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W.P.No.1841 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 20.06.2024

Orders Pronounced on : 09.07.2024

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.1841 of 2021

and

W.M.P. No. 2078 of 2021

J.Madhavan

... Petitioner

Vs

1. The Superintending Engineer,
Kancheepuram Electricity Distribution Circle,
Anna Maaligai, Olimohamedpet,
Kanchipuram – 631 502.

2. The Executive Engineer (O & M) North,
Tamil Nadu Electricity Board,
Kancheepuram – 631 502.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records in the impugned order Proc. No. SE/KEDC/KPM/EEGL/AEEGL/AEGL/F.TOE/D.973/2020 dated 14.12.2020 passed by the first respondent and quash the same as illegal, arbitrary and bad in law.

For Petitioner : Mr.R.Sivaraman



W.P.No.1841 of 2021

WEB COPY

For Respondents : Mr. L.Jaivenkatesh,
Standing Counsel

O R D E R

This Writ Petition has been filed challenging the order passed by the first respondent dated 14.12.2020, thereby the appeal filed by the petitioner, was dismissed and directed the petitioner to pay consumption charges and belated payment of surcharge, as assessed by the second respondent.

2. The petitioner is running a Rice Mill under the name and style of Amarthavalli Rice Mill. The petitioner was provided with the electricity service connection, with sanctioned power load of 50 HP. While that being so, in the year 1999, there was an inspection of the property in question and it was found that there was theft of electricity power by unauthorizedly drawing of power. Therefore, the petitioner was issued show cause notice. On receipt of the explanation from the petitioner, the authority concerned confirmed the allegations of theft of energy and a consumption charge of Rs.16,19,553/-, was levied. It was challenged by the petitioner before this



W.P.No.1841 of 2021

WEB COPY

Court in W.P. No. 8121 of 1999 and this Court by order dated 17.04.2001 had directed the petitioner to deposit a sum of Rs.2,00,000/-. Aggrieved by the same, the petitioner preferred an appeal before the Division Bench of this Court in W.A. No. 910 of 2001 and the Division Bench of this Court by judgment dated 20.07.2001 had directed to reduce the amount of Rs.1,50,000/- from 2,00,000/-. The levy of current consumption charge was quashed by this Court and second respondent was directed to issue fresh show cause notice and after conducting enquiry to pass orders afresh. As directed by this Court, after due enquiry, the petitioner was directed to pay a sum of Rs.16,19,553/- after deducting a sum of Rs.1,50,000/-, which was already deposited by the petitioner, he was directed to pay the balance amount. Once again, the petitioner was challenged the order dated 26.05.2003 in W.P. No. 16011 of 2003 before this Court and this Court had set aside the order dated 17.04.2013 and directed the second respondent therein to strictly comply with the directions issued by this Court in the said W.P. No. 8121 of 1999, by issuing fresh notice with all details including calculation and to pass orders. Even then, the petitioner preferred an appeal before the Division Bench of this Court in W.A. No. 1463 of 2013 and subsequently, it was dismissed as withdrawn on 17.07.2013, with liberty to



W.P.No.1841 of 2021

WEB COPY

file a review petition. Thereafter, the petitioner filed the review petition in Review Petition No.115 of 2013 before this Court. Further, as directed by this Court, the petitioner was served with notice and on receipt of his explanation, the second respondent passed an order dated 07.08.2013, thereby the petitioner was directed to deposit a sum of Rs.13,72,553/- as consumption charges and a sum of Rs.37,48,741/- as belated payment of surcharge by 24 installments from 15.09.2013 to 15.08.2015. Once again, the petitioner is aggrieved by the said order, he filed a Writ Petition before this Court in W.P. No. 25227 of 2013. This Court entertained the said Writ Petition and granted interim stay on condition that the petitioner shall pay a sum of Rs.13,72,580/- and the petitioner had deposited the said amount on 05.11.2013. Finally, this Court partly allowed the said Writ Petition to calculate the belated payment of surcharge from 2003, instead of 2001. Once again, the petitioner was aggrieved by the said order and hence, he had filed a Writ Appeal in W.A. No. 417 of 2020 and the same was disposed by this Division Bench of this Court by order dated 05.06.2020, with liberty to challenge by way of statutory appeal before the concerned authority. Accordingly, the petitioner filed an appeal before the first respondent and the same was also dismissed, confirming the order passed by the second



