BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.06.2022
DELIVERED ON : 14.07.2022

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)Nos.11971 of 2011 and 6253 of 2013
and
M.P(MD)Nos.1 & 2 of 2011, 1 of 2012,
1 to 3 of 2013 and 1 of 2014

W.P(MD)No.11971 of 2011:

T.Rajameyyapan ... Petitioner

Vs.

1.The Tamil Nadu Generation and
Distribution Corporation Ltd.,
Represented by its Executive Engineer (Distribution),
Thiruchendur.

2.The Executive Engineer (Distribution),
The Tamil Nadu Generation and
Distribution Corporation Ltd.,
Karaikudi-630 002.

3.The Assistant Executive Engineer (Distribution),
The Tamil Nadu Generation and
Distribution Corporation Ltd.,
Devakottai-630 302.

4.The Accounts Officer (Revenue Division),
The Tamil Nadu Generation and
Distribution Corporation Ltd.,
Karaikudi-630 002.

5.T.Arunachalam

6.T.Kasinathan ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records the first respondent herein in No.Se.Po/Vi.Thir/Tho.Nu.Vu./Koppu/Vazhaku/A.No.1651/11, dated 23-09-2011 and quash the same and forbear the respondents herein from in any manner demanding or collecting the amounts said to be due for the theft on 17-09-2011 in respect of Service connection No.A-167, Autoor, Arumuganeri Pirivu, Thiruchendur Zone, Tuticorin Electricity Distribution Circle from the petitioner herein and from disconnecting the service connection No.E-548, and E-549 at Devakottai for the said dues.

W.P(MD)No.6253 of 2013:

T.Arunachalam ... Petitioner

Vs.

1.The Executive Engineer (Distribution),
The Tamil Nadu Generation and
Distribution Corporation Ltd.,
Thiruchendur,
Thoothukudi District.

2.The Executive Engineer (Distribution),
The Tamil Nadu Generation and
Distribution Corporation Ltd.,
Karaikudi-630 002,
Sivagangai District.

3.The Assistant Engineer (Distribution),
The Tamil Nadu Generation and
Distribution Corporation Ltd.,
Devakottai-630 302,
Sivagangai District.

4.T.Rajameyyapan

5. T.Kasinathan ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to for the records relating to the impugned proceedings of the third respondent dated 19.11.2012 made in க.எண்.உமிபொ/நகர்/தேவ/கோ.க /அ.எண்.188/12 and quash the same and consequently forbearing the respondents 1 to 3 from in any manner demanding or collecting the amounts said to be due for the theft on 17.09.2011 in respect of Service Connection No.A.167 Athur, Arumuganeri Pirivu, Tiruchendur Zone, Tuticorin Electricity Distribution Circle from the petitioner herein by disconnecting the Service Connection No.E.541 at Devakottai, Sivagangai District for the said dues.

For Petitioner	: Mr.M.Vallinayagam Senior Counsel for Mr.D.Nalla Thambi (In both cases)
For Respondents	: Mr.S.Deena Dhayalan Standing Counsel for R1 to R4 (In both cases) No Appearance for R5 and R6 (In both cases)

ORDER

W.P(MD)No.11971 of 2011 has been filed by one T.Raja Meyyappan, son of late.Thiagarajan Chettiar challenging an order, dated 23.09.2011, under which the petitioner was directed to pay a sum of Rs.17,24,120/- (Rupees Seventeen Lakhs Twenty Four Thousand One Hundred and Twenty only) towards an energy theft that has happened on 17.09.2001.

2. W.P(MD)No.6253 of 2013 has been filed by one T.Arunachalam, son of late.Thiagarajan Chettiar challenging an order passed by the Electricity Board on 19.11.2012, under which he was directed to pay a sum of Rs.17,24,120/- (Rupees Seventeen Lakhs

Twenty Four Thousand One Hundred and Twenty only) towards an energy theft that is said to have happened on 17.09.2001.

3. These two notices relate to the same allegation of energy theft on 17.09.2001, claiming the same amount as against the two sons of deceased Thiagarajan Chettiar. Hence, both these writ petitions are listed together.

