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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.14024 of 2014
and
M.P.Nos.1 and 2 of 2014

The Leigh Bazaar Merchants Association Ltd.
(Registration No.4/1935)
represented by its Secretary,
Leigh Bazaar, Salem 636009.

... Petitioner

Vs.

1.The Tamil Nadu Electricity Board,
represented by the Executive Engineer,
Operation and Maintenance,
Salem Electricity Distribution Circle,
Revenue Branch/West,
Salem.

2.The Assistant Engineer,
Operation and Maintenance,
Tamil Nadu Generation and Distribution
Corporation Limited,
Arisipalayam,
Salem 636009.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondents relating to the order of the 1st respondent in letter No.EE/O&M/West/AAO/RB/F. T.A.Notice D.No.286/14 dated 22.04.2014 and of the 2nd respondent in Lr.No.AE/O&M/AP/SLM/F E.C. Arrears/No.450-4/2014 dated 14.05.2014 and quash the same and directing the respondents herein to forthwith restore electricity supply to S.C.No.452-009-286.

For Petitioner : Mr.Kandhan Duraisami

For Respondents : Mr.L.Jai Venkatesh
Standing Counsel [TNEB/TANGEDCO]



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O R D E R

The Notice for termination of agreement issued in proceedings dated 22.04.2014 is under challenge in the present writ petition.

2.The notice was issued based on the belated payment of surcharge by the petitioner. Thus the authorities have invoked Regulation 5 sub-clause (4) of the Tamil Nadu Electricity Supply Code.

3.The learned counsel for the petitioner made a submission that they are not liable to pay the demanded amount as the basis for the demand itself is not in consonance with the provisions of the Tamil Nadu Electricity Supply Code.

4.The learned counsel for the petitioner drew the attention of this Court that the petitioner approached the respondents by filing an application under the Samadhan scheme implemented and the said application is kept pending and no final order has been passed.

5.However, the learned counsel for the petitioner made a submission that the demand notice is disputed by the petitioners and therefore, the issues requires an adjudication with reference to the documents and evidences.

6.The petitioner has not shown any interest to settle the issue based on the Samadhan Scheme submitted as the authorities have not taken a decision within a reasonable period of time and the learned counsel for the respondents states that the decision was not taken due to the pendency of the writ petition as the demand notice itself is under challenge in the writ petition.

7.This Court is of the considered opinion that the impugned notice based on the belated payment of surcharge made by the petitioner and such issue requires an elaborate adjudication of disputed facts between the parties. Adjudication requires scrutinization of documents and evidences and High Court cannot conduct such an enquiry in a writ proceedings under Article 226 of the Constitution of India.

8.The learned Standing Counsel appearing for the respondent Board reiterated that the petitioner has to approach the Consumer Grievances Redressal Forum under Regulation 18 of the Tamil Nadu Electricity Supply Code for the purpose of raising the objections and to resolve the issues.



9.The demand notice and show cause notice are similar and in case of show cause notice, the addressee is asked to submit his explanations in respect of the allegations set out in the show cause notice. In the case of demand notice, the Authorities Competent demand certain issues with reference to the provisions of the Act and Rules or Regulations and communicate the determination or decision taken asking the addressee to comply with the decision taken.

10.In such circumstances, the person, who received the demand notice, may accept the demand and comply with the conditions or approach the Appellate Authority or the Forum/Court of Law constituted for the purpose of adjudication of the issues. Thus, mere issuance of demand notice and adjudication of facts and circumstances in the writ proceedings are not desirable, as it requires scrutinisation of original documents and evidences and if necessary oral evidences. Therefore, the demand notice may not provide cause in all circumstances except when such a demand notice is issued by the incompetent Authorities having no jurisdiction by directly hitting the provisions of the Act or Rules.

11.In all other circumstances, the opportunity provided to the person, who received the demand notice either to comply with the demand or to file an appeal or adjudicate the issues before the Competent Forum. Contrarily, such disputed issues cannot be adjudicated in the writ proceedings under Article 226 of the Constitution of India. In the event of venturing into adjudication of such disputes, merely based on the facts and circumstances filed in the writ proceedings, there is a possibility of omission, commission or error in the matter of considering the facts and circumstances based on the documents in original and evidences.

12.Contrarily, the Appellate Authority and the Forum constituted for redressing the grievances are empowered to examine the original documents and evidences and adjudicate the issues on merits and a finding can be provided. The findings of the Appellate Authority and such Redressal Forums would be of greater assistance to the High Court for the purpose of exercise of the powers of the Judicial Review under Article 226 of the Constitution of India.

13.This being the principles to be followed, the petitioner is bound to approach the Consumer Grievance Redressal Forum constituted under Regulation 18 of the Tamil Nadu Electricity Supply Code, the demand notice was issued by invoking the powers under the Regulation 4 of the Tamil Nadu Electricity Supply Code. Therefore, the petitioner has to approach the Grievance Redressal Forum constituted under



Regulation 18 of the Tamil Nadu Electricity Supply Code.

14.It is needless to state that the Authorities who decided the issues shall not be permitted to sit as a Member in the Redressal Forum and the independent Authorities must constitute the Forum for the purpose of adjudication of the issues and resolve the same.

15.In the event of filing an application before the Forum by the petitioner, the period in 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 is filed by the petitioner to condone the delay. All the issues raised are to be adjudicated and decided on merits and in accordance with law as expeditiously as possible and by affording an opportunity to the parties concerned.

16.The learned counsel for the petitioner made a submission that pursuant to the interim order granted by this Court in the present writ petition, the petitioner has deposited the amount and the said amount is to be adjusted by the Competent Forum.

17.With these observations, the Writ Petition stands disposed of. No costs. Consequently,connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Jeni/Cse
To

1.The Tamil Nadu Electricity Board,
represented by the Executive Engineer,
Operation and Maintenance,
Salem Electricity Distribution Circle,
Revenue Branch/Wests, Salem.

2.The Assistant Engineer,
Operation and Maintenance,
Tamil Nadu Generation and Distribution
Corporation Limited,Arisipalayam,Salem 636009.

+1 cc to Mr.Muthumani Doraisamy, Advocate Sr.NO. 62677
W.P.No.14024 of 2014

KV(CO)
A.SK(14.12.2021)