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W.P.No.11564 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.11564 of 2007

and

M.P.No.1 of 2007

M/s.Platinum Heat Treaters Pvt Ltd.,
Represented by its Chairman &
Managing Director,
Mr.K.Sekar,
No.K9, Ambattur Industrial Estate,
Ambattur, Chennai – 600 058.

...Petitioner

Vs.

- 1.The Chairman,
Tamilnadu Electricity Board,
Mount Road,
Chennai – 600 002.
- 2.The Superintending Engineer,
Tamilnadu Electricity Board,
CEDC/West, Thirumangalam SS,
Anna Nagar,
Chennai – 600 040.
- 3.The Executive Engineer,
Tamilnadu Electricity Board,
(O & M), Ambattur,
Ambattur, Chennai – 600 053.



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4.The Assistant Executive Engineer,
Tamilnadu Electricity Board,
(O & M), Ambattur Industrial Estate (South)
Ambattur CED West, Ambattur,
Chennai – 600 058.

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to impugned order bearing Lr.No.SE/CEDC/W/AEE/GL/AE2/F.LT A/c No.35-02-949/D.234/2007 dated 13.3.2007 passed by the 2nd respondent, quash the same and direct the 2nd respondent to refund a sum of Rs.2,32,916/- (Rupees Two Lakhs Thirty Two Thousand Nine Hundred and Sixteen only) deposited with the respondents vide receipt No.371544 dated 15.12.2004.

For Petitioner : Mr.R.Vijaya Raghavan

For R1 to R4 : Mr.L.Jai Venkatesh
For TANGEDCO

ORDER

The assessment order issued by the 2nd respondent / Superintending Engineer, Tamil Nadu Electricity Board in proceedings dated 13.03.2007 is under challenge in the present writ petition.



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2. The petitioner states that the Electricity Service Connection was provided to him in Connection No.35-02-949. The authorities competent from the Electricity Board conducted an inspection on 19.03.1999 in the premises of the petitioner and identified theft of electricity by way of tampering of meter seals. The theft of energy was detected and the electric meter was removed. On 19.03.1999, F.I.R was registered against the writ petitioner in Crime No.108/99 on the file of Ambattur Industrial Estate Police Station.

3. A show cause notice was issued to the writ petitioner on 22.03.1999, seeking for extra levy of Rs.18,68,716/- towards theft of electricity. The preliminary enquiry was conducted by the authorities on 07.04.1999 and 17.04.1999. The writ petitioner submitted his written explanation on 27.03.1999. Thereafter, an assessment order was passed on 23.04.1999 along with the working sheet by the Executive Engineer, Ambattur, asking the petitioner to pay a sum of Rs.17,46,866/-.

4. The writ petitioner filed O.S.No.3082/1999 before the VI Assistant Judge, City Civil Court, Chennai, challenging the show cause notice dated



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22.03.1999 and the assessment order dated 23.04.1999. On 08.07.1999, a copy of the Forensic report of the Scientific Assistant was sent to the Judicial Magistrate Court at Ambattur. The Scientific Assistant was made as Court witness in O.S.No.3082/1999 and the Forensic Report was taken into consideration. The Scientific Assistant was cross-examined. After trial, the Civil Court passed a judgment and decree on 11.10.2004 in O.S.No.3082/1999, directing the writ petitioner to pay the amount demanded in two installments and prefer an appeal before the Appellate Authority i.e., the Superintending Engineer and in the event of filing an appeal, it is to be disposed of within two months after payment of two installments. Permanent Injunction was also granted from effecting any disconnection of the writ petitioner's electricity service connection.

5. In respect of the appeal filed by the petitioner, the Appellate Authority conducted an enquiry and the writ petitioner was permitted to engage an Advocate to represent his case. The enquiry was conducted on 04.05.2005, 06.04.2006, 20.06.2006 and 05.01.2007. After conducting an elaborate enquiry by affording opportunity to the writ petitioner through his Advocate, the final order of assessment was passed by the Appellate



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Authority in proceedings dated 13.03.2007, which is impugned in the present writ petition.

6. The assessment order of the original authority, directing the petitioner to pay a sum of Rs.17,46,866/- was confirmed by the Appellate Authority and the petitioner was permitted to pay the said amount in 15 monthly installments.

7. The learned counsel for the petitioner mainly contended that the petitioner has not committed any theft of energy. The Forensic Report filed before the Civil Court reveals that the theft of energy was not established. Therefore, the very assessment is infirm and liable to be set aside.

