



W.A.No.649 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 31.08.2023

Delivered on: 15.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

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and

W.M.P. No.9117 of 2020

1. The Assistant Executive Engineer (Construction),
CEDC / Central / Chennai
Tamil Nadu Electricity Board,
33/11, Raghava Reddy Colony,
West Street, Ashok Nagar,
Chennai - 600 083.

2. The Assistant Executive Engineer,
(Construction / T. Nagar),
Chennai Central, TANGEDCO,
Chennai-600 017.

.. Appellants

Vs.

V. Rajagopalan, IRS

.. Respondent

Prayer:- Appeal filed under Clause 15 of Letter Patent praying to set aside the order passed by this Court in W.P. No. 32464 of 2013 dated 31.10.2019.



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For Appellants : Mr. L. Jaivenkatesh, Senior Counsel,
Tamil Nadu Electricity Board.

For Respondents : Mr. S. Vijayakumar.

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The Electricity Department, the Respondents in W.P.No.32464 of 2014, having suffered an order before the Writ Court, has filed the present Writ Appeal.

2. The brief facts that are necessary for deciding the writ appeal are as follows:-

The respondent, as writ petitioner is the owner a residential property which enjoys a 3 phase (III- Phase) service connection and resides in the said property, along with his family and he has let out the 1st floor to tenants. At the request of the respondent, the appellants provided additional meters for the 1st floor in the year 2008. According to the respondent, he has been prompt and regular in payment of the consumption charges. While so, since there were fluctuations in the voltage and frequent interruption of power supply, the respondent wrote to the appellant on 07.01.2013, regarding the fluctuation issues, pursuant to



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which the meters were inspected and the officials rectified the fault and stabilized the high voltage fluctuation. On 15.02.2013, the officials of the appellants came to the respondent's residence and carried out a sudden inspection of the meters and alleged that the security seal was tampered and the same was treated as theft of energy and the respondent was slapped with whopping fine of Rs.1,37,713/-. As the respondent was threatened with disconnection, if the said amount was not paid, the respondent was forced to pay the said amount, considering the fact that his aged father-in-law who was a Chronic Patient was residing with him and his daughter was also residing with him post her delivering a child and it would cause serious prejudice and untold hardship if the power supply was disconnected. However immediately the respondent made a protest on 17.02.2013 and sought for refund of said amount. The said request was rejected by the appellant which forced the respondent to approach the Writ Court. The appellants contended before the Writ Court that the respondent had voluntarily paid the demand and it was not open to him to challenge the same thereafter on any ground whatsoever.



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3. Considering the rival contentions, the Writ Court allowed the writ petition on 31.10.2019 as against which the appellants have challenged the said order on the grounds that when the respondent had admitted to the tampering of the security meter seal and also voluntarily paid the amount, including compounding charges on the same day, it was not open to the respondent to subsequently challenge the said voluntary payment and seek for refund. It is further contended that, in terms of provisions contained in ***Sections 135, 135A and 152 of Electricity Act 2003***, the writ petition ought to have been dismissed.

4. We have heard Mr.Jai Venkatesh, Standing Counsel for the Appellant / TNEB and Mr.S.Vijaya Kumar for the respondent. We have also perused the records and the order of the Writ Court.

5. It is seen from the records that the respondent has made a specific averment in the affidavit in support of the writ petition that on 07.01.2013, he had given a written complaint regarding voltage fluctuation and pursuant to the same the officials of the appellants inspected the meters and attended to the fault and thereafter the power supply had stabilized. We find that there is a specific reference to the complaint even in the letter



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dated 17.02.2013, in and by which the respondent sought for refund of the amount paid, which were according to the respondent paid under duress and threat. However, this specific averment in the affidavit has not been denied by the appellants in their counter affidavit filed before the Writ Court. Further the appellants, in their counter affidavit had also stated that the meters was sent for testing to the Chief Electrical Inspector to the Government, Guindy who issued a report that because of technical reasons, the energy calibrator test could not be carried out. The Writ Court has taken note of the said fact. When there is a clear admission on the part of the appellants that they have not been able to establish the charge of theft or tampering of the seal, it was not proper or justified on their part to impose a penalty and compounding charges on the respondent.

6. The counsel for appellants would invite our attention to a judgement of the Learned Single Judge of this Court in ***V.Swaminathan Vs. The Superintending Engineer, WP.No.113 of 2012 dated 09.02.2018***, and relying on the ratio laid down in the said case, would contend that the facts of the present case were identical to the facts in the said writ petition and therefore requested us to approve and follow the ratio laid down by the learned Single Judge in the said order. On a perusal of the said order, we



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find that in the said case there was a provisional assessment carried out initially, pursuant to which part of the amount determined was paid and subsequently a final notice was also issued to the consumer. Subsequently, a final assessment order was passed and the consumer was directed to pay the balance amount determined by the Electricity Department. The petitioner in the said case, filed an appeal against the final assessment order *U/s 127 of the Electricity Act*, which came to be dismissed and subsequently the amount was paid by the petitioner. In the said judgement the learned Single Judge has referred to the decision of this Court in *Fiem Industries Ltd. (Unit III) rep. by its Deputy General Manager - HR & Admn., Mr. K.A. Manikandan Vs. 1. The Superintending Engineer, Tamil Nadu Generation and Distribution Corporation Ltd., Krishnagiri Electricity Distribution Circle, Dharmapuri and Ors, reported in 2013 SCC OnLine Mad 3520*, wherein the Division Bench of this Court, has held that once the consumer decides to compound the offence, there is no question of contending that the compounding of the offence was under protest because compounding under protest is not recognised in law and held that when there is a case of compounding under protest, the Authorised Officer had to launch prosecution at once. However, in the



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light of the facts of the present case, where the specific allegation of the respondent was that he had called the appellants officials for an inspection to attend to voltage fluctuation fault and only in pursuance thereof there has been some tampering of the meter seal and that too he had immediately protested and sought for refund within a day and in such circumstances, we are unable to apply the ratio laid down by the learned Single Judge in the above referred *V.Swaminathan's case*. Here, admittedly the inspection was carried on 15.02.2013, and on the same day the petitioner has paid the amount demanded by the appellant under threat of disconnection of electricity supply and without any delay, on 17.02.2013, he has sent a detailed representation seeking refund and also narrating under what circumstances he was forced to make the payment. Though the appellants have chosen to file a counter before the Writ Court, they have not denied the specific claim of the respondent that only on his complaint dated 07.01.2013, the officials of the appellants visited the property and rectified the fault and it was his specific case that it was most likely that the tampering of the seal would have occurred, in all probability at that time only. Moreover, we have taken note of one another fact that the respondent resides in the said property along with his family and has let



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D.KRISHNAKUMAR, J.,
and
P.B.BALAJI, J.

(mjs)

Pre-delivery judgment in
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