3. The learned counsel for the petitioner submitted, pursuant to the energy theft, the criminal case had been instituted as against the petitioner, which culminated into trial in C.C.No.169 of 2000 before the Judicial Magistrate No. 1, Kanchipuram. Subsequently, the trial Court acquitted the petitioner and it was concluded that there was no theft of electrical energy. However, without considering the same, the Appellate Authority, viz., the first respondent, confirmed the order passed by the second respondent. Therefore, nothing survives to proceed against the original cause of action and consequential orders were passed by the respondents, void-ab-initio. In fact, there was a fire accident in the meter board due to short circuit of lines on 28.12.1998. On the complaint of the petitioner, the Electricity Board Authorities rectified the defect and re-fixed the meter. Therefore, the meter was in order and no defects as alleged, were found.

4. While that being so, on 19.02.1999, there was an inspection and all of sudden, the second respondent imposed penalty. Now, the criminal Court acquitted the petitioner herein holding that there was no electricity



W.P.No.1841 of 2021

WEB COPY

theft. This is the third round of litigation on the penalty imposed against the petitioner for electrical theft. As directed by this Court, the petitioner was given an opportunity of hearing and on receipt of the explanation from the petitioner, the second respondent passed the impugned order and the petitioner managed to drag on the proceedings for the past 25 years except depositing part of the amount, that too, as directed by this Court. In fact, in all the grounds raised by the petitioner in the previous Writ Petitions and Writ Appeals, this Court considered and rejected those grounds. Finally, the petitioner raised the ground that the criminal Court acquitted him for the charge of electrical theft.

5. On a perusal of the order passed in C.C.No.169 of 2020 dated 08.09.2005 by the learned Judicial Magistrate No.1, Kanchipuram, it reveals that the prosecution failed to prove its case “beyond reasonable doubt”. Therefore, the “benefit of doubt” goes in favour of the petitioner herein/accused. That apart, the acquittal of the criminal case will not be a bar for continuation of civil liability. In the scheme of Section 126 of the Electricity Act, 2003 deals with assessment of electricity charges payable by such person for unauthorized use of electricity, whereas Section 135 deals



W.P.No.1841 of 2021

WEB COPY

with the cases of theft of electricity. Therefore, when once the Board detects the case of unauthorized use of electricity by any consumer, in such event, the Board gets a cause of action to proceed as against such person under Section 126 or/and 135 of the Act. Therefore, both Sections 126 and 135 of the Act are independent in all respects and providing different kind(s) of liability and consequences, when once the monetary liability under Section 126 of the Act is involved, the other involves criminal liability under Section 135 of the Act, would not arise.

6. The issue involved in this case, was already dealt with by the Hon'ble Supreme Court of India in elaborate manner in the case of ***Maharashtra State Electricity Distribution Company Ltd., -vs- Appellate Authority and another***, reported in ***(2018) 3 SCC 608***, wherein the Apex Court held as follows:-

“17....

17. In these circumstances, if the Board initiates any action against any person/consumer, then such action must be brought to its logical end in accordance with the procedure prescribed under the



W.P.No.1841 of 2021

Act after affording an opportunity to such person/consumer.

18. In view of the foregoing discussion and subject to the observations, we find no merit in the appeals, which fail and are accordingly dismissed. As a consequence to the dismissal of the appeals, the authorities are directed to comply with the directions of the High Court and pass consequential order under [Section 126](#) of the Act in accordance with law in the case of consumers (respondents) within three months from the date of this order."