8. The 2nd respondent has wrongfully ignored the report of the Scientific Assistant by the Forensic Department. In the Civil Suit, the defendant's side witnesses 1 and 2 admitted the report of the Forensic Department and therefore, the report is binding on the respondents herein and thus, the order impugned is liable to be set aside.



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9. The writ petitioners have mainly relied upon the deposition of the witnesses made in O.S.No.3082/1999 and contended that the final assessment order, which is impugned in the present writ petition is bad in law.

10. The learned counsel appearing on behalf of the respondents raised an objection by stating that even as per the Forensic Report and the deposition of the Scientific Assistant, it is clear that there can be 50% chance of tampering and it is not as if the petitioner was fully exonerated from the allegation of theft of energy. The Scientific Assistant, who deposed before the Civil Court in the suit clearly stated that the collar letter impressions in the disputed seals did not tally with the sample seals. Due to difference in letters in collar seals, there can be a 50% chance for tampering. There was no defacing of the impressions in the collar seals. The officials of the MRT alone are competent to speak about the collar impressions of the security seals, originally affixed in the meter. The authorities have elaborately considered the issues and accordingly, passed the assessment order and thus, the writ petition is to be rejected.



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11. Considering the arguments between the parties to the *lis*, an inspection was conducted on 19.03.1999 in the premises of the petitioner and the authorities found that offence of theft of electricity has been committed by petitioner by way of tampering the meter seals. Immediately, a Criminal Case was registered in Crime No.108/1999. A show cause notice was issued to the writ petitioner. An enquiry was conducted and the petitioner submitted his written explanation. The assessment order was finally passed on 23.04.1999, which was challenged by the petitioner by way of Civil Suit in O.S.No.3082 of 1999.

12. Pertinently, the Civil Suit was not decreed, directing the writ petitioner to pay the demanded amount in two installments and permitted the petitioner to prefer an appeal to the Appellate authority i.e., the Superintending Engineer. Pursuant to the direction issued by the Civil Court, the petitioner preferred an appeal before the Superintending Engineer. The Superintending Engineer conducted an elaborate enquiry by permitting the petitioner to engage a lawyer to represent his case. After conducting an elaborate enquiry, the Appellate Authority / Superintending Engineer, confirmed the order of assessment and directed to petitioner to pay a sum of



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Rs.17,46,866/-. More so, the petitioner was permitted to pay the said amount in 15 monthly installments.

13. The petitioner mainly relied on the Forensic Report deposition made by the Scientific Assistant. The deposition of the Scientific Assistant even during the cross-examination as stated above is clear that the collar letter impressions in the disputed seals did not tally with the sample seals. Due to difference in letters in collar seals, there can be a 50% chance for tampering. Therefore, the Scientific Assistant has not deposed that there is no theft of energy and in fact, the discrepancies found in the meter seals were deposed by the Scientific Assistant before the Civil Court. Thus, the ground taken in this regard by the petitioner is untenable.

14. The petitioner has successfully dragged on the issues for the past about 23 years. The Criminal Case was registered on 19.03.1999. Though the assessment order was issued after conducting an enquiry, the petitioner filed a Civil Suit in the year 1999, which was disposed of in the year 2004 after a lapse of about 5 years. Thereafter, the petitioner preferred an appeal, which was disposed of in the year 2007.



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WEB COPY 15. The respondents in the present case, had provided sufficient opportunity to the writ petitioner to defend his case. Even during preliminary enquiry, the petitioner submitted his explanations and the Appellate Authority permitted the petitioner to engage an Advocate to represent his case. Thus, an elaborate adjudication was done by the competent authority by affording complete opportunity to the writ petitioner and the Scientific Assistant also deposed that there is a difference in the electricity meter seals. Therefore, the petitioner has not made out any case except by prolonging the issue.

16. In view of the facts and circumstances, the petitioner has not established any acceptable ground for the purpose of interfering with the order impugned passed by the 2nd respondent / Superintending Engineer. Thus, the order impugned passed by the 2nd respondent in order bearing Lr.No.SE/CEDC/W/AEE/GL/AE2/F.LT A/c No.35-02-949/D.234/2007 dated 13.03.2007 stands confirmed. Consequently, the writ petitioner is directed to pay the entire demanded amount as per the order impugned within a period of six weeks from the date of receipt of a copy of this order,



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failing which, the respondents shall disconnect the Electricity Service Connection provided in the premises of the writ petitioner and initiate all appropriate actions to recover the amount due to the Electricity Board.

17. With the above directions, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

17.04.2023

Index : Yes
Speaking order
Neutral Citation: Yes
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S.M.SUBRAMANIAM, J.

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