IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-07-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

WP No. 1039 of 2024

1. M/s.Sengoda Gounder Educational
And Charitable Trust
(now Sri Shakthi Institute Of
Engineering And Technology)
No.9/1, V.K.L Nagar Extension,
Thudiyalur, Coimbatore-641 034.

Petitioner(s)

Vs

1. The Tamil Nadu Electricity Ombudsman,
4th Floor, SIDCO Corporation Office Building,
Thiru-vi-ka Industrial Estate, Guindy,
Chennai-600 002.

2.The Chairman
Consumer Grievance Redressal Forum,
Coimbatore Electricity Distribution Circle/Metro,
TANGEDCO, Tatabad, Coimbatore-12

3.The Superintending Engineer
Coimbatore Electricity Distribution Circle/Metro,

Tangedco, Tatabad, Coimbatore-03

4.The Assistant Engineer,
O & M / AG Pudur,
Coimbatore Electricity Distribution Circle/metro,
Tangedco, Tatabad, Coimbatore-05

5.The Executive Engineer
Distribution / Ondiputhur,
Coimbatore Electricity Distribution Circle/metro,
Tangedco, Tatabad, Coimbatore

6.The Executive Engineer,
Distribution / Ondiputhur, Coimbatore
Electricity Distribution Circle/metro, Tangedco,
Tatabad, Coimbatore

Respondent(s)

PRAYER

To call for the records of the 1st respondent dated 07.11.2023 passed in A.P. No.63/2023 and quash the same.

For Petitioner(s): Mr.R.Mukund
Senior Counsel
for M/s.Sarvabhauman Associates

For Respondent(s): Mr.M.Surehkumar
Additional Advocate General
asst by
Mr.L.Jaivenkatesh
Senior Counsel for R1-6

ORDER

This writ petition has been filed challenging the impugned proceedings of the 1st respondent dated 07.11.2023 made in AP No. 63 of 2023, wherein the application submitted by the petitioner against the excess demand charges levied towards excess consumption over and above the sanctioned demand, which was calculated, was rejected by the Tamil Nadu Electricity Ombudsman.

2. The case of the petitioner is that the trust runs a college namely Sri Shakthi Institute of Engineering and Technology. In the year 2006, an electricity service connection was given with a sanctioned demand of 112 KW. During the year 2010, this sanctioned demand was not adequate, and hence the petitioner submitted an application to the respondents to convert the Low Tension (LT) to High Tension (HT) supply to enhance the sanctioned demand from 112 KW to 300 KVA. The respondents did not grant the HT supply. Meanwhile, the petitioner received monthly bills alleging excess demand and energy consumed by the Institute. Aggrieved by the same, the petitioner filed four writ petitions before this Court in W.P. Nos. 14095 of 2014, 15688 of 2014, 14721 of 2015, and 40813 of 2016. In the interregnum, another demand was made, and the electricity connection was disconnected. Hence, the petitioner filed W.P. No. 22066 of 2018.

3. All these writ petitions were disposed of by directing the petitioner to approach the Consumer Grievance Redressal Forum. Hence, the petitioner

approached the Consumer Grievance Redressal Forum. The application was disposed of by the 2nd respondent by an order dated 30.06.2023. Aggrieved by the same, the petitioner filed an appeal before the 1st respondent, and the 1st respondent rejected the appeal. Aggrieved by the same, the present writ petition came to be filed before this Court.

4. The 6th respondent has filed a counter affidavit and has taken a stand that the LT service connection was given to the Institute in the year 2006 with a sanctioned load of 80 kW. The tariff was changed from Tariff V to Tariff IIB2 with effect from 27.02.2009. During the period from 04/2009 to 01/2010, the consumer exceeded the sanctioned load of 80 KW about 9 times and also exceeded the maximum demand. Therefore, the same was included in the monthly bills, and the petitioner was asked to pay the amount. Even thereafter, the petitioner again exceeded the sanctioned demand, and over time, a penalty amount was levied, which was also paid by the petitioner. Thereafter, the petitioner submitted an application seeking for HT connection. On receipt of the same, an estimate was prepared, and the petitioner was directed to pay the amount. The shifting work of LT lines was completed during September 2012. However, the petitioner did not come forward to resubmit the HT application even after two years. Therefore, the petitioner was informed vide a letter dated 24.11.2014 that, if an HT service connection is required, the petitioner has to make a fresh application. On these grounds, the previous HT application submitted by the petitioner was returned.

