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W.P.No.4334 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.4334 of 2020

and

W.M.P.Nos.5139, 5140, 7114, 7116 and 7117 of 2020

N.Sampath Raj,
S/o.V.Natarajan,
Proprietor – Hotel Nala Residency,
21, Anna Salai,
Tiruvannamalai.

... Petitioner

Vs.

- 1.The Assistant Executive Engineer/Town TNEB,
Tamil Nadu Electricity Board,
Tiruvannamalai – 606 601.
- 2.The Assistant Executive Engineer,
Tamil Nadu Electricity Board,
Operations & Maintenance,
Tiruvannamalai.
- 3.The Assistant Executive Engineer,
Enforcement & Emergency Squad,
Tamil Nadu Electricity Board,
Villupuram.
- 4.The Assistant Executive Engineer,
Operations & Maintenance/TANGEDCO/TEDC/Town,
Tiruvannamalai.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the impugned order of the 4th respondent's vide க.எண்.உ.செ.பொ/இ&ப/நகரம்/திமலை/கோ-நேர்முக விசாரணை/அ.எண்.418/2019-20 நாள் 12.02.2020 and the consequential final Assessment Order in Form 10 vide க.எண்.உ.செ.பொ/இ&ப/நகரம்/திமலை/கோ-நேர்முக விசாரணை/அ.எண். 419/2019-20 நாள் 12.02.2020 demanding a sum of Rs.35,47,976/- from the petitioner with reference to the service connection of the petitioner in S.C.No.201-011-146 provided at Door No.21, Anna Salai, Tiruvannamalai and to quash the same.

For Petitioner : Mr.R.Jayaprakash

For Respondents : M/s.Daniel Mary
Standing Counsel

ORDER

This Writ Petition has been filed for a Writ of Certiorari, to call for the records of the impugned order of the 4th respondent's vide க.எண்.உ.செ.பொ/இ&ப/நகரம்/திமலை/கோ-நேர்முக விசாரணை/அ.எண்.418/2019-20 நாள் 12.02.2020 and the consequential final Assessment Order in Form 10 vide க.எண்.உ.செ.பொ/இ&ப/நகரம்/திமலை/கோ-நேர்முக விசாரணை/அ.எண். 419/2019-20 நாள் 12.02.2020 demanding a sum of Rs.35,47,976/- from the petitioner with reference to the service connection of the petitioner in



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S.C.No.201-011-146 provided at Door No.21, Anna Salai, Tiruvannamalai and

to quash the same.

2. The case of the petitioner is that he is the Proprietor of a hotel, functioning in the name and style of Hotel Nala Residency situated at No.21, Anna Salai, Tiruvannamalai. The said hotel consists of 22 rooms and a restaurant is situated in the ground floor. Initially, the tariff in respect of the rooms were charged below Rs.500/- per month and from the month of April 2008, the tariff was increased above Rs.500/- for non A/c and Rs.750/- for A/c. During that time, the commercial tax is liable only when the lodging facility is provided at the tariff of charging more than Rs.500/-. Accordingly, the petitioner furnished statement before the Commercial Tax Officer, Tiruvannamalai, applying for this purpose and the said office had issued a Certificate in Form X dated 13.02.2008. While being so, on 17.11.2008, at about 08.30 p.m., the respondents 2 and 3 have come to the hotel and orally informed that they have received certain allegations against the hotel. Thereafter, they have inspected the hotel premises and alleged that the electricity was drawn from the main line, by tampering certain connection points bypassing the meter box and thus, the offence of theft of electricity was registered. Thereafter, a criminal case was lodged against the petitioner and in order to compound the criminal case, the



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petitioner has paid the compounding fee of Rs.2,24,000/-. Apart from that, the respondents 3 and 4 have issued a final assessment order demanding to pay a sum of Rs.15,70,586/- towards extra levy. Challenging the same, the petitioner has filed a writ petition in W.P.No.27876 of 2008. During the pendency of the petition, as per the direction issued by this Court, the petitioner has paid 25% of the assessed amount i.e., a sum of Rs.3,92,647/-. This Court, by its order dated 19.06.2019, disposed the said writ petition by setting aside the assessment order dated 17.11.2008 and remanded the matter back to the respondents for passing appropriate orders.

