IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
22.06.2023	30.06.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.7585 OF 2020
AND
W.M.P. NO.10938 OF 2020

M/s.Rasipuram Textiles (P) Ltd.
Renamed as
M/s.Sakthi Aiswarya Spinning Mills Ltd.
Pachal (PO), Puduchatram
Namakkal. .. Petitioner

- Vs -

1. The Superintending Engineer
Tamil Nadu Electricity Board
Namakkal Electricity Distribution Circle
Namakkal.

2. The Chief Engineer (Distribution)
Tamil Nadu Electricity Board
Erode Region, Erode. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records on the file of the respondents leading to the impugned order passed by the 2nd respondent in Lr. No.015372/ED/AEE/GI/F.DKT/D.NO.108/20 dated 20.03.2020 and the consequent working sheet issued by the 1st respondent in Lr. No.SE/NEDC/AEE-MM/AE1/F.HTSC 89 RPM Tex TE/D.1954/2021 dated 017.09.2021 and quash the same.

For Petitioner : Mr. Vignesh Venkat

For Respondents : Mr. S.Kalaiselvan, Std. Counsel

ORDER

Assailing the impugned demand notice in and by which electricity charges along with extra levy and other penalty have been imposed on the petitioner towards theft of electricity, the present writ petition has come to be filed for quashment of the said order.

2. The case of the petitioner, in a nutshell, is as under :-

Pursuant to the MRT inspection, which was conducted on 11.5.1995 on the erstwhile company, viz., M/s.Rasipuram Textiles Pvt. Ltd., subsequently taken over on 21.7.1999 and renamed as M/s. Sakthi Aiswarya Spinning Mills Ltd., a show cause notice was issued by the 1st respondent on 23.5.1995 followed by an order of assessment on 1.6.1995, which order was put in issue before this Court in W.P. No.7971/1995 and this Court, vide order dated 29.08.2001 quashed the said assessment order and directed the 1st respondent to redetermine the matter after affording an opportunity of hearing to the petitioner.

3. Pursuant to the said order, show cause notice dated 24.5.2002 was issued by the 1st respondent and after hearing, resulted in an order dated 5.8.2002 being passed, wherein the petitioner was alleged to have committed theft of electricity and, therefore, an additional levy for the period of theft had been computed over a period of 12 months from the date of theft, viz., 11.5.1994 to 11.05.1995 and, consequently, penalty of four times the charges was imposed by computing the maximum demand charges at 1400 KVA.

4. Aggrieved by the said order, the petitioner preferred W.P. No.21113/2004 challenging the said order dated 5.8.2002, which was allowed by this Court vide order dated 8.9.2014. Pending the above petition, criminal prosecution in C.C. No.11/1996 was initiated by the 1st respondent

before the Judicial Magistrate No.2, Namakkal for the offence of theft against the erstwhile company and its directors and after trial the company and its directors were acquitted by the learned Addl. District & Sessions Judge, Namakkal, vide order dated 24.02.2003 in C.A. No.41/2002 and the revision in Crl. R.C. No.691/2003 by the 1st respondent before this Court was dismissed on 6.4.2004 and the appeal before the Supreme Court in C.A. No.1962/2008 by the 1st respondent was also dismissed.

5. Against the order in W.P. No.21113/2004 preferred by the petitioner, the 1st respondent preferred W.A. No.1705/2014, which was allowed by the Division Bench of this Court on 5.8.2019 by directing the petitioner to avail the statutory remedy of appeal before the appellate authority/2nd respondent. The appeal before the 2nd respondent by the petitioner was dismissed on 20.03.2020 and based on the said order, the 1st respondent had issued a working sheet dated 8.4.2020 raising a demand payable by the petitioner, against which the present petition is preferred.

