



W.P(MD)No.9198 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.9198 of 2011

and

MP(MD) Nos.1 to 3 of 2011

M/s.A.K.S.P.Spining Mills,
No.67, Harvey Road,
Kadambur,
Koilpatti Taluk,
Tuticorin District,
Rep by its Managing Partner,
S.P.Pakir Mohideen

... Petitioner

Vs.

1.The Assistant Executive Engineer,
Distribution,
TANGEDCO,
Koyathar 628 952.

2.M/s.S.S.V.M Viswasam Thiagaraj Traders,
(Lessee and Enjoyer),
North Vandanam Village,
Koilpatti Taluk,
Tuticorin District,
Rept by its Managing Partner,
S.S.V.Michel Raj

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorarified Mandamus, calling for the records in Lr.No.AEE/D/KYTR/CI/F.THEFT/D.No.344/11, dated 14.07.2011, made by the first respondent and quash the same as illegal, arbitrary and against Regulation 23 of the Tamil Nadu Electricity Supply Code, 2044, insofar as the petitioner is concerned and forbear the first respondent from initiating any provision against the petitioner to realize the alleged loss.

For Petitioner	:	Mr.A.L.Gandhimathi
For R1	:	Mr.S.Deenadayalan
For R2	:	Mr.K.Mohammed Sirajudeen for Mr.A.S.Mujibur Rahman

ORDER

This writ petition is filed challenging the final assessment order dated 14.07.2011 issued by the first respondent.

2.The petitioner is a manufacturer of cotton yarn and ginning of cotton etc., has got an electricity service connection in LTCT No.VB 7. The petitioner leased out his premises to the second respondent for a period of three years from 01.02.2010 to 31.01.2013. On 01.07.2011, the Mill was inspected by the first respondent and they claimed that there was theft of



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energy by bypassing the meter by short circuit the CT Secondary wires and electricity connection was also disconnected. The first respondent has also lodged a criminal complaint before the Kadambore Police Station on 01.07.2011 and the same was registered in Crime No.59 of 2011 for the offences punishable under Section 379 IPC and Section 135 (1) of the Electricity Act 2003. Thereafter, the first respondent issued a provisional assessment order on 02.07.2011 in the name of the petitioner and the second respondent, the enjoyer of the Mill, for payment of Rs.49,32,546/- Thereafter, the final assessment order was passed on 14.07.2011 and the same is under challenge in this writ petition.

3.The learned senior counsel appearing for the petitioner submits that the earlier provisional assessment order, dated 02.07.2011 was not served upon him. When the second respondent, who is the lessee in the petitioner's premises at the time of inspection is liable for the loss on account of theft of energy, the impugned final assessment order is issued as against this petitioner. According to the learned counsel for the petitioner, the premises was leased out to the second respondent on 01.02.2010 and on



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the date of inspection on 01.07.2011, the second respondent was in occupation of the premises and therefore, this petitioner is not liable to pay the compensation as claimed by the respondent board. He also relied on the the agreement dated 01.02.2010 entered between the petitioner and the second respondent, in order to substantiate his contention. The learned senior counsel has also relied upon the judgment of this Court, in ***V.B.R.Menon Vs.The Assistant Executive Engineer and others***, reported in **2016 (2) CWC 573**, wherein, this Court held as follows:-

14.In this regard, a reference could be placed in the judgment relied upon by the learned counsel for the petitioner, delivered by the High Court of Gujarat, reported in CDJ 2009 GHC 003 in the case of Barot Vitthalbhai Damodardas Vs. Natwarbhai Umedbhai Patel, wherein it has been observed as follows_

"3.It appears that it is an admitted position that at the time when the inspection took place the shop in question - premises was in the occupation of the tenant Patel Pankajkumar Bhikhabhai. The said aspect is also recorded in the complaint by the complainant and the petitioner was not at all in actual occupation or using the shop or the electricity supply. When there is any



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allegation for fastening of criminal liability, it would be qua the person, who has committed offence and it cannot be extended to the owner of the property, unless there is any specific accusation that the owner is aware about it and he has played role in alleged offence for use of the electricity by the tenant by doing alleged theft. The principles of fastening criminal liability is different than that of civil liability in case of an ownership of the property or the use of the electricity. The language of Section 135 of the Act even if considered as it is, it refers to 'whoever' and the same would mean 'a person, who is involved in the commission of offence'. In a case where the property is owned by 'a' and is given on rental basis on any other agreement or contract known to law to 'b' and when 'b' is in occupation and using the electricity supply, any offence, if detected, such principles of criminal liability may be qua 'b' and it cannot be extended against 'a' in mere capacity as the owner of the property. If the criminal liability is extended to the owner of the property when admittedly the property is in occupation of the person other than the owner in whatsoever capacity it may be, it would be not only result into re-writing the principles of criminal liability in absence of any mens rea and other necessary ingredients for fastening criminal



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liability, but it would also result into miscarriage of justice on the face of it. The law never intends to punish the person, who is not guilty or the person, who cannot be said as guilty on the face of the accusation. If such is permitted, it would, on the face of it, also abuse the process of law."

