



W.A.(MD)No.896 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.06.2025

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

AND

THE HONOURABLE **DR.JUSTICE A.D.MARIA CLETE**

W.A.(MD)No.896 of 2018

and

C.M.P.(MD)No.5776 of 2018

- 1.The Superintending Engineer,
Tamil Nadu Electricity Generation and
Distribution Corporation Circle (TANGEDCO)
Tirunelveli District.
- 2.The Executive Engineer,
Distribution / TANGEDCO,
Tirunelveli.
- 3.The Assistant Executive Engineer,
Distribution / TANGEDCO,
Tirunelveli.
- 4.The Assistant Engineer,
Distribution / TANGEDCO,
Thachanallur, Tirunelveli District.

... Appellants

-Vs-

E.Balasubramanian

... Respondent



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PRAYER: Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 16.04.2018 made in W.P.(MD)No.7646 of 2018 on the file of this Court.

For Appellants : Mr.S.Deenadhayalan,
Standing Counsel

For Respondent : Mr.C.Saravanakumar,
for Mr.A.Selvendran

JUDGMENT

[Judgment of the Court was delivered by ***S.M.SUBRAMANIAM, J.***]

The present intra-Court appeal has been instituted, challenging the order of the Writ Court dated 16.04.2018 passed in W.P.(MD)No.7646 of 2018.

2.The respondent has instituted the said Writ proceedings, challenging the demand notice issued by the Assistant Engineer, Distribution / TANGEDCO. On receipt of the demand notice to pay current consumption charges, the respondent has chosen to file the Writ Petition mainly on the ground that he is the subsequent purchaser of the subject property. He has purchased the subject property through Court auction conducted by the Authorized Officer under SARFAESI Act. Therefore, he is not liable to pay consumption charges, which would have no application in respect of his sale of property. Further, the demand



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is made in respect of the consumption of electricity by erstwhile owner, for which, the respondent cannot hold liable.

3.The learned Standing Counsel appearing for the appellants would mainly contend that even the subsequent purchaser of the property is liable to pay consumption charges, in view of the judgment of the Hon'ble Supreme Court of India in the case of *Haryana State Electricity Board Vs. Hanuman Rice Mills, Dhanauri and others* reported in (2010) 9 SCC 145, wherein at paragraph No.12 (ii), it has been held that “Where the statutory rules or terms and conditions of supply which are statutory in character, authorise the supplier of electricity to demand from the purchaser of a property claiming reconnection or fresh connection of electricity, the arrears due by the previous owner / occupier in regard to supply of electricity to such premises, the supplier can recover the arrears from a purchaser”.

4.He would further contend that SARFAESI Act is protecting the rights of the bank and the Act is stating that the debt to bank have priority and other debts / liabilities comes later. SARFAESI Act does not wipe out the debts / liabilities of other Acts. Therefore, the submission that the subsequent Court auction purchaser is not liable to pay consumption charges is incorrect.

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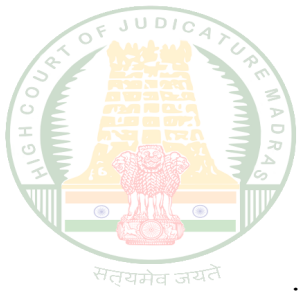
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5.The issues regarding the liability of the consumer to pay current consumption charges are no more *res-integra* and the Hon'ble Supreme Court in the case of ***Telangana State Southern Power Distribution Company Limited and another Vs. M/s.Srigdhaa Beverages*** reported in ***AIR 2020 SC 2676*** held as follows:-

“15.We have gone into the aforesaid judgments as it was urged before us that there is some ambiguity on the aspect of liability of dues of the past owners who had obtained the connection. There have been some differences in facts but, in our view, there is a clear judicial thinking which emerges, which needs to be emphasized:

A.That electricity dues, where they are statutory in character under the Electricity Act and as per the terms & 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.

B.Where, as in cases of the E-auction notice in question, the existence 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).



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C.The debate over connection or reconnection would not exist in cases like the present one where both aspects are covered as per clause 8.4 of the General Terms & Conditions of Supply.”

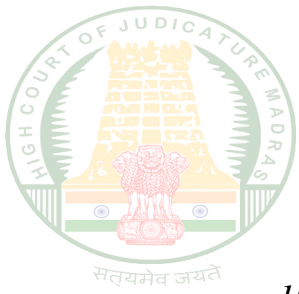
6.In the case of ***K.C.Ninan Vs. Kerala State Electricity Board and others*** reported in ***2023 0 Supreme (SC) 555***, the three Hon'ble Judges Bench of the Hon'ble Supreme Court of India settled the legal positions in the concluding paragraph No.328, which reads as follows:-

“328. The conclusions are summarized 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 PART I premises are different, it will be considered as a fresh connection and not a reconnection;



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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;

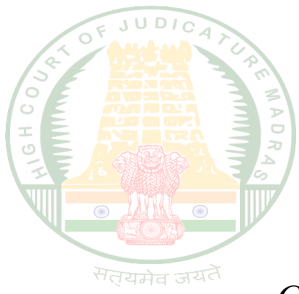
e.The scope of the regulatory powers of the State Commission under Section 50 of the 2003 Act is wide enough to stipulate conditions for recovery of electricity arrears of previous owners from new or subsequent owners;

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 PART I liability for the payment of dues, like service charges, electricity dues for power connection, and taxes of the local authorities; and



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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.”

7.In view of the above two judgments, the subsequent auction purchaser of a property is also liable to pay current consumption charges, as it is statutory in character. Thus, this Court do not find any infirmity in respect of the demand notice issued by the appellants. The learned Single Judge has considered the scope of SARFAESI Act and Rules, which has no application in respect of the electricity consumption charges, which has been made under the provisions of Electricity Act. Thus, the order of the Writ Court dated 16.04.2018 made in W.P.(MD)No.7646 of 2018 is set aside and accordingly, this Writ Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

[S.M.S, J.] & [A.D.M.C., J.]
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NCC : Yes / No
Index : Yes / No

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