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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2022

CORAM:

THE HON'BLE MR.JUSTICE T.RAJA
AND
THE HON'BLE MR.JUSTICE K. KUMARESH BABU

W.A.No.1353 of 2014
and M.P.No.1 of 2014

1.The Superintending Engineer,
Tamil Nadu Electricity Board,
Tirupur Electricity Distribution System,
Tirupur.

2.The Assistant Executive Engineer,
(O&M) Tamil Nadu Electricity Board,
Tirupur Electricity Distribution Circle,
Uthukuli, Tirupur District.

3.The Assistant Executive Engineer,
Anti-Power Theft Squad,
Tamil Nadu Electricity Board,
Tirupur.

4.The Assistant Engineer (O&M),
Tamil Nadu Electricity Board,
Tirupur Electricity Distribution Circle,
Chengapalli, Tirupur District.

5.The Executive Engineer,
Tamil Nadu Electricity Board,
Tirupur – 641 603.
Tirupur District. ...

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Appellants

vs.

P.Periyasami Gounder (died)

1.P.Lakshmi Ammal

2.P.Subramaniam (Deceased)

3.S.Nirmala

4.Vidhya

5.Malathi

6.Gayathri

(RR 3 to 6 substituted the LR's of the deceased 2nd respondent vide order of Court dated 05.11.2019 made in CMP.No.14879/2019) ... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.1381 of 2003 dated 20.06.2014.

For Appellants : Mr.M.Abdul Kalam
(Electricity Board)

For Respondents : R1 & R2 - Died

Mr.K.Ravi Ananthapadmanabhan for R3 to R6

for Mr.M.Guruprasad

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JUDGMENT

(Judgment of the court was made by K.Kumaresh Babu, J.)

This appeal is preferred by the Electricity Board, challenging the order passed by the learned Single Judge made in W.P.No.1381 of 2003 dated 20.06.2014, wherein the learned Judge had allowed the Writ Petition filed by the respondents herein holding the entire dispute falls under Section 26(6) of the Tamil Nadu Electricity Act and hence, without proceeding under the said provision, the demand dated 10.05.2002 has been wrongly made.

2.Heard learned counsel for the parties. Mr.M.Marimuthu, Assistant Executive Engineer, TANGEDCO, Tiruppur Electricity Distribution Circle, Uthukuli is present in person today.

3.The case of the appellants is that the learned Judge had erroneously held the issue in the Writ Petition falls under Section 26(6) of the Tamil Nadu Electricity Act and failure to follow the said provisions vitiated the proceedings. Learned counsel for the appellants argued that the learned Judge has wholly misunderstood the issue involved in the Writ Petition. He further submitted that in the peculiar circumstances of the case, Section 26(6) will not apply, as it is not the case of a faulty meter reading but only adoption of a wrong multiplying factor.

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4.On the contrary, learned counsel appearing for the respondents had submitted that through out the period from the initial date of providing the service connection and even till date, the multiplying factor of 40 alone has been applied to the connection given to the respondents. Only based on an inspection made by the Anti Power Theft Squad, the appellants have made this improper demand. Further, the procedures laid down under Section 26(6) of the Tamil Nadu Electricity Act have not been followed and a wrong claim has been made for the period from 4/1994 to 3/2002. The learned counsel for the respondents further claims that any demand cannot be made for a period exceeding 3 years, as it is barred by limitation.

5.In reply, the learned counsel for the appellants submitted that it is a simpliciter issue of multiplying factor which has been erroneously made. He submitted that when the respondents shifted their service connection from one place to another on 18.03.1994, the multiplying factor adopted has not been duly verified and certified by the Competent Authority. Hence, there had occasioned a wrong adoption of MF 40 instead of MF 80. He further contended that the wrong adoption is not due to the defect either in the meter or in the LTCT coil but due to wrong connection in the double ratio LTCT coil.

6.We have carefully considered the arguments made by the counsels

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appearing on either side.

7.It is not disputed by the parties that the entire issue arose on the inspection conducted by the Anti Power Theft Squad, Erode on 26.04.1997. As per the order impugned in the Writ Petition, it has been stated during the inspection, it was detected that the CT ratio adopted in the CT coils provided to the first respondent service is 400/5 amp for which the multiplication factor should be 80. The order further proceeds to state that LTCT meter and LTCT coils were functioning correctly and that it was only a wrong adoption of multiplying factor.

8.It is pertinent to note that an additional counter has been filed by the Superintending Engineer, Tamil Nadu Electricity Board, who is the first appellant herein on 05.07.2003, and at paragraph No.6, it is stated as follows:

> **"*After shifting, the MF factor to be adopted has not been duly verified and certified by the competent authority viz., MRT. The wrong adoption of MF 40 instead of MF 80 was found by Anti Power Theft Squad on 26.4.1997 during inspection.*"**

9.It has been admitted by the deponent in the affidavit that the MF that has to

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be adopted had not been duly verified and certified by the Competent Authority and that the wrong adoption was found by the Anti Power Theft Squad. It is an admitted case that for the service connection given to the respondents, right from day one, multiplying factor of 40 was adopted. Again after change of meter, the multiplication factor of 40 is only being adopted. But for the period between 4/1994 and 3 /2002 alone, the appellants are seeking to apply a different multiplying factor. There is no explanation as to the change in circumstances for adopting a different multiplier that too when it is an admitted case that the mistake in adoption was on the part of the Competent Authority.

10.The learned Judge has rightly appreciated the issue and rightly held that there was no pleading in the counter filed by the appellants to substantiate their claim and on the other hand they have admitted that there has been a wrong adoption of multiplying factor.

11.It is the case of the appellants that the terminal point to which the respondents service connection was provided would attract the multiplying factor 80, instead of 40. It is very surprising to note that for a long period of 8 years, the said mistake has not been identified by any of the officials of the appellants who

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would have been regularly visiting the premises of the respondents to take down meter readings and it could have been easily found out by nature of coil to which the service connection is connected. There is no explanation from the appellants as to why the same was not detected. But, on the other hand, only when the Anti Power Theft Squad had inspected the premises, the said application of wrong multiplication factor was noticed.

12.We do not find any reason to interfere with the findings of the learned Judge that the dispute involved herein can only be relating to the meter and not related to the LTCT coil ratio and when such being the position, the same should have been resolved by resorting to the provisions under Section 26(6) of the Tamil Nadu Electricity Act and on their failure to do so, the impugned order is not sustainable in law.

13.In the result, the Writ Appeal stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

14.Since a total amount of Rs.40 lakhs has been paid on the basis of adoption

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of multiplying factor 80, the said amount shall be refunded to the writ petitioners, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(T.R., J.) (K.B., J.)
01.08.2022

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Speaking order /non-speaking order
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