



W.A.(MD) No.878 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.07.2024

CORAM

JUSTICE N. SESHASAYEE

and

JUSTICE P.VADAMALAI

W.A.(MD) No.878 of 2020

and

C.M.P.(MD) No.4818 of 2020

1.The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited,
Dindigul District, Dindigul.

2.The Executive Engineer,
North Division,
Tamil Nadu Generation and Distribution
Corporation Ltd,
Dindigul District, Dindigul.

3.The Assistant Executive Engineer,
North Division,
Tamil Nadu Generation and Distribution
Corporation Limited,
Dindigul District, Dindigul.



W.A.(MD) No.878 of 2020

WEB COPY

4. The Assistant Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited,
N.G.O. Colony, Dindigul District, Dindigul

... Appellants/
Respondents

Vs.

S.Vijayalakshmi

... Respondent/
Writ Petitioner

Prayer: Appeal filed under Clause 15 of Letters Patent against the order dated 04.08.2020 passed in W.P.(MD) No.5511 of 2020 on the file of this Court.

For Appellants : Mr.S.Deenadhayalan
Standing Counsel

For Respondent : Mrs.S.Devasena

JUDGMENT

(Judgment of the Court was delivered by N.Seshasayee, J.)

This writ appeal is preferred challenging an order of a learned Single Judge of this Court dated 04.08.2020 in W.P.(MD) No.5511 of 2020.



W.A.(MD) No.878 of 2020

2. The facts are that:

- a) The respondent's husband Sagadevan was running an industrial unit in plastic products. While so, on 09.02.2000, the authorities of the Anti Prevention Theft Squad of the erstwhile Tamil Nadu Electricity Board (TNEB) made a surprise inspection to the industrial unit of Sagadevan and they deducted theft of electricity whose value was later assessed at Rs.24,85,469/-. This order of assessment was served Sagadhevan on 10.04.2000.
- b) TNEB would now initiate two separate proceedings. The first one is a criminal case, which had been laid against Sagadevan and his son, and that ultimately came to be taken cognizance of by the Sessions Court, Dindigul in S.C.No.3/2009. It may be stated that this case ended in acquittal. On the civil side, TNEB instituted was O.S.No.321 of 2000 for recovery of the assessed sum of Rs.24,85,469/- plus interest thereon. This suit was laid before the Additional District Court (FTC), Dindigul, and it was later taken on record by the Principal District Court, Dindigul, in O.S.No.23 of 2005. And this suit came to be dismissed on



W.A.(MD) No.878 of 2020

WEB COPY

31.03.2009, but with a direction to TNEB to initiate fresh proceedings for recovery of the said sum, since the earlier notice issued on the consumer was found to be defective.

c) In the meantime, the consumer himself laid O.S.No.224 of 2000 before the Additional District Munsif Court, Dindigul. This suit came to be laid under the circumstances where TNEB disconnected its power supply to the industrial unit where theft of electricity was deducted. This suit came to be dismissed by the trial Court on 18.03.2004 and the consumer concerned challenged this decree in A.S.No.338 of 2004. And the consumer tasted a dismissal of the suit yet another time before the appellate Court *vide* its decree dated 10.02.2010.

3. It may have to be now stated that in between, the Electricity Act, 2003 came into force and it replaced Tamil Nadu Electricity Board, and Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) came into existence. Now after the conclusion of the various civil litigations between the parties, Sagadevan was served with a notice under Regulation



W.A.(MD) No.878 of 2020

17(8) of the Tamil Nadu Electricity Supply Code purportedly on 23.01.2020 to show cause why the amount of Rs.23,85,469/- should not be added to the other service connections of Sagadevan. Sagadevan appeared for the enquiry and showed cause, but died very shortly thereafter. It is in this backdrop, TANGEDCO passed its final orders on 15.02.2020 directing the payment of the sum due, failing which the other four connections of the consumer would be added. The subtle indication this notice provided was that *“if in case you do not pay the sum due of one connection, all the other four service connections which the consumer had will also be disconnected”*.