*15. The learned Advocate General has also referred to yet another judgment of the Hon'ble Supreme Court in the case of **Executive Engineer vs. Sri Seetaram Rice Mill**, reported in **(2012) 2 SCC 108**, wherein the scope of Sections 126 and 135 of the Act have been discussed in extenso and the relevant paragraphs runs thus:*

"25. [Section 135](#) of the 2003 Act falls under Part XIV relating to 'offences and penalties' and title of the Section is 'theft of electricity'. The Section



W.P.No.1841 of 2021

opens with the words 'whoever, dishonestly' does any or all of the acts specified under clauses (a) to (e) of Sub-section (1) of [Section 135](#) of the 2003 Act so as to abstract or consume or use electricity shall be punishable for imprisonment for a term which may extend to three years or with fine or with both. Besides imposition of punishment as specified under these provisions or the proviso thereto, Sub-section (1A) of [Section 135](#) of the 2003 Act provides that without prejudice to the provisions of the 2003 - Act, the licensee or supplier, as the case may be, through officer of rank authorized in this behalf by the appropriate commission, may immediately disconnect the supply of electricity and even take other measures enumerated under Sub-sections (2) to (4) of the said Section. The fine which may be imposed under [Section 135](#) of the 2003 Act is directly proportional to the number of convictions and is also dependent on the extent of load abstracted.

26. In contradistinction to these provisions, [Section 126](#) of the 2003 Act would be applicable to the cases where there is no theft of electricity but the



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W.P.No.1841 of 2021

electricity is being consumed in violation of the terms and conditions of supply leading to malpractices which may squarely fall within the expression 'unauthorized use of electricity'. This assessment/proceedings would commence with the inspection of the premises by an assessing officer and recording of a finding that such consumer is indulging in an 'authorized use of electricity'. Then the assessing officer shall provisionally assess, to the best of his judgment, the electricity charges payable by such consumer, as well as pass a provisional assessment order in terms of -[Section 126\(2\)](#) of the 2003 Act.

27. The officer is also under obligation to serve a notice in terms of [Section 126\(3\)](#) of the 2003 Act upon any such consumer requiring him to file his objections, if any, against the provisional assessment before a final order of assessment is passed within thirty days from the date of service of such order of provisional assessment. Thereafter, any person served with the order of provisional assessment may accept such assessment and deposit the amount with



W.P.No.1841 of 2021

the licensee within seven days of service of such provisional assessment order upon him or prefer an appeal against the resultant final order under [Section 127](#) of the 2003 Act. The order of assessment under [Section 126](#) and the period for which such order would be passed has to be in terms of Sub-sections (5) and (6) of [Section 126](#) of the 2003 Act. The Explanation to [Section 126](#) is of some significance, which we shall deal with shortly hereinafter. [Section 126](#) of the 2003 Act falls under Chapter XII and relates to investigation and enforcement and empowers the assessing officer to pass an order of assessment.

30. Therefore, there is a clear distinction between the cases that would fall under [Section 126](#) of the 2003 Act on the one hand and [Section 135](#) of the 2003 Act on the other. There is no commonality between them in law. They operate in different and distinct fields. The assessing officer has been vested with the powers to pass provisional and final order of assessment in cases of unauthorized use of electricity



W.P.No.1841 of 2021

and cases of consumption of electricity beyond contracted load will squarely fall under such power. The legislative intention is to cover the cases of malpractices and unauthorized use of electricity and then theft which is governed by the provisions of [Section 135](#) of the 2003 Act.

31. [Section 135](#) of the 2003 Act significantly uses the words 'whoever, dishonestly' does any of the listed actions so as to abstract or consume electricity would be punished in accordance with the provisions of the 2003 Act. 'Dishonesty' is a state of mind which has to be shown to exist before a person can be punished under the provisions of that Section.

36. Having dealt with the principle of interpretation of these provisions and the distinction between [Sections 126](#) and [135](#) of the 2003 Act, we shall now discuss the ambit and scope of [Section 126](#). The provisions of [Section 126](#) contemplate the following steps to be taken:

(i) An assessing officer is to conduct inspection of a place or premises and the equipments, gadgets, machines, devices found



WEB COPY



W.P.No.1841 of 2021

connected or used in such place.

(ii) The formation of a conclusion that such person has indulged in unauthorized use of electricity.

