



WP(MD)No.5626 of 2009, SA(MD)No.369 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)No.5626 of 2009

&

SA(MD)No.369 of 2018

and

MP(MD)No.1 of 2009

&

CMP(MD)No.10333 of 2018

WP(MD)No.5626/2009:-

R.Jeganathan

: Petitioner

Vs.

The Assistant Executive Engineer,
Town / TNEB,
Palani,
Dindigul District.

: Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus directing the respondent to restore the electricity service connection in SC.No.1126 / TF III B / Pappampatty Distribution / Pappampatty Section.

For Petitioner : Mr.AR.L.Sundaresan,
Senior Counsel
for M/s.AL.Gandhimathi

For Respondent : Mr.S.Deenadhayalan



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SA(MD)No.369/2018:-

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1. Superintending Engineer,
Dindigul Electricity System,
Tamil Nadu Electricity Board,
Bye Pass Road, Dindigul.

2. Assistant Executive Engineer,
(Operation & Maintenance),
Tamil Nadu Electricity Board,
Railway Feeder Road, Palani.

3. Assistant Executive Engineer,
MRT Dindigul Electricity System,
Bye Pass Road, Dindigul.

: Appellants

Vs.

Jeganathan, Managing Partner,
Sri Krishna Spinning Mills Partnership Firm,
Pappampatti Village, Palani Taluk,
Dindigul District.

: Respondent

PRAYER: Appeal filed under Section 100 of the Civil Procedure Code to call for the records relating to the judgment and decree dated 20.10.2017 made in A.S.No. 73 of 2017 on the file of the Additional District Court, Palani, reversing the judgment and decree dated 10.12.2013 made in O.S.No.228 of 2009 on the file of the District Munsif Court, Palani and set aside the same.

For Appellants : Mr.G.Ramanathan

For Respondent : Mr.AR.L.Sundaresan,
Senior Counsel
for M/s.AL.Gandhimathi



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COMMON JUDGMENT

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The writ petition in WP(MD)No.5626 of 2013 is filed by the petitioner for restoration of electricity service connection in SC.No.1126 / TF III B / Pappampatty Distribution / Pappampatty Section, which was disconnected after an inspection, wherein it was found that there was a theft of electricity by tampering the coil.

2.The second appeal in SA(MD) No.369 of 2018 is filed by the Electricity Board as against the judgment and decree passed by the learned Additional District Judge, Palani in A.S.No.73 of 2017 dated 20.10.2017, reversing the judgment and decree passed by the learned District Munsif, Palani in O.S.No.228 of 2009, dated 10.12.2013. The suit was filed by the plaintiff / writ petitioner for a declaration that the coils mounted on the incoming cables from the transformer in the chamber were not tampered with.

3.Since the issues in both the writ petition and the second appeal are inter-connected, both the petitions have been tagged together by the order of the Hon'ble Administrative Judge dated 23.01.2019. Both the writ petition as well as



the second appeal are heard together and are disposed of by way of this common judgment.

4.For the sake of convenience and clarity, the writ petitioner, who is the respondent in second appeal, is hereinafter referred to as “the Consumer” and the appellants Board / respondent in the writ petition are hereinafter referred to as “the Board”.

5.The case of the Consumer is that their service connection was inspected on 25.06.2009 by the Electricity Board Officials and it was alleged that there was an offence of theft of energy by tampering of the LTCT Meter CT chamber Box MRT seals (2 Nos). and 3 Nos. 300/5ACT coil to reduce the recording of the energy consumption, which is punishable under Section 135 of the Electricity Act, 2003 (hereinafter referred to as “the Act”). The Assistant Executive Engineer has lodged a complaint for the alleged theft of electricity and the same was registered in Crime No.310 of 2009 on the file of the Taluk Police Station, Palani. The Assistant Executive Engineer by his letter dated 25.06.2009 stated that since the Consumer has accepted the option for compounding of the offence under Section 152 of the Act and the Consumer was called upon to pay a sum of Rs.5,00,000/



towards compounding of the offence. On receipt of the said letter dated 25.06.2009, the Consumer remitted the said sum of Rs.5,00,000/- on 26.06.2009 and accordingly, by letter dated 26.06.2009, the Assistant Executive Engineer intimated the Taluk Police Station, Palani that the acceptance of compounding fee amounts to an acquittal within the meaning of Section 300 of the Criminal Procedure Code and that the offence may be treated as compounded.

