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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 05.06.2025
Pronouncing orders on : 09.06.2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

**WP No. 17976 of 2024
and WMP Nos. 19715 & 19718 of 2024**

M/s.Sri Krishna Alloys
Rep By its Partner N.Anbalangan,
262/1B-3,Manjakkalpatty Village,
Akkampet Post, Sankari-637301

Petitioner(s)

Vs

1. The Superintending Engineer
Mettur Electricity Distribution Circle,
Mettur Dam-1

2.The Superintending Engineer (Metro)
Tamilnadu Electricity Board,
Coimbatore Electricity Distribution Circle,
Coimbatore

Respondent(s)

PRAYER Writ Petition filed under Article 226 of the Constitution of India for
issuance of a Writ of Certiorarified Mandamus, calling for the records of the



first respondent Lr.No./SE/MEDC/MTR/AEE/DEV/AE/T/F.Doc/D.No.343/2 2-23 dt,12.4.2023 quash the same and direct the Special Court constituted under notification in G.O.Ms.No.102 dated 05.10.2006 namely before the Principal District an Sessions Judge Salem to determine the civil liability if any in terms of money, for the alleged loss or damage said to have been sustained by the Board on account of the alleged offence in High Tension S.C.No.110.

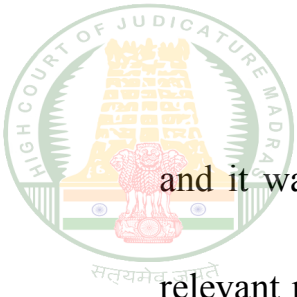
For Petitioner (s): Mr.N.L.Rajah,
Senior Counsel for
Mr.A.S.Balaji

For Respondent (s): Mr.P.Wilson
Senior Counsel for
Mr.I.Syed Sibgathulla
Standing Counsel for R1 and R2

ORDER

The petitioner assails the impugned Assessment Notice dated 12.04.2023 issued by the 1st respondent in the present writ petition.

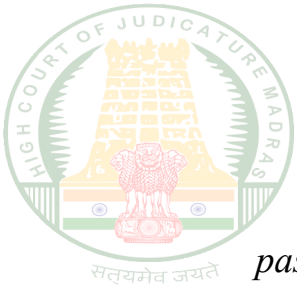
2.The case of the petitioner is that they were provided high tension power supply in HTSC No.110 by the respondent Board in the year 1992. A surprise inspection was conducted on 06.05.2003 by the officials belonging to the Board



and it was found that the electronic meter was tampered. After collecting the relevant particulars from the electronic meter, the officials gave a complaint to the police for theft of energy and an FIR came to be registered in Crime No.459 of 2023 before the jurisdictional police. Parallely, the respondent Board issued Show Cause Notice to the petitioner and conducted an enquiry.

3.Initially W.P.No.19582 of 2003 was filed by the petitioner challenging the communication dated 10.07.2003 and for furnishing relevant records. This writ petition was disposed of by issuing directions and the records were also furnished. When the enquiry was going on, the petitioner filed yet another writ petition in W.P.No.24842 of 2003 seeking for the change of the Enquiry Officer. Accordingly, the Enquiry Officer was changed and this writ petition was also disposed of.

4.The petitioner filed the third writ petition in W.P.No.32341 of 2003 challenging the communication dated 28.10.2003 and this writ petition was disposed of by an order dated 31.12.2019 in the following terms:



83. Resultantly, while disposing the writ petition, this Court passes the following orders:

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(i) that the impugned order is sustainable, as it does not require to be quashed.

(ii) Since the enquiry date fixed as 14.11.2003 already been gone by, the new enquiry date can be decided by the respondent and due intimation to be communicated to the petitioner.

(iii) The respondent while conducting the enquiry / adjudication shall not rely upon any documents other than what has been supplied to the petitioner.

(iv) The respondent authority is very well entitled to or is having jurisdiction to conduct the enquiry or to adjudicate the issue to find out the civil liability on the petitioner, if any, on-the alleged theft of energy case, dated 15.05.2003-and accordingly, such authority can proceed to determine the said issue in accordance with law.

5.The petitioner was called for an enquiry thereafter and the petitioner informed the respondents that he has filed a writ appeal in W.A.No.2940 of 2021 challenging the order of the learned single Judge and an interim order was



passed not to disconnect the electricity connection. Hence, the petitioner requested the respondents to keep the enquiry in abeyance. In the meantime, the

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Enquiry Officer viz., the Superintending Engineer, Coimbatore submitted a report with findings and based on the same, the Assessment Notice dated 12.04.2023 was issued by the 1st respondent directing the petitioner to pay a sum of Rs.4,18,77,084/-. Aggrieved by the same, the present writ petition has been filed before this Court.