Factual background of pleadings:

4. It is the case of the petitioners that they are the sons of Thiagarajan Chettiar. While the said Thiagarajan Chettiar was alive, he was running a partnership firm under the name and style of M/s.Senthil Ice Products at Autoor. According to the petitioners, the said land was a leasehold land and the superstructure and the machineries belonged to the partnership firm. In September 1993, the partners of the ice factory had decided to sell the same together with the machinery. The machinery and the superstructure were sold to one Thangavelu after receiving various amounts on different dates. Finally, on 21.09.1994, the factory,

superstructure and the machineries were transferred in favour of one Mr.Chairman, son of Thangavelu. However, the electricity service connection continued to stand in the name of Thiagarajan Chettiar and the purchaser has not taken any action to change the service connection in his name.

5. The petitioners have further contended that their father Thiagarajan Chettiar had passed away on 24.02.1996. Thereafter, the legal heirs of Thiagarajan Chettiar had partitioned the joint family properties.

6. According to the petitioners, suddenly they have received a notice on 23.09.2011 and 19.11.2012 calling upon them to pay a sum of Rs.17,24,120/- (Rupees Seventeen Lakhs Twenty Four Thousand One Hundred and Twenty only) for the alleged energy theft that had taken place on 17.09.2001. The petitioners have further contended that when no assessment was made as against their father, no liability can be fastened on the legal heirs merely on the ground that two domestic

service connections at Devakottai were standing in the name of deceased Thiagarajan Chettiar at the time of the alleged incident. Their father Thiagarajan Chettiar had died on 24.02.1996 and the alleged energy theft is said to have taken place on 17.09.2001. According to the petitioners, the sales tax registration for the said premises was surrendered on 18.10.1993 and the machineries were sold on 21.09.1994. Thereafter, neither Thiagarajan Chettiar nor any of his children had anything to do with the said business or the electricity service connection therein.

7. The petitioners have further contended that the Electricity Board ought to have taken steps only as against the owner/occupier of the premises at the time of the alleged incident on 17.09.2001 and cannot proceed as against their father or his legal heirs. The petitioners have further contended that the impugned notice has been issued for the first time as against the petitioners' family after a period of 10 years that is from the date of alleged incident. No documents were supplied, on which the electricity board had placed its reliance. That apart, the entire demand made by the electricity board is barred by limitation. The petitioners had

apprehended that the said demand is likely to be incorporated in the current consumption charges of two other domestic connections, which are standing in the name of the writ petitioners. Hence, the petitioners have challenged the orders passed on two different dates, but with the same contents.

8. The respondents had filed a counter contending that an inspection was conducted on 17.09.2001 and energy theft was detected by the squad of the electricity board. The respondents had further contended that there are no records to show that the property had been sold away to a third party. In case, if there is any sale by a registered consumer, the same has to be informed to the electricity board and a fresh agreement has to be entered into with the subsequent purchaser. The respondents had further contended that the two domestic connections standing in the name of Thiagarajan Chettiar in Devakottai has been transferred in the name of the respective writ petitioners only in October 2004 much later than the date, on which energy theft was detected for Service Connection No.A.167 at Autoor Village. The

respondents had further contended that as per clauses 19.08 and 19.18 of the terms and conditions of supply of electricity, the board has got powers to disconnect other service connections standing in the name of the same registered owner until the dues are collected. Hence, the impugned orders demanding the petitioners to pay the amount or face disconnection of other two service connections as per the terms and conditions of the board.

9. The respondents had further contended that one Clamons, the beneficiary of the service connections had filed three writ petitions challenging the assessment orders issued by the electricity board. The said Clamons had also filed W.A.No.1281 of 2002, in which an order was passed on 24.06.2002 directing the authorities to issue a revised final assessment order after considering the objection of the said Clamons. Thereafter, the said Clamons had filed W.A.No.3277 of 2002, in which an interim order was passed on 24.11.2009 directing the said Clamons to remit a sum of Rs.7,24,120/-. However, the said interim order was not complied with and the service was disconnected in the year 2009.