6.After the compounding of the offence, the Consumer was served with a provisional assessment order dated 25.06.2009 stating that the approximate loss caused to the Board by the Consumer due to dishonest abstraction of energy amounted to Rs.18,28,473/- and that the same should be paid in one lumpsum within 7 days. The electricity service connection was also disconnected. In order to restore the service connection, the Consumer has filed the writ petition.

7.In the meantime, the Consumer has also filed a suit in O.S.No.228 of 2009 before the District Munsif Court, Palani, for a declaration that the 3 CT coils mounted on the incoming cables from the transformer in the chamber were not tampered with and for other incidental reliefs. In the said suit, the Consumer filed



an interlocutory application in I.A.No.516 of 2009 praying for a direction to produce the LTCT chamber box to the Court for the purpose of getting an expert opinion. Pending the said application and after filing of counter affidavit, the Board claimed to have sent the LTCT chamber box for expert opinion on 12.11.2009 and obtained a report dated 19.02.2010 that there was tampering. The trial court has dismissed the suit holding that the suit was barred and as against the same, the Consumer filed an appeal in A.S.No.73 of 2017 before the Additional District Court, Palani. The first appellate Court, by judgment and decree dated 20.10.2017, allowed the appeal, holding that the provisional assessment demanding a sum of Rs.18,00,000/- was made without even subjecting the meter for testing. The first appellate Court further held that when an application was filed in the suit for production of the meter box / chamber box to the Court for the purpose of testing the same by an Expert was pending, behind the back of the Consumer and even without informing the Court, the Board claimed to have sent the meter box / chamber box for testing and obtained a report on 19.02.2010.

8. Aggrieved over the findings of the first appellate Court, the Board has filed the Second Appeal in S.A(MD).No.369 of 2018 and the same was admitted by this Court on the following substantial questions of law:-



“1. When the proviso under Sub-Section (1) in Section 135 of Electricity Act, 2003 states that the authority shall presume on the prima facie evidences, is the court below right in placing the burden of proof on the authority?

2. When Ex.B2- Forensic Report clearly states the commission of theft of energy, is the court below right in holding that no evidence was produced to prove the commission of theft of energy?

3. Is not the Civil Court jurisdiction impliedly ousted in view of Section 135 of the Electricity Act, 2003?

4. Is the Court below right in granting negative declaration under Specific Relief Act?”

9.Learned Senior Counsel appearing for the Consumer made his submissions as follows:

9.1.Section 154 of the Act provides that notwithstanding anything contained in the Criminal Procedure Code, every offence punishable under Section 135 of the Act shall be triable only by the Special Court. Section 154(5) of the Act provides that the Special Court shall determine the civil liability against a consumer, in terms of money for theft of energy and the amount of civil liability so determined shall be recovered as if it was a decree of a civil Court. Section 154(6)



of the Act provides that the civil liability so determined finally by the Special Court, if it is less than the amount deposited by the Consumer, the excess amount so deposited shall be refunded by the Board together with interest.

9.2.As per Section 152(3) of the Act, the acceptance of the sum of money for compounding an offence by the appropriate government or an officer empowered in this behalf, shall be deemed to amount to an acquittal within the meaning of Section 300 Cr.P.C. If that be so, there can be no proceedings in respect of the alleged offence under Section 154 of the Act before the Special Court and as such, there cannot be any computation.

9.3.This intention of the Parliament is also reaffirmed and reiterated under Rule 23AA of the Tamil Nadu Electricity Supply Code. Sub-Rules 1 to 21 of Rule 23AA deal with the manner in which the occurrence will have to be inspected, registered, enquired, provisional assessment passed and final assessment passed. However, Sub-Rule 22 of Rule 23AA provides that in case of compounding, the notice as in Form 11 in appendix to this code may be issued and the amount to be collected as per Section 152 of the Act.



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9.4.The Board has offered for compounding and the Consumer has accepted the same and remitted a sum of Rs.5,00,000/-. Therefore, there is no scope for any enquiry under Rule 23AA or for any provisional assessment order or for final assessment order under Sections 126 or 127 of the Act or any adjudication before the criminal Court under Section 154 of the Act. Hence, the demand, for any amount over and above the compounding fee, is wholly without jurisdiction and therefore, the writ petition deserves to be allowed.

