



W.P.(MD) No.19894 of 2015

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	DELIVERED ON
12.11.2024	19.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE **K.KUMARESH BABU**

W.P.(MD) No.19894 of 2015
and M.P.(MD).No.1 of 2015

J.S.K.Godhawari

... Petitioner

/vs./

1.The Tamil Nadu Generation & Distribution,
Corporation Limited,
Madurai Electricity Distribution Circle,
Rep., by its Superintending Engineer,
Race Course Road,
Madurai – 625 002.

2.The Assistant Engineer,
The Generation & Distribution Corpn., Ltd.,
Distribution/Villapuram,
Madurai – 625 011.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 14.10.2015 in reference number உ.மி.பொ/ப/விலல்லா/கோ.தணிக்கை/அ.எண்,456/15 passed by the second respondent and quash the same and consequentially, forbearing the respondents from demanding the liability of the erstwhile tenant, Muniasamy in the service



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connection number 055-013-984 from the petitioner by including the same in the monthly electricity consumption charges in the electricity service connection number 066-005-1222 standing in the name of the petitioner.

For Petitioner : Mr.J.Barathan

For Respondents : Mr.Deenadhayalan
Standing counsel for RR1-R2

ORDER

The challenge in the Writ Petition is to an order passed by the second respondent herein fastening the liability of a service connection enjoyed by the tenant of the petitioner to the service connection of the petitioner.

2. Heard Mr.J.Barathan, learned counsel for the petitioner, Mr.Deenadhayalan, learned Standing counsel appearing for the respondents.

3. The learned counsel appearing for the petitioner would submit that the petitioner had rented out a property to one Muniasamy who carried on business of stainless steel polishing works. He had obtained a 3 phase electricity connection in his name and he had vacated the premises long time back and thereafter, the electricity connection granted to him was also disconnected by



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the Department. There has been no default or arrears to the electricity connection standing in the name of the petitioner. However, a communication dated 28.03.2015 by which the second respondent alleged that the erstwhile tenant Muniasamy has misused the electricity connection and a demand for a sum of Rs.3,67,264/- from the petitioner. No show cause notice had been issued to the petitioner in that regard. He would further submit that the liability of the tenant cannot be fastened on the petitioner. Therefore, the petitioner had effected a legal notice on 02.04.2015, by a further communication dated 14.10.2015, the second respondent had called upon the petitioner to pay a sum of Rs.3,86,801/- and if the amount is not paid, the said demand would be added to the service connection of the petitioner. He would submit that the petitioner was not aware of the misuse of electricity connection by his tenant. Had the Department immediately taken appropriate action, the petitioner would have made attempts to recover the same from Muniasamy. But after a long length of time the respondents are trying to effect the claim as against the petitioner is unacceptable.



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4. The learned counsel for the petitioner would also rely upon a judgment of the learned Single Judge of this Court in the case of ***P.Muthusamy vs. Tamil Nadu Electricity Board*** reported in ***(2017) SCC Online Mad 33074*** and contend that only the person who had committed the theft of energy and person who had enjoyed the benefit alone would be made responsible and not any other person. He had also further relied upon a judgment of the learned Single Judge to support the said contention.

5. Countering his arguments, Mr. Deenadhayalan, the learned Standing counsel appearing for the Department would submit that the theft of energy committed by a tenant or even a predecessor in interest would be liable on the premises and the same can be collected from the owner of the premises. It is a statutory due and it cannot be waived by the Department. He would further submit that a Division Bench of this Court in the judgment in W.A.No.1785 of 2021, had held that in such circumstances as per the Regulations 18 of the Tamil Nadu Electricity Service Code, the grievance with regard to the building issues can be raised by the customer before the Consumer Grievance Redressal Forum and in the present case against the said demand made by the second



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respondent, the petitioner can approach the said forum for redressal of his grievance. He would also further rely upon Full Bench judgment in the case of ***K.C.Ninan vs. Kerala State Electricity Board*** reported in ***(2023) 9 S.C.R. 637***, wherein it had held that such dues can be collected from the subsequent purchaser also. In the present case, the petitioner being the owner of the land is liable to pay the due arrears, which had been quantified against the petitioner's tenant and therefore, he would submit that the Writ Petition deserves to be dismissed.

6. I have heard the submissions made by the learned counsels appearing on either side and perused the materials placed on record.

7. Admittedly, the petitioner had leased out the premises to a tenant who is alleged to have misused the connection given to him. Section 56(2) of the Electricity Act had been held to be available to the Department for recovery of the said dues either from the estwhile consumer or a subsequent transferor in exercise of the statutory power. The Hon'ble Apex Court had held that the bar of limitation under Section 56(2) restricts the remedy of disconnection under



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Section 56. For better appreciation, the relevant paragraph is extracted hereunder:-

“131.We therefore, reject the submission of the auction purchasers that the recovery of outstanding electricity arrears either by instituting a civil suit against the erstwhile consumer or from a subsequent transferee in exercise of statutory power under the relevant conditions of supply is barred on the ground of limitation under Section 56(2) of the 2003 Act. Accordingly, while the bar of limitation under Section 56(2) restricts the remedy of disconnection under Section 56, the licensee is entitled to recover electricity arrears through civil remedies or in exercise of its statutory power under the conditions of supply.”

8. It is also useful to refer to a Regulation 17 of the Tamil Nadu Electricity Supply Code particularly Sub-Regulation 8. The said Sub-Regulation indicates that if an consumer has more than one service connection, if he defaults in payment of dues relating to any one of the service connections, the licensee may cause other service connections in the name of the consumer to be disconnected on issuing proper notice till all the arrears due for all the service connections are paid notwithstanding the fact that the service connections are covered in the said agreement.



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9. In the present case, admittedly, the petitioner was not a consumer. The term “consumer” had been definition under the Regulation 2(g) which reads as thus under:-

2. Definitions:- In this Code, unless the context otherwise required,-

.....

(g) “Consumer” means any person who is supplied with electricity of his own use by a licensee, the Government or by any other person engaged in the business of supplying electricity to the public under the Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;

10. Admittedly, the petitioner had leased out his premises to a third party who had availed the service connection in which the said individual had committed theft of energy for which he had also been proceeded upon. What the respondent had not attempted to do is to add the demand against the lessee of the petitioner, to the service connection enjoyed by the petitioner. Sub-Regulation 8 of Regulation 17 of the Supply Code enables the Department to



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claim the amount due to it from a consumer to another service connection of the consumer. The definition of “consumer” as extracted supra also includes any person whose premises are for the time being connected for the purpose of receiving electricity. On the facts of the present case, the petitioner's premises was energized by granting a service connection in the name of the lessee of the petitioner. A cogent reading of Sub-Regulation 8 of Regulation 17 with definition 2(g) would enable the respondent from making a claim as against the petitioner for the dues to be payable to the Department. As Regulation 18 of the Supply Code also provides for referring the matter to the Consumer Redressal Forum constituted under the Act.

11. In such view of the matter, I am inclined to held that the first respondent had rightly exercised its powers for issuing the order impugned. However, the same in not addressed to by this Court on the merits. In such view of the matter, I am not inclined to grant the relief as prayed for in this Writ Petition. I am inclined to grant a direction to the respondent to refer the grievance of the petitioner under Regulation 18 to the Consumer Redressal Forum constituted under the Act. Till a decision is taken by the said Form, the



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demand with regard to the dues which had been added to the service connection of the petitioner shall be kept in abeyance and shall be subject to the decision taken by the said forum.

12. With the aforesaid direction, this Writ Petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes / No
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K.KUMARESH BABU, J.

Gba

To

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