5. Once again, the petitioner during the month of April 2014 exceeded the maximum demand from 112 kW to 161 kW, for which a penalty of Rs.16,22,320/- was raised along with the CC bill. The petitioner raised a query when this demand was raised and did not pay this amount. Therefore, the service connection of the petitioner was disconnected on 16.05.2014. The petitioner filed writ petitions, and pursuant to the interim order passed by this Court directing the petitioner to deposit a sum of Rs.7,00,000/-, the service connection was restored. Even thereafter, the petitioner exceeded the sanctioned demand during the months of May 2014, November 2014, April 2015, and October 2016. When a demand was made by adding the same to the CC bills, the same was challenged by filing writ petitions. All these writ petitions were disposed of by directing the petitioner to approach the Consumer Grievance Redressal Forum. The Forum considered the grievance expressed by the petitioner. The petitioner filed an appeal before the Ombudsman, and the same was also rejected by the Tamil Nadu Electricity Ombudsman. It is stated that the petitioner has exceeded the sanctioned demand on various occasions, and the respondents have only followed the supply code and levied the penalty by adding the same to the CC bills. Hence, the respondents have sought dismissal of the petition.

6. When this writ petition came up for hearing on 19.06.2025, this Court passed the following order,

"This Court heard the submissions of Mr.R.Mukund, learned Senior Counsel for the petitioner and the learned Standing Counsel appearing on behalf of the respondents.

2. The subject matter of challenge in the present writ petition pertains to the orders passed by the first respondent dated 07.11.2023, confirming the order passed by the Consumer Grievance Redressal Forum, Coimbatore dated 30.06.2023. The respondents have been directed to issue the demand notice on the ground that the petitioner has exceeded the sanctioned load of 112 KW.

3. The only issue that has been raised by the learned Senior Counsel appearing on behalf of the petitioner is that the consumption of electricity in excess of the sanctioned/connected load, will be construed as an unauthorised use of electricity, in terms of Section 126 of the Electricity Act, 2003. In such an event, the authority must have followed the procedure prescribed under Section 126(1) to 126(3) of the Electricity Act. The learned Senior Counsel also placed reliance on the judgment of the Apex Court in Kerala State Electricity Board and others v. Thomas Joseph @ Thomas M.J and others, 2022 LiveLaw (SC) 1034. The learned Senior Counsel placed specific reliance on paragraphs 54 to 58 of the judgment.

4. On a careful reading of the judgment, it is seen that the Apex Court, while interpreting the term 'unauthorised use of electricity', has held that a restricted meaning cannot be given to the term and accordingly even the consumption of electricity in excess of the sanctioned load has been brought within the purview of Section 126(6)(b)(iv).

5. The learned Standing Counsel appearing on behalf of the Electricity Board seeks for some time to go through the judgment of the Apex Court to make his submissions.

6. Post this writ petition under the caption 'part heard case' on 26.06.2025."

7. Heard Mr.R.Mukund, learned Senior Counsel appearing for the petitioner and Mr.M.Surehkumar, learned Additional Advocate General assisted by Mr.L.Jaivenkatesh, learned Senior Counsel appearing for the respondents 1 to 6.

8. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials placed on record.

9. It is not in dispute that the petitioner is having the LT service connection since 2006 with a sanctioned demand of 112 KW. Since this sanctioned demand was not sufficient to run the institution, the petitioner submitted an application for converting LT supply to HT supply. Due to various reasons, the HT service connection was not given to the petitioner. In the meantime, the petitioner was repeatedly exceeding the sanctioned demand and as a result, the respondents have levied penalty along with the CC bills.