9.5.He has also relied on the judgment of the Delhi High Court in **B.S.E.S. Rajdhani Power Ltd. v. Jagat Ram & Anr**, reported in **(2015) 216 DLT 280**, wherein it has been held as follows:

“17. The Explanation in Section 154 provides the link between the exercise of the two jurisdictions of the Special Court, i.e., the criminal jurisdiction and the civil jurisdiction. The definition of ‘civil liability’ in terms of Explanation is exclusive. It ‘means’ loss or damage that is incurred “due to commission of an offence.” The word “due to” necessarily requires the Special Court to first determine the criminal liability arising out of the commission of an offence punishable under Sections 135 to 140 and Section 150 of the Act.”



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9.6.As far as the second appeal is concerned, the suit is not barred since it was not filed challenging the assessment order under Section 126 of the Act. In fact, no proceedings under the Act was challenged. A declaratory relief that the meter was not tampered with was prayed for. Such a prayer is not barred under law and hence, the suit is very well maintainable.

9.7.Pending the suit, the Consumer has filed an interlocutory application praying for a direction to produce the LTCT chamber box to the Court for the purpose of getting an expert opinion. When the application was pending, the Board, behind their back, claimed to have sent the LTCT chamber box for expert opinion and obtained a report as if there was a tampering. The first appellate Court has rightly held that the provisional assessment was made without even subjecting the meter for testing. Therefore, the same does not warrant any interference.

10.Learned Standing Counsel appearing for the Board made his submissions as follows:

10.1.As per the report of the Assessing Officer, 1,89,774 Units of energy



was extracted illegally, for which, liability has been fixed as Rs.18,28,473/-. Since the act of the Consumer is an offence under Section 135 of Electricity Act, 2003, the option of compounding was offered and the same was also accepted by the Consumer. Accordingly, on 25.06.2009, compounding charges of Rs.5,00,000/- has been paid as per Section 152 of Electricity Act, 2003, by the Consumer.

10.2.In continuation of the same, after giving due opportunity to the Consumer, provisional assessment order was issued in the Form-9, as prescribed in Regulation 23 (AA) (8) of the Supply Code, assessing the loss caused to the Board as Rs.18,28,473/- and the Consumer was also given opportunity to file his objections, if any. However, instead of filing any objections to the provisional assessment order, the Consumer has filed the writ petition. Pursuant to the interim order of this Court, the Consumer has deposited a sum of Rs.4,00,000/- in two installments and thereafter, the service connection was also restored. In view of the interim order, they could not pass the final assessment order.

10.3.The Consumer having compounded the offence and paid the compounding charges of Rs.5,00,000/- as per Section 152 of Electricity Act, 2003,



sought for Restoration of Electricity Service Connection by invoking Article 226 of Constitution of India, without challenging the Provisional Assessment Order, which is highly unsustainable. Nor he has filed any objections to the provisional assessment order.

10.4.The trial Court has categorically given its finding that the Board has proved the tampering by the Consumer and that the suit was filed with *mala fide* intention and dismissed the suit. However, the appeal preferred by the Consumer was allowed and as against the same, the Board has filed the second appeal.

10.5.As per Regulation 23(AA)(8) of TNERC Supply Code, mere absolution from criminal action is not a bar for the Board to proceed with the civil liability. Therefore, he prayed for appropriate orders.

11.This Court paid it's anxious consideration to the rival submissions and also to the materials placed on record.



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12. The writ petition is filed by the Consumer for a mandamus directing the Board to restore the electricity service connection in SC.No.1126 / TF III B / Pappampatty Distribution / Pappampatty Section. The consumer is running a spinning mill in the name and style of “Sri Krishna Spinning Mills” at Pappampatti, Palani Taluk, Dindigul. The Consumer is having LTCT service connection and on 25.06.2009, the authorities of the Board conducted an inspection on the Mill and detected tampering of LTCT meter and lodged a criminal complaint as against the Consumer for theft of energy under Section 135 of the Act. The Inspector of Police, Taluk Station, Palani has also registered a criminal case in Crime No.310 of 2009.

13. The Consumer has made an offer to compound the offence and also paid the compounding charges of Rs.5,00,000/- as per Section 152 of the Act. Therefore, the Executive Engineer by letter dated 26.06.2009 intimated the concerned police station regarding the acceptance of the compounding fee. The FIR registered as against the Consumer was also closed as per Section 300 of the Criminal Procedure Code, since the offence was compounded. Thereafter the



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Board has issued provisional assessment order dated 25.06.2009 that the loss caused by the Consumer due to dishonest obstruction of energy is valued at Rs.18,26,473/- and also directed the Consumer to pay the amount within 7 days.

