



WEB COPY



W.P.No.21825 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.No.21825 of 2016
and
W.M.P.Nos.18674 & 18675 of 2016

M/s.ATC Telecom Tower Corporation
Private Limited,
Rep. by its Authorised Signatory -
Head Operations - Tamil Nadu Circle,
No.443/304, Guna Complex,
Annexure - 1, 3rd Floor, Anna Salai,
Teynampet, Chennai - 600 018.

...Petitioner

Vs.

1.The Chairman,
The Tamil Nadu Generation &
Distribution Corporation (TANGEDCO),
Anna Salai, Chennai.

2.The Junior Engineer,
The Tamil Nadu Generation &
Distribution Corporation (TANGEDCO),
O & M, Jambai - 638 312,
Erode District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorari calling for the records on the file of the



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2nd respondent herein pertaining to the demand letter dated 09.06.2016 pertaining to the petitioner's telecommunication tower bearing service connection number 331-001-1917 situated at SF No.87/3A, Old No.108A & 108B in Oricheri Village, Bhavani Taluk, Erode District and quash the same.

For Petitioner : Mr.J.Ravikumar

For Respondents : Mr.M.Abul Kalam,
Standing Counsel for TANGEDCO

ORDER

The challenge in this writ petition is to the demand notice issued by the second respondent dated 09.06.2016 requiring the petitioner to pay a sum of Rs.46,449/- towards consumption charges for the period between July, 2010 and November, 2010 for the electricity service connection No.331-001-1917 granted to the petitioner on the ground that the meter was defective.

2. Mr.J.Ravikumar, learned counsel appearing for the petitioner, relying upon the judgement of this Court dated 01.12.2021 in *M/s.ATC Telecom Infrastructure Private Limited vs. The Chairman and Managing*



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Director, Tamil Nadu Generation and Distribution Corporation

(TANGEDCO), would submit that the authorities do not have the power to demand payment after the expiry of 2 years, in view of Section 56(2) of the Electricity Act, 2003. He would add that the demand itself is made in the year 2016 for the power that is alleged to have been consumed from July, 2010 to November, 2010. According to the learned counsel, the respondents cannot make a demand and disconnect the electricity supply on the ground of non-payment, after the expiry period of 2 years prescribed under Section 56(2) of the Electricity Act.

3. Contending contra, Mr.M.Abul Kalam, learned Standing Counsel appearing for the respondents/Electricity Board would submit that even in the judgement of this Court relied upon by the learned counsel for the petitioner, the power of the Board to demand and collect consumption charges, which is omitted to be collected earlier, is preserved and only the power to demand under threat of disconnection has been held to be not available to the respondents, after the expiry of the 2 year period prescribed under Section 56(2).



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4. Section 56(2) of the Electricity Act provides a period of 2 years

as limitation for recovery of dues. The same has been interpreted by the

Hon'ble Supreme Court in a judgement in Civil Appeal No.1672 of 2020,

dated 18.02.2020, in the case of ***Assistant Engineer (D1), Ajmer Vidyut***

Vitran Nigam Limited and another Vs. Rahamatullah Khan alias

Rahamjulla, as follows:-

"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.

The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired.

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.



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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. "



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5. A reading of the above judgement of the Hon'ble Supreme Court would show that while the power of licensee to recover the dues is available, but it is barred from taking recourse to disconnection of supply of electricity, under Section 56(2) after the period of 2 years.

6. In view of the above, the impugned demand notice dated 09.06.2016 is quashed. It is made clear that it will be open to the licensee, namely the respondents, to recover the dues in a manner known to law without resorting to disconnection of electricity supply. The amount that has been deposited pursuant to the interim order will be adjusted in the future bills.

7. This Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index:No
Internet:Yes
Speaking order

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