



WEB COPY



W.P.No.28753 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2024

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.28753 of 2022

and

W.M.P.Nos.28040 of 2022 & 17418 of 2023

K.M.Vishnu Vardhan

.... Petitioner

Vs

1. The Chairman,
TANGEDCO/TNEB,
No.144, 10th Floor,
Anna Salai, Chennai.

2. The Assistant Engineer (O & M),
TANGEDCO,
CEDC/South, K.K.Nagar,
S.S.Complex,
Anna Main Road, Chennai – 78

.... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari, calling for the records of the second respondent in Letter No.AE/OM/KKN/K:229-025-1082/D/2022 dated 04.08.2022 and quash the same as illegal, arbitrary and untenable under law and against the provisions of the Tamil Nadu Electricity Supply Code, 2004.



WEB COPY



W.P.No.28753 of 2022

For Petitioner : Mr.M.Velmurugan
for Ramesh Venkatachalapathy
For Respondents : Mr.L.Jai Venkatesh
Standing Counsel

ORDER

This Writ Petition has been filed challenging the order passed by the second respondent dated 04.08.2022, thereby ordering to pay the balance amount with belated payment surcharges.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The property, comprised in S.F.No. (new) 5/1, S.F.No.(old) 114/1, Thiruvallur Salai, 1st Street, Nesapakkam, Chennai, was owned by one K.Ravichandran. In which, he obtained electricity service connection in S.C.No.230-025-410 under Tariff V utilised for a bakery in the name and style of Sri Ragavendra Bakery. While being so, on 26.04.2001, an inspection was conducted by Anti Power Theft Squad and found that there was electricity theft in the said electricity service connection, thereby assessed the loss to the tune of Rs.8,01,983/-. Immediately, a demand notice was served to the said K.Ravichandran and also directed to pay the penal charges along with the monthly



W.P.No.28753 of 2022

consumption charges for the month of April 2004.

WEB COPY

4. Aggrieved by the same, the said K.Ravichandran filed a writ petition before this Court in W.P.No.13735 of 2004 and this Court granted interim stay on condition that he has to pay a sum of Rs.1,00,000/-. Accordingly, the said K.Ravichandran had paid a sum of Rs.1,00,000/-. While being so, suppressing the said fact, the said K.Ravichandran had sold the entire property in favour of the petitioner by a registered sale deed dated 30.05.2008. Subsequently, the writ petition was also dismissed as withdrawn by an order dated 26.06.2004. Thereafter, fresh demand notice was issued to the petitioner, viz., subsequent purchaser, thereby directed the petitioner to pay a sum of Rs.7,01,963/-, after deducting a sum of Rs.1,00,000/- already paid by the erstwhile owner. Thereafter, the petitioner was also served with a demand notice, thereby demanded to pay a sum of Rs.7,01,963/- along with belated payment surcharge of Rs.22,74,360/-. The petitioner was given facility to pay the said amount. Accordingly, the petitioner also paid a sum of Rs.2,99,033/ as first installment on 30.09.2019.

5. In the meantime, the petitioner also sold the property to



W.P.No.28753 of 2022

one E.Vishal. The subsequent purchaser, viz. E.Vishal, applied for temporary service connection and the same was rejected by the respondents on the ground of outstanding arrears. Therefore, the said E.Vishal filed a writ petition before this Court in W.P.No.28078 of 2021. This Court, by an order dated 17.06.2022, directed the respondents to give an opportunity of hearing and pass orders. Thereafter, an enquiry was conducted on 08.07.2022 and the order has been passed on 25.07.2022, thereby directed to pay the outstanding amount with interest.

6. The learned counsel appearing for the petitioner would submit that the petitioner is not liable to pay the belated payment surcharge for the theft of electricity energy by the erstwhile owner. The petitioner was served with a demand notice only on 31.08.2018. That apart, the amount assessed for theft of energy is to the tune of Rs.8,01,983- and insofar as the belated payment charges is concerned, the petitioner is not liable to pay the same.

7. A perusal of the counter filed by the second respondent and the submissions made by the learned Standing Counsel appearing for the respondents revealed that as per Section 17(8)(b), the authorised



W.P.No.28753 of 2022

office of the licensee may permit such applicant to pay the outstanding dues in installments and to avail the service on payment of 40% of the total arrears outstanding including the belated payment surcharges in addition to the charges for connections or effecting new service connections. The balance 60% of the outstanding dues shall be collected in ten monthly installments. Therefore, the petitioner was served with demand notice to pay the belated payment surcharges.

8. The learned counsel appearing for the petitioner relied upon the Judgment of this Court in ***W.A.No.719 of 2014, dated 27.01.2015***, in the case of ***The Assistant Engineer Vs. Sabasthi Ammal***, in which, the Hon'ble Division Bench of this Court held that the demand/claim made by the Electricity Department claiming the amount towards theft of electricity charges as penalty from the petitioner is clearly unsustainable in the eye of law. Therefore, the petitioner is not liable to pay the belated payment surcharges, since, the petitioner was served with notice only on 31.08.2018. Though the petitioner purchased the subject property on 30.05.2008, the petitioner was never informed about the belated payment of surcharges by the erstwhile owner of the premises.

9. In fact, on the fresh demand notice, the petitioner paid the



W.P.No.28753 of 2022

first installment to the tune of Rs.2,99,033/-. Thereafter, in the interim order passed by this Court in the present writ petition, the petitioner had paid the entire amount as assessed by the respondents for the electricity theft, i.e., a sum of Rs.8,01,963/-. Insofar as the belated payment surcharges is concerned, the petitioner is not liable to pay the said amount, since he was informed only on 31.08.2018. It is also seen that the erstwhile owner filed writ petition before this Court challenging the demand in W.P.No.13735 of 2004 which was pending till 26.06.2018. Only on that day, the said K.Ravichandran had withdrawn the said writ petition. Subsequently, the petitioner, being the new purchaser of the subject property, was served with a demand notice on 31.08.2018. Therefore, the impugned demand raised by the second respondent dated 04.08.2022 cannot be sustained and it is liable to be quashed.

10. In view of the above, the impugned demand notice dated 04.08.2022 in Lr.No.AE/OM/KKN/E:229-025-1082/D/2022, is hereby quashed. The respondents are at liberty to proceed as against the said K.Ravichandran, viz., erstwhile owner, to recover the belated payment surcharges in the manner known to law. It is also noticed that the said K.Ravichadran is facing criminal prosecution for theft of electricity



W.P.No.28753 of 2022

energy.

WEB COPY

11. In the result, this writ petition stands allowed.

Consequently, connected miscellaneous petitions are closed. No costs.

13.06.2024

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

To

1. The Chairman,
TANGEDCO/TNEB,
No.144, 10th Floor,
Anna Salai, Chennai.

2. The Assistant Engineer (O & M),
TANGEDCO,
CEDC/South, K.K.Nagar,
S.S.Complex,
Anna Main Road, Chennai – 78



WEB COPY



W.P.No.28753 of 2022

G.K.ILANTHIRAIYAN, J.

Lpp

W.P.No.28753 of 2022

13.06.2024