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W.P.No.3413 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.03.2024

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.No.3413 of 2021

and

W.M.P.Nos.3899, 3900 & 4205 of 2021

P.Ramamoorthi
S/o K.Palanisamy

... Petitioner

vs.

1. The Superintending Engineer,
Tamil Nadu General and Distribution Corporation Limited,
Tatabad,
Coimbatore.
2. The Executive Engineer/ Appellate Authority,
Tamil Nadu Generation and Distribution Corporation limited,
Operation and Maintenance,
Somanur,
Coimbatore District.
3. The Assistant executive Engineer,
Tamil Nadu General and Distribution Corporation Limited,
CEDC/ South,
Mangalam,
Tiruppur.
4. The Assistant Accounts Officer,
Tamil Nadu Generation and Distribution Corporation Limited ,
Somanur - 641 668,
Coimbatore District.
5. The Assistant Engineer,
110/11, Sub Station,



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Tamil Nadu Generation and Distribution Corporation Limited,
Kovai Distribution Circle/ South,
Vanjipalayam - 641 663

..Respondents.

Prayer in W.P. : Writ Petition filed under Article 226 of the Constitution to issue a Writ of Ceritiorari to call for the records of the order dated 28.07.2020 in proceedings number Lr.No.EE./ O&M/Somanur/AAO/RB/F.SC.No.964/D.No.1529 on the file of the 2nd respondent and quash the same.

For Petitioner : Mr.K.Myilsamy

For Respondents : Mr.Vijayamehanathan,
Standing Counsel for TANGEDCO

ORDER

This Writ Petition has been filed challenging the order dated 28.07.2020 passed by the 2nd respondent, by which, the appeal filed against Section 3(1) Notice under TNEB Revenue Recovery and Recovery of Dues (RR & RD) act, 1978, was dismissed.

2. The brief facts of the case of the petitioner are as follows:

(i) The petitioner is the owner of agricultural land measuring to an extent of one acre comprised in S.No.494/4 situated at Samanthankottia, Pudhupalayam Village, Vanjipalayam Tiruppur. The petitioner obtained free agricultural electricity service connection from the respondent for drawing bore well water.

(ii) According to the petitioner, the respondents conducted



inspection without issuing any notice. First information report was registered against the petitioner in Crime No.1434 of 2012 for the unauthorised use of free electricity service connection. The respondent, without even issuing any provisional assessment order had passed final order and directed the petitioner to pay a sum of Rs.5,75,450/-. The final order was challenged by the petitioner before this Court in W.P.No.1524 of 2013 . This Court held that the theft of energy cannot be adjudicated because of complex of facts and directed the respondent to calculate the entire assessment in accordance with law.

(iii) The petitioner filed CMP.No.1140 of 2018 on the file of Principal District Judge at Tiruppur for closure of FIR. On hearing all the parties, the said petition was allowed, closing the FIR. Thus, it shows that the petitioner has not committed any offence as alleged by the respondent. The respondent issued notice under the TNEB (Recovery of Dues) Act. Challenging the same , the petitioner filed an appeal before the respondents.

(iv) In the meanwhile, the petitioner purchased another piece of land and building admeasuring to 2.40 acres and cents comprised in Survey No.655/2, Sub Division No.655/2A situated to Pudupalayam Village, Avanashi Taluk, Tiruppur District from one M/s. Sri Lakshmi

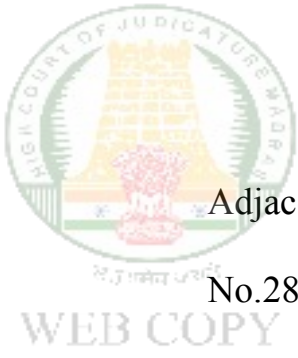


Ventures" vide registered sale deed dated 09.12.2019. The petitioner applied for electricity connection for his newly purchased property. It was rejected citing the above reasons.

(v) Challenging the same, the petitioner filed writ petition before this Court in W.P.No.5671/2020 and the same was disposed of with a finding that the petitioner has to obtain stay order of appeal or the petitioner has to furnish bank guarantee. On fulfilment of any one of the conditions, the 5th respondents are directed to grant EB connection to the newly purchased property of the petitioner. Therefore, the petitioner filed stay petition before the 2nd respondent and the same was dismissed without any valid reason. The petitioner filed W.P.No.11278 of 2020 before this Court, in which, notice was ordered and pending till date. In the meanwhile, the 2nd respondent dismissed the appeal. Thus, the present writ petition has been filed challenging the appeal.

