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W.P.No.25321 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.25321 of 2018 and
W.M.P.No.29455 of 2018

N.Sendamaraai

...Petitioner

Vs

1. The Chairman,
Tamilnadu Electricity Board, (TANGEDCO),
800, Anna Salai,
Chennai – 600 003.
2. The Superintending Engineer,
Coimbatore Electricity Distribution Circle/Metro,
Tatabad,
Coimbatore – 12.
3. The Executive Engineer,
(Operation and Maintenance),
Tamil Nadu Electricity Board, (TANGEDCO),
Ondipudur,
Coimbatore District.

...Respondents

Prayer: Petition filed Under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned order made in Lr.No.SE/CEDC/M/AEE.GI/AE/F. New HT SC/D.1114/18-19 dated 06.09.2018 passed by the 2nd respondent, quash the same and



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consequently direct the respondents to grant new HT Service Connection for 750 KVA by considering the petitioner's application dated 24.08.20178 without insisting her to clear the consumption charges relating to pre-sale period.

For Petitioner : M/s.N.Manokaran

For respondents : Mr.L.Jai Venkatesh

ORDER

This writ petition is filed seeking for issuance of a writ of certiorarified mandamus to quash the impugned order made in Lr.No.SE/CEDC/M/AEE.GI/AE/F New HT SC/D.1114/18-19 dated 06.09.2018 passed by the 2nd respondent, and consequently to direct the respondents to grant new HT Service Connection for 750 KVA by considering the petitioner's application dated 24.08.20178 without insisting her to clear the consumption charges relating to pre-sale period.

2. The case of the petitioner is that the petitioner has purchased the property at S.F.No.674/1, situated at Neelambur Village, Coimbatore District by way of e-auction conducted under the SARFAESI Act, 2002 by the State Bank of India, Tirupur Branch. Long after the purchase, the second respondent / Superintending Engineer, Coimbatore Electricity



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Distribution Circle has issued a communication dated 25.07.2018 demanding a sum of Rs.11,65,138/- towards the arrears of the electricity consumption charges defaulted by the erstwhile landowner Mr.K.R.Gurusamy. Subsequently, on 24.08.2018 petitioner submitted an application dated 24.08.2018 before the second respondent seeking electricity service connection for the above said property, pursuant to which the second respondent issued the impugned proceedings dated 06.09.2018. Challenging the said order the petitioner is before this Court on the ground that there is not privity between the petitioner and the Electricity Board and the demand is unlawful.

3. The learned counsel for the petitioner submits that the respondents have disconnected the service connection as early as on 1.11.2010 and the property was sold in e-auction on 18.12.2015. However, the respondents have not taken any action against the erstwhile owner between 2010 - 2015. He further submits that in the absence of any statutory provisions authorising the demand for the dues of the previous owner, the subsequent transferee cannot be mulcted with responsibility to clear the arrears which is not a condition precedent for auction sale. In this regard he refers to the judgment of the Hon'ble Apex



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Court in the case of *M/s.Isha Marbles V. Bihar State Board reported in*

1999 (2) SCC 648. Hence, learned counsel for the petitioner prayed this

Court to allow this writ petition.

4. It is further submitted that at the time of admission vide order dated 2.11.2018, this Court has passed an interim order directing the respondents to grant electricity service connection to the petitioner's property without prejudice to their legal demands. As against the interim order granted by this Court the respondent Board filed writ appeal in W.A.No.2650 of 2018 wherein this Court modified the interim order dated 2.11.2018 by directing the writ petitioner to deposit a sum of Rs.5,00,000/- to the second respondent herein and it was also made clear that the modification of the interim order is subject to the result of the present writ petition, pursuant to which the petitioner deposited Rs.5,00,000/- to the second respondent Board. Hence, the second respondent Board may be directed to refund the sum of Rs.5,00,000/- to the petitioner.

5. Per contra learned standing counsel appearing for the respondents submits that the erstwhile owner of the property had



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defaulted in payment during September 2010. Hence in accordance with the provisions under Section 56(1) of the Electricity Act r/w Clause 21 of the Tamil Nadu Electricity Supply Code, the supply of electricity was disconnected on 1.11.2010. He further submits that the respondents do no know about the mortgage of the property by erstwhile owner with the State Bank of India and the subsequent sale through e-auction. The respondents were neither informed nor put on notice about the alleged sale either by the Bank or by the erstwhile owner. Since the petitioner has requested new electricity service connection for the same premises where the electricity connection was disconnected on account of default in payment of CC charges as per clause 6.10 of the terms and conditions of Tamil Nadu Supply code the Board is entitled to refuse the supply to the intending consumers without clearing the dues. Hence, learned counsel for the respondents submits that the impugned communication is issued in accordance with the provisions of the Electricity Act.