The dictum laid down in the above judgment would clearly show that if the property is in occupation of the tenant and the tenant is the beneficiary of the alleged offence, he should alone be held responsible under Section 135 of the Act.

15.In fact, in an identical case, in W.P.No.39070 of 2002, in the case of T.M.Marasimhan Vs. The Superintending Engineer, Tamil Nadu Electricity Board, and another, when a tenant approached this Court stating that only the owner of the premises would be held responsible, the contention of the tenant was rejected by the learned Single Judge of this Court by order dated 10.01.2013.

*16.In this regard, a reference could be placed in one more judgment delivered by the Division Bench
in W.A.No.719 of 2014, dated 27.01.2015, in the case of*



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Ammal and Ors, wherein it has been observed as follows:-

"7..... In short, Section 135 of the Tamil Nadu Electricity Act, 2003 and the explanation of Section 23 of the Tamil Nadu Electricity Supply Code categorically state that for the purpose of the above Section, tampering of meters and theft of energy if the premises in question is occupied by an authorised tenant, the responsibility shall vest with the authorised tenant only.

10.....In fact, Section 126 of the Tamil Nadu Electricity Act, 2003 empowers the Assessing Officer to make assessment in the case of 'unauthorised use of electricity'. It specifies that if on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used or after inspection of records maintained by any person, the Assessing Officer comes to a conclusion that such person in indulging in 'unauthorised use of electricity', then he shall assess the electricity charges payable by such person or by any other person benefited by such use...."



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In view of the dictum laid down in the above decision and considering the factual aspects of the case on hand, I am of the considered opinion that the initiation of the proceedings under Section 135 of the Act and the entire procedure adopted by the respondents during the proceedings of the criminal nature against the petitioner, are not legally sustainable, when admittedly he was neither the owner nor the occupier or enjoyer of the premises on the date of inspection.

17. With regard to the second question, as to whether the petitioner is liable to pay the amount since he failed to give advance intimation to the Electricity Board with regard to the transfer/leasing out of the property, as required under Regulation 17(4) of the Supply Code, I am of the opinion that when the petitioner does not fall under the definition of "Accused Person", merely for non-communication with regard to transferring/leasing out of the property, he cannot be held responsible. At this juncture, it would be appropriate to extract the Regulation 17(4) of the Supply Code "If the consumer fails to give advance intimation as aforementioned of his



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intention to sell or lease out or otherwise dispose of the properties or business to which supply is given or contracted for, the licensee shall have the right to recover the charges for consumption and other charges due to the licensee under the agreement even beyond the date of sale or lease out or otherwise disposal of the properties or business."

It is clear from the above Regulation, that lawful dues arising out of the agreement between the Consumer and the Licensee are civil liabilities, being contractual in nature, against which a criminal prosecution under Section 135 of the Act cannot be invoked. Moreover, Regulation 17(1) as well as Regulation 4 of the Supply Code, list the various types of lawful charges recoverable from the Consumer, in which compounding fee and penalty under Section 135 of the Act do not find a place. Hence, the right to claim lawful dues under Regulation 17(4) cannot be taken as a ground to justify the proceedings against the petitioner under Section 135 of the Act. In this regard, a reference could be placed in the decision of a Division Bench of this Court, in W.A.No.719 of 2014 (cited supra), wherein it has been held as follows_



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"18. Therefore, in the present case, the fact of the matter is that the First Respondent/writ Petitioner by means of an order dated 31.12.2005 was allotted a shed bearing No.915, 28th street, B.V.Colony, Vyasarpadi, Chennai-39 and she is engaged in a small trade of packing salt in small polythene bags and sell the same in retail. Moreover, electricity supply is necessary for her small business and as such, the impugned order dated 17.03.2011 passed by the Appellant/First Respondent recovering the First Respondent/writ Petitioner to pay the sum of Rs.15,53,975/- together with interest to the Tamil Nadu Electricity Board and only when she is willing to pay the aforesaid amount, the new service connection in her name would be considered is not legally a tenable one in the eye of law because of the simple reason for theft of energy or for the benefit enjoyed by a person in regard to the theft of electricity only that particular person can be considered to be an accused person and against whom the Appellant/First Respondent/TNEB can proceed in the manner known to law and in accordance with law. But the First Respondent/writ Petitioner by no stretch of imagination



