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W.P.(MD).No.4155 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 07.07.2022

ORDER PRONOUNDED ON : 11 .07.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).No.4155 of 2012
and
MP(MD).Nos. 1 & 2 of 2012**

S.Baskaran

...Petitioner

Vs.

1.The Chairman Cum Managing Director
Tamil Nadu Generation & Distribution
Corporation Limited, 144
Anna Salai, Chennai 600 002

2.The Superintending Engineer
The Tamil Nadu Electricity Board
(NOW TANGEDCO)
Vallam Road, Thanjavur

3.The Assistant Engineer
The Tamil Nadu Electricity Board
(NOW TANGEDCO)
Rural Court Road
Thanjavur Town

.....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the first respondent Lr.No.CE/Comml/EE3/AEE3/F.Thanjavur EDC/D.85/12 dt. 14.03.2012 and



W.P(MD).No.4155 of 2012

quash the same and direct the respondents to re-pay a sum of Rs.1,41,542/- with interest from the date of payment till the date of realization.

For Petitioner : Mr.Ram Sundar Vijayaraj
For Mr.C.Jeganathan
For Respondents : Mr.S.Deenadhayalan
Standing Counsel

ORDER

This writ petition has been filed challenging an order passed by the first respondent under which a final assessment order was passed as against the writ petitioner with BPSC demanding a sum of Rs.1,62,192/- towards theft of energy.

2.The petitioner herein is running a Plastic Company namely 'Abirami Plastics' and he is having three commercial service connection numbers in S.C.Nos.14,15 and 16. According to the writ petitioner, there was an inspection on 09.10.2003 by the officer of the respondents Board. The authorities are alleged to have found tampering of meter box with regard to service connection Nos.15 and 16. Thereafter, they threatened the writ petitioner to pay a sum of Rs.1,41,542/- and he was forced to pay the same in order to avoid criminal prosecution. A provisional assessment order was passed on 10.10.2003 and the said order was challenged by the writ petitioner



W.P(MD).No.4155 of 2012

by way of O.S.No.342 of 2003 on the file of the District Munsif Court, Thanjavur for declaration that the notice of the respondents as null and void and for a permanent injunction from disconnecting the service connection given to the writ petitioner. The suit was decreed on 08.03.2007, but the matter was remitted back to the authorities for a fresh enquiry.

3.The writ petitioner herein had challenged the remittance for fresh enquiry by filing A.S.No.58 of 2007 before the Subordinate Court, Thanjavur. The learned Subordinate Judge by his order dated 13.09.2007 allowed the appeal and reversed the decree for fresh enquiry. The respondent Electricity Board challenged the said judgment and decree in S.A.No.521 of 2008. By an order dated 28.08.2008, this Court allowed the second appeal and dismissed the suit on the ground that the Civil Court has no jurisdiction to entertain the suit relating to energy theft. However, liberty was granted to the writ petitioner to file a revision to the first respondent herein.

4.On the basis of the order passed by this Court in the second appeal, the writ petitioner filed a revision before the first respondent herein on 14.11.2008 and the said revision petition was disposed of by the first respondent herein on 14.03.2012. The said order is under challenge in the present writ petition.



W.P(MD).No.4155 of 2012

5.The learned counsel for the petitioner had contended that on 09.10.2003, when the inspection was conducted by the respondent authorities, he was not present. Unless an inspection is conducted in the presence of the owner/occupier, any report based upon the said inspection, cannot be a basis for fixing any criminal or civil liability upon the petitioner. The learned counsel had further contended that based upon the liberty granted by the High Court, the petitioner had approached the first respondent by way of filing the revision petition. However, without affording any opportunity of personal appearing, the impugned order has been passed by the first respondent herein. Hence, the order is liable to be set aside for violation of principles of natural justice.

6.The learned counsel had further contended that the Electricity meters which are alleged to have been tampered with, have not been referred to the Inspector to find out whether actually tampering had taken place or not. When the alleged tampering has not been proved by the respondent authorities, the question of invoking the other provisions on the ground that an energy theft has taken place is not sustainable in the eye of law. Hence, he prayed for allowing the writ petition.

7.Per contra, the learned counsel for the respondents had pointed out that the inspection was conducted on 09.10.2003 and the petitioner has



W.P(MD).No.4155 of 2012

signed in the inspection report. This will clearly disclose that the inspection was conducted only in the presence of the writ petitioner.