10. The respondents had further contended that the plea of limitation is not applicable to theft of energy cases. Once proceedings are initiated for theft of energy, the board is entitled to collect the consumption charges from the defaulter/consumer. It is further contended that the final assessment order was referred to Lok Adalat, but the petitioners have not chosen to settle the same and hence, it was referred back to Court. Hence, the respondents prayed for dismissal of the writ petitions.

<u>Contentions of the counsel for the Petitioner:</u>

11. Based upon the above said pleadings, the learned senior counsel appearing for the petitioners in both the writ petitions had raised the following contentions:

(i) The Service Connection No.A-167 in Autoor Village, Arumuganeri, Trichendur was originally standing in the name of one Thiagarajan Chettiar. He had sold away the superstructure and the machineries in favour of a third party in September, 1994. Thereafter, he had died on 24.02.1996. The alleged energy theft is said to have taken place on 17.09.2001. Hence, on the date of the alleged theft of energy, Thiagarajan Chettiar was not even alive. Hence, the proceedings initiated after a period of 10 years as against the legal heirs of Thiagarajan Chettiar is not legally sustainable.

(ii) On the date of detection of energy theft, Thiagarajan Chettiar was not alive. Hence, no criminal proceedings or any assessment order was issued as against Thiagarajan Chettiar immediately after the detection of energy theft. For the first time, only under the impugned orders, electricity board has demanded a huge sum without issuing a show cause notice or affording any opportunity.

(iii) The two domestic service connections standing in the name of late.Thiagarajan Chettiar at Devakottai were changed in the name of the respective writ petitioners in October 2004. The present impugned orders have been passed in the year 2011 and 2012. Hence, when the impugned orders were passed, the only service connection standing in the name of Thiagarajan Chettiar was A-167 at Autoor Village, Tiruchendur Taluk.

The other two domestic service connections at Devakottai were standing in the name of the writ petitioners. Even assuming that the board is entitled to disconnect other service connections standing in the name of the same registered user for default in payment of anyone of the service connection, on the date of impugned orders, the two service connections at Devakottai were not standing in the name of Thiagarajan Chettiar. Hence, the impugned order attempting to invoke Regulation 17 under the Electricity Supply code is not legally sustainable.

(iv) The alleged energy theft is said to have taken place on 17.09.2001. For the first time, a demand has been raised as against the writ petitioners under the impugned orders in the year 2011 and 2012. As per Section 56(2) of the Electricity Act 2003, the period of limitation for demanding the electricity consumption charges is only two years, unless the same has been continuously reflected as current consumption charges in all the bills. Hence, the demand issued by the respondent board after a period of 10 years is clearly barred by limitation.

(v) It is the specific case of the electricity board that an energy theft has taken place on 17.09.2001. In all cases of energy theft, the liability can be fixed only upon the occupier or the beneficiary of the service connection and not upon the registered owner. In the present case, the petitioners' father Thiagarajan Chettiar had alienated the superstructure and the machinery in September 1994. Even as per the counter affidavit filed by the respondent board, only the said Clamons was continuously challenging the assessment orders before the Principal Bench. In all the above said proceedings, the clamons had claimed himself to be the beneficiary of the service connection. When that be the case, the respondent board cannot make a claim or demand as against the writ petitioners, who are the legal heirs of the registered owner.

(vi) The respondent board had all along being following only Clamons for recovery of the amount alleged to be arising out of energy theft. When the interim order passed by this Court in W.A.No.3277 of 2002 on 24.11.2009 was not complied with by the said clamons, the respondent board has started targeting the writ petitioners.

(vii) When the occupier or the beneficiary of the service connection alone can be prosecuted for energy theft, the civil liability will also be only upon the occupier/beneficiary of the service connection. The criminal liability and the civil liability are composite in nature. In other words, the civil liability can be fastened only upon a person, who is liable to be prosecuted for energy theft. In the present case, no criminal proceedings have been initiated as against Thiagarajan Chettiar or the writ petitioners. The petitioners are given to understand that criminal proceedings were initiated only as against the said clamons. Hence, the respondent board will not be entitled to fasten the criminal liability on the occupier/beneficiary of the service connection and civil liability on the registered owner, especially when the registered owner had died five years prior to the alleged date of energy theft.