6. He further relied upon the Judgment of the Hon'ble Apex Court in the case of ***Telangana State Southern Power Distribution Company and anr. Vs.M/s.Srigdhaa Beverages reported in 2018 (12) SCC 644*** wherein the Hon'ble Supreme Court has considered the case of the



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Telangana State Southern Power Distribution Company and anr. and held that the sale is on “AS IS WHERE IS WHATEVER THERE IS AND WITHOUT RECOURSE BASIS” and that the liability to pay the electricity dues exists on the respondent (purchaser). Hence, learned standing counsel appearing for the respondents submitted that the subsequent purchaser is bound to pay the current consumption charges of the erstwhile consumer and he prayed to dismiss the writ petition.

7. This Court carefully considered the rival submissions and also perused the materials placed before it.

8. It is not in dispute that the properties had been purchased by the petitioner by way of e-auction on 18.12.2015. It is also not in dispute that the service connection for the said premises was disconnected as early as on 1.11.2010. The petitioner has submitted an application on 27.08.2018 to obtain new service connection for the property purchased in e-auction enclosing all the requisite documents after receipt of the application, the second respondent has directed the petitioner to clear the outstanding arrears payable by the erstwhile owner for granting the new service connection.



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9. On a perusal of the dictum relied upon by the learned counsel for the petitioner in the case of *M/s.Isha Marbles V. Bihar State Board reported in 1999 (2) SCC 648*, it was held that the law, as it stands, is inadequate to enforce the liability to the previous contracting party against the auction purchaser who is a third party and it is in no way connected with the previous owner / occupier, Whereas on a careful perusal of judgment relied upon by the learned standing counsel appearing for the respondents in the case of *Telangana State Southern Power Distribution Company and anr. Vs.M/s.Srigdhaa Beverages reported in 2018 (12) SCC 644*, it is clear that there is a specific clause i.e. clause 26 in the e-auction notice, which absolved the Authorized officer of various dues including electricity charges, lien, encumbrance, property tax dues etc. However, in the present case and in the case of *M/s.Isha Marbles*, no such clause was available in the e-auction notice. Hence, the payment of the past dues cannot be mulcted on the subsequent purchaser.

10. For better appreciation the aforesaid judgment in the case of *Telangana State Southern Power Distribution Company and*



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anr.Vs.M/s.Srigdhaa Beverages reported in 2018 (12) SCC 644 is

extracted hereunder:-

*“6. We may also take note of the fact that the aforesaid dues partake the character of statutory dues under the **Electricity Act, 2003** read with the General Terms & Conditions of Supply.*

*7. A writ petition was filed by the respondent before the High Court of Telangana and Andhra Pradesh seeking quashing of these demands predicated on a reasoning that as a subsequent purchaser, the respondent was not responsible for the dues of the earlier owner, and in that behalf relied upon the judgments of this Court in **Isha Marbles v. Bihar State Electricity Board & Anr.1** and **Southern Power Distribution Company of Telangana Limited (through its CMD) & Ors. v. Gopal Agarwal & Ors.2** Reliance on these judgments persuaded the learned single Judge to issue directions quashing the demand of appellant No.1. The appeal filed 1 (1995) 2 SCC 648 2 (2018) 12 SCC 644 before the Division Bench against this order was also dismissed on 30.4.2018.*



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8. *We have examined the submissions in the contours of the aforesaid controversy, and take note of the fact that in the case of Isha Marbles,³ the sale was in pursuance of Section 29(1) of the State Financial Corporations Act, 1951, but the important aspect was that there was no clause specifically dealing with the issue of electricity dues or such other dues, as in the present auction notice. This Court elucidated the position in the context of Section 24 of the Electricity Act, 1910, to emphasise that under Section 2(c) of the Electricity Act, a consumer means any person who is supplied with energy, and since liability to pay electricity dues is fastened only on the consumer, at the relevant time, the purchaser was not the consumer. It has also been stated that in the absence of consumption of electricity, the subsequent purchaser was merely seeking reconnection without there being any statutory dues towards consumption charges. We had specifically posed a question to the learned counsel for the respondent in the order dated 15.11.2019, that whether, in the context of the judicial pronouncements sought to be relied upon, there was a 3 (supra) specific clause in the nature*



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of Clause 26 as in the present E-auction sale notice, which absolved the Authorized Officer of various dues including “electricity dues”. On the conspectus of the judgments referred to by the respondent, there were no such clauses in the cases in question.”

11. On a careful consideration of the aforesaid decisions relied on by the parties, it is clear that the decision in *Srigdhaa Beverages (supra)* though is applicable squarely to the case on hand but it favours the petitioner only in as much as the e-auction notice with regard to absolving the authorised officer of all liabilities as found in the said case does not find place in the e-auction notice in the case on hand. There being no such condition in the e-auction notice necessarily the petitioner cannot be made to pay the dues towards the consumption of electricity.

12. For the reasons aforesaid, the impugned order is set aside and this writ petition is allowed. However, it is open to the respondent Board to recover the dues from the erstwhile owner. The respondent Board is further directed to refund the sum of Rs.5,00,000/- to the petitioner without any interest. No costs. Consequently, connected miscellaneous



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petition is closed.

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Index : Yes / No

Speaking/Non-speaking order : Yes / No

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