6. The 1st respondent has filed a counter affidavit. The 1st respondent has taken a stand that the petitioner was called for enquiry during various occasions and the petitioner refused to attend for the enquiry and was referring to the pending writ appeal where no interim order was granted. Left with no other alternative, the Enquiry Officer viz., the Superintending Engineer, Coimbatore went through the available records and submitted the findings. Based on the same, the assessment notice has been issued by the 1st respondent. The 1st respondent has stated that this is a case of theft of energy and that the petitioner is deliberately avoiding enquiry and challenging the same by filing repeated



writ petitions before this Court. It is stated that there are absolutely no merits in

this writ petition and the petitioner has not remitted even a single rupee for more

than twenty years and as a result, the Board is running into huge loss.

Accordingly, the 1st respondent has sought for the dismissal of this writ petition.

7.The learned Senior Counsel appearing on behalf of the petitioner submitted that during the pendency of the writ petition in W.P.N.32341 of 2003, a technical person was appointed to conduct an enquiry and he submitted a report to the effect that it is not possible to come to the conclusion about the theft of energy. Ultimately, when the writ petition was disposed of, a specific direction was given to the Superintending Engineer, Coimbatore to conduct the enquiry and to pass an order and whereas, the order has been passed by the Superintending Engineer, Mettur Dam which is in violation of the direction issued by this Court. It was further submitted that the petitioner was not given an opportunity to challenge the report of the 2nd respondent and it was not served on the petitioner and straight away the assessment notice came to be



issued by the 1st respondent. Even otherwise, the respondents did not take into consideration the report that was submitted by the expert in the earlier writ petition, wherein, it was found that there was no energy theft. It was further contended that there are absolutely no reasons assigned and no opportunity was given to the petitioner. Even though, the petitioner informed the respondents about the pendency of the writ appeal, it was not taken into consideration and the impugned assessment notice was issued in violation of principles of natural justice.

8.The learned Senior Counsel submitted that the impugned assessment order is liable to be interfered by this Court and the matter has to be remanded back to the respondents to conduct an enquiry afresh by affording opportunity to the petitioner and consider the grounds raised by the petitioner and thereafter, pass final orders.

9.Per contra, Mr.Wilson, learned Senior Counsel appearing on behalf of the respondents submitted that this is a clear case of abuse of process of law,



wherein, the petitioner is filing one writ petition after another and for more than twenty years, the petitioner has managed by not even paying one rupee towards theft of energy. The learned Senior Counsel submitted that the expert report that was submitted in the earlier writ petition has become stale, since there was no reference to that report when the writ petition was disposed of finally and there was not even a direction issued to consider the said report at the time of the enquiry. The learned Senior Counsel further submitted that as per the request made by the petitioner, the Superintending Engineer, Coimbatore was the Enquiry Officer and based on his findings, the final assessment notice was issued by the 1st respondent. Therefore, the directions issued by this Court has not been violated. The learned Senior Counsel contended that the petitioner was repeatedly issued with summons and he refused to attend for the enquiry. No interim order was passed in the writ appeal restraining the enquiry and therefore, the respondents proceeded further with the enquiry with the available records and the petitioner cannot be allowed to complain as if no opportunity was given to him, when he has not cooperated for the enquiry. When the writ appeal was dismissed, the assessment notice was brought to the notice of the



Division Bench and in spite of the same, the writ appeal was dismissed without granting any liberty. Therefore, the petitioner cannot be allowed to question the assessment notice, more particularly, after the dismissal of the writ appeal. The learned Senior Counsel concluded his arguments by submitting that as on today, a total sum of Rs.20,08,00618/- is due and payable by the petitioner and sought for the dismissal of this writ petition.

10.This Court has carefully considered the submissions made on either side and the materials available on record.

11.The alleged theft of energy took place in the year 2003 and for the last twenty two years, the matter has not reached finality. The petitioner was questioning the enquiry on one ground or the other from the beginning. What is relevant for the present case is the third writ petition that was filed in W.P.No.32341 of 2003 questioning the communication dated 28.10.2003. When this writ petition was pending, a miscellaneous petition was filed in W.P.M.P.No.2314 of 2003 by the respondent Bard to vacate the interim order



that was granted in favour of the petitioner. This petition was heard along with the stay petition. It was agreed between the parties that a technical expert can be

appointed for the purpose of conducting an enquiry and to file a report.

Accordingly, an order was passed on 23.02.2004, appointing one

Mr.Ranganathan who is a retired Superintending Engineer as the Commissioner.

