



W.P.(MD).No.9967 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 17.08.2022

ORDER PRONOUNDED ON : 30.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.9967 of 2012

and

MP(MD).No. 1 of 2012

W.P.John Jebaraj

....Petitioner

-Vs-

1.The Executive Engineer (Distribution)

TANGEDCO

Tamil Nadu Electricity Board

Thiruchendur

Tuticorin District

2.The Assistant Executive Engineer (Distribution)

TANGEDCO

Tamil Nadu Electricity Board

Thiruchendur

Tuticorin District

3.S.Sheltan Rajadurai

....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order in Lr.No.AEE/D/TCR/F.Doc/D.No.398/12 dated 09.05.2012 passed by the 2nd respondent herein and to quash the same as



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illegal and direct the 2nd respondent herein to restore the electricity supply to the petitioner's premises in respect of Service Connection SC.NoA-129 to Door No.1/411 Kuringinagar, Veerapandian Pattinam, Tuticorin District with the additional load to run both the plant ie., 37 KW & 20.5 KW required.

For Petitioner : Mr.T.Pon Ramkumar

For R1 & R2 : Mr.S.Deenadhayalan
Standing Counsel

For R3 : No appearance

ORDER

The present writ petition has been filed challenging the final assessment order of the respondent authorities arising under Section 135 of the Electricity Act, 2003.

2.According to the petitioner, he was having a service connection in S.C.No.A-129 under tariff IIIB. There was an inspection by the second respondent on 27.08.2010 and on the allegation of theft of energy, a provisional order of assessment was assessment was passed for a sum of Rs.27,78,591/-. Challenging the said order, the petitioner had filed W.P.No.11645 of 2010 and by way of interim orders, the petitioner had deposited a sum of Rs.5,00,000/- on 14.09.2010 and the service connection was restored.



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3.The petitioner had further submitted that he had faced difficulty in obtaining an additional load from the respondents herein. Hence, he had leased out the premises to an Ice factory from January 2011 onwards. Within a period of few months, he found that the tenant is indulging in theft of energy and he made various complaints to the respondent authorities and has also lodged a police complaint. However, no action was initiated. Finally after a complaint was lodged to the Vigilance Cell, an inspection was conducted in the Ice plant on 02.01.2012 wherein the respondent authorities found that there was a theft of energy. The respondent authorities have initiated criminal action as against the writ petitioner and his lessee in Crime No.11 of 2012 on the file of the Thiruchendur Police Station, Tuticorin District and it culminated in Spl.Calender Case No.1 of 2014. In the said criminal proceedings, the petitioner was arrayed as A1 and his lessee was arrayed as A2. The learned Principal Sessions Judge, Tuticorin acquitted the petitioner on the ground that the petitioner had been intimating the department about the electricity theft of his lessee and hence, he is not guilty of the alleged offence. However, the learned Judge proceeded to convict the second accused namely lessee on 13.08.2020.

4.The petitioner had further contended that the respondent authorities have issued a provisional order of assessment only to his lessee on



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05.01.2012. Since his lessee had left the premises after criminal prosecution, the petitioner had submitted his explanation on 25.01.2012 in order to avoid disconnection. However, the said provisional order was served only upon the lessee and only on 27.01.2012, a copy of the provisional assessment order was served upon the petitioner. The petitioner herein had challenged the said provisional assessment order in W.P(MD).No.4707 of 2012 and an order was passed on 11.04.2012 directing the petitioner to treat the provisional assessment order as a show cause notice and submit his explanation within a period of 15 days and the second respondent shall not proceed further till passing of final order. Thereafter, the petitioner has submitted his objection to the second respondent on 25.04.2012. The second respondent herein without affording any personal hearing to the writ petitioner, has passed the final assessment order on 09.05.2012 invoking Regulation 23(AA) of the Tamil Nadu Electricity Supply Code. The said order is under challenge in the present writ petition.

5. The Contentions of the learned counsel for the writ petitioner are as follows:

(i). The petitioner had leased out the premises to the third respondent herein in January 2011. From March 2011 onwards, the petitioner has been lodging complaints to the respondent authorities including the Chairman of



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the board that his tenant is committing theft of energy and action may be initiated against him. The petitioner has also lodged a complaint to the vigilance department on 14.10.2011. Due to pressure from the petitioner, finally an inspection was conducted only on 02.01.2012 and theft of energy was unearthed. Hence, according to the learned counsel for the petitioner, the civil liability to pay penalty cannot be fastened upon the writ petitioner who is the landlord and who has already warned the respondent authorities about the energy theft nearly nine months prior to the inspection.