6. Learned counsel appearing for the petitioner submitted that the decision arrived at by the 2nd respondent based on which the demand has been raised by the 1st respondent is bereft of reason and is in violation of principles of natural justice. It is the further submission of the learned counsel that the theft of electricity has not been established by the 2nd respondent and the 2nd respondent has straight-away proceeded on the assumption that theft of electricity took place, without bearing in mind the position of law reiterated by this Court in W.A. No.1705/2014 that it should be on the touchstone of preponderance of probability. The contentions placed by the petitioner have not been taken into consideration by the 2nd respondent while passing the impugned order.

7. It is the further submission of the learned counsel that the evidence, which have been adduced in the criminal trial, clinchingly prove that there was no theft of electricity as alleged by the respondents. It is the further submission of the learned counsel that frequent inspections of the meter had taken place and no irregularity or tampering was ever noticed by the authorities of the respondents. It is the further submission of the learned

counsel that there is a clear deposition that the seals of the meter are intact and there has been no tampering with the meter. It is therefore the submission of the learned counsel for the petitioner that when the evidence speaks volumes in favour of the petitioner, even on the principles of preponderance of probabilities, no finding could be rendered that there had been theft of electricity committed by the petitioner

8. It is the further submission of the learned counsel that the acquittal in a criminal case, though has no bearing on the enquiry initiated by the respondents, however, the evidence on record should be analysed on the touchstone of preponderance of probabilities and mechanically the respondents cannot fasten theft on the petitioner when there is no material, which would establish that an act of theft had taken place at any point of time.

9. It is the further submission of the learned counsel that even assuming without admitting that there happened an incident of theft on 11.5.1995, utmost the quantum of levy, period of assessment have been

erroneously computed by the respondents in respect of 'Maximum Demand Reached' over a 12 month period for calculating the computation of demand.

10. It is the further submission of the learned counsel that Clause 8.02 of B.P. (FB) No.80 dated 26.4.2000 stipulates four options while computing extra levy for theft of energy by tampering the meter/meter seals and the rider provided therein is that out of the four options provided therein, whichever period of the above is less, that has to be taken for the purpose of computation. However, erroneously, the 1st respondent has, at his whim, taken the option that best suited it and computed the extra levy, which is against the mandate of the Board Proceedings.

11. It is the further submission of the learned counsel that inspection was conducted on 7.5.1995 as entered in the meter reading note, on which date, no adverse findings are recorded. Such being the case, the alleged theft on 11.5.1995 could at best attract an extra levy in respect of the said period and there cannot be any levy for a period of 12 months.

12. It is the further submission of the learned counsel that the application of multiplication factor for levy is wholly arbitrary, as it had not taken into consideration the subsequent Board Proceedings in B.P. (FB) No.20 dated 12.3.2002 and the said proceedings should be applied to the petitioner even in respect of a theft, which was retrospective in nature, as a beneficial construction could be applied even in respect of theft, which was prior to the Board Proceedings.

13. It is the further submission of the learned counsel that the 2nd respondent, being the appellate authority, ought to have considered all the grounds raised in the appeal, which alone could be stated to be in consonance with the principles of natural justice. However, ignoring many of the contentions raised by the petitioner, passing of order by the 2nd respondent, reveals total non-application of mind. Further, there is violation of principles of natural justice, as the documents sought for by the petitioner have not been provided to the petitioner to substantiate its case.

14. In support of the aforesaid submissions, learned counsel for the petitioner placed reliance on the following decisions :-

i) Jayashree Talkies – Vs – Paschim Gujarat Vij Co. Ltd. (MANU/GJ/0558/2018);

ii) Sharda Oil Industries Pvt. Ltd., Nunaihi – Vs – Authority/Superintending Engineer, UP State Electricity Board (MANU/UP/0065/1994);

iii) M/s.Jai Mahavir Atta Mill – Vs – Jharkhand State Electricity Board;

iv) Piyush Salt & Chem Works – Vs – Dakshin Gujarat Vij Co. Ltd. (SCA No.8524/2004 dated 12.12.2013);

v) Gujarat Microwax Ltd. – Vs – Uttar Gujarat Vij Co. Ltd. (SCA No.6164/2004 dated 31.01.2013)

vi) Uttar Gujarat Vij – Vs – Gujarat Microwax Ltd. (AIR 2021 Guj 144);

vii) State of Jharkhand – Vs – Ambay Cements (MANU/SC/0977/2004);

viii) Hyderabad Asbestos Cement Products – Vs – Union of India (MANU/SC/0760/1999);

ix) Union of India & Ors. – Vs – Ind-Swift Laboratories Ltd. (MANU/SC/0140/2011); and

x) Babu Manmohan Das Shah – Vs – Bishun Das (MANU/SC/0248/1966)

