



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06-12-2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP No.30564 of 2014

And

MP Nos.1 and 2 of 2014

And

WMP No.6757 of 2016

K.Somasundaram

..Petitioner

vs.

1. The Superintending Engineer,
Tamil Nadu Electricity Board,
CEDC/West Thirumangalam,
Anna Nagar, Chennai - 600 040.

2. The Assistant Executive Engineer/O&M,
Anna Nagar,
Tamil Nadu Electricity Board,
CEDC/West, Chennai.

3. The Assistant Engineer,
O&M/Shanthi Colony,
TANGEDCO,
TNEB/Anna Nagar,
Chennai - 40.

..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 third respondent in his proceedings in his letter Lr.No.EEAAO/AS/A /A/Audit Shortfall/D.No.19 dated 21.04.2014 and quash the same as illegal.

For Petitioner : Mr.K.Sasindran for
M/s.Achari and Antoni Associates.

For Respondent : Mr.L.Jaivenkatesh,
R1 to R3 Standing Counsel for TANGEDCO.

O R D E R

The order impugned dated 21.04.2014, is the demand issued based on the audit short fall assessment. The Electricity Meter



in the premises of the petitioner was found to be defective and the petitioner states that he provided information to the Board for change of Electricity Meter and after replacing the defective Electricity Meter, an assessment was made by the Competent Authorities.

2. The assessment made regarding the consumption of electricity and the charges to be paid are questioned by the petitioner on the ground that the impugned order has been issued beyond the period of two years and therefore, in violation of Section 56(2) of the Electricity Act.

3. The learned counsel for the petitioner reiterated that the impugned order was passed after the lapse of many years and without considering the power conferred on the Authorities to issue such demand notices beyond the period of limitation. Even on merits, the petitioner contends that he is not responsible for the defective meter and therefore, the demand notice is to be set aside.

4. The learned counsel appearing on behalf of the respondent-TANGEDCO relied on the recent judgment of the Hon'ble Supreme Court of India in the case of M/s.Prem Cottex vs. Uttar Haryana Bijli Vitran Nigam Ltd., and Others [2021 SCC OnLine SC 870], wherein the Hon'ble Supreme Court has considered Section 56(2) of the Electricity Act. Accordingly, what is the meaning to be ascribed to the term 'First Due' in Section 56(2) of the Act, was also considered by the Apex Court. In this regard, the Court held that though the liability to pay arises on the consumption of electricity, the obligation to pay would arise only when the Bill is raised by the Licensee and that, therefore, electricity charges would become 'First Due' only after the Bill is issued, even though the liability would have arisen on consumption. On the third issue, regarding whether recourse to disconnection may be taken by the Licensee after the lapse of two years in the case of a mistake, the Apex Court held in Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam limited vs. Rahamatullah Khan alias Rahamjulla [(2020) 4 SCC 650], that "the period of limitation of two years would commence from the date on which the electricity charges became first due under Section 56(2)".

5. In this context, it is relevant to consider that certain limitations prescribed under the Statute are 'directory' and cannot be construed as 'mandatory'. These limitations are prescribed for the purpose that State claims cannot be raised. However, the Bill issued, the cause aroused or the information provided regarding the defective meter, are the mitigating factors to be adjudicated before the Authorities or before the Appellate Forum based on the documents and evidences.



6. The Court cannot form an opinion merely based on the consumption date as well as the billing date. If such dates are considered for the purpose of considering the issues, then there is a possibility of omission or error. In some occasions, the defective meters are unnoticed for several years. In some cases, theft of energy is being committed by the consumers or sometimes on other circumstances. Those factors are relevant for the purpose of forming an opinion by Competent Authorities. If at all any errors committed by the Authorities, the aggrieved person must approach the Consumer Grievance Redressal Forum constituted under Regulation 18 of the Tamil Nadu Electricity Supply Code. Contrarily, the High Court cannot adjudicate such an elaborate adjudication in the writ proceedings under Article 226 of the Constitution of India.

7. In the present case, the petitioner is raising a ground of limitation. However, the ground of limitation is also to be adjudicated with reference to the facts and circumstances. As pointed out by the Hon'ble Supreme Court in the case of M/s. Prem Cottex vs. Uttar Haryana Bijli Vitran Nigam Ltd., and Others, referred to supra, the period of limitation of two years would commence from the date on which the electricity charges became 'First Due' under Section 56(2) of the Electricity Act. Such factum is to be adjudicated with reference to the documents and evidences made available. Thus, the petitioner is at liberty to approach the Consumer Grievance Redressal Forum for the purpose of redressing his grievances. In the event filing any such application 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 application to condone the delay is filed and the issues are to be adjudicated on merits and in accordance with law as expeditious as possible.

8. With the abovesaid liberty, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

Svn



To

1. The Superintending Engineer,
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+1cc to Mr.L.Jaivenkatesh, Advocate, S.R.No.64445

WP 30564 of 2014

PL(CO)
RGA(14/12/2021)