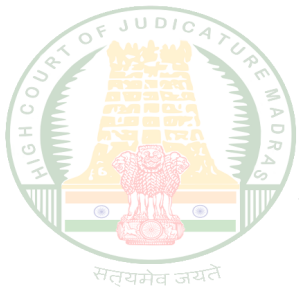
This expert conducted an enquiry and filed a report. The finding of the expert is

extracted at Paragraph 15 of the order passed in W.P.No.32341 of 2003 and for

proper appreciation, Paragraph 15 of the previous order is extracted hereunder:

15. Pursuant to the said order passed by the learned Judge as referred to above, the technical person, one Mr.Ranganathan who was appointed as a Commissioner to file a report, had filed a report before this Court along with supporting affidavit in March 2004, where inter alia the Commissioner has stated the following under the heading "Conclusion":

"2. Before giving a report of possible theft in High Tension service in the MRT wing will prepare a report after inspection and after study of down loaded meter particulars from the meters and if they are satisfied that there is a prima



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facie case then only report about theft has to given by MRT.

But in this case meter was down loaded on 06.05.2003 and no such report was available in this records. Again there was inspection on 15.05.2003 the meter was down loaded, but without studying the tamper data, load survey data, Executive Engineer (MRT) has given a report that "it is possible to steal the energy with the existing arrangement". Even after studying down load parameters on 16.05.2003 the Executive Engineer (Meter Relay Test) has not stated anything about the method of theft. With regard to the meters & metering arrangement only the Meter Relay Test wing are only competent to give a report or complaint about the nature of theft and they. are play a vital role in detecting the theft, since. the theft of energy means not recording the actual consumption. There is no such report or complaint by the Meter Relay Test wing in this case.

3. In this service last monthly reading was taken 27.04.2003 and bill was given and the same was paid well before 06.05.2003. There was inspection on 06.05.2003 and meter was down loaded and load survey data, tamper data were taken and they have not found any abnormality in the service and reported to the other Higher officials.



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4. In this service no records for load survey data and tamper data for the period 06.11.2002 to 21.03.2003 are available. In the absence of any records it is not possible to come to the conclusion about theft in this service, especially after fixation of Electronic Meters and after fixation of Electronic Meter Theft of Energy can be proved scientifically.

I am herewith submitting the following copies given by the respondent, which has not been furnished to the consumer.

- 1. Billing Data taken on 06.05.2003 & 15.05.2003.*
- 2. Load Survey Data, i.e, daily load graph taken on 06.05.2003 & 15.05.2003.*
- 3. Tamper data taken on 06.05.2003 & 15.05.2003.*

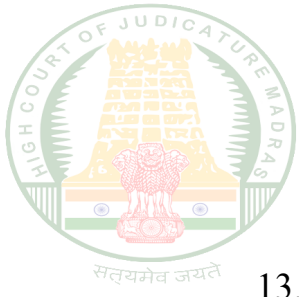
(A.RANGANATHAN)"

11.The expert who was appointed as a Commissioner came up with a finding that there are no records for load survey data and tamper data for the period 06.11.2002 to 21.03.2003 and in the absence of any records, it is not possible to conclude that there was theft of energy.



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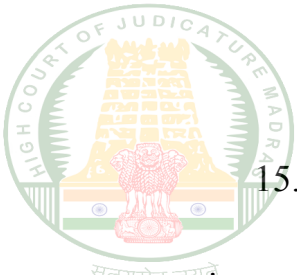
12. The report was called for from the expert in order to enable the writ Court to satisfy itself regarding the claim made by the Board that there was theft of energy. Hence, this report either should have been acted upon and the proceedings itself should have been closed. Or in the alternative, if the Board had any objections, this Court should have directed that the report can also be taken into consideration by the authority at the time of enquiry and a final decision can be arrived at. In the entire order, there is not even a whisper about the report submitted by the expert. This is probably due to the fact that the writ petition itself came up for final hearing only in the year 2018 and the order was pronounced on 31.12.2019. While disposing of the writ petition, this Court found that the authority had the power to conduct the enquiry and rejected the claim made by the petitioner that only the Special Court can determine even the civil liability of the petitioner. After having upheld the authority of the Superintending Engineer, this Court directed the authority to conduct the enquiry and decide the issue in accordance with law.



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13. After the above order was passed, the notices were issued to the petitioner from 18.11.2020 onwards and atleast four notices were issued up to 11.08.2022. In the meantime, the petitioner filed W.A.No.2940 of 2021 and was informing the respondents that the writ appeal is pending. When the writ appeal was repeatedly entertained, an interim order was passed on 21.04.2023 to the effect that the respondents should not disconnect the electricity connection, until further orders. No stay was granted for conducting the enquiry. Therefore, the 2nd respondent was repeatedly issuing notice to the petitioner to attend the enquiry and the petitioner was not attending the enquiry and was repeatedly pointing out to the pending writ appeal.