(viii) The learned senior counsel had relied upon the judgments in ***(2008) 3 MLJ (Crl) 761 (P.Yamuna Vs. State, Represented by Inspector of Police, H-4, Korukupet Police Station, Chennai-600 021), 2008 4 MLJ 546 (S.Senthil Kumar and another Vs. The Executive***

Engineer (Distribution), Tamil Nadu Electricity Board, Coimbatore Dist. And Another), 2004 1 MLJ (Crl) 389 (T.Krishnapandian Vs. State Represented by Inspector of Police(Crime)) and a judgment reported in W.P(MD)No.5128 of 2009, dated 27.11.2018 (M.Kathirvel Vs. The Executive Engineer, Tamil Nadu Electricity Board and other). All these judgments were referred to impress upon the Court that criminal liability cannot be fastened upon the registered owner of the electricity service connection.

Contentions of the counsel for the Respondent:

12. The learned standing counsel appearing for the electricity board placed the following submissions:

(i) Admittedly, an energy theft was detected on 17.09.2001. At that point of time, the service connection was standing in the name of Thiagarajan Chettiar. The other two service connections at Devakottai were also standing in the name of Thiagarajan Chettiar. Only in October 2004, the name transfer has taken place in the name of the writ petitioners. Hence, on the date of occurrence, all the three service connections were standing in the name of Thiagarajan Chettiar. Therefore, the respondent board was right in invoking Regulation 17 under the electricity supply code so as to disconnect other two service connections also, which were at Devakottai.

(ii) The learned standing counsel for the respondent board had relied upon a judgment of Hon'ble Supreme Court reported in ***(2020) 4 SCC 650 (Assistant Engineer(D1), Ajmer Vidyut Vitrann Nigam Limited and another Vs. Rahamatullah Khan @ Rahamjulla)*** to impress upon the Court that Section 56 (2) does not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period in the case of a mistake or bona fide error, however, it does not empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply for recovery of the additional demand.

(iii) The learned standing counsel for the respondent board relied upon Paragraph No.8 of the judgment and contended that Section 56(2) 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, but it does not restrict other modes of recovery, which may be initiated by the licensee company for recovery of a supplementary demand. Hence, he contended that there is no absolute bar for making a demand after a period of two years from the date the consumption charges have become due.

(iv) The learned standing counsel for the respondent board further contended that the criminal proceedings as well as the civil proceedings need not be a composite action. Even after the compounding of the offence under Section 152 of the Electricity Act, 2003, still the board would be entitled to collect the charges from the consumer. He relied upon Rule 23(AA) of Tamil Nadu Electricity Supply Code to impress upon the Court that in order to recover the dues, a provisional assessment order would be issued and after granting an opportunity to the consumer, a final assessment order would also be issued. Hence, the payment made towards compounding of the offence cannot in any way absolve the consumer from his civil liability. He further relied upon Clause 24 of Tamil Nadu Electricity Supply code to contend that the rate for compounding of an offence is a fixed amount for each category of service. Hence, the contention of the learned senior counsel that the civil liability follows the criminal liability is not correct. He further contended that the compounding offence for an industrial service is just Rs.20,000/- (Rupees Twenty Thousand only). The consumer cannot escape from his civil liability by just paying the said Rs.20,000/-(Rupees Twenty Thousand only), when he had committed an energy theft valuing for several lakhs of rupees. He further relied upon clause 23 (AA) (7) of Tamil Nadu Electricity Supply Code to contend that a procedure has been incorporated as to how to assess the quantum of energy consumption in theft of energy cases for preparation of provisional assessment order.

(v) There is no proof, whatsoever that the superstructure or the missionery were transferred by Thiagarajan Chettiar in favour of third party at any point of time. As long as Thiagarajan Chettiar continues to be the registered owner, he is liable to pay the amount arising out of energy theft. When the liability is upon Thiagarajan Chettiar, naturally the liability falls on the legal heirs of the Thiagarajan chettiar after his death. Hence, the demand made by the electricity board under the impugned orders are sustainable in law.