15. Per contra, learned standing counsel appearing for the respondents submit that the computation made for raising the demand is perfectly in order and that opportunity was given to the petitioner to put forth its submissions and only thereafter the demand order had come to be passed. It is the further submission of the learned standing counsel that the 12 month period fixed by the 2nd respondent is in tune with the practice adopted and particular cases, which have been relied on by the petitioner cannot form the basis for fixing the period which would govern the "maximum demand computation".

16. It is the further submission of the learned standing counsel that the detection of theft at a particular point of time, viz., on 11.5.1995, though inspection was carried out on 7.5.1995 clearly evidences the fact that once the inspection gets over, theft of energy is resorted to, which had come to light only on 11.5.95 when surprise inspection was carried out immediately following the inspection on 7.5.95. Only on that basis, the 1st respondent had gone ahead and fixed the period of 12 months for computing the demand and merely because theft was detected on 11.5.95 and with reference to the last

inspection, only four days could be taken for the purpose of computing the extra levy is wholly misconceived.

17. It is the further submission of the learned standing counsel that the mere fact that the criminal case has ended in acquittal as against the erstwhile company and its directors would not form the basis to absolve the company from the theft of energy, as the standard of evidence in a criminal is not akin to the standard of evidence required in an enquiry proceedings and the enquiry proceedings are governed by the preponderance of probabilities in the evidence submitted at the enquiry. The enquiry having been conducted in a proper manner upon remand by this Court in the earlier round of litigation, the petitioner cannot cite the acquittal in the criminal trial to gain advantage before this Court in the present case.

18. It is the further submission of the learned standing counsel that the petitioner has already deposited a sum of Rs.1.15 Crores towards the demand made out of the amount of about Rs.11 Crores. Further, the application of multiplication factor is governed by the Board Proceedings, which was

applicable on the date when the alleged theft took place and the petitioner cannot seek the subsequent Board Proceedings to be applied when the enquiry was completed to his advantage, as the Board Proceedings would only have prospective and not retrospective effect.

19. In fine, it is the submission of the learned standing counsel that all the materials have been considered in proper perspective by the respondent while the impugned demand had come to be passed and, therefore, there is no error in the same warranting interference at the hands of this Court.

20. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

21. This is the second round of litigation with regard to the theft of energy alleged to have been committed by the erstwhile petitioner company. The earlier round of litigation resulted in the remand of the matter on account of violation of principles of natural justice.

22. Though the petitioner, even in the present round of litigation, canvasses his case on violation of principles of natural justice, however, this Court is not inclined to entertain the said contention, as the documents, which are alleged to have been not supplied by the respondents to the petitioner, thereby, there is violation of principles as claimed by the petitioner, are not relevant to advance his case, when even the affidavit of the petitioner reveals details, which are very much available and which have formed the basis of the affidavit of the petitioner. Therefore, the contention relating to violation of principles of natural justice deserve to be rejected.

23. The main ground on which the plea is canvassed by the petitioner is with regard to the computation of the extra levy over a period of 12 months, which according to the petitioner, is not made out for the reason that while inspection was carried out on 7.5.1995, no theft was detected nor were there any suspicious actions in the meter board as could be seen in the entries in the Meter Reading Note.

