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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2021

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.NO.14600 OF 2017
AND
W.M.P.NO.15825 OF 2017

M/s.Ratna Cafe,
A/c.No.121-072-438,
255, Triplicane High Road,
Triplicane,
Chennai - 600 005,
Rep. by its Senior Manager,
R.Somasundaram.

... Petitioner

Versus

1. The Chairman and Managing Director,
Tamil Nadu Generation and Distribution
Corporation (TANGEDCO),
No.144, Anna Salai,
Chennai 600 002.

2. The Director of Finance,
Tamilnadu Generation and Distribution,
Corporation (TANGEDCO),
No.144, Anna Salai, Chennai 600 002.

3. The Executive Engineer,
Mylapore Revenue Branch,
Chennai Electricity Distribution Circle/South,
110, K.V.S.S. Complex
Nungambakkam,
Chennai - 600 034

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, to call for the records of the third respondent in Lr.No.EE/O&M/My1/AAO/RB/AS2/F. BOAB/D1162/2017 dated 03.02.2017 and quash the same as illegal, arbitrary, untenable under law and barred by limitation under Section 56(2) of the Electricity Act 2003 and against the provisions of Tamil Nadu Electricity Supply Code 2004 and violative of Principles of natural justice.

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For Petitioner : Mr.K.Seshadri

For Respondents : Mr.L.Jai Venkatesh
Standing Counsel

ORDER

This Writ Petition has been filed seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records of the third respondent in Lr.No. EE / O&M / My1 / AAO / RB / AS2 / F. BOAB / D1162 / 2017 dated 03.02.2017 and quash the same as illegal, arbitrary, untenable under law and barred by limitation under Section 56(2) of the Electricity Act 2003 and against the provisions of Tamil Nadu Electricity Supply Code 2004 and violative of Principles of natural justice.

2.It is the case of the petitioner that the petitioner is doing high class vegetarian hotel business for the last 60 to 70 years. The petitioner is regular in payment of current consumption charges as demanded by the officers of the respondents. From the year 2007 onwards, the respondents were unable to meet the required power supply on the State of Government of Tamilnadu and on the request of the first respondent, the Government of Tamilnadu had issued restriction and control orders and imposed quota in the use of power supply by the H.T.Industrial and Commercial consumers apart from scheduled and unscheduled power cut. While so, the third respondent issued a show cause notice dated 03.02.2017 in Lr.No. EE / O&M / My1 / AAO / RB / AS2 / F. BOAB / D1162 / 2017, demanding a sum of Rs.75,384/- towards short fall amount of current consumption charges for non-adoption of correct average of current consumption during the meter defective period from 3/2011 to 3/2012. Aggrieved by the show cause notice, the petitioner filed the objection and requested to review the demand made by the third respondent. However, there was no reply from the respondents. Therefore, the present Writ Petition has been filed.

3.The learned counsel for the petitioner submits that the third respondent claimed audit short fall of consumption charges for non-adoption of correct average of current consumption during the meter defective period between 03/2011 and 03/2012, belatedly, that too after a lapse of 6 years, in the year 2017. The learned counsel would further 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

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limitation and therefore, the impugned demand cannot be sustained and the same is liable to be quashed.

4.Per contra, the learned Standing Counsel appearing for the respondents would submit that admittedly, the petitioner has not paid the shortfall for the period between 03/2011 and 03/2012 and therefore, the third respondent has rightly issued the demand notice by furnishing all the details. He would also submit that during audit inspection, it was found that the petitioner was due to pay the arrears and as per audit report, the demand has been made and without making the payment, the petitioner has approached this Court and hence, he prayed to dismiss the Writ Petition.

5.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.

6.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."

7.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, the provision of Section 56 of the Electricity Act, 2003, (hereinafter referred to as 'the Act'), does not empower the third respondent to recover any amount, if the period of two years has elapsed 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 provisions of Section 56 of the Act would be attracted.

8.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) of the Act. 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

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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 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)

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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. "

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

10.In view of the above, this Writ Petition is allowed and the impugned demand notice bearing Lr.No. EE / O&M / My1 / AAO / RB / AS2 / F. BOAB / D1162 / 2017 dated 03.02.2017, issued by the third respondent, insofar as the audit amount of Rs.75,384/- is quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To:
1. The Chairman and Managing Director,
   Tamil Nadu Generation and Distribution
   Corporation (TANGEDCO),
   No.144, Anna Salai,
   Chennai 600 002.
2. The Director of Finance,
   Tamilnadu Generation and Distribution,
   Corporation (TANGEDCO),
   No.144, Anna Salai, Chennai 600 002.
3. The Executive Engineer,
   Mylapore Revenue Branch,
   Chennai Electricity Distribution Circle/South,
   110, K.V.S.S. Complex
   Nungambakkam, Chennai - 600 034

+1cc to Mr.K.Seshadri, Advocate, S.R.No.62870
+1cc to Mr.L.Jai Venkatesh, Advocate, S.R.No.62860

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and W.M.P.No.15825 of 2017

KG(CO)
RLP(20/12/2021)

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