13. I have carefully considered the submissions on either side.

Discussion:

14. The respondent board has detected energy theft in relation to Service Connection No.A-167 at Autoor, Arumuganeri, Trichendur Taluk on 17.09.2001. Based upon the said inspection, an F.I.R was registered as against the father of the writ petitioners, namely Thiagarajan Chettiar, one Clamons and one Pattu Rajan in Crime No.157 of 2001 on the file of Autoor Police Station, Tutucorin District. The said Thiagarajan Chettiar, who was arrayed as first accused had died on 24.02.1996 itself, that is 5 years prior to the date of inspection. Thereafter, the provisional assessment order and final assessment order have been issued by the electricity board as against the said Clamons.

15. The said Clamons has challenged the assessment orders in various writ petitiones. Finally, in W.A(MD)No.3277 of 2002 on 24.11.2009, an order has been passed as against the said clamons, directing him to deposit a sum of Rs.7,24,120/- (Rupees Seven Lakhs Twenty Four Thousand One Hundred and Twenty only) within a period of six weeks as a condition for grant of stay. Admittedly, the said condition has not been fulfilled by the said Clamons, who was arrayed as the second accused in the criminal proceedings.

16. The present impugned order has been passed on 19.11.2012 calling upon the writ petitioners to pay a sum of Rs.17,24,120/- (Rupees Seventeen Lakhs Twenty Four Thousand One Hundred and Twenty only). The said impugned order has been passed 11 years after the date of inspection. Before passing the said impugned order, no notice was issued as against the writ petitioners, no provisional assessment order or final assessment order were passed as against the writ petitioners. Admittedly, the said service connection has been disconnected in the year 2001 itself. Hence, the charges relating to electricity theft were not reflected in any current consumption bill after 2001.

Limitation:

17. Section 56 (2) of Electricity Act, 2003 is extracted hereunder:

> *"(2). Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."*

18. In view of the above said provision, the electricity dues shall not be recoverable after a period of two years from the date of which such sum became first due. The licensee shall not be empowered to cut off the supply of electricity for non payment of the said arrears. The learned standing counsel for the respondent board had relied upon a judgment of the Hon'ble Supreme Court reported in ***(2020) 4 SCC 650 (Assistant Engineer(D1), Ajmer Vidyut Vitran Nigam Limited and another Vs. Rahamatullah Khan @ Rahamjulla)*** in Paragraph Nos.8,9 and 9.1 as held as follows:

"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."

19. A perusal of the above said judgment of the Hon'ble Supreme Court will clearly indicate that in the said case, an additional demand was raised by the electricity board after a mistake in the billing was discovered. By that time, the limitation period of two years has already expired. Hence, the Hon'ble Supreme Court has categorically held that where a mistake in billing has been discovered, an additional demand can be raised even after the period of expiry of the limitation. When an additional demand is raised, the electricity charges become "first due". From the date of additional demand, the board would be entitled to recover the said amount. But the judgment of the Hon'ble Supreme Court is not applicable to the facts of the present case. It is not a case of a discovery of error in billing and no additional demand was raised. The theft of energy was discovered by the electricity board, even on 07.09.2001 and it was followed by provisional and final assessment orders against the occupier, namely one Clamons. Hence, the charges claimed under the impugned order have become "first due" on 17.09.2001 itself. Therefore, any demand raised for the first time as

against the writ petitioners on 19.11.2012 is clearly barred under Section 56(2) of The Electricity Act, 2003.

Civil and Criminal liability:

20. As far as the criminal liability is concerned, the registered owner, namely Thiagarajan Chettiar had died on 24.02.1996 and the theft of energy has been detected on 17.09.2001. The F.I.R has been registered on 18.09.2001 as against Thiagarajan Chettiar (who had died five years back) and against Clamons and one Pattu Rajan. Therefore, it is clear that the criminal proceedings have been initiated as against the person, who had died five years prior to the date of alleged offence. The present status of the criminal proceedings have not been made available by either of the parties.