10. When the petitioner approached the 2nd respondent, the 2nd respondent disposed of the application by proceedings dated 30.06.2023. The 2nd

respondent took into consideration the fact that the Electricity Board has already rejected the HT application submitted by the petitioner on 24.11.2014, stating that the consumer did not submit the details of the remarks that were pointed out. Hence, if the petitioner was aggrieved, he should have approached the Consumer Grievance Redressal Forum. In view of the same, the petitioner cannot justify exceeding the sanctioned demand of 112 KW, and there was no dispute regarding the fact that the meter condition was good. Accordingly, the 2nd respondent concluded by upholding the penalty that was levied against the petitioner, and the 2nd respondent was not inclined to waive the excess demand charges levied towards the excess over and above sanctioned demand. Accordingly, a direction was given to the respondents to issue a demand notice for the arrears of bills along with BPSC for the portion of maximum demand penalty.

11. The petitioner went before the Tamil Nadu Electricity Ombudsman. The Ombudsman considered the entire case and came to a conclusion that there is no justification to interfere with the findings of the 2nd respondent, and it was found that the petitioner is liable to pay excess demand charges as per the supply code. Accordingly, the appeal was rejected by an order dated 07.11.2023.

12. In the considered view of this Court, the findings rendered by the 2nd respondent, which was subsequently confirmed by the 1st respondent, does not suffer from any illegality, and those findings were rendered based on the facts

that were placed before the Forum in terms of the meter reading.

13. The only legal issue that has to be considered in the present case, is as to whether the respondents ought to have followed the procedure prescribed under Section 126(1) and 126(3) of the 2003 Act by considering the consumption of electricity in excess of the sanctioned/connected load as an unauthorised use of electricity in terms of Section 126 of the 2003 Act.

14. The learned Senior Counsel appearing on behalf of the petitioner relied upon the judgment in ***Executive Engineer and Another Vs. Sri Seetaram Rice Mill*** reported in **2012 2 SCC 108** and ***Kerala State Electricity Board and Others Vs. Thomas Joseph Alias Thomas M.J.and Others*** reported in **2023 11 SCC 700**. It was submitted that consumption of electricity in excess of the sanctioned load must be considered to be unauthorised use under Section 126, and therefore, if the procedure had been followed, the petitioner would have been able to defend himself efficiently.

15. Per contra, the learned Additional Advocate General appearing on behalf of the respondents submitted that the judgments that were relied upon by the petitioner is not applicable to the facts of the petitioner's case. Regulation 5(2) deals with excess demand charges, which will be levied whenever the consumption exceeds the sanctioned demand. Insofar as unauthorised use of electricity is concerned, Regulation 19 deals with the same and hence, the

Electricity Supply Code itself provide for both scenarios, namely, excess demand charges for excess sanctioned demand and investigation and enforcement of the provision under Section 126 of the Act for unauthorised use of electricity. It was therefore contended that in the light of the supporting provisions being available under Supply Code, it is always left open to the Electricity Department to invoke the relevant Regulation under the Supply Code and make a demand by adding the penalty in the CC bills.

16. In the judgment in the case of ***Seetaram Rice Mill*** referred supra, the Apex Court was dealing with the provisions under Section 126 of the 2003 Act. In that case, the Apex Court did not have the advantage of considering any provision akin to the Tamil Nadu Electricity Supply Code, which specifically deals with various scenarios. Hence, the Apex Court came to the conclusion that wherever the consumer commits breach of the terms of the Agreement, Regulations and the provisions of the Act by consuming electricity in excess of the sanctioned and connected load, the same will be construed as unauthorised use of electricity within the meaning of Section 126 of 2003 Act.

