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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2021

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.28105 of 2017
and W.M.P.No.30198 of 2017

M/s. ATC Telecom Infrastructure Private Limited,
"Celestiel Point" No.45, Damodaran Street,
T.Nagar, Chennai - 600 017.
Represented by its Deputy Manager - Legal,
N.Senathipathi ... Petitioner

Versus

- 1.The Chairman & Managing Director,
Tamil Nadu Generation and Distribution
Corporation (TANGEDCO),
Anna Salai, Chennai.
- 2.The Junior Engineer,
Operation & Maintenance,
Tamil Nadu Generation and Distribution
Corporation (TANGEDCO),
Kodavasal, Thiruvarur - 612 601.
- 3.The Executive Engineer/O & M,
Operation & Maintenance,
Tamilnadu Generation and Distribution
Corporation (TANGEDCO),
Kodavasal, Thiruvarur - 612 601.
- 4.The Assistant Accounts Officer
Tamilnadu Generation and Distribution
Corporation (TANGEDCO),
Revenue Branch, Thiruvarur. ... 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 pertaining to the demand letter dated
06.09.2017 bearing No.JE/O&M/KDL/F.BOAB Audit/D.No.173/17-18
of the second respondent and quash the same.

For Petitioner : Mr.J.Ravikumar
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 Certiorari, to call for the records pertaining to the demand letter dated 06.09.2017 bearing No.JE/O&M/KDL/F.BOAB Audit/D.No.173/17-18 of the second respondent and quash the same.

2.It is the case of the petitioner that the petitioner Company is engaged in the business of establishment, maintenance and provision of telecommunication infrastructure, such as Towers and allied equipments and also licensing of antennae sites on multi operator sharing basis, to various telecom service providers like wire-lines and wire-less communications which includes Cellular service provider. The petitioner was provided with electricity service connection bearing No.567-06-954 for its Telecom Tower at No.254/63, Mela Aghraharam, Kodaivasal Village, Thiruvarur District. The petitioner has been paying the consumption charges periodically and promptly as per the demand of the respondent based on Meter reading. While so, during the period of 2017, the petitioner noticed an arrear demand slip alleging defective meter during the period between 25.10.2008 and 26.06.2010, in the online portal of the respondents for the petitioner's service connection. However, the respondent has not issued any notice. Therefore, the petitioner approached the fourth respondent and collected the detailed statement on 04.08.2017. After receiving the same, the petitioner wrote a detailed objection to the respondents. Thereafter, the second respondent issued a demand letter dated 06.09.2017, demanding a sum of Rs.2,64,976/-. Aggrieved over the same, the present Writ Petition has been filed.

3.The learned counsel for the petitioner would submit that, in terms of Section 56(2) of the Electricity Act, 2003, the period of limitation 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 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 25.10.2008 and 26.06.2010 and therefore, the second 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 Writ Petition.



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

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 does not empower the respondents 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 would be attracted.

"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.

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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)

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 second 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 issued by the second respondent, insofar as the audit amount of Rs.2,64,976/- is quashed.

11. Further, at the time of admission, this Court directed the petitioner to pay a sum of Rs.1,00,000/- towards the demand made by the second respondent. The learned counsel for the petitioner submitted that the same was complied with. If any such amount was paid as per the order of this Court dated 03.11.2017, the respondents shall adjust the said deposit made by the petitioner in the future electricity charges. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

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To:

1. The Chairman & Managing Director,
Tamil Nadu Generation and Distribution
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2. The Junior Engineer,
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4. The Assistant Accounts Officer
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Corporation (TANGEDCO), Revenue Branch, Thiruvarur.

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RSV(CO)

A.SK(17.12.2021)