BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.04.2022

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

W.P(MD)No.7114 of 2009
and
M.P(MD)No.1 of 2009

The Superintending Engineer,
Sivagangai Electricity Distribution Circle,
TANGEDCO,
Sivagangai. ... Petitioner

v.

1.Tamil Nadu Electricity Ombudsman,
No.19A, Rukumani Lakshmipathy Salai (TIDCO Complex),
Egmore, Chennai - 600 008.

2.M/s.Sree Kumar Textiles Private Ltd.,
26, Sree Narayana, P & T Nagar Road,
Visalakshipuram,
Madurai - 625 014. ... Respondents

[Cause title amended vide order dated 08.03.2019 in W.M.P(MD)No.1050 of 2019]

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the impugned order of the 1st respondent passed in Petitioner No.8 of 2009, dated 25.06.2009 and quash the same.

For Petitioner : Mr.S.Dheenadhayalan
Standing Counsel

For R.1 : No Appearance

For R.2 : Mr.S.Natesh Raja
for M/s. B.S.G. Firm

ORDER

This writ petition is filed by the Superintending Engineer, Sivagangai Electricity Distribution Circle, as against the orders of the first respondent / Tamil Nadu Electricity Ombudsman, in Petition No.8 of 2009, dated 25.06.2009.

2.The second respondent, a textile mill, which had a HT service connection in SC No.50 with the petitioner herein, raised a dispute before the National Consumer Disputes Redressal Commission, New Delhi, in O.P.No.102 of 1996, claiming compensation of a sum of Rs.44,51,750/-, along with interest for deficiency in service. The National Consumer Disputes Redressal Commission, by order dated 19.01.2004, allowed the complaint and directed the Tamil Nadu Electricity Board to pay a sum of Rs.4,71,500/-, as compensation, along with interest @ 10% from the date of filing of the complaint, ie., from 15.03.1996, within a period of six weeks, failing which, the Board was directed to pay the amount with interest @ 12% from the date of filing of the complaint. Tamil Nadu Electricity Board has not challenged this order and as such, it became final.

3.The second respondent / consumer was having some dues to the tune of Rs.14,29,121/- towards CC charges arrears, re-connection fee, testing fee payable to the Tamil Nadu Electricity Board. The petitioner arrived a sum of Rs.12,57,462/-, as refund to be paid as per the order of the National Consumer Redressal Commission and by proceedings dated 27.09.2004, adjusted this amount with the dues and directed the petitioner to pay the balance amount of Rs.1,71,659/-. The relevant portion from the said proceedings is extracted as under:-

1.CC Charges arrears with BPSC upto 30.09.2004	- Rs.14,25,121/-
2.Reconnection Fees	- Rs. 3,000/-
3.Testing Fees	- Rs. 1,000/-
	Rs.14,29,121/-
Less : As per the orders of the National Consumer Redressal Commission / New Delhi, dt.10.1.2004 to be paid by us	- Rs.12,57,462/-
	Rs. 1,71,659/-

The second respondent / consumer has accordingly remitted the amount on 30.09.2004.

4.Thereafter, during the audit enquiry for the period 2003-04, certain objections were raised that the amount has been adjusted, based on the orders of the National Consumer Redressal Commission, by calculating compound interest, instead of treating the same as simple interest, thereby, excess amount to the tune of Rs.3,64,994/- was calculated. After adjudication, the petitioner calculated the excess compensation amount as Rs.2,84,800/- and directed the second respondent to remit the same, by letter dated 28.04.2006. Thereafter, it appears that no steps have been taken to collect the amount.

5.On 20.02.2009, the second respondent / consumer has surrendered their HT supply and requested for refund of CCD amount, after adjusting the dues, if any. The petitioner, by letter dated 04.03.2009, has responded that the service connection was disconnected as early as on 21.11.2008. The petitioner / Board further adjusted the arrears amount to the tune of Rs.7,01,937/- from the CCD amount of Rs.15,39,208/- and calculated the balance CCD to be refunded as Rs.8,37,271/-. Insofar as the excess compensation amount of Rs.2,84,800/- noted during the audit objection, the petitioner / Board has withheld the amount from the amount to be refunded, stating that legal opinion is awaited from its legal cell. To that effect, an order was passed by the Consumer Grievance Redressal Forum, Sivagangai Electricity Distribution Circle, dated 31.03.2009. Challenging this order, the second respondent / consumer has filed a petition before the first respondent / Tamil Nadu Electricity Ombudsman in Petition No.8 of 2009 and the first respondent / Tamil Nadu Electricity Ombudsman, by order dated 25.06.2009, allowed the petition filed by the second respondent / consumer, by setting aside the audit objections. Aggrieved over the same, the petitioner / Board has moved the instant writ petition.

