



WEB COPY



W.P.No.10100 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.10100 of 2020

AURA PACK (INDIA) PRIVATE LIMITED,
Represented by its Director,
Mrs.Ashok Babu Arukkutti,
No.3/556, Gandhi Nagar,
K.Vadamadurai,
Coimbatore – 641 017.

... Petitioner

Vs.

- 1.The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai – 600 002.
- 2.The Superintending Engineer,
Tamil Nadu Electricity Board,
Coimbatore EDC/Metro,
Coimbatore – 641 012.
- 3.The Executive Engineer,
Tamil Nadu Electricity Board,
Covai Electricity Distribution Circle,
Coimbatore.
- 4.The Assistant Engineer,
Tamil Nadu Electricity Board,



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Sulur Road,
Coimbatore.

5.R.M.Vijayalakshmi
6.R.M.Somasundaram

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the entire records in Lr.No.Se.Po/O.Pu/U.Ka.A/Ka.Mea.7/Ko.Vazhaku/A.No.795/2020, dated 10.07.2020 from the file of the 3rd respondent, quash the same and consequently forbear the respondents from adding the demand of Rs.29,07,267/- with the electricity consumption charges for the S.C.No.050-003-1409 within the jurisdiction of the 4th respondent.

For Petitioner : Mr.D.Shivakumaran

For Respondents : Mr.L.Jai Venkatesh
Standing Counsel [R1 to R4]

ORDER

This Writ Petition has been filed seeking for a Writ of Certiorarified Mandamus, to call for the entire records in Lr.No.Se.Po/O.Pu/U.Ka.A/Ka.Mea.7/Ko.Vazhaku/A.No.795/2020, dated 10.07.2020 from the file of the third respondent, quash the same and consequently forbear the respondents from adding the demand of



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Rs.29,07,267/- with the electricity consumption charges for the S.C.No.050-003-1409 within the jurisdiction of the fourth respondent.

2. The case of the petitioner is that, the petitioner is a Private Limited Company registered under the Indian Companies Act and engaged in the business of manufacturing Corrugated Carton Boxes. The petitioner entered a lease agreement with the landlord on 31.08.2011. Thereafter, he came to know that there was electricity arrears by the previous tenant, namely M/s.Athi Sakthi Spinners to the tune of Rs.14,46,977/- and the said amount was not paid by the previous tenants. Challenging the same, the previous tenant filed a writ petition before this Court in W.P.No.30556 of 2008, subsequently, the same withdrawn by them and they vacated the premises. Thereafter, the petitioner came to possession of the subject property in the year 2011 and thereafter, the present impugned demand notice was issued on 10.07.2020 demanding a sum of Rs.29,07,267/- from the petitioner. Challenging the same, the above writ petition has been filed.



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3. The learned counsel for the petitioner submits that, the total demand made to the previous tenants is Rs.14,46,977/-, out of which, they have paid a sum of Rs.5,00,000/- on 30.01.2009, hence, the balance arrears amount to be paid as on 30.01.2009 is Rs.9,46,977/-. However, the third respondent has passed the present impugned order demanding a sum of Rs.29,07,267/-, which includes the belated payment surcharge of Rs.19,60,290/- for 138 months from February 2009 to July 2020. He also submits that, during the pendency of the writ petition, the petitioner paid more than a sum of Rs.10,00,000/- as per the directions issued by this Court. In support of his contention, he relied upon the judgment of the Apex Court reported in **2023 0 Supreme (SC) 555**, wherein, the Apex Court held that, with regard to penalty and belated payment surcharge, the Electricity Board has to exercise its discretionary power and pass appropriate orders. Hence, he prays that, this Court may issue a direction to the official respondents to exercise the discretion for reduction of the belated payment surcharge, within a reasonable time that may be fixed by this Court.



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4. On the above contentions, heard the learned Standing Counsel appearing for the respondents 1 to 4 and perused the materials available on record.

5. Admittedly, the principal arrears amount payable by the previous tenant is Rs.9,46,977/- and the belated payment surcharge is Rs.19,60,290/-, totally, a sum of Rs.29,07,267/-. Though the previous tenant is liable to pay the principal arrears amount, however, the petitioner had paid more than the principal arrears amount of the previous tenant as per the conditional orders passed by this Court.

6. The Apex Court, passed a judgment in the case of ***K.C.Ninan Vs. Kerala State Electricity Board & Ors.*** reported in ***2023 0 Supreme (SC) 555*** and the relevant portion of the judgment is as follows :

“327. Taking all facts and circumstances into consideration, including the lapse of more than two decades since the appeals were filed before this Court and the equities arising in favour of one party or the other, we direct the Electric Utilities to waive the outstanding interest accrued on the



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principal dues from the date of application for supply of electricity by the auction purchasers.

I. Conclusions

328. The conclusions are summarised below:

- a. The duty to supply electricity under Section 43 of the 2003 Act is not absolute, and is subject to the such charges and compliances stipulated by the Electric Utilities as part of the application for supply of electricity;*
- b. The duty to supply electricity under Section 43 is with respect to the owner or occupier of the premises. The 2003 Act contemplates a synergy between the consumer and premises. Under Section 43, when electricity is supplied, the owner or occupier becomes a consumer only with respect to those particular premises for which electricity is sought and provided by the Electric Utilities;*
- c. For an application to be considered as a 'reconnection', the applicant has to seek supply of electricity with respect to the same premises for which electricity was already provided. Even if the consumer is the same, but the premises are different, it will be considered as a fresh connection and not a reconnection;*
- d. A condition of supply enacted under Section 49 of the 1948 Act requiring the new owner of the premises to*



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clear the electricity arrears of the previous owner as a precondition to availing electricity supply will have a statutory character;

e. The scope of the regulatory powers of the State Commission under Section 50 of the 2003 Act is wide enough to stipulate conditions for recovery of electricity arrears of previous owners from new or subsequent owners;

f. The Electricity Supply Code providing for recoupment of electricity dues of a previous consumer from a new owner have a reasonable nexus with the objects of the 2003 Act;

g. The rule making power contained under Section 181 read with Section 50 of the 2003 Act is wide enough to enable the regulatory commission to provide for a statutory charge in the absence of a provision in the plenary statute providing for creation of such a charge;

h. The power to initiate recovery proceedings by filing a suit against the defaulting consumer is independent of the power to disconnect electrical supply as a means of recovery under Section 56 of the 2003 Act;

i. The implication of the expression “as is where is” basis is that every intending bidder is put on notice that the seller does not undertake responsibility in respect of the property offered for sale with regard to any liability for the payment of dues, like service charges, electricity



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dues for power connection, and taxes of the local authorities; and

j. In the exercise of the jurisdiction under Article 142 of the Constitution, the Electric Utilities have been directed in the facts of cases before us to waive the outstanding interest accrued on the principal dues from the date of application for supply of electricity by the auction purchasers.”

7. In view of the above, this Court, without interfering with the impugned proceedings, directs the respondents 1 to 4 to consider and waive the belated payment surcharge on the principal arrears amount, within a period of six (6) weeks from the date of receipt of a copy of this order.

8. With the above direction, the writ petition is disposed of. No costs.

28.06.2023

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