



WP(MD)No.13108 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 28.11.2023

DELIVERED ON : 12.03.2024

CORAM:

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

WP(MD)No.13108 of 2014
and
MP(MD)No.1 of 2014

S.Muthiah

: Petitioner

Vs.

- 1.The Tamil Nadu Generation and
Distribution Corporation (TANGEDCO),
Rep. by its Chairman,
144, Annasalai, Chennai – 600 002.
- 2.The Superintending Engineer,
Madurai Electricity Distribution Circle (MEDC),
TANGEDCO, Madurai – 625 007.
- 3.The Executive Engineer,
Operation and Maintenance, MEDC,
TANGEDCO, Usilampatti,
Madurai District.
- 4.The Assistant Engineer,
Rural West, MEDC, TANGEDCO,
Usilampatty (TK), Madurai District.

: Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari calling for the records relating to the impugned letter in No.Mae Pa Po/Ma Me Pa Va/Ma Thu/Thu Ne Ka/Oo Me Aa/Me Ee No.127/Aa No.163/2014 dated 22.07.2014 issued by the second respondent directing the petitioner to pay a sum of Rs. 1,80,82,175.13/- towards arrears of electricity consumption charges under an erstwhile High Tension Electricity Service Connection under HT SC No. 127 and quash the same.

For Petitioner : Mr.Issac Mohanlal,
Senior Counsel
Assisted by
Mr.T.Cibi Chakaraborthy

For Respondents: Mr.S.Deenadhayalan

ORDER

The petitioner has purchased the subject property in SF.No.214/1, measuring an extent of 1.87 Acres, through public auction conducted by Tamilnad Mercantile Bank, on 05.12.2008. The property was previously owned by one M/s.Usilai Thiru Karpaga Vinayagar Cotton Spinning Mills (P) Ltd. They had availed loan for a sum of Rs.1,28,44,606.79/- from



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Tamilnad Mercantile Bank, by mortgaging the subject property. The Company committed default in payment and the Bank, by invoking the provisions under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, brought the property for auction. The auction was conducted on 05.12.2008 and the petitioner was selected as the successful bidder.

2. According to the petitioner, after the purchase, he applied for electricity service connection and a LT service connection was granted to his premises on 21.04.2009 vide LT SC.No.551. He is also regularly paying the monthly bill. While so, the second respondent, by the impugned communication dated 22.07.2014, has stated that there was an old electricity service connection in the property in HT SC.No.127, which was disconnected on 30.04.2001. The erstwhile owner of the property had a due of Rs.1,80,82,175.13/- in this service connection and the petitioner was directed to remit the same. Aggrieved over the same, the petitioner has filed this writ petition.



3.Learned Senior Counsel for the petitioner submitted that the petitioner has purchased this property through public auction free from all encumbrances. There is no encumbrance such as any previous electricity dues. Even according to the respondents, the earlier service connection in HT SC.No.127 was disconnected for default of CC charges on 30.04.2001. The petitioner purchased the property through auction on 05.12.2008. After purchasing the property, the petitioner applied and obtained a service connection in LT SC.No.551 on 21.04.2009. All along, he is regularly paying the monthly bill. While so, after five years, the impugned communication has been slapped in the year 2014 on the petitioner directing him to remit a hefty sum of Rs.1,80,82,175.13/-, being the dues of the erstwhile owner.

4.Learned Counsel for the respondents, on instructions, submitted that the erstwhile owner defaulted in payment of charges from September, 1997 till April, 2001, stating that the meter reading is incorrect. In this regard, the erstwhile owner filed a suit in O.S.No.139 of 1997 before the District Munsif Court, Usilampatti, wherein, an order of interim injunction was granted in favour of the then owner. The previous owner has filed yet



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another suit in O.S.No.60 of 2001 before the District Munsif Court, Usilampatti, challenging the demand notice. Both the suits were decreed in favour of the previous owner. Challenging the same, the Department has preferred appeals in A.S.Nos.119 & 120 of 2003 before the Sub Court, Madurai. The learned Appellate Judge, by judgment dated 12.12.2007 & 21.10.2009, allowed both the appeals and set aside the decree granted by the trial Court.

5.He further submitted that the petitioner has applied for reconnection on 08.12.2008. As on that date, since a decree was in operation as against the respondents, they have granted the service connection without insisting on the arrears amount. Later the judgment came to be passed in the appeal in favour of the Department. Hence, they have made the impugned demand as against the present owner of the property.

6.By referring the Regulation 17(9)(a) of the Tamil Nadu Electricity Supply Code, the learned Counsel submitted that if the service connections have been disconnected / dismantled for defaults in payment of dues, the



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application for fresh connection / re-connection by other persons who purchased the premises by purchase / transfer / lease, would be considered and service connection would be effected after payment of dues attributed to such premises. He has also relied on the decision of the Hon'ble Supreme Court in *Telangana State Southern Power Distribution Company Ltd v. Srigdhaa Beverages* [(2020) 6 SCC 404] and the order of this Court in *M/s.Virgin Manufacturing Industries Pvt Ltd v. Chairman and Managing Director of Tamil Nadu Generation and Distribution Corporation Ltd and Another* [WP.No.13672 of 2020, dated 29.06.2021].

7.This Court considered the rival submissions made on either side and perused the materials placed on record.

8.Regulation 17(9)(a) of the Tamil Nadu Electricity Supply Code enables the respondents for collection of dues before effecting re-connection or new service connection attributed to such premises. The issue was already decided by the Hon'ble Supreme Court in *Srigdhaa Beverage's* case (supra) in the following terms:-



“16.1. That electricity dues, where they are statutory in character under the Electricity Act and as per the terms and conditions of supply, cannot be waived in view of the provisions of the Act itself, more specifically Section 56 of the Electricity Act, 2003 (in pari materia with Section 24 of the Electricity Act, 1910) and cannot partake the character of dues of purely contractual nature.