6.Learned Standing Counsel for the petitioner / Board reiterated the facts of the case and submitted that the National Consumer Dispute Redressal Commission has not ordered for any compounding the interest, but, it has been misinterpreted by the authorities. It was noted during the Audit and the petitioner was also issued with a demand notice dated 28.04.2006. The rule of limitation of two years as per Section 56(2) of the Electricity Act, 2003 and Regulation 21(2) of the Tamil Nadu Supply Code is applicable only for arrears of CC charges for electricity supplied. In this case, it is not the arrear amount, but the excess amount, which was wrongly paid to the consumer by misinterpreting the order of the National Consumer Disputes Redressal Commission. Even assuming that the question of limitation applies, the cause of action arose only when the audit raised the objections and within a period of two years therefrom, the petitioner / Board has issued the demand notice. Therefore, the learned Standing Counsel prayed for appropriate orders.

7.Learned Counsel for the second respondent / consumer, by relying upon Section 56(2) of the Electricity Act, submitted that the claim is barred by limitation and the petitioner / Board is not justified in claiming the amount after the period of two years. He has also relied upon the decision of this Court reported in ***2010 0 Supreme(Mad) 2154***, in ***M/s.Sree Spinning Mills P Ltd., v. Secretary, Tamil Nadu Electricity Regulatory Commission and Others***, wherein, it was held as follows:-

> *"8.4.The Commission also discussed and held that a licensee is empowered to claim its demand upto a period of*

two years from the date when such sum became due, since a plea was taken by the consumers that excess demand charges and excess quota charges have been raised by the Tamil Nadu Electricity Board belatedly. Paragraphs 11.12, 11.13 and 11.14 of the said order is usefully extracted hereunder:-

"... ... ...

11.14. Section 56 makes it clear that a licensee is empowered to claim its demand upto a period of two years from the date when such sum became due. The "charge for electricity" mentioned in Section 56(1) refers to the electricity tariff; "any some other than a charge for electricity" referred to in Section 56(1) means charges other than tariff charges such as capacitor compensation charge, excess demand charge, belated payment surcharge, additional security deposit, name transfer charge, re-connection charge, meter related charges etc., mentioned in Clause 4 of the Tamil Nadu Electricity Supply Code 2004 notified by the Commission. Therefore, we have to conclude that the TNEB is entitled to recover any sum due to them within a period of two years.""

8.This Court has paid it's anxious consideration to the rival submissions made and also to the materials placed on record.

9.The facts of the case is not in much dispute. The National Consumer Disputes Redressal Commission, by order dated 19.01.2004, directed the petitioner / Board to pay a sum of Rs.4,71,500/-, with interest. The nature of interest was not specifically mentioned in the Commission's order. Under such circumstances, the interest ordered has to be read as simple interest and not compound interest. However, the authorities have misinterpreted and calculated compound interest. Therefore, they are entitled for recovering the excess amount.

10.No doubt, at this stage, Section 56(2) of the Electricity Act needs to be looked into, which bars any claim for recovery after a period of two years. But then, in this case, the cause of action arose as on the date of audit, during which the mistake was discovered for the first time. The Hon'ble Supreme Court, in the decision reported in ***(2020) 4 SCC 650*** [***Ajmer Vidyut Vitran Nigam Ltd., and Another v. Rahamatullah Khan***], has held that limitation period *qua* raising of additional demand begins from the date when the mistake is discovered. The relevant portion from the said decision is extracted as under:-

"8.Section 56(2), however, does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of two years. It only restricts the right of the licensee to disconnect

electricity supply due to non-payment of dues after the period of limitation of two years has expired, nor does it restrict other modes of recovery which may be initiated by the licensee company for recovery of a supplementary demand.

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.

9.1.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.

... ...

9.3.In the present case, the period of limitation would commence from the date of discovery of the mistake, ie., 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."

11.In the case on hand, immediately after the regular audit for the period 2003-04, the petitioner / Board has raised a demand notice to the respondent / consumer by proceedings dated 28.04.2006. During the audit, the mistake was discovered for the first time and therefore, the period of limitation commences from then only. As such, in view of the aforesaid ratio laid down by the Hon'ble Supreme Court, this Court is of the opinion that the petitioner / Board is entitled to make the demand, as it is well within the period of limitation.

12.Under such circumstances, this Court is inclined to interfere with the impugned proceedings and accordingly, the impugned order in Petition No.8 of 2009, dated 25.06.2009, passed by the first respondent / Tamil Nadu Electricity Ombudsman is set aside. The petitioner / Board is entitled to recover the excess amount, which was wrongly calculated by way of compound interest, instead of simple interest.

In fine, this writ petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

gk

To

1.Tamil Nadu Electricity Ombudsman,
No.19A, Rukumani Lakshmipathy Salai (TIDCO Complex),
Egmore, Chennai - 600 008.

2.The Superintending Engineer,
Sivagangai Electricity Distribution Circle,
TANGEDCO,
Sivagangai.

+1 CC to M/s.S.DEENADHAYALAN, Advocate (SR-16656[F] dated 05/04/2022)

W.P(MD)No.7114 of 2009
01.04.2022

RK(02/05/2022) 6P 4C