8.The learned counsel had further contended that the revision was filed by the writ petitioner on 14.11.2008 and the same could be disposed of by the first respondent only after a period of four years namely on 14.03.2012. In between the four years period, several opportunities have been granted to the writ petitioner. The learned counsel had further contended that the petitioner had submitted his written submission on 20.05.2009. Thereafter, the matter was adjourned on several days namely 07.07.2009 and 29.10.2009. Another written arguments were filed by the petitioner on 29.10.2009. Thereafter, the petitioner had filed a petition on 18.08.2011 contending that the Chief Engineer has no jurisdiction to enquire afresh and the Chairman who enquired the case has to pass orders. Thereafter, another petition was filed by the writ petitioner seeking the certified copies of the proceedings conducted on 07.07.2009 and 29.10.2009. He had further contended that the last date of hearing was fixed on 10.11.2009 in which the petitioner had refused to avail opportunities including the cross examination of the officers of the Board concerned. Hence, it is evident that several opportunities were granted during four years period and the petitioner had availed the said opportunity by filling the written submissions.



W.P(MD).No.4155 of 2012

9.The learned counsel for the respondents had further contended that the petitioner had accepted the fact of energy theft and he has compounded the offence under Section 152 of Electricity Act 2003, to avoid criminal prosecution. When the petitioner himself has admitted to the tampering of the meter with regard to service connection Nos.15 and 16, the question of referring the matter to the Inspector of Meter does not arise. Hence, he contended that all the contentions raised by the writ petitioner has been properly appreciated by the first respondent and he has passed the order of assessment fixing the liability upon the writ petitioner. Hence, he prayed for dismissal of the writ petition.

10.I have carefully considered the submissions made on either side.

11.Admittedly, an inspection has been conducted by the authorities of the respondents Board on 09.10.2003 in the industrial premises of the writ petitioner. The inspection report discloses the fact that the petitioner was also present and he has signed in the inspection report. As per the writ averments, the petitioner has paid the compounding fee of Rs.1,41,542/- towards compounding of the offence to avoid criminal prosecution. Hence, the contention of the writ petitioner that he was not present on the date of inspection is not factually correct.



W.P(MD).No.4155 of 2012

12.The petitioner has accepted the allegation of tampering of meter and he has paid the compounding fee. At no point of time, the petitioner has chosen to challenge the payment of compounding fee or requested the Board to initiate criminal proceedings so as to vindicate his rights. Hence, this Court can safely arrive at a conclusion that there is no factual dispute with regard to the fact that the electricity meters relating to service connection Nos.15 and 16 were tampered. When the tampering of the meters are not in dispute, the authorities of the respondent Board are not expected to send the meters for inspection to find out whether the meters have been tampered with or not. Only in a case where the consumer did not admit the allegation of tampering of meter, the issue of sending the electricity meter for inspection by the Inspector would arise. Hence, the contention of the writ petitioner that the meters were not subjected to inspection is also not legally sustainable.

13.The petitioner had further contended that no proper opportunity was afford to him during the revision proceedings by the first respondent. The petitioner had presented the revision on 14.11.2008. The petitioner had filed his written arguments on 29.10.2009. Thereafter, on 18.08.2011, the petitioner has filed an application that the Chief Engineer has no jurisdiction to enquire afresh and the Chairman who enquired the case has to pass orders. Hence, liberty has been granted to the writ petitioner to examine the officials



W.P(MD).No.4155 of 2012

of the Board on 10.11.2011, but the petitioner had refused to cross examine the officials of the Board. Thereafter, the petitioner has filed another application seeking certified copies of the proceedings of the previous hearing namely 07.07.2009 and 29.10.2009. Thereafter, the matter was finally posted on 10.11.2011 so as to give an opportunity to the writ petitioner to cross examine the officials of the Board, but the petitioner had refused to avail the said opportunity.

14.The sequence of the dates and events as narrated above will clearly indicate that the revision petition was pending before the first respondent for nearly four years and the petitioner was given as much liberty as he could be given by the first respondent. Only thereafter, the impugned order has been passed.

15.The quantum of amount arrived at in the impugned order has not been specifically disputed in the writ petition. According to the impugned order, the quantum of liability is based upon the provisions of Tamil Nadu Electricity Supply Board with BPSC. Hence, I do not find any illegality or infirmity in the order passed by the first respondent.



W.P(MD).No.4155 of 2012

16.It is clear that though the energy theft is relating to the period 2003, the petitioner was highly successful in prolonging the matter before the Civil Court as well as before the authorities of the Board. I do not find any merit in the writ petition. The writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

11 .07.2022

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W.P(MD).No.4155 of 2012

R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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