IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2022

CORAM:

THE HON'BLE MR. JUSTICE M.GOVINDARAJ

W.P.No.24749 of 2011
and
M.P.No.1 of 2011

A.Jegadeesh ...Petitioner

vs.

1. The Executive Engineer (O & M),
   Tamil Nadu Electricity Board,
   C.E.D.C./Central,
   Mambalam Revenue Branch,
   Chennai - 600 034.

2. The Assistant Engineer (O & M),
   Tamil Nadu Electricity Board,
   T.Nagar (East), C.E.D.C./Central,
   41, Thanikachalam Road,
   T.Nagar, Chennai - 600 017. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the entire records in Letter No.EE/O&M/TN/AAO/MBM/RB/D.491/11, dated 07.09.2011 on the file of the 1st respondent and quash the same, directing the respondents to refund the sum of Rs.85,407/- collected on 15.10.2011 for restoring the supply.

For Petitioner : Mr.M.Arun Kumar
for M/s.Sampath Kumar and Associates
For Respondents: Mr.L.Jai Venkatesh,
Standing Counsel

O R D E R

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus calling for the entire records in Letter No.EE/O&M/TN/AAO/MBM/RB/D.491/11, dated 07.09.2011 on the file of the 1st respondent and quash the same, directing the respondents to refund the sum of Rs.85,407/- collected on 15.10.2011 for restoring the supply.

2. Challenging the order of the 1st respondent dated 07.09.2011, demanding arrears for a period of 11 years, the petitioner has preferred this writ petition. The petitioner is a consumer of electricity under the respondents. During October 1994, there was malfunctioning of the meter provided by the respondents and immediately it was reported to the respondents on 26.10.1994 followed by remainders dated 06.07.1995 and 12.07.1995. The respondents replaced the meter only on 02.02.1996 for the period between 26.10.1994 and 02.02.1996 they have collected amounts as per the average meter reading at the rate of Rs.15,251/-. The petitioner has paid the sum. Again the fresh meter provided by the respondents was also found defective and again a complaint was made on 27.06.1996 followed by remainder dated 07.08.1996. But, it was replaced only on 07.06.1997 and he was charged an average of Rs.14,900/- for each billing period. He was suddenly served with letters dated 05.03.2000 and 31.05.2000 from the 1st respondent stating that the audit Department has pointed out that Rs.1,66,466.30/- and Rs.89,751.30/- had been levied short of the actual assessment for the period between April 1996 to April 1998 and February 1996 to June 1997, in respect of the two different connections.

3. The petitioner made a representation on 22.04.2000, however, the respondents demanded Rs.1,66,466.30/- and Rs.89,751.30/- and an added sum of Rs.89,175/- towards short levy of assessment. This was challenged by the writ petitioner in W.P.No.11801 of 2000. This Court had set aside the demand made by the respondents by its order dated 01.08.2000 with liberty to proceed with the issue after issuing proper show cause notice and an opportunity of hearing to the petitioner. But, the respondents have not taken any action and after a lapse of 11 years, suddenly the 1st respondent issued a letter dated 07.09.2011 stating that the petitioner has not submitted his objection to the audit report dated 25.02.2000 and 06.05.2000 and therefore directed payment within 15 days and if there is any objection, the petitioner shall raise the same with necessary documents, otherwise final action will be taken. The same is under challenge in this writ petition.

4. From a perusal of the records it is noted that the petitioner has properly reported malfunctioning of the meter on 26.10.1994 itself. But the respondents have taken their own time and replaced the meter only on 02.02.1996 after a period of 2 years. Again a malfunctioning was noted on 27.06.1996 and even after the complaint made by the petitioner on the same date, the meter was replaced only on 07.06.1997. Installing defective meters is attributable to the respondents and a delay

in replacing the defective meters after a period of 2 years at the first instance and 1 year at the 2nd instance is fully attributable to the respondent. For the delay caused by the respondents, the consumer shall not be penalized. It is true to state that the procedure laid down under the Act in the statute prescribes for a collection of average consumption charges. But, it does not mean that the respondents at their sweet will replace the meters after 3 years and impose a penalty on the consumer. In demanding that amount, after a period of 4 years, pursuant to the audit objection, the respondents have not given the details of the calculation for arriving at the amount. This Court in its order in W.P.No.11801 of 2000 dated 01.08.2000 had set aside the demand made by them on the face of audit report and permitted the petitioner to proceed with the claims after issuing show cause notice setting out all the basis and reasons as to how the petitioner is liable and after receiving his objection to pass orders. Obviously the petitioner have received this order in the year 2000 itself, however, the 1st respondent has attributed delay on the part of the petitioner and issued a letter of demand on 07.09.2011 after a lapse of 11 years.

5. It is required to be noted that the order dated 01.08.2000 is very clear that the respondents were directed to furnish the audit objection and also basis or reasons for making such a demand and as to how the petitioner is liable to pay that amount. But, in the impugned order there is absolutely no reason or basis on which the petitioner was found liable. On the other hand, the 1st respondent with pre-determined attitude has sent a demand directing the petitioner to make a payment within 15 days or else final action will be taken as per TNEB Rules. This letter after a delay of 11 years is not in conformity with the directions issued by this Court. Even assuming that the petitioner is found liable to pay that amount, the demand should have been made immediately after receipt of the order, much less, within a reasonable period. When there is no limitation fixed for demanding the same, the damand made after 11 years without setting out the basis or reasons as to how the petitioner is liable to pay the sum is not sustainable. Therefore, the impugned order passed by the respondents is hit by latches, and accordingly the same is set aside. This writ petition is ordered as prayed for. No costs. Consequently, the connected miscellaneous petition is closed.

6. It is submitted that the petitioner was directed to pay a sum of Rs.85,407/- on 15.10.2011. The respondents are directed to re-fund the said amount collected on 15.10.2011 to

the tune of Rs.85,407/- within a period of eight (8) weeks from the date of receipt of a copy of the order.

Sd/-
Assistant Registrar(CS IV)

True Copy//

Sub Assistant Registrar

dsa

To

1. The Executive Engineer (O & M),
   Tamil Nadu Electricity Board,
   C.E.D.C./Central,
   Mambalam Revenue Branch,
   Chennai - 600 034.

2. The Assistant Engineer (O & M),
   Tamil Nadu Electricity Board,
   T.Nagar (East), C.E.D.C./Central,
   41, Thanikachalam Road,
   T.Nagar, Chennai - 600 017.

+2cc to Mr.Sampath Kumar & Associates, Advocate, S.R.No.15632
+1cc to Mr.L.Jaivenkatesh, Advocate, S.R.No.15612

W.P.No.24749 of 2011

RK(CO)
SP/02/06/2022