21. The learned senior counsel appearing for the petitioners has cited two judgments of Madras High Court reported in ***(2004) 1 MLJ (Crl) 389 (T.Krishnapandian Vs. State Represented by Inspector of Police(Crime))*** and ***(2008) 3 MLJ (Crl) 761 (P.Yamuna Vs. State***

Represented by Inspector of Police, H-4, Korukupet Police Station, Chennai-600 021.). In both the above said cases, the criminal prosecution launched as against the registered owner of the meter has been quashed on the ground that only the occupier is liable for the said offence. In the present case, admittedly, one Clamons was the occupier of the disputed premises and he was filing various writ petitions challenging the provisional and final assessment orders of the authorities of the electricity board.

22. Now, the issue that arises for consideration is that whether the registered owner of electricity meter could be fastened with civil liability, when criminal liability has not been fastened against him. As far as criminal liability is concerned, the judgments of Madras High Court referred to supra have quashed the proceedings as against the registered owner of the electricity meter. The learned senior counsel for the writ petitioners would contend that when criminal liability is not fastened as against the writ petitioners, they cannot be held liable for the civil liability also. The learned senior counsel referred to various provisions

under the Tamil Nadu Electricity Supply Code in particular. A particular reference was made to Rule 23 (AA) (7) and (11)) of Tamil Nadu Electricity Supply Code, which read as follows:

> *"(7) Where it is established that there is a case of theft of energy, the authorized officer shall assess the quantum of energy consumption for the past twelve months as per the assessment formula given in Form 8 in Appendix to this Code and prepare provisional assessment order for the charges for such consumption at two times of the tariff applicable (i.e. the applicable tariff for the purpose for which the pilfered energy was used) an Se on the accused person under proper receipt. The authorized officer may reduce the period for such billing if it is established by the facts or documents submitted in the representation of the accused person or any such other evidence observed by the authorized officer......."*
>
> *"(11) In case the accused person does not respond to the provisional order within seven working days, the licensee or supplier concerned, as the case may be, may proceed to initiate the recovery against the provisional assssment order."*

23. The learned senior counsel for the petitioners further relied

upon explanations to Rule 23 (AA) (22), wherein an accused person has been defined. It reads as follows:

> "*(22) (a). "accused person" shall mean and include the owner or occupier of the premises or his authorized agent or representative or any other person who is in occupation or possession or in charge of the premises at the relevant time of detection of theft of electricity or any other person who has been benefited by the theft of electricity;"*

24. After referring to the said provisions, the learned senior counsel for the petitioners has contended that provisional assessment order arising out of energy theft has to be issued only as against the accused person. If the accused person has not responded to the provisional assessment order, the board may proceed to initiate recovery against the provisional assessment order. The learned senior counsel for the petitioners has further referred to Rule 23 (AA) (17) to contend that the accused person shall be required to make the payment within seven (7) working days of the receipt of final assessment order. The learned senior counsel for the petitioners has further pointed out that the accused person has got a wider meaning, which includes the person in occupation

or possession or in charge of the premises at the relevant time of detection of theft of electricity or anyother person, who has been benefited by the theft of energy.

25. The learned senior counsel for the petitioners further referred to Section 135 of The Electricity Act, 2003 with regard to the definition of theft of electricity. The Section starts with the words "whoever, dishonestly". In view of the above said provision, the learned senior counsel for the petitioners has contended that no dishonesty could be attributed to a person, who had died five years prior to the date of inspection. According to the petitioners, their father has handed over the premises to one Clamons, who was running the Ice factory. The said Clamons was also defending the criminal as well as the assessment proceedings. Hence, he had contended that the civil proceedings, namely the assessment proceedings are also directed only as against the person, accused of theft of electricity. By no stretch of imaginations, the petitioner's father, Thiagarajan Chettiar could be alleged to have committed theft of electricity. In such an event, the accused person

would only be the occupier of the premises at the relevant point of time or the beneficiary of the theft of electricity.