(ii). The petitioner had further contended that though he was prosecuted under Section 135 of the Electricity Act, he was acquitted by the learned District Judge on the ground that he is a whistle-blower who had made complaint to the Board regarding theft of energy. But when the complaint was lodged by the petitioner, the respondent authorities did not take action as against the tenant. Ultimately his energy theft is found after nine months and the same cannot be imposed upon the landlord/writ petitioner. The entire energy theft has happened only due to the negligence/collusive nature of the authorities which could have been prevented, if action had taken place in March 2011.

(iii).The petitioner had further contended that Regulation 23(AA) of the Tamil Nadu Electricity Supply Code has been framed corresponding to



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Section 135 of the Electricity Act. When the petitioner has been acquitted in the Criminal Court on the ground that there is no dishonest intention on the part of the writ petitioner and he was just a whistle-blower who informed the authorities about energy theft, the authorities were not legally correct in invoking Regulation 23(AA) as against the writ petitioner.

(iv).The learned counsel had further contended that the total power used by the Ice plant after disconnection is just 44 KW, but the respondents herein had calculated it as 75 KW and the calculation of the authorities is erroneous. Hence, he prayed for setting aside the assessment order.

6.The learned Standing Counsel appearing for the respondents/Electricity Board had contended as follows:

(i). As per Regulation No.17(3) of the Tamil Nadu Electricity Supply Code, whenever a landlord intends to lease out the premises to the third party, he should inform the board at least three months in advance. In case of failure to give such prior notice, the landlord alone would be liable for the charges for consumption and other charges under the agreement even beyond the date of lease as contemplated under Regulation 17(4) of the Tamil Nadu Electricity Supply Code.



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(ii).The learned counsel for the respondents had further contended that the petitioner along with his lessee has been prosecuted under Section 135 of the Electricity Act. Though the petitioner has been acquitted, his lessee has been convicted. Hence, the impugned order of final assessment invoking Regulation 23(AA) of the Tamil Nadu Electricity Supply Code meant for theft of energy is legally sustainable.

(iii).The learned counsel for the respondents had further contended that even though the petitioner has been acquitted in the criminal case, his civil liability will continue. Though the tenant of the petitioner has committed theft of energy, the petitioner being the registered owner of the service connection is liable to pay penalty as contemplated under Regulation No.23 of the Tamil Nadu Electricity Supply Code.

(iv).The learned counsel had further contended that the petitioner himself has suffered a provisional assessment order in the year 2010 for theft of energy. Only in order to escape from fresh proceedings, the petitioner is said to have inducted the third respondent as a tenant and he has attempted to hide behind the third respondent. The respondent authorities had further contended that the petitioner being a registered owner of the service connection, he is liable to pay whatever dues that arises out of the said



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service connection. Either the consumption charges or penalty arising out of Section 126 or 135 of the Act, the ultimate liability is only upon the registered consumer. Even in case where tenant was inducted into the premises, the electricity board cannot be searching for the tenant who had vacated the premises. In fact, the current consumption charges and the penalty levied under various statutory provisions over the property, can very well be collected from the landlord. Hence, he prayed for dismissal of the writ petition.

7.I have considered the submissions made on either side and perused the materials available on record.

8.The petitioner is having a service connection under Tariff IIIB and he has already suffered an order of provisional assessment arising out of energy theft in the year 2010 for a tune of Rs.27,78,591/-. According to the petitioner, he has inducted the third respondent as his tenant in January 2011. As contemplated under Regulation No.17(3) of the Tamil Nadu Electricity Supply Code, the petitioner has not intimated about the induction of the tenant into the premises. He has lodged a complaint to Thiruchendur Police Station as against the tenant on 01.03.2011 apprehending that theft of energy may take place in his premises for which a CSR has been issued on



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08.03.2011. On 22.05.2011, the petitioner has sent an E-mail to the Chairman of the Electricity Board alleging theft of energy by his tenant. Again on 23.05.2011 another Mail has been sent by the petitioner to the Chairman of the Board. The petitioner has sent another mail on 11.07.2011 to the Chairman marking a copy to the first and second respondents in the writ petition alleging theft of energy and collusion on the part of the authorities in such theft of energy.