24. It is evident from the materials on record, and also not disputed by the parties that periodical inspections are carried out and in addition to the above, surprise inspections are also carried out. The last of the periodical inspection was on 7.5.1995 and the one before was on 27.4.1995, as is evident from the materials in the affidavit filed in support of the writ petition. Subsequent to the inspection on 7.5.1995, surprise inspection was carried out on 11.5.1995, on which date, tampering with the meter box was observed, thereby, finger was pointed at the petitioner with regard to theft of energy.

25. True it is that the present Board had taken over the erstwhile company on 21.7.1999 and the act relating to the theft of energy was by the erstwhile company. However, whatever fraudulent act perpetrated by the erstwhile company, would necessarily follow to the present take over.

26. The computation of 12 months period for calculating the "Maximum Demand Reached" over the 12 months period is based on the Board Proceedings and the same is not questioned by the petitioner. However, four options with regard to the manner in which the period should

be taken for computing the extra levy for theft of energy by tampering with the meter/meter seals has been provided for in the Board Proceedings and attention of this Court is drawn to the rider attached to the Board Proceedings, which provide that the lesser of the period should be taken for the purpose of computation of extra levy for theft of energy by tampering of meter/meter seals.

27. The main ground on which the above contention is advanced is that there is no demarcation provided in the Board Proceedings with regard to intermittent theft and permanent theft and, therefore, the 1st respondent cannot choose from out of the four options and it should be only the option with regard to the period whichever is less.

28. Though such a contention is advanced, it is to be pointed out that there is no demarcation between intermittent theft and permanent theft. Even the affidavit of the petitioner shows the inspection conducted by the respondent on various dates, which are generally separated by a ten to fifteen day period. However, surprisingly, when an inspection was taken up

on 7.5.1995, immediately on 11.5.1995, another surprise inspection was taken up, which revealed the theft of energy. Only on account of the fact that immediately upon an inspection getting completed and the period when the next inspection takes place, the erstwhile company is alleged to have committed theft, which was set right before the next inspection, the 1st respondent had adopted the 12 month period for arriving at the extra levy for theft of energy by tampering of meter/meter seals.

29. In this regard, a perusal of the Board Proceedings No.80 reveal that four options are given for extra levy for theft of energy by tampering of meter/meter seals and for better clarity, the same is quoted hereunder :-

> *"Extra levy for theft of energy by tampering of meters/meter seals will be made at the rates given below :*
>
> *(a) For a period of 12 months; (or)*
>
> *(b) For a period from the date of prior inspection if any by the APTS or MRT wing to the date of detection; (or)*
>
> *(c) For a period from the date of replacement of meter to the date of detection; (or)*

> *(d) For a period from the date of service connection to the date of detection whichever period of the above is less.*
>
> *For other cases of theft of energy, the extra levy will be made for a period of 12 months or from the date of service connection to the date of detection whichever period is less at the same rates given below."*

30. A perusal of the above reveals that from the four options, for theft of energy by tampering with meter/meter seals, it is for the appropriate authority to adopt any one of the option for computing the extra levy. Only insofar as other cases of theft of energy, comes into play the two options of 12 months period or the period from the date of service connection to the date of detection.

31. In the present case, even it is the admitted case of the petitioner that out of the four options, one of the option is to be exercised. The theft of energy is on account of tampering with the meter/meter seals and rightly the 1st respondent had exercised one of the option and not the proviso option with respect to other forms of theft of energy. Since the 1st respondent was

not able to particularly lay hands on the actual date when the theft started or the period of theft, it has decided to go with option (a) and impose the demand on the petitioner.

32. For theft of energy by tampering with meter/meter seals, it is for the respondents to adopt any one of the four options and the options does not curtail the respondents to adopt only a particular option. Only in cases where the theft of energy is otherwise and not due to tampering of meter/meter seals, the respondents have to go with the two options and only in that case, the case of whichever period is less would come into play.