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be called upon to pay a sum of Rs.15,53,975/- with interest to the Tamil Nadu Electricity Board and putting a precondition in regard to the above said payment by the Appellant/Tamil Nadu Electricity Board is not correct and legally valid one in the eye of law based on the reason that the First Respondent/writ Petitioner had not committed theft of electricity or energy or even benefited by the theft of electricity which was detected on 19.04.2001 and in fact, the previous tenant Sengalammal was alone responsible for the same in regard to her electricity connections A/c.67-17-584. Also that, the First Respondent/writ Petitioner who is not at all connected with the previous tenant of the Second respondent/Tamil Nadu Slum Clearance Board in the considered opinion of this Court cannot be imposed with a liability of erstwhile tenant in the absence of any agreement between her and the Electricity supplier, more so when the theft of energy was purportedly detected on 19.04.2001 in A/c. 67-17-584, wherein, the theft of energy detected was used by the erstwhile tenant namely, Sengalammal.”

4.The learned counsel has also relied on the judgment of the



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Division Bench of this Court in the case of ***the Assistant Engineer / O & M Vs. Sabasthi Ammal and another***, reported in ***W.A.No.719 of 2014***, wherein, this Court has held as follows:-

“17.At this stage, this Court very relevantly points out the decision of the Honourable Supreme Court in Haryana State Electricity Board Vs.Hanuman Rice Mills, Dhanauri and others (2010 (9) SCC 145), wherein, at page 151 in para 14, it is observed and held as follows:-

“14.The Appellant did not demand the alleged arrears, when the first respondent approached the appellant for electricity connection in its own name for the same premises and obtained it in the year 1991. More than three years thereafter, a demand was made by the appellant for the first time on 16.01.1995, alleging that there were electricity dues by the previous owner. In these circumstances, the claim relating tot he previous owner could not be enforced against the first respondent””

18.Therefore, in the present case, the fact of the matter is that the first respondent/writ petitioner by means of an order, dated 31.12.2005 was allotted a shed bearing No. 915, 28th street, B.V.Colony, Vyasarpadi, Chennai – 39 and she is engaged in a small trade of packing salt in small



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polythene bags and sell the same in retail. Moreover, electricity supply is necessary for her small business and as such, the impugned order dated 17.03.2011 passed by the appellant /first respondent recovering the first respondent/writ petitioner to pay the sum of Rs.15,53,975/- together with interest to the Tamil Nadu Electricity Board and only when she is willing to pay the aforesaid amount, the new service connection in her name would be considered is not legally a tenable one in the eye of law because of the simple reason for theft of energy or for the benefit enjoyed by a person in regard to the theft of electricity only that particular person can be considered to be an accused person and against whom the Appellant/first respondent/TNEB can proceed in the manner known to law and in accordance with law. But the first respondent/writ petitioner by no stretch of imagination be called upon to pay a sum of Rs.15,53,975/- with interest to the Tamil Nadu Electricity Board and putting a precondition in regard to the above said payment by the Appellant/Tamil Nadu Electricity Board is not correct and legally valid one in the eye of law based on the reason that the first respondent/writ petitioner had not committed theft of electricity or energy or even benefited by the theft of electricity which was detected on 19.04.2001 and in fact, the previous tenant Sengalammal



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was alone responsible for the same in regard to her electricity connections A/c.67-17-584. Also that, the first respondent/writ petitioner who is not at all connected with the previous tenant of the second respondent/Tamil Nadu Slum Clearance Board in the considered opinion of this Court cannot be imposed with a liberty of erstwhile tenant in the absence of any agreement between her and the Electricity Supplier, more so when the theft of energy was purportedly detected on 19.04.2001 in A/c.67-17-584, wherein, the theft of energy detected was used by the erstwhile tenant namely, Sengalammal.

5.The learned Standing Counsel appearing for the respondent Board submits that this petitioner is the owner of the premises and he only availed the electricity service connection in LTCT No.VB 7, in the year 1978. The ground taken by the petitioner that the premises was leased out is not correct and it is created to defeat the claim of the compensation raised by the Board. The learned standing counsel for the respondent Board by referring the regulation 17(3) and 17(4) of the Tamil Nadu Electricity Supply Code submits that the consumer, if intended to sell or lease out the premises, to which, supply has been provided has to give three months



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notice, with regard to the intention to the Engineer of the Licensee TANGEDCO and clear all the dues upto the date of sale or proposal of lease. Only on such notice alone, the agreement insofar as the consumer is concerned will cease to operate. Here, in this case, no such notice was provided and the stand of the lease itself is taken only after the inspection conducted on 30.06.2011 and the lease agreement referred by them is also unregistered document created for the purpose of this case.