2.1. Further, case of the petitioner is that, the enquiry was not conducted in the manner known to law and the fourth respondent had passed the final assessment order dated 22.10.2019 demanding a sum of Rs.34,94,969/-. Challenging the same, the petitioner had filed another writ petition in W.P.No.32538 of 2019 before this Court and this Court, by its order dated 25.11.2019 again set aside the matter and remanded the matter back to the authorities and again the fourth respondent had passed the present impugned order dated 12.02.2020 demanding a sum of Rs.35,47,976/-. Challenging the same, the present writ petition is filed.



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3. The learned counsel for the petitioner submits that, till 2020, no demand was made against the petitioner and the petitioner is not a wilful defaulter and calling upon the petitioner to pay surcharge at 1.5% on belated payment is wholly illegal. The provisional assessment order dated 17.11.2008 was passed. Challenging the same, a writ petition was filed and the same was disposed by this court by setting aside the provisional assessment order and remanded the matter back to the respondents and an order has been passed by the respondents. Challenging the same, petitioner filed another writ petition, in which, this Court set aside the order passed by the assessing authority on the ground of violation of principles of natural justice, thereby, the present impugned order is passed. Without reason, any demand against the petitioner calling for 1.5% towards belated surcharge payment is not sustainable. Except the order dated 12.02.2020, no other demand was made against the petitioner prior to that. Hence, calling 1.5% towards belated payment surcharge is not sustainable.

4. Per contra, the learned Standing Counsel appearing for the respondents submits that, on 17.11.2008, at about 20.30 hours, a joint inspection was carried out by the first respondent along with third respondent and found a electrical energy theft by bypassing the electrical energy meter



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pertaining to the hotel. Thus, the petitioner committed an offence of theft of electrical energy and the total amount towards cost of energy stolen was a sum of Rs.15,70,586/- and the total amount of cost to be paid by the petitioner is Rs.35,47,976/- including belated payment surcharge. On receipt of notice under regulations 23(AA) of the Electricity Supply Code and the compounding of offence under Section 152 of the Electricity Act, 2003, the petitioner accepted to pay the compounding charges of Rs.2,24,000/- on 18.11.2008 to discharge from criminal case against the petitioner. Thereafter, the service connection was reconnected on 22.11.2008 after collecting 25% of penal levy as per the directions of this Court in W.P.No.27876 of 2008. He also submits that the payment of compounding amount alone will not entitle the consumer to get the service connection reconnected and the service is liable for reconnection only after the payment of the entire assessed amount as per third proviso to Section 135(IA) of the Electricity Act, 2003. Therefore, a sum of Rs.35,47,976/- (including the belated payment surcharge) has to be paid by the petitioner.

5. Further, the learned Standing Counsel submits that, as per Section 152 of the Electricity Act 2003 r/w. G.O.Ms.No.118, Energy (E2) Department, dated 27.11.2005, for compounding of the offence Rs.2,24,000/- has been collected as the petitioner has come forward voluntarily to compound the



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offence admitting that he has committed the offence and has requested not to proceed further with any criminal proceedings. While requesting for compounding the offence, he has also agreed to pay their loss caused to the Board due to the theft of energy.

6. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondents and perused the materials available on record.

7. It is evident from the materials that based on the inspection, theft of electrical energy was found out, which resulted in the imposition of levy and as the petitioner sought to compound the offence, compounding fee to the tune of about Rs.2.24 Lakhs was received from the petitioner and the offence was compounded. Thereafter, assessment proceedings was initiated for collecting the loss and provisional assessment order was passed on 17.11.2008 and a final assessment order was also passed on the same day. Thereafter, two rounds of litigations relating to the order of assessment was filed before this Court, in which, this Court, had remanded the matter to the respondents for fresh consideration. Thereafter, the present impugned order is passed demanding a sum of Rs.35,47,976/-. Admittedly, the petitioner paid 25% of the assessed



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demand out of Rs.15,70,586/- on 22.11.2008 and there was a due to the tune of Rs.11,77,939/- to the Electricity Board.

