



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.02.2021

CORAM

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) No. 11863 of 2010

and

M.P. (MD) No. 1 of 2010

N.Sivakumar

... Petitioner

Vs.

1. The Superintending Engineer,
Ramnad Electricity Distribution Circle,
Ramanathapuram.

2. The Executive Engineer (Distribution),
Tamilnadu Electricity Board,
Bharathi Nagar, Ramanathapuram.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the proceedings of the first respondent made in க.எண்.மே.பொ/மி.பவ/இராம/உ.செ.பொ/பொது/வரை/கோ.மி.தி.அ.610/2010 dated 03.09.2010 and quash the same.

For Petitioner	: Ms.M.Viji
For Respondents	: Mr.E.P.Venkateshwar, for Mr.S.M.S.Johny Basha.

* * *

O R D E R

Heard the learned counsel appearing for the petitioner and the learned Standing counsel appearing for the respondents.

2. The writ petitioner was a consumer of electricity supply and he has been enjoying the service connection with the respondents, when the surprise inspection was conducted in the petitioner's premises on 02.08.2001.

3. According to the respondents, they found the seal of the meter to have been tampered. The proceedings for energy theft were therefore initiated against the petitioner and the assessment order dated 03.10.2001 was passed against the petitioner. The petitioner was asked to pay a sum of Rs.9,63,606/- in ten installments. Aggrieved by the same, the petitioner filed an appeal before the



first respondent. The first respondent dismissed the appeal dated 28.05.2009 and the same is under challenge by the petitioner in W.P. (MD)No.4791 of 2009 and the same was remitted to the file of the first respondent. Even after such direction to the first respondent, he confirmed the original assessment order and to that effect, passed the impugned order dated 03.09.2010. The same is under challenge in this writ petition.

4. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition.

5. The learned counsel would also point out that on the same cause of action, the petitioner was prosecuted in C.C.No.1 of 2007 on the file of the Principal Sessions Judge, Ramanathapuram and vide Judgment dated 26.08.2009, he was acquitted. The grievance of the petitioner's counsel is that the evidence tendered in the said proceedings and the Judgment of acquittal were not even taken note of by the appellate authority. The petitioner's counsel in this regard places reliance on the decision reported in (2018) 1 MLJ 8918 (Chennai Colour Coatings V. Tamil Nadu Electricity Board).

6. Per contra the learned Standing counsel submitted that the impugned order does not warrant any interference.

7. I carefully considered the rival contentions and went through the materials on record.

8. There is no dispute about the fact that the petitioner herein has been acquitted. The charge against the petitioner was that he tampered with the seals affixed by the board and that replaced the same with the fabricated seal. It is on this basis, the respondents arrived at a conclusion the petitioner had committed energy theft. When the petitioner was prosecuted on the same cause of action, the jurisdictional criminal Court went into the charges and acquitted the writ petitioner. It appears that the Judgment of acquittal has become final. Thus the Judgment of acquittal together with the evidence adduced therein by the E.B. Officials becomes a relevant material. The appellate authority passed the impugned order only on 03.09.2010. But well before that on 26.08.2009, the Judgment of acquittal was pronounced by the jurisdictional trial Court. When it was a relevant material, the appellate authority was bound to have taken note of the same. The appellate authority ought to have met the reasons given by the trial Judge in his order. Since the first respondent has not even taken note of the relevant materials, I am constrained to interfere. I also note that the order passed by the appellate authority is rather non-speaking and cursory.

9. Therefore, the order impugned in this writ petition is quashed. This writ petition stands allowed and the matter is



remitted to the file of the first respondent to pass orders afresh in accordance with law, after hearing the petitioner once again. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Superintending Engineer,
Ramnad Electricity Distribution Circle,
Ramanathapuram.
2. The Executive Engineer(Distribution),
Tamilnadu Electricity Board,
Bharathi Nagar, Ramanathapuram.

+1 CC to M/s.M.VIJI, Advocate (SR-4837[F] dated 12/02/2021)

W.P.(MD)No.11863 of 2010
11.02.2021

VB (17.02.2021) 3P 4C