BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 06.01.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.6390 of 2011

A.Dhandapani,
S/o.Arumugam,
Proprietor,
Sri Sivan Mills,
3/391, Lakshmipuram East,
Sedapatti, Sithayankottai (Post),
Dindigul. ... Petitioner

Vs.

1. The Superintending Engineer,
   Dindigul Electricity Distribution Circle,
   TANGEDCO, Dindigul.

2. The Executive Engineer,
   Operation and Maintenance,
   TANGEDCO,Batlagundu, Dindigul District.

3. The Assistant Engineer,
   Operation and Maintenance,
   TANGEDCO, Sithayankottai,
   Dindigul District. ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the first respondent made in Lr.No.SE/DEDC/DGL/AEE/PRO/AE/F.VetrispinMil/Dno. 381/11 dated 28.05.2011 and quash the same and consequently direct the third respondent to effect supply to the petitioner for the property comprised in Survey No.326/4 and 326/2, Palayamkottai Village, Aathur Taluk, Dindigul District.

For Petitioner	:	Mr.Murali, for Mr.K.Govindarajan.
For Respondents	:	Mrs.M.Parameswari, for Mr.S.M.S.Johny Basha, Standing Counsel.

O R D E R

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

2. One M/s.Vettri Spinning Mills Pvt. Ltd., established in the year 1995 was enjoying service connection with the respondents.

The said company was spread over 5 acres and 49 cents. The company fell sick and had to be shut down. The electricity service connection was also disconnected for non-payment of dues.

3. While so, the petitioner purchased 82.32 cents from the said company in the year 2010. The petitioner applied to the respondents for being provided with a new service connection. The first respondent while considering the said application passed the impugned order dated 28.05.2011 calling upon the petitioner to clear the arrears of M/s.Vettri Spinning Mills Pvt. Ltd. Challenging the same, this writ petition came to be filed.

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 also placed reliance on the decision reported in 2016 (1) CTC 75(Kadhariya Oriental Nursery and Primary School and Others V. Tamil Nadu Generation and Distribution Corporation Ltd., and Others). According to him, the petitioner had purchased only a portion of the property owned by M/s.Vettri Spinning Mills Pvt. Ltd. and that therefore, the liability of the previous consumer cannot be fastened in *toto* on him. He would pointedly contend that only if the premises in which the previous consumer was also purchased as a whole by the petitioner then and then alone, the liability can be fastened on him.

6. It is true that the case law relied on by the petitioner's counsel appears to contain such a proposition. But then, as rightly contended by the learned Standing counsel the weight of the judicial decision is more on the side of the respondents. That apart, the statutory position is very clear. Regulation 17(9)(a) of the Tamil Nadu Electricity Supply Code, 2004 reads as follows:-

> "17. Agreement with respect to supply: Issues on recovery of charges - (1) ..
> (2) ..
> (3) ..
> (4) ..
> (5) ..
> (6) ..
> (7) ..
> (8) ..
> (9)(a) In case of service connections in a premises, which have been disconnected/dismantled for defaults in payment of dues whatsoever and if such service connections are to be reconnected or new service connections are to be obtained by other persons in such premises either by purchase or transfer or lease basis, the Distribution Licensee shall reconnect such service connections or effect

new service connections, as the case may be, in such premises only after payment of dues attributed to such premises by the applicant:
Provided that in case such premises have legally been sub-divided, the outstanding dues attributed to such premises shall be divided in proportion to the area covered by that sub-division. A new service connection to any of such sub-divided premises shall be given only after the share of outstanding dues attributed to such sub-divided premises, is duly paid by the applicant. The Distribution Licensee shall not refuse connection to an applicant of such sub-divided premises only on the ground that, dues attributed to the other portion(s) of such sub-divided premises have not been paid, nor shall the licensee demand record of last paid bills of such other portion(s) from such applicants."

7. The decisions reported in (1995) 2 SCC 648(Isha Marbles V. Bihar SEB), (1998) 4 SCC 470(Hyderabad Vanaspathi Limited V. Andhra Pradesh State Electricity Board), (2016) 13 SCC 101(Dakshin Haryana Bijli Vitran Nigam Ltd., V. Paramount Polymers (P) Ltd.,) and (2008) 10 SCC 720(Dakshin Haryana Bijli Vitran Nigam Ltd. and Another V. Excel Buildcon Pvt. Ltd., and Others) clearly sustain the stand of the respondents. However in the counter affidavit filed, it has been fairly stated that since the petitioner had purchased only a portion of the premises owned by the previous consumer, the petitioner has to be liable to pay the arrear amount proportionately.

8. Now the question that arises for consideration is what was the amount that ought to be paid by the previous consumer. The learned counsel appearing for the petitioner has enclosed a copy of the proceedings dated 15.04.2011 in which it has been mentioned that the previous consumer was liable to pay a sum of Rs.8,45,380/-.

9. The first respondent is therefore directed to compute the petitioner's liability on that basis. In other words, the previous consumer owned 5 acres and 49 cents. The petitioner admittedly purchased only 82.32 cents. The proportion will have to be worked out accordingly. The proportionate liability will be paid by the petitioner.

10. The learned Standing counsel appearing for the respondents also submitted that BPFC will have to be paid. It is not in dispute that the petitioner obtained new connection in the year 2011 itself. Therefore, the petitioner ought to have paid the proportionate amount then itself. Now the question is whether the petitioner has to pay only at the interest rate or he is liable to

pay at the statutory rate.

11. As rightly pointed out by the petitioner's counsel, the respondents had raised an unacceptably high demand. Hence, the petitioner refused to remit the amount. If the demand of payment of proportionate amount alone had been made, then the petitioner would not have refused to pay the same. This is clearly not the case. This writ petition filed by the petitioner has been pending for the last ten years. For the pendency of the litigation, the petitioner cannot be made liable to bear the exorbitant burden.

12. Therefore, I interfere with the impugned order to a limited extent as indicated above. The petitioner shall pay the proportionate amount as mentioned above together with interest at 7.5% p.a. from the date of obtaining service connection till date of payment.

13. This writ petition stands partly allowed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pmu

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,
   Dindigul Electricity Distribution Circle,
   TANGEDCO,Dindigul.

2. The Executive Engineer,
   Operation and Maintenance,
   TANGEDCO,Batlagundu, Dindigul District.

3. The Assistant Engineer,
   Operation and Maintenance,
   TANGEDCO, Sithayankottai,Dindigul District.

+2CC to M/s.K.GOVINDARAJAN,Advocate(SR-464 &405[F] dated 07/01/2021)

W.P.(MD)No.6390 of 2011
06.01.2021

(MJ)CO
AP(29/01/2021) 4P 6C