6.This Court paid its anxious consideration to the rival submissions made and also perused the materials placed on record.

7.Admittedly, electricity service connection in LTCT No.VB 7 stands in the petitioner's name. The petitioner, who run the cotton and ginning factory in the premises said to have leased out the premises to the second respondent for a period of three years from 01.02.2010 to 31.01.2013, The agreement, dated 01.02.2010 is also placed before this Court. This agreement is an unregistered document. The respondent board claims that during the inspection conducted in the petitioner's premises, in



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the service connection LTCT No.VB 7 on 30.06.2011, they detected theft of energy and criminal case was also registered in Crime No.59 of 2011, for the offences punishable under Sections 379 IPC and Section 135(1) of the Electricity Act. The stage of the criminal case is also not known. As pointed out by the learned counsel for the second respondent Board, the regulations when the second respondent, who is the lessee in the premises liable for the loss on account of theft of energy. prescribes that prior intimation i.e three months notice is essential for any sale or lease out the premises for which, electricity supply has been provided and the relevant provision is extracted as under:-

17. Licensee not to do certain things.—

(1) No licensee shall, without prior approval of the Appropriate Commission,—

(a) undertake any transaction to acquire by purchase or takeover or otherwise, the utility of any other licensee; or

(b) merge his utility with the utility of any other licensee: Provided that nothing contained in this sub-section shall apply if the utility of the licensee is situate in a State other than the State in which the utility referred to in clause (a) or clause (b) is situate.

(2) Every licensee shall, before obtaining the approval under sub-



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section (1), give not less than one month's notice to every other licensee who transmits or distributes, electricity in the area of such licensee who applies for such approval.

(3) No licensee shall at any time assign his licence or transfer his utility, or any part thereof, by sale, lease, exchange or otherwise without the prior approval of the Appropriate Commission. (4) Any agreement, relating to any transaction specified in sub-section (1) or sub-section (3), unless made with the prior approval of the Appropriate Commission, shall be void.

8.In this case, no such notice as contemplated under Regulation 17(3) and 17(4) of the Tamil Nadu Electricity Supply Code were given either by the petitioner or by the second respondent. The petitioner has challenged the provisional assessment order only on the ground that the lease agreement, dated 01.10.2010 has been executed in favour of the second respondent. The unregistered lease agreement was disputed by the learned counsel for the Board stating that the unregistered document itself has been created for the purpose of defeating the claim. The learned senior counsel has relied upon the judgments of this Court in ***W.A.No.719 of 2014*** in ***W.P.No.8713 of 2011***, the order of this Court in ***V.B.R.Menon Vs. The***



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Assistant Executive Engineer and others, reported in **2016 (2) CWC 573**.

He further relied on the judgment of the Honourable Apex Court in ***Telangana State Southern Power Distribution Company Limited and another Vs. M/s. Srigdhaa Beverages***, reported in **Civil Appeal No.1815 of 2020**, wherein, it was held as follows:-

15. We have gone into the aforesaid judgments as it was urged before us that there is some ambiguity on the aspect of liability of dues of the past owners who had obtained the connection. There have been some differences in facts but, in our view, there is a clear judicial thinking which emerges, which needs to be emphasized:

A. That electricity dues, where they are statutory in character under the Electricity Act and as per the terms & conditions of supply, cannot be waived in view of the provisions of the Act itself more specifically Section 56 of the Electricity Act, 2003 (in pari materia with Section 24 of the Electricity Act, 1910), and cannot partake the character of dues of purely contractual nature.

B. Where, as in cases of the E-auction notice in question, the existence of electricity dues, whether quantified or not, has been specifically mentioned as a liability of the purchaser and the sale is on AS IS WHERE



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IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS, there can be no doubt 10 (supra) that the liability to pay electricity dues exists on the respondent (purchaser).

C. The debate over connection or reconnection would not exist in cases like the present one where both aspects are covered as per clause 8.4 of the General Terms & Conditions of Supply.”

9.In view of the foregoing discussions and reasons that, prior intimation/three months notice has not been given by the petitioner to the respondent Board, for leasing out the premises to the second respondent and the lease agreement is also an unregistered document, this Court finds no merit in this writ petition.

10.Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition are closed.

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To

The Assistant Executive Engineer,
TANGEDCO,
Koyathar 628 952.



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B.PUGALENDHI, J.

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Order made in
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