(iii) The assessing officer to provisionally assess, to the best of his judgment, the electricity charges payable by such person.

(iv) The order of provisional assessment to be served upon the person concerned in the manner prescribed, giving him an opportunity to file objections, if any, against the provisional assessment.

(v) The assessing officer has to afford a reasonable opportunity of being heard to such person and pass a final order of assessment within 30 days from the date of service of such order of provisional assessment.

(vi) The person, upon whom the provisional order of assessment is served, is at liberty to pay the said amount within seven days of the receipt of such order and where he files such objections, final order



WEB COPY



W.P.No.1841 of 2021

of assessment shall be passed, against which such person has a right of appeal under [Section 127](#) of the 2003 Act within the prescribed period of limitation.

Assessment and Computation

37. Wherever the assessing officer arrives at the conclusion that unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if such period cannot be ascertained, it shall be limited to a - period of 12 months immediately preceding the date of inspection and the assessment shall be made at the rate equal to twice the tariff applicable for the relevant category of service specified under these provisions. This computation has to be taken in terms of [Sections 126\(5\), 126\(6\) and 127](#) of the 2003 Act. The complete procedure is provided under these sections. Right from the initiation of the proceedings till preferring of an appeal against the final order of assessment and termination thereof, as such, it is a complete code in itself.



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W.P.No.1841 of 2021

38. We have already indicated that the provisions of [Section 126](#) do not attract the principles of Criminal Jurisprudence including mens rea. These provisions primarily relate to unauthorized use of electricity and the charges which would be payable in terms thereof. To determine the controversy in the present case, it will be essential to examine the implication of the expression 'unauthorised use of electricity' as contained in Explanation (b) of [Section 126](#) of the 2003 Act.

39. In order to explain these expressions, it will be necessary for us to refer to certain other provisions and the Regulations-as well. These expressions have to be understood and given meaning with reference to their background and are incapable of being fairly understood, if examined in isolation. It is always appropriate to examine the words of a statute in their correct perspective and with reference to relevant statutory provisions. The expression 'unauthorized use of electricity' on its plain reading means use of electricity in a manner



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W.P.No.1841 of 2021

not authorized by the licensee of the Board.

'Authorization' refers to the permission of the licensee to use of electricity', subject to the terms and conditions for such use and the law governing the subject.

41. The "unauthorized use of electricity" means the usage of electricity by the means and for the reasons stated in sub- clauses (i) to (v) of clause (b) of Explanation to [Section 126](#) of the 2003 Act. Some of the illustratively stated circumstances of 'unauthorised use' in the section cannot be construed as exhaustive. The 'unauthorized use of electricity' would mean what is stated under that Explanation, as well as such other unauthorized user, which is squarely in violation of the above-mentioned statutory or contractual provisions."

7. Therefore, though the criminal case ended in acquittal, it will not absolve the petitioner herein from the civil liability with regards to payments of dues under the Electricity Act for the alleged illegal consumption of energy, that too, by way of theft. The purpose of trial under



W.P.No.1841 of 2021

Section 39 of the Indian Electricity Act is to punish and sentence a person imposing punishment, who is alleged to have committed the offence(s). The trial of an accused in a criminal case can have no bearing in the matter of assessment made in accordance with the tariff of the value of the electricity, dishonestly abstracted or consumed. Further, in order to convict he accused in the criminal case, the prosecution ought to have proved the charge “beyond reasonable doubt”. whereas, the civil liability is only a preponderance of probabilities and both the criminal liability and civil liability are completely different from each other.

8. In view of the above discussion, this Court finds no infirmity or illegality in the impugned order passed by the first respondent and the Writ Petition is devoid of merits and it is liable to be dismissed. Accordingly, this Writ Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

09.07.2024

Index: Yes/No
Neutral Citation: Yes/No



W.P.No.1841 of 2021

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WEB COPY

To

1. The Superintending Engineer,
Kancheepuram Electricity Distribution Circle,
Anna Maaligai, Olimohamedpet,
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WEB COPY



W.P.No.1841 of 2021

G.K.ILANTHIRAIYAN, J.

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W.P.No.1841 of 2021

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