14.The Consumer, thereafter, filed a suit in O.S.No.228 of 2009 before the District Munsif Court, Palani, for a declaration that there was no tampering of CT coils as projected by the Board. The Consumer has also taken out an application in I.A.No.516 of 2009 for a direction to produce the LTCT chamber box for the purpose of getting an expert opinion. Pending the application, the Board sent the chamber for expert opinion on 12.11.2009 and obtained a report dated 19.02.2010 that there was tampering of seal. The trial Court, by judgment and decree dated 10.12.2013, dismissed the suit. The Consumer filed an appeal before the learned Additional District Judge, Palani in A.S.No.73 of 2014 and the same was allowed by the first appellate Court by judgment and decree dated 20.10.2017. As against the same, the Board preferred the second appeal.

15.The criminal complaint registered in Crime No.310 of 2009 was closed under Section 300 Cr.P.C., since the Consumer has paid the compounding charges



as per Section 152 of the Act. The assessing officer thereafter issued a provisional assessment order as per Section 126 of the Act. The compounding of offence under Section 152 of the Act and by paying the compounding charges under the Act does not absolve any consumer from the civil liabilities under Section 126 of the Act. The Consumer is having an option of submitting his objection to the provisional assessment order and even for a personal hearing before the assessing authority as per Section 126(3) of the Act. If the assessing officer passes any order, the Consumer has a right of appeal before the Appellate Authority under Section 127 of the Act.

16. Here, the Consumer neither challenged the provisional assessment order nor raised any objections to the same. However, he filed a civil suit before the District Munsif Court, Palani in O.S.No.228 of 2009, for a declaration that the coils are not tampered with. In the suit, he has also taken out an application to refer the LTCT chamber box for an expert opinion. In the meantime, the Board themselves have sent the chamber box for opinion and the expert has also issued a report dated 19.02.2010 that there was tampering. However, the first appellate Court allowed the appeal on the ground that the chamber box was not produced before the Court for referring the same to get the expert opinion.



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17.The Consumer has approached the civil Court by way of O.S.No.228 of 2009 for a declaration that the coil was not tampered with. Deciding this question is the basic requirement in determining the alleged offence under Section 135 of the Act. As per Section 127 of the Act, any grievance over a final assessment order passed by an assessing authority under Section 126 of the Act can be challenged only by way of an appeal. In this case, the same was questioned before the civil Court, however in a different color.

18.The Hon'ble Supreme Court in ***Southern Electricity Supply Co. of Orissa Ltd. v. Sri Seetaram Rice Mill***, reported in ***(2012) 2 SCC 108***, has held that the provisions of Section 126, read with Section 127 of the Act become a code in themselves. Right from the initiation of the proceedings by conducting an inspection, to the right to file an appeal before the appellate authority, all matters are squarely covered under these provisions.

19.As per Section 145 of the Act, Civil Courts are barred to try any matter which an assessing officer referred to in Section 126 or an appellate authority



referred to in Section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine. As per Section 126 of the Act, if the assessing officer concludes that any person is indulging in unauthorized use of electricity during or after inspection, he should refer the equipment, gadgets, machines, devices found connected or used. Accordingly, the Board has referred the coil for expert opinion and obtained a report. However, the Consumer has instituted a suit for a declaration that the coils mounted on the incoming cables from the transformer in the chamber were not tampered. This is a matter within the ambit of the assessing officer to decide. Therefore, the suit itself is barred as per Section 145 of the Act.

20. This Court in ***A.R.V. Jegadeesan v. Assistant Engineer, Tamil Nadu Electricity Board, Sulakkarai, Virudhunagar***, reported in ***(2011) 2 MWN (Civil) 54*** has held as follows:

“7. It clearly refers to the matters regarding which power is given to the Assessing Officer under Section 126 and to the Appellate Authority under Section 127 as the matters that are excluded from the scrutiny of the Civil Court in a Suit. Not only referring to the two provisions viz., Section 126 and 127 under which powers are given to the Assessing Officer and the Appellate Authority for the exclusion of



such matters from the jurisdiction of the Civil Court, Section 145 of the Electricity Act also brings the matters within the bar provided therein. Matters regarding which the Adjudicating Officer appointed under the Act is empowered to determine. We are not concerned with the other clause, relating to the matters in which an Adjudicating Officer appointed under the Act or empowered or under the Act to determine for the simple reason, the case on hand clearly falls under the definition of “matters regarding which Assessing Officer under Section 126 and the Appellate Authority under Section 127 are given power to determine.”