33. Further, Section 126 of the Electricity Act prescribes that the period of one year has to be presumed as the period of theft of energy only if the actual period of theft cannot be ascertained. In the case on hand, the period of actual theft of energy could not be ascertained by the respondents. The inspection carried out by the respondents, surprisingly on 11.5.95 after the routing inspection on 7.5.1995, wherein theft of energy was detected had resulted in the 1st respondent deciding to hold that it was an intermittent

theft committed by the petitioner between the period of inspection and since the respondents could not decide a particular time period when the theft was committed, the respondents have decided to adopt option (a) and the extra levy was computed over a 12 month period, which is fully in consonance with Section 126 of the Electricity Act. Such an adoption of option, in the considered opinion of this Court, cannot be said to be erroneous or wrong. It is well within the power of the respondents to adopt any option, which is in the interest of the respondents and not always it would enure to the benefit of the person, who commits the theft. Therefore, the computation of theft by adopting a period of 12 months cannot be held to be unsustainable.

34. The next of the contention relates to the adoption of multiplier, to which the petitioner contends that a subsequent Board Proceedings in the year 2004 had to be adopted as it prescribes a particular procedure for adopting multiplier and without giving the said benefit, going along with the earlier Board Proceedings of the year 2000 is wholly erroneous.

35. It is to be pointed out that the petitioner lays stress for computation of theft of energy by adopting option based on Board Proceedings of the year 2000. Such being the case, for the purpose of adoption of multiplier, the petitioner cannot advert to Board Proceedings of the year 2004. It is to be pointed out that if a Board Proceeding is followed for computation purpose, the same proceedings have to be followed for the purpose of adoption of multiplier as well. Such being the case, the respondents having calculated the theft of energy demand based on Board Proceedings of the year 2000, were right in not adopting the multiplier, which were provided for in Board Proceedings of the year 2004, as the whole computation would be only governed by Board Proceedings, 2000 and not of a subsequent Board Proceedings. The contention advanced on behalf of the petitioner is only for the purpose of suiting the petitioner's convenience, which cannot be sustained.

36. Further, it is evident from the order passed by the 2nd respondent, that the 2nd respondent had taken into consideration all the materials and also the contentions put forth on behalf of the petitioner at the time of

personal hearing and had elaborately dealt with the issue and arrived at the finding. It is even evident from the order passed by the 2nd respondent that the 2nd respondent has given proper reasons for adopting the option and multiplier. Therefore, the contention of the petitioner that the order of the 2nd respondent is bereft of reasons is wholly erroneous and the said contention deserves to be negative.

37. Insofar as the decisions of the Supreme Court, relied on by the petitioner, the said decisions would not in any manner be of assistance to the case of the petitioner, as the issue covered in the said decisions does not stand attracted to the case on hand.

38. Insofar as the decisions of Gujarat High Court, Jharkhand High Court and Allahabad High Court are concerned, the said decisions would only have persuasive value and it cannot be treated as a binding precedent tying the hands of this Court from effectively considering the present case. Even otherwise, the decisions aforesaid does not in any way effectively advance

the case of the petitioner as the facts of the said and the findings rendered therein would not be in any way applicable to the case on hand.

39. A status report has been filed by the respondents in which the respondents have stated that the demand has been revised to a sum of Rs.11,41,33,269/- vide its order dated 17.9.2021 and the petitioner was directed to remit the said amount towards extra levy. Further, a demand has already been raised on the respondent vide the demand notice dated 17.09.2021, which has resulted in amendment of the prayer. Therefore, it is submitted that the petitioner is due to pay the amount demanded vide demand notice dated 17.09.2021.

40. In the above circumstances, this writ petition is dismissed and the petitioner is directed to pay the amount as demanded by the respondents vide its demand notice dated 17.09.2021. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

30.06.2023

Index : Yes / No

GLN

To

1. The Superintending Engineer
Tamil Nadu Electricity Board
Namakkal Electricity Distribution Circle
Namakkal.

2. The Chief Engineer (Distribution)
Tamil Nadu Electricity Board
Erode Region, Erode.

M.DHANDAPANI, J.

GLN

PRE-DELIVERY ORDER IN
W.P. NO.7585 OF 2020

Pronounced on
30.06.2023