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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.35335 of 2012
and M.P.Nos.1 and 2 of 2012

T.Suseela ... Petitioner

Vs.

1. The Tamil Nadu State Electricity
Regulatory Commission,
Rep. by its Secretary.

2. The Executive Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Board,
MEDC/North, Vyasarpadi,
Chennai - 39.

3. The Assistant Executive Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Board,
Royapuram Sub Division,
Royapuram, Chennai - 600 013. ... Respondents

PRAYER: The Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration, to declare that the sub clause (a) to (d) clause 9 of Regulation (17) as published in the T.N.G.G. Part VI Sec.2 of weekly issue No.13 dated 13.04.2011 at pages 261 to 263 vide notification No.TNERC/SC/17-25 dated 18.03.2011 is ultra vires the power conferred on the first respondent and declare that the said clause is in operative and void.

For Petitioner : M/s.S.L.Sudharsanan

For Respondent : M/s. L.Jai Venkatesh
Standing Counsel

O R D E R

The present Writ Petition has been filed for issuance of a Writ of Declaration, to declare that the sub clause (a) to (d) clause 9 of Regulation (17) as published in the T.N.G.G.

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Part VI Sec.2 of weekly issue No.13 dated 13.04.2011 at pages 261 to 263 vide notification No.TNERC/SC/17-25 dated 18.03.2011 is ultra vires the power conferred on the first respondent and declare that the said clause is in operative and void.

2. The Writ Petitioner purchased a property under registered Sale Deeds dated 30.11.1998, 09.12.1998 and 12.12.1998. Before purchasing the property, it appears that one M/s.Taj Ice Factory was inducted as a tenant in the buildings. They obtained electricity service connection in the Factory's name after getting consent from the owner. Thereafter, the respondent/Electricity Board, as per Section 49 of the Electricity (Supply) Act, 1948, imposed terms and conditions for supply of electricity to the said M/s.Taj Ice Factory and fixed the tariff accordingly. The said factory appears to have committed theft of energy and also committed default in paying the electricity consumption charges. At the time of purchase of the property, a demand of Rs.5,62,632/- was made by the respondents against the petitioner, who is the subsequent purchaser of the property.

3. The petitioner immediately approached this Court by way of the present Writ Petition. This Court has given an interim direction directing the petitioner to deposit a sum of Rs.3,00,000/-. It is submitted that against the said direction, the petitioner went upto the Hon'ble Supreme Court and failed. Thereafter, the petitioner deposited the money before the respondents concerned.

4. Today, the learned counsel for the petitioner would produce a Calculation Memo, wherein, it is stated that so far, the petitioner has deposited around Rs.9,00,000/- as against the claim of Rs.5,62,632/-.

5. Now, the learned counsel for the respondentd would submit that the due, as on today, is Rs.22,55,847/- along with accrued interest.

6. This Court, in W.P.Nos.25679 of 2008 and 8588 of 2009, dated 12.04.2022, has already passed an order that in the case of separate contract between consumer and Electricity Board, consumption charges can be collected only from the consumer and not from the landlord. In a similar circumstance, the Consumer Grievances Redressal Forum, Chennai Electricity Distribution Circle, Central/TANGEDCO Ltd., had decided a similar issue, in Petition No.15 of 2013-14, dated 01.07.2014. Findings and Orders of the same are extracted as under:-

"Hearing both sides argument sand verification of documents it is clear that the services 182-001-

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419 and 182-001-412 were utilized by M/s Future Software Company only, But the STPI certificate is issued to 8th floor in complex II with address 481, Anna Salai. The amount levied for wrong adoption of tariff for the above two services is legal and recoverable only, and as requested by the owner of the service to collect the amount levied from the enjoyer of the service during that period 2001 to 2007 who are now functioning in Guindy, the Executive Engineer/O&M/T.Nagar is directed to attach the above said amount to M/s Aricent (Formerly Future Software) Espee IT park, Guindy and necessary action in this regard may be taken as per TANGEDCO procedures in vogue."

It is held that the amount shall be collected from the consumer, who occupied the building during the relevant time and not from the landlord. Therefore, the occupier, who obtained separate service connection under specific tariff assessed by the respondents, is liable to pay the outstanding. The Electricity Board is entitled to recover it from him by invoking Revenue Recovery Act, but, not from the subsequent purchaser of the property.

7. Now the petitioner submits that he has deposited around Rs.9,00,000/- against the demand of Rs.5,62,632/- after the direction issued by this Court, which he is not liable to pay. However, the excess amount over and above the sum of Rs.5,62,632/- is liable to be refunded to the petitioner, but the same can be adjusted towards future consumption charges.

8. Considering the facts and circumstances of the case, a direction is given to the respondents to adjust the amount towards future consumption charges.

With the above direction, this Writ Petition is ordered. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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   Royapuram, Chennai - 600 013.

+1cc to Mr.L.Jai Venkatesh, Advocate, S.R.No.28560

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RSV(CO)
SB(23/05/2022)

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