16.2. Whereas in cases of the e-auction notice in question, the question of electricity dues, whether quantified or not, has been specifically mentioned as a liability of the purchaser and the sale is on “as is where is, whatever there is and without recourse basis”, there can be no doubt that the liability to pay electricity dues exists on the respondent (purchaser).”

9. Following this ratio, I have dismissed a similar writ petition in **M/s. Virgin Manufacturing Industries Pvt Ltd**'s case (supra), by observing as follows:-

“27. Admittedly, in this case, there exists a statutory rule namely, Clause 17(9) of Tamil Nadu Electricity Supply Code, 2004, which authorises the Board to refuse to supply electricity to an intending consumer in case of services which have been disconnected / dismantled for defaults in payment of dues and if the services are to be availed by other parties in the same premises either by purchase or transfer or in



auction or on lease basis, the services will be effected only on clearance of the dues attributed to such premises by the applicant / intending consumer. That apart, in the sale notice for the E-auction, it is specifically mentioned that the sale will be on "As is where is", "As is what is" and "Whatever there is".

28. Therefore, the decision in Isha Marbles's case (supra) would not apply to be present case on hand and in view of the other decisions (discussed supra), this Court is of the view that the respondent Board is well within its right to demand the arrears due of the erstwhile owner from the petitioner / auction purchaser."

10.The Hon'ble Supreme Court, in a recent decision in ***K.C.Ninan v. Kerala State Electricity Board and Others*** [2023 SCC OnLine SC 663] has held that the auction purchasers would be liable to pay the outstanding dues of the previous consumer. The relevant portions from the said decision are extracted as under:-

"339. This Court must bear in mind the element of public interest in balancing the equities, particularly, at this stage where more than two decades have passed in litigation since the issue first arose. The 2003 Act was enacted to promote the development of the electricity industry, while protecting the interest of consumers. It must be kept in mind that



many of the auction-purchasers are commercial entities who had purchased the premises for commercial ventures. Electricity being a necessity for operation of any commercial venture, denial of electricity connections to the auction-purchasers for an indefinite period of time resulted in loss of business. The delay in the court proceedings should not be to the further detriment of the litigants.

340. Taking all facts and circumstances into consideration, including the lapse of more than two decades since the appeals were filed before this Court and the equities arising in favour of one party or the other, we direct the Electric Utilities to waive the outstanding interest accrued on the principal dues from the date of application for supply of electricity by the auction purchasers.

I. Conclusions

341. The conclusions are summarised below:

a. The duty to supply electricity under Section 43 of the 2003 Act is not absolute, and is subject to the such charges and compliances stipulated by the Electric Utilities as part of the application for supply of electricity;

b. The duty to supply electricity under Section 43 is with respect to the owner or occupier of the premises. The 2003 Act contemplates a synergy between the consumer and premises. Under Section 43, when electricity is supplied, the owner or occupier becomes a consumer only with respect to those particular premises for which electricity is sought and provided by the Electric



Utilities;

c. For an application to be considered as a 'reconnection', the applicant has to seek supply of electricity with respect to the same premises for which electricity was already provided. Even if the consumer is the same, but the premises are different, it will be considered as a fresh connection and not a reconnection;

d. A condition of supply enacted under Section 49 of the 1948 Act requiring the new owner of the premises to clear the electricity arrears of the previous owner as a precondition to availing electricity supply will have a statutory character;

e. The scope of the regulatory powers of the State Commission under Section 50 of the 2003 Act is wide enough to stipulate conditions for recovery of electricity arrears of previous owners from new or subsequent owners;

f. The Electricity Supply Code providing for recoupment of electricity dues of a previous consumer from a new owner have a reasonable nexus with the objects of the 2003 Act;

g. The rule making power contained under Section 181 read with Section 50 of the 2003 Act is wide enough to enable the regulatory commission to provide for a statutory charge in the absence of a provision in the plenary statute providing for creation of such a charge;

h. The power to initiate recovery proceedings by filing a suit against the defaulting consumer is independent of the power to



disconnect electrical supply as a means of recovery under Section 56 of the 2003 Act;

i. The implication of the expression "as is where is" basis is that every intending bidder is put on notice that the seller does not undertake responsibility in respect of the property offered for sale with regard to any liability for the payment of dues, like service charges, electricity dues for power connection, and taxes of the local authorities; and

j. In the exercise of the jurisdiction under Article [142](#) of the [Constitution](#), the Electric Utilities have been directed in the facts of cases before us to waive the outstanding interest accrued on the principal dues from the date of application for supply of electricity by the auction purchasers."

11.To be noted, the petitioner has purchased the property through auction on 'As is what is' basis. Therefore, in view of the settled position of law, this Court is not inclined to interfere with the right of the Department in making the demand.

12.It appears that the Tamilnad Mercantile Bank has replied to the respondents / Board that subject property fetched a sum of Rs.43 Lakh in



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the public auction, as against the loan amount of Rs.1.78 Crore. In fact, during the course of arguments, the petitioner's Counsel prayed for indulgence that the Electricity Board has demanded a sum of Rs.1.80 Crore as arrears, for a property which has a value of around Rs.23 Lakh. That apart, the fact remains that litigations were pending as regards the demand. Therefore, this Court is inclined to waive the outstanding interest accrued on the principal dues.

Accordingly, this writ petition is disposed of with a direction to the respondents to collect the outstanding amount without insisting on any interest / penalty. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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