21. The argument of the Consumer that there is no scope for any enquiry under Rule 23AA or any provisional assessment order or final assessment order under Sections 126 or 127 of the Act or any adjudication before the criminal court under Section 154 of the Act, since the compounding was accepted and compounding fee of Rs.5,00,000/- was remitted, cannot be accepted. This is because, in case of theft of energy, both assessment under Section 126 of the Act and the criminal or civil liability can be determined under Section 154 of the Act parallelly. Since the criminal action was compounded under Section 152 of the Act, it does not mean that the assessment under Section 126 of the Act cannot be done. In this regard, in ***W.B. State Electricity Distribution Co. Ltd. v. Orion Metal (P) Ltd.***, reported in ***(2020) 18 SCC 588***, the Hon'ble Supreme Court has



held as follows:

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“14. We also do not find any valid reason for making a distinction as made by the High Court in applying Section 126 of the Act. From the scheme of the Act, it appears that after inspection team notices unauthorized use of energy by tampering the meter, the authorities can disconnect the power supply immediately and make immediate assessment for loss of energy, by invoking power under Section 126(1) of the Act. The term “unauthorized use of energy” is of wide connotation. There may be cases of unauthorized use of energy, not amounting to theft, which are cases viz. exceeding the sanctioned load or using the electricity in the premises where its use is not authorized etc. But at the same time, when there is an allegation of unauthorized use of energy by tampering the meter, such cases of unauthorized use of energy include ‘theft’ as defined under Section 135 of the Act. The power conferred on authorities for making assessment under Section 126(1) of the Act and power to determine civil liability under Section 154(5) of the Act, cannot be said to be parallel to each other. In this regard, we are of the view that the High Court has committed an error in recording a finding, that both proceedings cannot operate parallelly. In a given case where there is no theft of energy, amounting to unauthorized use of energy, in such cases no complaint of theft can be lodged as contemplated under Section 135 of the Act. In such cases for loss of energy, on account of unauthorized use of energy not amounting to theft, it is always open for the authorities to assess the loss of energy by resorting to power under Section 126(1) of the Act. In cases where



allegation is of unauthorized use of energy amounting to theft, in such cases, apart from assessing the proceedings under Section 126(1) of the Act, a complaint also can be lodged alleging theft of energy as defined under Section 135(1) of the Act. In such cases, the Special Court is empowered to determine civil liability under Section 154(5) of the Act. On such determination of civil liability by the Special Court, the excess amount, if any, deposited by the petitioner, is to be refunded to the consumer. It is a settled principle that to prove the guilt of the accused in a criminal proceeding, authorities have to prove the case beyond reasonable doubt and the element of mens rea is also to be established. On the other hand, such a strict proof is not necessary for assessing the liability under Section 126(1) of the Act.”

22. In view of the foregoing discussions and reasonings and the decisions referred to supra, this Court is passing the following order:-

i) The judgment and decree dated 20.10.2017, passed in A.S.No. 73 of 2017 on the file of Additional District Court, Palani, is set aside and the judgment and decree dated 10.12.2013, passed in O.S.No.228 of 2009 on the file of the District Munsif Court, Palani, is hereby confirmed.



ii) The interim order granted in the writ petition is hereby vacated.

In view of the interim order, the final assessment order has not been passed till date. Since the petitioner is having a right of submitting his objection to the provisional assessment order as per Section 126(3) of the Act, the assessing officer, after affording reasonable opportunity of hearing to the petitioner, shall pass final order of assessment. The assessing officer shall also decide the further course of action by following the procedures contemplated under Rule 23(AA) of the Tamil Nadu Electricity Supply Code.

iii) Since the petitioner has already deposited certain amount pursuant to the interim order of this Court and thereafter, the service connection was also restored, the same shall not be disturbed till the passing of final assessment order. The assessing officer shall proceed further and pass appropriate final assessment orders, without insisting the petitioner for further deposition of any amount. After the passing of final assessment orders, it is open to the Board to take appropriate action as they deem fit.



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There shall be no order as to costs. Consequently, connected miscellaneous petitions stand closed.

Index : Yes / No
Internet : Yes
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10.01.2023

To

- 1.The Additional District Judge,
Palani.
- 2.The District Munsif,
Palani.



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