30.11.2011 from the Office of the third respondent. Later the said Electricity Service Connection was converted into domestic.

3. The petitioner further states that he was using the power supply only for his domestic purposes and the pumped water was utilised for plantation of coconut and other trees in his land. The petitioner states that his average bi-monthly usage was only 70 units and it may vary sometimes. However, the petitioner states that he never used the Electricity Service Connection for any other purpose other than domestic purpose.

4. The fourth respondent inspected the property of the petitioner on 25.12.2015 and at that point of time, the electricity Meter reading showed exorbitant usage. The petitioner approached the Office of the fourth respondent and made a request to check the EB Meter, as he was of the opinion that the Meter was defective. However, the Authorities conducted further inspection and issued the impugned order of demand, directing the petitioner to pay a sum of Rs.2,04,963/- towards consumption charges.



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5. The petitioner submitted a representation to withdraw the demand notice. In view of the fact that the said demand notice has not been withdrawn, the petitioner is constrained to move the present writ petition.

6. The petitioner filed a petition before the Consumer Grievance Redressal Forum under Clause 18 of the Tamil Nadu Electricity Supply Code, who in turn passed an order on 09.08.2016, rejecting the petition filed by the petitioner. The Consumer Grievance Redressal Forum permitted the petitioner to file an appeal within 30 days by depositing the 25% of the electricity consumption amount. Instead of filing an appeal, the petitioner has chosen to file the present writ petition.

7. The learned counsel for the petitioner strenuously contended that the petitioner has not utilised the Electricity Service Connection for any other purpose other than the domestic purpose and for about 5 years, the consumption of electricity charges are far below and surprisingly during the inspection, the fourth respondent erroneously calculated the consumption charges based on the defective Meter and issued a demand notice by stating that the petitioner is liable to a sum of Rs.2,04,963/-.

8. The learned counsel for the petitioner states that there is no possibility of such higher demand as the earlier consumption charges were below a sum of Rs.1,000/-. It is contended that action against the petitioner was initiated after two years. Therefore, the demand notice issued by the fourth respondent itself is untenable.

9. The learned counsel for the petitioner drew the attention of this Court with reference to the assessment of consumption charges made by the fourth respondent and contended that the demand is not only exorbitant but also not in accordance with the provisions of the Electricity Act.

10. The learned Standing Counsel, appearing on behalf of TANGEDCO, objected the contentions of the learned counsel for the petitioner by stating that there was a collusion between the officials of the Electricity Board and the petitioner and in this regard, the disciplinary proceedings were initiated.

11. Today i.e., on 19.11.2021 Smt.Er.R.Kavitha, M.E., Assistant Engineer, Operation and Maintenance, TANGEDCO, Ethirmedi, Namakkal District appeared in person before this



Court and assisted the learned Standing Counsel for TANGEDCO made a submission that disciplinary proceedings initiated against the accused and ended with an order of punishment by the Department. Thus, the illegality committed by the Department Officials, namely, the Assessor was also considered and under these circumstances the writ petition is to be rejected.

12. The learned Standing Counsel for TANGEDCO further contended that the inspection conducted by the Electricity Board Authorities reveals that the Electricity Service Connection is not utilised for domestic purposes and no one is living in the small house constructed in that property. The petitioner is using the Electricity Service Connection for irrigation purposes by using 5 HP Motor and therefore, the contentions made by the petitioner are false and incorrect.

13. The learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court of India in the case of Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Ltd and Another vs. Rahamatullah Khan alias Rahamjulla [(2020) 4 SCC 650]. The Hon'ble Supreme Court considered the period of limitation under Section 56(2) of the Electricity Act.

14. No doubt, limitation prescribed is to be scrupulously followed by the Authorities. However, various facts and circumstances involved in a particular case is also to be taken into consideration while applying the Law of Limitation. If the cause is continuing, then the period of limitation is to be reckoned in such a manner, so as to ensure that the purpose and object of the limitation and the Statute as a whole is protected. Thus, this Court is of an opinion that in the present case, admittedly, the petitioner was using the Electricity Service Connection continuously and therefore, it is to be construed that it is a continuing cause of action and the period of two years contemplated cannot be considered in the present case.

15. Even in other circumstances, wherever the Statute contemplates limitation in completion of certain proceedings or initiation of certain prosecutions etc., the Hon'ble Supreme Court has held in many judgments that such limitation contemplated in Statutes should not frustrate the entire purpose and object of the Act. In such circumstances, the limitation prescribed is to be construed as directory and cannot be held as mandatory. All these principles are to be considered based on the circumstances placed before this Court. Thus, it is not as if the period of limitation is to be applied blanketly, so as to



quash the actions initiated by the Authorities Competent otherwise in accordance with the provisions of the Act.

16. In the present case, admittedly, the petitioner is consuming electricity continuously and even now he is consuming based on the interim order granted by this Court in the present writ petition. The Consumer Grievance Redressal Forum rejected the claim of the petitioner and permitted the petitioner to prefer an appeal before the Electricity Ombudsman. But the petitioner has not chosen to do so and filed the present writ petition.

17. Certain disputed facts and circumstances are to be established through the documents and evidences in original, which is to be done before the Electricity Ombudsman and the High Court cannot conduct any elaborate adjudication in respect of such disputed issues in the writ proceedings under Article 226 of the Constitution of India.

18. The power of judicial review under Article 226 of the Constitution of India is ensured. The processes through which a decision is taken by the Competent Authorities in consonance with the provisions of the Law and not the decision itself. Thus, the order passed based on the inspection is a demand. The petitioner rightly approached the Consumer Grievance Redressal Forum and thereafter, the petitioner ought to have approached the Electricity Ombudsman under the Regulations.

19. As far as the present writ petition is concerned, the inspection conducted by the Authorities would reveal that there was an exorbitant usage of electricity consumption by the petitioner by utilising the Electricity Service Connection for irrigation purposes. The petitioner also admitted in his affidavit that he purchased the agricultural land in the year 2011 to an extent of 4 Hectares and 19 Areas and he constructed a small house in the said land.

20. Taking note of the basic facts and the possibility of consumption of electricity and other than the domestic purpose and the manner in which the Electricity Officials acted in respect of the Electricity Service Connection provided to the petitioner, this Court is of the opinion that definite conclusion cannot be arrived. With reference to these disputed facts, prima facie, the Authorities verified the correctness of the Meter and it was found that the Meter was properly functioning. Based on the Meter reading, they have issued demand notice.



21. This being the factum established, this Court do not find any infirmity in respect of the order impugned passed by the fourth respondent and it is left open to the petitioner to approach the Appellate Authority. If any appeal is filed by the petitioner, the period during which the writ petition was pending before this Court, is to be taken into consideration for condoning the delay, if any such appeal condoning the delay is filed. In respect of merits, the Appellate Authority/Ombudsman has to consider the same independently based on the documents and evidences to be produced by the respective parties and uninfluenced by the findings in the present writ petition.

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

s/d-  
Assistant Registrar

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Sub-Assistant Registrar

Svn

To

- 1.The Chairman,  
Tamil Nadu Generation and Distribution  
Corporation Ltd.,  
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No.144, Anna Salai,  
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4.The Assistant Engineer,  
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Edirmedi - 638 183,  
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+1 CC to Mr.V.Jayaprakash Narayanan, Advocate sr 59911.

W.P.No.31287 of 2016

PMK(CO)  
SP(02/12/2021)