26. A careful analysis of the above said submissions and a combined reading of the provisions cited by the learned senior counsel for the petitioners, it is clear that the assessment proceedings (civil liability) are targeted as against the accused person. In the present case, the father of the petitioners though was arrayed as first accused, he had passed away five years prior to the incident. His name has been wrongly mentioned as first accused in the F.I.R. That apart, by no stretch of imagination, dishonesty could be attributed to the deceased person as contemplated under Section 135 of the Electricity Act, 2003. From the above said discussion, it is clear that whether it is the owner or occupier, whoever may be, the beneficiary of the theft of energy alone would be liable for the civil liability also. In the present case, even as per the admitted case of the electricity board, the father of the petitioners is not the beneficiary of the theft of electricity, though the meter continued to be in his name.

27. Hence, this Court is of the opinion that civil liability always follows the person on whom criminal liability has been imposed on the basis of the beneficiary of the theft of electricity.

Discussion of other service connections:

28. Under the impugned order, the respondent board intends to disconnect the other two domestic service connections standing in the name of the writ petitioners at Devakottai on the ground that if a registered owner is in arrears of electricity charges for one service connection, the other service connections standing in the name of the registered owner could also be disconnected.

29. In the present case, A-167 is the service connection, which is the subject matter of theft of electricity and the same is located in Autoor Village, Trichendur Taluk. The other two domestic service connections are of the residential houses of the writ petitioners, which are located at

Devakottai. The said two domestic service connections were originally standing in the name of Thiagarajan Chettiar. However, after his death, the sons have entered into a partition and based upon the said partitiondeed, those service connections have got transferred in the name of the writ petitioners on 05.10.2004. Therefore, on the date, when the impugned order was passed on 23.09.2011, the two service connections at Devakottai were not standing in the name of Thiagarajan Chettiar. The impugned order itself refers to the fact that the writ petitioners have entered into a registered partition through a document, dated 18.05.2000. Hence, it is clear that the partition has taken place one year prior to the date of inspection, namely 17.09.2001. Though the board is entitled to disconnect all the service connections standing in the name of the registered owner for non-payment of dues with regard to one of the service connections, in the present case, on the date of impugned order, the domestic service connections at Devakottai were not standing in the name of Thiagarajan Chettiar, who is the registered owner of Service Connection No.A-167, which has been complained of theft of electricity. Therefore, I am of the opinion that the registered owner of the Service

Connection No.A-167 (subject matter of energy theft) had died in the year 1996 and the writ petitioners (sons of Thiagarajan Chettiar) have entered into a partition deed in the year 2000. Only in the year 2001, the energy theft was detected in relation to the Service Connection No.A-167 at Autoor Village. The service connections at Devakottai standing in the name of Thiagarajan have got mutated in the name of the writ petitioners in the year 2004 itself. Therefore, on the date of impugned order, the domestic service connections at Devakottai were not standing in the name of Thiagarajan Chettiar. Hence, the electricity board cannot invoke Clause 17 (8) of Tamil Nadu Electricity Supply Code on the facts of this case.

30. As per Section 56 (2) of the Act, even the service connection which is involved in the the theft of energy cannot be disconnected for non payment of time barred claim. When such is the case, the two connections which are no way connected with energy theft cannot be disconnected for nan payment of the time barred claim.

31. In view of the above said discussions, the impugned order passed by the electricity board in both the writ petitions suffers from various illegalities as stated supra and the same are set aside. Both the Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

14.07.2022

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Index : Yes / No
Internet : Yes / No
To

1.The Executive Engineer (Distribution),
The Tamil Nadu Generation and
Distribution Corporation Ltd.,
Thiruchendur.

2.The Executive Engineer (Distribution),
The Tamil Nadu Generation and
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Karaikudi-630 002.

3.The Assistant Executive Engineer (Distribution),
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4.The Accounts Officer (Revenue Division),
The Tamil Nadu Generation and
Distribution Corporation Ltd.,
Karaikudi-630 002.

R.VIJAYAKUMAR ,J.

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Pre-delivery Judgment made in
W.P(MD)Nos.11971 of 2011 and 6253 of 2013

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