4. Promptly widow of Sagadevan moved this Court in W.P.(MD) No.5511 of 2020 challenging the said proceedings of the TANGEDCO. This petition was allowed by the learned Single Judge, and he set aside the impugned proceedings of the TANGEDCO dated 15.02.2020. The line of reasoning of the learned Single Judge was that after about twenty years the claim became stale. TANGEDCO now challenges this order of the learned Single Judge in this appeal.



W.A.(MD) No.878 of 2020

WEB COPY

5. Heard both sides. The learned Standing Counsel for the appellants valiantly submitted that the sum in question is due to public exchequer and it represents the value of the electricity stolen. He emphasis, at no time, the consumer challenged the correctness of the amount assessed. And the claim can never be considered as a stale claim, since Section 185 of the Electricity Act saves the other Act either done or purported to have been done under the old Act.

6. The effort the learned Standing Counsel for the appellants notwithstanding this Court may have to record that it carried little conviction to persuade this Court to differ from the learned Single Judge. Section 56(2) of the Electricity Act, 2003 stipulates only two years period for recovery of any sum due payable. It is relevant to extract Sec. 56 of the Electricity Act, and it reads as below:

“Section 56. (Disconnection of supply in default of payment): -- (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for



WEB COPY



W.A.(MD) No.878 of 2020

electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -

- (a) an amount equal to the sum claimed from him, or*
- b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.*



W.A.(MD) No.878 of 2020

WEB COPY

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity”

7. This Court is informed that prior to the Electricity Act, 2003, the same period of limitation was prescribed under the terms and conditions of service, which is more in the nature of statutory contract. Turning to facts, after the disposal of O.S.No.23 of 2005, TANGEDCO has not chosen to raise a fresh demand on the consumer. Indeed, when the competent Court has declined to treat the earlier demand made by the then TNEB (which provided the cause of action for instituting O.S.No.23 of 2005), as sustainable, TANGEDCO has to cover lot of distance in convincing this Court that at all has made a claim to ascertain when the amount has become first due.



W.A.(MD) No.878 of 2020

WEB COPY

8. In *Prem Cottex Vs Uttar Haryana Bijili Vitran Nigam Ltd., & Others* [(2021) 20 SCC 200], it has been held that electricity charges would become '*first due*' only after the bill is issued, even though the liability would have arisen on consumption, and that the period of limitation of two years would commence from the date on which the electricity charges become first due under Sec.56(2) of the Act. In this case, even though a demand indeed had been made prior to the institution of O.S.No.23 of 2005, inasmuch as the same has not been countenanced by the Civil Court, then it has to be construed that no demand has yet been made. And till date no demand has been made.

9. The point here is how long that demand can be kept alive. Can it be kept alive for 20 years since the date the amount was found payable? It is precisely for this reason, the learned Single Judge has considered that the claim has become a stale claim due to the plain inaction of the TANGEDCO. And it must be said that 'inaction' is a milder expression and hibernation would be the most appropriate expression to describe the state of affairs.



W.A.(MD) No.878 of 2020

10. In *Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited and another Vs. Rahamathullah Khan @ Rahamjulla* [(2020) 4 SCC 650], the Hon'ble Supreme Court has held that the true import of Sec. 56(2) is that it does not preclude the distribution licensee (which in this case is TANGEDCO) from raising supplementary demand after the expiry of limitation period, but the only embargo is that it shall not disconnect electricity service.

11. Now what is before this Court is not any fresh demand, but using a demand which is not made yet for invoking Regulation 17(8) of the Tamil Nadu Electricity Supply Code. To repeat, till date, TANGEDCO has not made any fresh demand subsequent to the dismissal of O.S.No.23 of 2005 on 31.03.2009, but still wants to use it to fuel its purported action under Regulation 17(8) and merely because TANGEDCO wants to pursue its claim at its convenience without any reference to reasonableness of the time within which it could so recovered, the same does not augur well for rule of fairness to initiate its action.



W.A.(MD) No.878 of 2020

12. To end, this Court does not find any reason to interfere with the order of the learned Single Judge and this Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(N.S.S., J.) (P.V.M., J.)
12.07.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes

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WEB COPY



W.A.(MD) No.878 of 2020

N. SESHASAYEE, J.
and
P.VADAMALAI, J.

ABR

W.A.(MD) No.878 of 2020

12.07.2024