8. The issue arises in the present writ petition is whether the respondent-Electricity Board is entitled to get 1.5% towards belated payment surcharge against the petitioner. Clause 5(4) of the Tamil Nadu Electricity Supply Code reads as follows :

5. Miscellaneous Charges.-

.....
(4) *Belated payment surcharge (BPSC).*-

(i) All bills are to be paid in the case of HT consumers, within the due date specified in the bill and in the case of LT consumers, within the due date and notice period specified in the consumer meter card.

[(ii) (a) Where any HT consumer neglects to pay any bill by the due date, he shall be liable to pay belated payment surcharge from the day following the due date for payment. Where any LT consumer (except services relating to Public lighting and water supply and other services belonging to Local Bodies) neglects to pay any bill by the last day of the notice period, he shall be liable to pay belated payment surcharge from the day following the last day of the notice period.

(b) Where the local bodies neglect / fail to pay any bills in respect of LT services for Public Lighting and Public Water Works, and other services of Local Bodies the belated payment surcharge shall be applicable for the payments made beyond 60 days from the date of demand. In case of payment made beyond 60 days from the date of demand, the belated payment surcharge shall be payable from the day following the 60th day of demand.

(c) The surcharge shall be for a minimum period of fifteen days and where the delay exceeds fifteen days but does not exceed one month, it shall be for the number of whole months, and for any fraction of a month, it shall be proportionate to the number of days.]



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(iii) If the due date in the case of HT consumers and the last day of the notice period in the case of LT consumers falls on a holiday, the surcharge is payable from the day following the next working day.

[(iv) In the case of LT Consumers (except Local Bodies) the surcharge shall be 1.5% per month for the outstanding arrears towards the price of electricity supplied. In respect of LT services belonging to Local Bodies, the surcharge shall be 0.5% per month for the outstanding arrears towards the price of electricity supplied]

[(v) In the case of HT consumers except Local Bodies and Government Departments the surcharge shall be 1.5% per month for the notice period. In the case of Local Bodies and Government Departments, the surcharge shall be 1% per month for the notice period.

However for the consumers who are availing of extension of time beyond the notice period up to the end of the due month, on an application to the licensee, the BPSC shall be at 2% per month from the expiry of the due date allowed for payment, for a full month irrespective of the number of days delayed. When no extension of time is granted or the delay continues after the expiry of the extended time, the surcharge shall be at 1.5% per month]

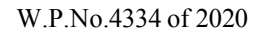
(vi) In case of sums other than price of electricity supplied which are outstanding, surcharge shall be leviable at the discretion of the licensee at a rate not exceeding 1.5 % per month.

(vii) In the case of short assessment included in a subsequent bill, surcharge shall accrue in the case of HT consumers, after the due date for the payment of the subsequent bill wherein the short assessment is included and in the case of LT consumers, it shall accrue from the day following the last day of the notice period.

(viii) In the case of short assessment permitted to be payable in instalments, the surcharge shall accrue only when there is default in the payment schedule and the surcharge shall be worked out from the day following the day on which the instalment fell due and shall be payable along with the amount of instalment due.

(ix) Where the service connection stands terminated, the amount of security deposit and the interest accrued thereon shall first be adjusted against belated payment surcharge and the remainder, if any, against other dues.

(x) The belated payment surcharge is payable only on any outstanding amount excluding belated payment surcharge component.



[*Explanation.-* In this regulation and other regulations of this code, the reference to the expression 'HT Consumer' shall be deemed to include a reference to the expression 'EHT consumer' also].