17. In the next judgment, in the case of ***Kerala State Electricity Board*** referred supra**,** the Apex Court was dealing with the Kerala Electricity Supply Code, 2013. The Apex Court had taken note of Regulation 153, which deals with estimation and regularization of unauthorised additional load. Clause 15 under Regulation 153 provides that unauthorised additional load in the same

premises and under the same tariff shall not be recognised as unauthorised use of electricity. This specific provision was considered by the Apex Court in this judgment. While doing so, the Apex Court took into consideration the earlier judgment in ***Seetaram Rice Mill's case.*** While dealing with Regulation 153(15) of the Code, the Apex Court held as follows,

REGULATION 153(15) OF THE CODE 2014

67. We shall now look into the main limb of the submission canvassed on behalf of the consumers that the Regulation 153(15) of the Code 2014 makes all the difference and the ratio and the principles as propounded in Seetaram Rice Mill (supra) should be understood in the light of the Regulation 153(15) of the Code 2014. We have quoted Regulation 153(15) of the Code 2014 in the earlier part of our judgment. We do not find any merit in the submission canvassed on behalf of the consumers in regard to the applicability of Regulation 153(15) of the Code 2014. The Code 2014 is framed under Section 50 read with Section 181(x) of the Act 2003.

68. This Court in Uttar Pradesh Power Corporation Limited and Others v. Anis Ahmad reported in (2013) 8 SCC 491, held that the Supply Code cannot provide for nor does it relate to assessment of charges for 'unauthorised use of electricity' under Section 126 of the Act 2003. Paras 53 and 54 resply of the said judgment state as follow:

"53. Section 50 of the Electricity Act, 2003

empowers the State Commission to specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, measures for preventing damage to electrical plant or electrical line or meter, entry of distribution licensee, etc. and it reads as follows:

> *"50. The Electricity Supply Code.— The State Commission shall specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity, measures for preventing tampering, distress or damage to electrical plant or electrical line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter, entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters."*

54. From reading Section 50, it is clear that under the Electricity Supply Code provisions are to be made for recovery of electricity charges, billing of electricity charges, disconnection, etc. and measures for preventing tampering, distress or damage to the electrical plant or line or meter, etc. But the said Code need not provide provisions relating to it/do not relate to assessment of charges for "unauthorised use of electricity" *under Section 126 or action to be taken against those committing "offences" under Sections 135 to 140 of the Electricity Act, 2003." (Emphasis supplied)*

69. Thus, reliance on Regulation 153(15) of the Code 2014 framed under Section 50 of the Act 2003 by the respondent (consumers) is thoroughly misconceived, as the same does not conform to the provisions of the Act 2003. In any event, Regulation 153(15) travels much beyond Section 126 and Section 50 resply of the Act 2003. It is settled law that the regulation making power cannot be used to bring into existence substantive rights, which are not contemplated under the Act 2003.

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95.In overall view of the matter, we have reached to the conclusion that the finding recorded by the High Court in para 31(vi) is not sustainable in law. We have also reached to the conclusion that the Regulation 153(15) deserves to be declared invalid being inconsistent with the provisions of Section 126 of the Act 2003.

18. The above judgments that were relied upon by the learned Senior Counsel appearing for the petitioner will not come to the aid of the petitioner. As stated supra, the present case is governed by the Tamil Nadu Electricity Supply Code. This Code separately deals with the excess demand charges under Regulation 5(2) whenever consumption exceeds the sanctioned demand. It also provides the manner in which the calculation has to be made, and how it will be

added along with the CC bills. The Supply Code also separately deals with unauthorised use of electricity as contemplated under Section 126 of the 2003 Act. In view of the same, considering the ambit of the Electricity Supply Code, the procedure that was adopted by the electricity department by levying the excess demand charges, adding it along with the CC bills cannot be faulted. Inspite of such a provision being available, the Electricity Board cannot be asked to treat it as unauthorised use of electricity and follow the procedure under Section 126 of the 2003 Act. When the Tamil Nadu Electricity Supply Code provides for a simpler mechanism to levy the demand whenever the consumption exceeds the sanctioned demand, the Electricity Board can always initiate action by adhering to that procedure.

19. In the light of the above discussions, this Court finds no ground to interfere with the order passed by the 1st respondent in A.P. No.63/2023, dated 07.11.2023, confirming the decision taken by the 2nd respondent. Accordingly, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petitions, if any, are closed.

17-07-2025

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Index:Yes/No
Speaking/Non-speaking order
Internet:Yes

Neutral Citation:Yes/No

To

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4th Floor, Sidco Corporation Office
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