3. Heard the learned counsel for the petitioner, the learned Standing Counsel for the respondent Electricity Board and perused the materials available on record.

4. It is seen from the records that initially, electricity service connection was effected to the petitioner's land in S.F.No.494/4 Pudhupalayam Village in Tariff IV under free Agricultural category.



Adjacent to the above service connection, another service connection No.283 001 1377 under Commercial Tariff V was effected to the petitioner's father viz.,K.Palanisamy and the said connection was disconnected for non-payment of CC charges. On 16.11.2012, service connection were inspected in the presence of the petitioner's father K.Palanisamy and it was found that through the free agricultural service connection, water was extracted from the borewell and this water was taken through PVC pipe to the length of 70 feet and stored in another tank. Thus, water was stored illegally in the reconnected, disconnected service connection No.283 001 1377 and sold with the help of Tanker lorry No.TN40 X 0885 of M/s. Kavitha Tankers.

5. In view of the above, Provisional assessment notice on theft dated 16.11.2012 was issued to the petitioner by the respondent. The petitioner also filed his reply and also attended the personal hearing on 13.12.2012. On detailed examination, theft of energy was confirmed and a final assessment was made imposing a sum of Rs.5,75,450/- and the same was demanded vide letter dated 31.12.2012. On failure to pay the compounding fees, FIR was filed in Crime No.1434 of 2021 on the file of Anupparpalayam Police Station, Tiruppur District.

6. Challenging the demand notice, the petitioner filed a writ



petition in W.P.No.1524/29013, in which, interim stay was granted on condition that the petitioner shall pay 50% of the impugned demand within 2 weeks. However, the petitioner filed an appeal in W.A.No.210 of 2013 and the same was withdrawn by him. Therefore, on such withdrawal, the petitioner had to pay 50% of the impugned demand, but the petitioner had not complied with the same.

7. The writ petition filed by the petitioner's father K.Palanisamy in W.P.No.1523 of 2013 and the W.P.No.1524 of 2013 filed by the petitioner, both were dismissed by this Court on 06.09.2018. Thus, this Court has upheld the impugned order of assessment of theft of electricity. Further, this Court has noted that the petitioner was present and submitted his defense statement and opportunity of hearing was given to him and there is no violation of principles of natural justice. Even in Form 91 of the FIR, it is noted that theft has been witnessed by the VAO and his Assistant and the petitioner's father K.Palanisamy had also signed the *Parvai* Mahazar.

8. As far as the contention of the petitioner that the criminal case has been closed and he and his father had never committed theft of electricity is concerned, in the order passed by the learned Principal District Judge, Tiruppur in C.M.P.No.1140 /2018 it is observed at



paragraph No.10 that *"the offence under section 3(1) of TNPPDL Act was particularly included without any averments or documents. There is no averments to show that the petitioners have committed the offence u/s 425 IPC and 3(1) of TNPPDL Act"*. It was also further observed that *"the final report for the offence under section 135(1)(e) and 138(1)(b) of the Electricity Act, 2003 has not been filed within the period of limitation and in order to save the period of limitation, the offence under section 3(1) of TNPPDL Act was included without any prima facie which is not legally maintainable"*. Therefore, it is seen that the petitioner and his father were released from the charges under section 425 IPC and 3(1) of TNPPDL Act and not from the charges u/s 135(1)(e) and 138(d) of the Electricity Act. In respect of the said charges, the final report has not been filed within the time and therefore, barred by limitation and thus, the FIR has been ordered to be closed on technicality rather than on merits. Therefore, it cannot be stated that there is no theft of electricity and a false case was foisted against the petitioner.

9. Further, as per Regulation 27(3), the Licensee will refuse to supply electricity to an intending consumer who had defaulted payment of dues to the licensee in respect of any other service connections in his name. Thus, notice under Section 3(1) was issued and the same is in



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order which need not be interfered with.

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10. In view of the above discussion, this Court finds no infirmity in the order dated 28.07.2020 passed by the appellate authority dismissing the appeal. Accordingly, the Writ Petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index :yes/No
Speaking /Non speaking order
vsi

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