14. Even during the pendency of the writ appeal, the 2nd respondent who was appointed as the Enquiry Officer submitted a report dated 12.01.2023 to the 1st respondent by rendering his findings based on the available records. On receipt of the same, the 1st respondent issued the assessment notice.



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15. The findings of the 2nd respondent based on which the assessment notice was issued by the 1st respondent was brought to the notice of the Division Bench when the writ appeal was dismissed by order dated 07.06.2024. In spite of the same, the Division Bench proceeded to dismiss the writ appeal on the ground that no further adjudication is required. It is quite evident that the petitioner was aware of the impugned assessment notice and the demand made from the petitioner. This is borne out by the communication dated 15.04.2023 of the petitioner to the 1st respondent. It is quite curious that the petitioner did not choose to challenge the assessment notice dated 12.04.2023 till the writ appeal was dismissed by order dated 07.06.2024. The present writ petition was filed only on 01.07.2024. The petitioner who was aware of the assessment notice should have challenged the assessment notice and if that had been done, that writ petition could have been clubbed with W.A.No.2940 of 2021 and heard together.

16. The petitioner cannot complain that no opportunity was given to them, since the petitioner had chosen not to participate in the enquiry conducted by the 2nd respondent by citing the pending writ appeal. The pendency of the writ



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appeal did not tie the hands of the 2nd respondent, since no stay was granted for conducting the enquiry. Therefore, the 2nd respondent had no other alternative, except to render findings with the available records. There is no violation of the earlier order passed by this Court since the 2nd respondent alone had conducted the enquiry. To further complicate the issue, the petitioner who was aware about the impugned assessment notice did not choose to challenge the same immediately even while the writ appeal was pending. If this had been done by the petitioner as a strategy, it is now proving to be counter protective and it is staring against the petitioner.

17. It is true that the challenge to the assessment notice issued by the 1st respondent was a separate cause of action and it had no bearing in the pending writ appeal. However, such challenge ought to have been made immediately so that the Division Bench could have dealt with it when the writ appeal was considered. The petitioner is now conveniently raking up the same issue which was raised in the previous writ petition to the effect that it is only the Special Court which can determine the civil liability. This ground is no more available



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to the petitioner in the light of the previous order passed by this Court and raising such a ground is barred by *res judicata*. The assessment notice which refers to the findings of the 2nd respondent, nowhere deals with the findings rendered by the Commissioner who was appointed during the pendency of W.P.No.32341 of 2003. It has been mentioned in the assessment notice that a separate opinion was obtained from one Dr.Rajagopal and the enquiry was proceeded with. If at all, the petitioner wanted to rely upon the report of the Commissioner, the petitioner should have submitted the explanation during the enquiry and placed it before the Enquiry Officer. However, the petitioner had chosen not to participate in the enquiry and therefore, the tenability of the Advocate Commissioner's report was not even an issue before the Enquiry Officer. The Enquiry Officer was not under the obligation to rely upon the said report, since no such directions were issued by this Court while disposing of the writ petition. The fact that this Court did not choose to even make a mention about the report of the Commissioner while disposing of the writ petition shows that the report of the Commissioner pales into significance.



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18.The petitioner has successfully pulled on with this case for the last twenty two years. The extra levy that was payable by the petitioner for theft of energy was Rs.4,18,77,084/- and presently it has accumulated to nearly Rs.20 Crores by adding the BPSC amount. This Court is not satisfied with the attitude of the petitioner and when the petitioner is seeking for enforcing his right, it must be accompanied by a proper conduct on his part. Not a single rupee has been recovered from the petitioner till date. That has virtually caused huge loss to the Electricity Board.

19.This Court does not find any merits in the present writ petition and accordingly, this writ petition stands dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

09-06-2025

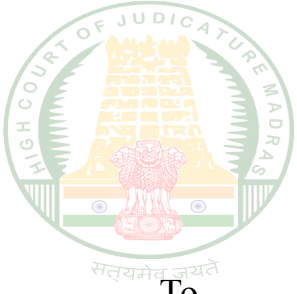
Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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1. The Superintending Engineer
Mettur Electricity Distribution Circle,
Mettur Dam-1

2. The Superintending Engineer (Metro)
Tamilnadu Electricity Board,
Coimbatore Electricity Distribution Circle,
Coimbatore



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20/20

WP No. 17976 of 2



N.ANAND VENKATESH J.

SSR

Pre-Delivery Order in
WP No. 17976 of 2024
and WMP Nos. 19715 & 19718 of 2024

09-06-2025