



WP(MD)No.6807 of 2016

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.6807 of 2016
and
WMP(MD)No.6291 of 2016

D.Premkumar

: Petitioner

Vs.

1.The Superintending Engineer,
Tamil Nadu Generation of Electricity and
Distribution Corporation (TANGEDCO),
Dindigul Electricity Distribution Circle,
Dindigul.

2.The Assistant Engineer,
Tamil Nadu Generation of Electricity and
Distribution Corporation (TANGEDCO),
N.G.O. Colony,
Dindigul.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the second respondent in



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Ka.No.AE/N.G.O/D/VA/Kerkat/F.No.291/2016 dated 31.03.2016, quash the same and consequently, directing the respondents to supply electricity (new connection) to the building to be constructed by the petitioner in S.No.967, 971/1 in Paraipatti, Kulathur Village, Vedasandur Taluk, Dindigul District (formerly Dindigul Palani District).

For Petitioner : Mr.S.Sarvagan Prabhu

For Respondents: Mr.S.Deenadhayalan

ORDER

The petitioner has purchased a vacant land to an extent of 1.90.43 Acre in S.No.971/1 and another 35.80 Cents in S.No.967, totalling 2.26.23 Acres from one M/s.MVM Traders, by way of a registered sale deed dated 04.03.2016.

2.The property originally belonged to one M/s.Aruna Textiles. M/s.Aruna Textiles and Exports Ltd was wound up by the orders of this Court in Company Petition No.117/2004 dated 05.01.2007 and consequently, an official liquidator was appointed. The official liquidator



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has brought the property of M/s.Aruna Textiles to an extent of 8.30 Acres for public auction in Company Application No.137 of 2012. M/s.MVM Traders has taken the same on public auction on 29.10.2013. From this 8.30 Acres, M/s.MVM Traders has sold a portion of 2.26.23 Acres of land to this petitioner in the year 2016 as a vacant site.

3.The petitioner, after the purchase, has approached the respondents / TANGEDCO for electricity supply for construction of a school building. The application of this petitioner was returned through the impugned order dated 31.03.2016 that in the premises, a HT service connection was provided to one M/s.Embee Textiles Ltd and they had an arrears to the tune of Rs.7,28,279/- for the period from 07/1998 to 03/2016. Along with the BPSC charges of Rs.23,26,851/-, the petitioner was directed to remit a sum of Rs.30,55,130/-, the electricity dues of the previous occupier of the site, namely, M/s.Embee Textiles Ltd. By the impugned order, the respondents have also informed the petitioner that even temporary service connection would be provided only after clearing the arrears of electricity charges of the previous occupier of the premises.



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4.Learned Counsel for the petitioner submitted that the petitioner has purchased this property only as a vacant site. There was no building and the petitioner was not aware of the dues, if any, by the previous owner and this petitioner cannot be fastened with the liability of the previous owner. As per Section 43 of the Electricity Act, 2003, the respondents are bound to give supply of electricity within one month from the date of application for supply. In view of the impugned order passed by the second respondent, the petitioner was prevented from utilizing the property from the year 2016 onwards.

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



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decision of the Hon'ble Supreme Court in *Telangana State Southern Power Distribution Company Ltd v. Srighdaa 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].

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

7.Regulation 17(9)(a) of the Tamil Nadu Electricity Supply Code enables the respondents for collection of defaulted dues from the present occupier before effecting re-connection or new service connection attributed to such premises. The issue has already decided by the Hon'ble Supreme Court in *Srighdaa 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)."

8. 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.”

9.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."

10. 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.

11. As per the proviso to Regulation 17(9)(a) of the Tamil Nadu Electricity Supply Code, the respondents can claim the dues from the petitioner proportionate to the area purchased by him. The provision reads as follows:-

"Provided that in case such premises have legally been sub-divided, the outstanding dues attributed to such premises shall be divided in proportion to the area covered by that sub-division. A new service connection to any of such sub-divided premises shall be given



only after the share of outstanding dues attributed to such sub-divided premises, is duly paid by the applicant. The Distribution Licensee shall not refuse connection to an applicant of such sub-divided premises only on the ground that, dues attributed to the other portion(s) of such sub-divided premises have not been paid, nor shall the licensee demand record of last paid bills of such other portion(s) from such applicants."

12.The earlier service connection was for the entire extent of 8.30 Acres. Of this 8.30 Acres, the petitioner has purchased 2.26.23 Acres. Therefore, the respondents shall collect the dues proportionate to the area which the petitioner has purchased.

13.The dues as per the impugned order is from 07/1998 to 03/2016. The property was abandoned in the year 2007, brought for auction in the year 2013 and was in occupation of one M/s.MVM Traders till 04.03.2016. From 04.03.2016 onwards, the petitioner is in possession of the property. The respondents could have collected this arrears amount from M/s.MVM Traders or from the previous occupier, who had defaulted the Electricity Board. This Court feels that the Electricity Board is not taking any serious



steps to recover the arrears from the occupiers, who is responsible for the dues, in view of the Regulation 17(9)(a) that they can recover it from the subsequent purchasers as well. This conduct of the respondents needs to be deprecated and in this regard, this Court reiterates the observations made in *M/s. Virgin Manufacturing Industries Pvt Ltd's* case (supra) as follows:-

“29. ... At the same time, the attitude of the respondent Board in keeping quite for very long period and then making a demand, once an application for fresh connection is submitted, needs to be deprecated.

30. Admittedly, the electricity connection was disconnected on 22.07.2013 itself. The property was taken over by the Bank on 17.12.2013. Sale notice was issued on 09.05.2019. E-auction was conducted on 29.05.2019. The petitioner made an application for electricity connection on 20.02.2020. From 22.07.2013 onwards, till 20.02.2020, ie., for six full years, the respondent Board kept quite and when the petitioner made an application for electricity connection, the respondents raised the demand for arrears. Had the property not been auctioned by the Bank, or had the petitioner not purchased the property, or had the petitioner not made any application for fresh electricity connection for another five years or so, whether the respondent Board would wait for years together, by simply showing that arrears of charges have to be recovered? Therefore, this Court expects the first respondent / Chairman to come out with a mechanism and issue necessary circulars /



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directions to the concerned Superintending Engineers of the Board to take timely action on the electricity supply lines which have been disconnected / dismantled for default in payment of charges, instead of waiting for years together."

14.This Court expects the Chairman and Managing Director of Tamil Nadu Generation and Distribution Corporation Ltd., Chennai, to take necessary action in this regard.

15.The petitioner who is said to have purchased the property in the month of March, 2016, was deprived from utilising the property for the past eight years on account of the dues liable to be paid by the previous occupier. In view of the same, coupled with the conduct of the respondents, this Court is inclined to waive the outstanding interest accrued on the principal dues.

16.Accordingly, this writ petition is disposed of with a direction to the respondents to collect the outstanding amount on the premises



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proportionate to the area in occupation / owned by the petitioner and also
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
gk

12.03.2024

Note:

Mark a copy of this order to
The Chairman and Managing Director,
Tamil Nadu Generation and Distribution
Corporation Ltd (TANGEDCO),
144, Anna Salai, Chennai.



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B.PUGALENDHI, J.

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