



WEB COPY



W.P. No.10960 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.08.2023

CORAM: JUSTICE N.SESHASAYEE

W.P. No.10960 of 2021 and
W.M.P. No.11592 of 2021

P.Shantilal Jain

... Petitioner

Vs.

- 1.The Additional Chief Engineer
Office of CEDC/Central
TANGEDCO
No.97, Kodambakkam High Road
1st Floor, Nungambakkam, Chennai-34
- 2.The Superintending Engineer
CEDC/Central
SS Campus, 3rd Floor
Nungambakkam, Chennai-34
- 3.The Executive Engineer, O&M
Mylapore Division
SS Campus, 3rd Floor
Nungambakkam, Chennai - 34
- 4.The Assistant Executive Engineer (O&M)
CEDC/Central/TNEB
Thousand Lights Division
No.52, College Road, DPI Compound
Chennai - 600 006



W.P. No.10960 of 2021

5. Chairman cum Managing Director
Tamil Nadu Generation and Distribution Corporation
6th Floor, TANTRANSCO Building
144, Anna Salai
Chennai - 600 002

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India for a writ of certiorari to call for the records in Lr. No.EE/O&M/Myl/AE/CAUP/F.TOE/D.4637/2003 dated 15.07.2003 on the file of the 3rd respondent and consequential order passed in Ka.En.VuSePo/Epu/Aa.Vi/Vu.Mey/Ko.Theft/A.No.250/2020 dated 23.09.2020 on the file of the 4th respondent and quash the same as illegal, arbitrary and against law.

For Petitioner : Mr.M.Sunil Kumar

For Respondents : Mr.L.Jaivenkatesh,
Standing Counsel for TNEB
for R1 to R5



W.P. No.10960 of 2021

ORDER

The petitioner owns certain premises of which he leased out to certain Internet World. The officials of the TANGEDCO discovered that there has been a theft of electricity and raised a demand for Rs.1,46,993.20 on the petitioner. The cost of electricity so stolen by the petitioner's tenant was assessed at Rs.71,704/- and including penalty and tax on the same, the total figure arrived at was Rs.1,46,993.20. While so, the petitioner's tenant, namely M/s.Internet World approached this court in W.P. No.19544 of 2003 before which it made a statement that it would pay 40% of the said demand and furnish a bank guarantee for the remainder. This was recorded by this court in its order dated 29.07.2003 and accordingly, the said writ petition was disposed of.

2.Petitioner's tenant however did not keep up its word and has left the premises. The TANGEDCO was however prompt in disconnecting the electricity connection to the petitioner premises. In this proceedings, the petitioner seeks the assessment made by the third respondent vide his proceedings dated 15.07.2003. Vide his proceedings the third respondent has required the petitioner to pay the said amount of Rs.1,46,994/- in ten monthly instalments. This is now under challenge.



W.P. No.10960 of 2021

WEB COPY

3.Placing reliance on the order of this court in ***W.P. No.11074 of 2020 in R.Jayanthima vs. The Assistant Executive Engineer and Another decided on 24.08.2020***, the learned counsel submitted that, when the tenant commits theft of electricity, the landlord shall not be penalised. In particular, the learned counsel relied on paragraph 8 of the said order, which reads as below:

"8. This court had already dealt in detail with regard to the liability of the owner of the premises, where theft of electricity has been committed by a tenant. This court held that the theft of electricity is an individual illegal act which can only put against the persons who has actually committed theft and that is the reason why this court held that the compounding fee and penalty can be collected only from the person who committed the theft and not from anyone else. Useful reference can be made to the judgment in the case of "V.B.R.Menon vs. The Assistant Executive Engineer, O&M, Porur South" reported 2016 (2) CWC Page 573. Therefore, it is clear that insofar as theft of electricity is concerned, it is an act committed with the requisite mens rea by the person who committed it. The liability in terms of penalty of compounding fee cannot be shifted to the owner of the property."



W.P. No.10960 of 2021

4.The respondents have not filed their counter. However, the learned standing counsel appearing for the respondents opposes the argument of the petitioner and submitted that once electricity supply is provided to an individual, it is up to the consumer to use and to avert misuse of the electricity provided. It is a contract, based on which the TANGEDCO supplies electricity and it is not done free of cost and that there is also no privity of the contract between TANGEDCO and the petitioner's tenant.

5.This court is *prima facie* impressed with the submissions of the learned counsel for the respondents. After all, at the end of the day, the petitioner herein is the consumer of TANGEDCO and it is purely a contract between the petitioner and the TANGEDCO, and the learned counsel for the respondents has rightly contended that there is no privity of contract between the petitioner's tenant and the TANGEDCO and at no time the TANGEDCO never offered to supply electricity free of cost. Therefore, the petitioner cannot escape the liability on the ground that the tenant had committed theft. After all, the petitioner as a landlord, has received rent from the tenant and it is his responsibility to ensure that the service connection he has, is not abused or misused by the tenant.



W.P. No.10960 of 2021

6. Turning to the ratio in *W.P. No.11074 of 2020 in R.Jayanthima vs. The Assistant Executive Engineer and Another decided on 24.08.2020*, the petitioner cannot escape the liability, though he may not be liable for penalty. This court, therefore, directs the petitioner to pay TANGEDCO, a sum of Rs.71,704/- and interest thereon till date. Learned counsel submitted that he has paid the first instalment of Rs.14,694/-. He is now required to pay the balance, if he is interested in restoring the electricity supply to his premises.

7. Writ petition is disposed of accordingly. No costs. Consequently, the connected writ miscellaneous petition is closed.

09.08.2023

Asr
Index : Yes/No
Speaking/Non-speaking order



W.P. No.10960 of 2021

To

WEB COPY

- 1.The Additional Chief Engineer
Office of CEDC/Central
TANGEDCO
No.97, Kodambakkam High Road
1st Floor, Nungambakkam, Chennai-34
- 2.The Superintending Engineer
CEDC/Central
SS Campus, 3rd Floor
Nungambakkam, Chennai-34
- 3.The Executive Engineer, O&M
Mylapore Division
SS Campus, 3rd Floor
Nungambakkam, Chennai - 34
- 4.The Assistant Executive Engineer (O&M)
CEDC/Central/TNEB
Thousand Lights Division
No.52, College Road, DPI Compound
Chennai - 600 006
- 5.Chairman cum Managing Director
Tamil Nadu Generation and Distribution Corporation
6th Floor, TANTRANSCO Building
144, Anna Salai
Chennai - 600 002



WEB COPY



W.P. No.10960 of 2021

N.SESHASAYEE, J.,

Asr

W.P. No.10960 of 2021 and
W.M.P. No.11592 of 2021

09.08.2023