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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2021

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.13983 of 2017
and
W.M.P.No.15197 of 2017

K.Vinoth

... Petitioner

Versus

1. The Assistant Engineer,
TANGEDCO,
Gingee Town,
Villupuram District - 604 202.

2. The Assistant Audit Officer,
(Audit Party No.II),
TANGEDCO,
Villupuram Region.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the record relating to impugned order made in Ka.A/U.me/Po/Nagaram/Gingee/Ko.V/A364/2017 dated 29.05.2017 passed by the 1st respondent and quash the same and consequently forbear the respondents from disconnecting or interfering with the electricity service connection No.485-016-1204 situated at Door No.85, Gandhi Bazaar, Sakarapuram Village, Gingee Taluk, Viluppuram District.

For Petitioner : Mr.G.Ethirajulu

For Respondents : Mr.L.Jai Venkatesh
Standing Counsel

O R D E R

This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, to call for the record relating to impugned order made in Ka.A/U.me/Po/Nagaram/Gingee/Ko.V/A364/2017 dated 29.05.2017 passed by the 1st respondent and quash the same and consequently



forbear the respondents from disconnecting or interfering with the electricity service connection No.485-016-1204 situated at Door No.85, Gandhi Bazaar, Sakarapuram Village, Gingee Taluk, Viluppuram District.

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2. The case of the writ petitioner is that the petitioner has purchased a property situated at Door No.85, Gandhi Bazaar, Sakarapuram Village, Gingee Taluk, Viluppuram District by way of a registered sale deed dated 13.07.2016. At the time of purchasing the property, the sale deed made it clear that there was no electricity service connection. Thereafter, the petitioner made an application and obtained the electricity service connection. While so, after a period of one year of the usage of the electricity connection, all of a sudden on 29.05.2017, the 1st respondent made a demand of Rs.69,638/- stating that the previous owner was in due of electricity consumption charges relating to the period from August, 2013 to February, 2014.

3. The contention of the petitioner is two fold. Firstly, the petitioner has obtained the new service connection and hence, he is no way connected with the arrears due and payable by the previous owner of the property. As the present service connection is entirely a new connection obtained by the petitioner, there are no dues payable by the petitioner. Secondly, the present demand notice cannot be sustained under Section 56(2) of the Electricity Act, 2003 since it was made belatedly after a period of two years.

4. It is the case of the petitioner that based on the account summary slip dated 28.12.2016, the 2nd respondent demanded a sum of Rs.69,638/- towards arrears of C.C. Charges. The 2nd respondent has furnished the details of the arrears due and payable by the petitioner during the period between 04/12 and 10/12 for a total sum of Rs.69,638/-. By referring to the said details, the learned counsel for the petitioner submits that the respondents claimed arrears of C.C. Charges for the year 2012 belatedly, that too after a lapse of 4 years, in the year 2016. The learned counsel would submit that, in terms of Section 56(2) of the Electricity Act, 2003, the period of limitation prescribed for collecting the arrears was prescribed as two years from the date when such sum becomes first due. In the present case, since the demand was made beyond the period of limitation, the impugned demand cannot be sustained and the same is liable to be quashed.

5. Per contra, Mr.L.Jai Venkatesh, learned Standing Counsel appearing for the respondents would submit that admittedly, the



erstwhile owner of the property was in due of the arrears and the petitioner has purchased the property without verifying the same and therefore, for his lapse, the department cannot sustain the loss and therefore, the petitioner who is in occupation of the property in respect of which, electricity consumption charges were due and hence, the 1st respondent has rightly issued the demand notice for recovery of the dues for the period between 04/12 and 10/12 by furnishing all the details. He would also submit that without making the payment, the petitioner has approached this Court and hence, he prayed to dismiss Writ Petition.

6. Heard the learned counsel for the petitioner as well as the learned Standing Counsel appearing for the respondents and perused the materials available on records.

7. It is relevant to extract Section 56(2) of the Electricity Act, 2003, which reads as under:

"56 (2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

8. A perusal of the above, it is clear that no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied. Therefore, Section 56 of the Act does not empower the 1st respondent to recover any amount if the period of two years has elapsed and no electricity supply be cut off for non-payment of those dues. In other words, what is sought to be contended is that if the demand or part of the demand is time barred, the provision of Section 56 of the Act would be attracted.

9. In the present case, admittedly, the impugned demand has been made after the prescribed period of two years. Therefore, it is clearly barred by limitation by virtue of Section 56(2). Further, it is not the case of the respondents that such sum has



been shown continuously as recoverable as arrear of charges for electricity supplied in the books of account. In this regard, it is also worthwhile to refer a decision of the Hon'ble Supreme Court in C.A.No.1672 of 2020 dated 18.02.2020, wherein, it was made it clear that no claim can be made beyond the period of two years. The relevant portion of the judgment is extracted hereunder:

"9. Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September, 2011.

The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired.

Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.

As per Section 17(1)(c) of the Limitation Act, 1963, in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time.

In Mahabir Kishore and Ors. v. State of Madhya Pradesh,⁵ this Court held that :-

Section 17(1)(c) of the Limitation Act, 1963, provides that in the case of a suit for relief on the ground of mistake, the period of limitation does not begin to run until the plaintiff had discovered the mistake or could with reasonable diligence, have discovered it. In a case where payment has been made under a mistake of law as contrasted



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with a mistake of fact, generally the mistake become known to the party only when a court makes a declaration as to the invalidity of the law. Though a party could, with reasonable diligence, discover a mistake of fact even before a court makes a pronouncement, it is seldom that a person can, even with reasonable diligence, discover a mistake of law before a judgment adjudging the validity of the law." (emphasis supplied)

In the present case, the period of limitation would commence from the date of discovery of the mistake i.e. 18.03.2014. The licensee company may take recourse to any remedy available in law for recovery of the additional demand, but is barred from taking recourse to disconnection of supply of electricity under sub-section (2) of Section 56 of the Act. "

10. In the light of the above discussion, the impugned demand made by the 1st respondent cannot be sustained and hence, the same is liable to be set aside.

11. In view of the above, this Writ Petition is allowed and the impugned order dated 29.05.2017 passed by the first respondent is quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jd/sp

To

1. The Assistant Engineer,
TANGEDCO,
Gingee Town,
Villupuram District - 604 202.



2. The Assistant Audit Officer,
(Audit Party No.II)
TANGEDCO,
Villupuram Region.

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+1cc to Mr.Ethirajulu, Advocate, S.R.No.63428

W.P.No.13983 of 2017
and
W.M.P.No.15197 of 2017

MG(CO)
SU(07/01/2022)