10. Admittedly, the petitioner had made a payment of Rs.15,70,586/-.

<https://www.mhc.tn.gov.in/judis>
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On the said date, there was a balance due to be paid by the petitioner was a sum of Rs.11,77,939/-. As per the clause 5(4) of the Tamil Nadu Electricity Supply Code, the petitioner has to pay 1.5% surcharge per month towards the belated payment. Such an act cannot be said to be illegal, perverse or arbitrary. Accordingly, calculation arrived by the respondent-Electricity Board is as follows:

a. Total amount levied = Rs.15,70,586/-

b. 25% paid on 22.11.2008 = Rs.3,92,647/-

c. Balance amount to be paid = Rs.11,77,939/-

d. As per Supply Code Clause 5(4) of BPSC 1.5% per month to be added.

$Rs.11,77,939 \times 1.5\% = Rs.17,669.08$ or 17,669/- per month

$17669/30 \text{ days} = 590 \text{ per day}$

e. From 18.11.2008 to 30.11.2008 = 12 days

$12 \text{ days} \times Rs.590 = Rs.7,080/-$

f. From 01.12.2008 to 31.12.2008 = Rs.17669/-

g. From 01/2009 to 12/2019 = 132 months $\times$ 17,669
= Rs.23,32,308/-

h. From 01.01.2020 to 22.01.2020 = 22 days $\times$ 590
= Rs.12,980/-

i. Total Belated Payment Surcharge = Rs.23,70,037/-

j. Total Due (c + i) = Rs.35,47,976/-



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Payment details of the petitioner is as follows :

Sl.No.	Description of Amount	Amount in Rs.	Collection Particulars	Date of Collection	Remarks
1	Compounding of offence	2,24,000/-	VMT201IA1S159	18.11.2008	Amount paid next day of detection
2	As per Chennai High Court direction 25% of Extra levy	3,92,647/-	VMT201IA1S340	22.11.2008	Amount paid on direction of High Court, Chennai, vide W.P.No.2787 6/2008
3	Balance Extra Levy	11,77,939/-	VVMT201IA2D1	16.03.2020	Amount collected on direction of High Court, Chennai vide W.P.No.4334 / 2020 & M.P.No.7114 / 2020
4	1/3 rd of BPSC Amount	7,90,013/-	VMT201AR3D332	07.04.2020	
5	2/3 rd of BPSC Amount (B.G)	15,80,027/-	CANARA Bank B.G.No.865GOPG 10515002	20.02.2021	Valid up to 22.03.2023

11. The balance amount of the assessment order was paid by the petitioner on 16.03.2020 to the tune of Rs.11,77,939/- and 1/3rd of the BPSC amount was paid by the petitioner on 07.04.2020. The petitioner also executed bank guarantee at 20.02.2021 for the balance BPSC amount. From the above, it is clear that, the petitioner has paid the entire amount as per the order of assessment, in the form of payment by way of bank guarantee. Therefore, this Court is inclined to direct the respondents to encash the bank guarantee, which



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would result in the respondents realising the amount due and payable by the petitioner.

12. Accordingly, for the reasons aforesaid, the respondents are directed the en-cash the bank guarantee executed by the petitioner on 20.02.2021 and give credit to the amount in favour of the petitioner and close the entire dues pending as against the petitioner.

13. This Writ Petition is dismissed with the aforesaid directions. No Costs. Consequently, the connected miscellaneous petitions are closed.

25.04.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp

To

1.The Assistant Executive Engineer/Town TNEB,
Tamil Nadu Electricity Board,
Tiruvannamalai – 606 601.

2.The Assistant Executive Engineer,
Tamil Nadu Electricity Board,
Operations & Maintenance,
Tiruvannamalai.



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M.DHANDAPANI, J.

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- 3.The Assistant Executive Engineer,
Enforcement & Emergency Squad,
Tamil Nadu Electricity Board,
Villupuram.
- 4.The Assistant Executive Engineer,
Operations & Maintenance/TANGEDCO/TEDC/Town,
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