9.An account summary pertaining to the above said service reveals that the meter got burnt and it was replaced on 27.04.2011. On 14.10.2011, the petitioner has sent a complaint to D.G.P Vigilance Cell of Tamil Nadu Electricity Board by way of a registered post under which he has alleged about the energy theft. The above communication from the writ petitioner to the respondent board have not been disputed in the counter. Though the petitioner has not informed the respondent board about the induction of the tenant, he has been continuously informing about the theft of energy from March 2011 onwards to the respondent authorities. Hence, the authorities cannot now turn around and contend that the petitioner has not informed about the induction of the tenant and hence, the petitioner is liable to pay the penalty arising out of theft of energy.



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10. The provisional assessment order has been issued on the lessee on 05.01.2012. The observation mahazer on 02.11.2012 indicates only the tenant was in possession and he was present at the time of inspection. In fact the department has issued notice only to the lessee informing about the inspection. The final assessment order has been passed on 09.05.2012. Till the final assessment order was passed, the criminal proceedings were pending before the learned Principal Sessions Court, Tuticorin. Only on 13.08.2020, orders have been passed acquitting the petitioner and convicting the third respondent namely the lessee of the premises. Hence, there was a legally justifiable reason for invoking Regulation 23(AA) of the Tamil Nadu Electricity Supply Code, at the time of provisional assessment and final assessment order in view of the pendency of the criminal proceedings. However, once the petitioner has been acquitted, the legal basis for invoking Regulation 23 falls to ground. The petitioner can no longer be considered to have dishonestly committed the theft of energy. Only if Section 135 of the Electricity Act can be invoked, the question of invoking corresponding Regulation No.23 for imposing penalty would arise. In all cases where accused got acquitted, they cannot be saddled with the penalty invoking Regulation No.23 of the Tamil Nadu Electricity Supply Code.



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11.The provisional assessment order as well as the final assessment order have been issued only as against the third respondent/tenant. However, the petitioner has chosen to challenge the same on the ground that if the said amount has not been paid, his service connection will get disconnected. According to the petitioner, after criminal prosecution, the tenant has left the premises without any information and he is running the Ice factory now. Any impugned order, though directed as against the tenant, would ultimately affect the business interest of the writ petitioner alone. Hence, the petitioner has chosen to challenge the provisional assessment order as well as the final assessment order passed as against the third respondent herein. The third respondent being a tenant has happily left the premises leaving his landlord to defend the proceedings and to protect his service connection.

12.A perusal of Regulation No.23 of the Tamil Nadu Electricity Supply Code clearly indicates that it is corresponding to Sections 135 to 141 of Electricity Act. When the petitioner being acquitted of the criminal charges on the ground that he was the landlord and he does not have any dishonest intention to commit theft of energy, the proceedings under Regulation No.23 cannot be initiated as against the writ petitioner. There are no clear statutory provision or regulation to clarify whether a landlord would have to face the



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civil liability even after he has been acquitted in criminal prosecution. It is settled position of law that the landlord would not be liable for criminal prosecution unless the Electricity Board has established his connivance that the tenant in theft of energy. In the present case, the respondent authorities have not placed any record to establish that the landlord has colluded together for committing theft of energy. In fact the petitioner/landlord has been making series of allegations as against the third respondent /tenant from March 2011 onwards which is 9 months prior to the date of inspection. Had the petitioner been convicted by the Special Court, the Special Court would have invoked Section 154(5) to determine the civil liability as against the consumer.

13. In paragraphs above, it has been held that Regulation 17(3) and 17(4) of Tamil Nadu Electricity Supply Code, cannot be put against the petitioner for not informing about the tenancy. Even assuming that Regulation 17(4) can be invoked, it could be invoked only for the purpose of recovering consumption charges and other charges due to the lessee under the agreement beyond the date of lease. It does not contemplate recovery of penalty arising out of un-authorised use of electricity or theft of energy as contemplated under Section 126 or 135 of the Act.



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14.Hence viewed from any angle, the respondent board cannot demand the penalty amount from the writ petitioner who has already been acquitted from the criminal case. The respondent board is always at liberty to proceed as against the third respondent/ tenant against whom there is a reference in the observation mahazer, the provisional assessment order, final assessment order and the order of conviction by a Criminal Court.

15.In view of the above said discussions, the order impugned in the writ petition cannot be enforced as against the writ petitioner or with regard to the premises for which the said service connection has been given. The respondents are at liberty to enforce the same as against the third respondent herein who has not chosen to challenge the final assessment order. The writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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