

(2007) 10 MAD CK 0137

In the Madras High Court

Case No : Writ Petition (MD) No. 8376 of 2007 and M.P. (MD) No. 1 of 2007

C. Sakthivel

APPELLANT

Vs

The Commissioner, Kovilpatti Municipality, The Junior Engineer, Kovilpatti Municipality, The Municipal Council (Appellate), Kovilpatti Municipality and The State of Tamil Nadu

RESPONDENT

Date of Decision : 25-10-2007

Acts Referred:

Electricity Act, 1910 — Section 24

Citation : (2007) 10 MAD CK 0137

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : S. Sivailayaraja, for the Appellant; R. Anitha, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

M. Jeyapaul, J.—The petition is filed seeking a writ of certiorarified mandamus to call for the records of the first respondent and quash the

same and also to direct the first respondent to restore the water connection and return the motor pump.

2. The first respondent, Commissioner of Kovilpatti Municipality, Kovilpatti having found that drinking water was drawn directly by the petitioner

through electric motor cut off the water connection to the premises of the petitioner, invoking the Government (Standing) Order No. 81 and

directed the petitioner herein to pay the penalty and other charges within 15 days to get reconnection avoiding permanent disconnection.

3. The grievance of the petitioner is that the petitioner had not drawn water through an electric motor straight from the drinking water pipe. The

further stand of the petitioner is that without affording an opportunity to explain the stand of the petitioner, the second respondent had disconnected the water connection to the premises of the petitioner.

4. The learned Counsel appearing for the petitioner would submit that principles of natural justice require prior notice before ever the water connection is cut off by the Municipality. There was no illegal tapping as alleged by the Municipality and therefore, the Municipality has acted highhandedly and disconnected the water connection.

5. The learned Counsel appearing for the respondents would submit that the second respondent had disconnected the water connection only in terms of the Government (Standing) Order 81, dated 21.06.2002. It is her submission that patent violation like fitting motor to draw water illegally does not require any notice before ever the disconnection is made, under the aforesaid Government Order. Only after the inspection done by the second respondent, the disconnection was ordered and accordingly, the water connection to the premises of the petitioner was disconnected.

6. The respondents have come out with a case that they had to take the extreme step of immediate disconnection of the water connection given to the petitioner on account of the fact that there was an illegal tapping of the drinking water through motor pump set up by the petitioner. The Government (Standing) Order 81, dated 21.06.2002 would stipulate that if any electric motor was found fitted for the purpose of drawing drinking water, the connection should be immediately snapped and the motor also should be confiscated imposing a fine of Rs. 7,000/-. It is found that the first respondent has acted only within the ambit of the aforesaid Government (Standing) Order 81, dated 21.06.2002.

7. The learned Counsel appearing for the petitioner persuades this Court to follow the ratio laid down by the Bench of this Court in Union of India

(UOI) Vs. Vasantha Carbide Company Ltd., , wherein it has been held as follows:

A perusal of the said Clause No. 88 shows that it is only an enabling power to disconnect the supply of electricity on the ground mentioned therein.

But, the Department cannot disconnect the power supply without giving prior notice to the consumer. This is on the basis of the principles of

natural justice and the same has to be read into with the said clause. The respondent/plaintiff cannot assume for themselves that the consumer has

contravened any of the provisions of the Indian Electricity Act or Electricity (Supply) Act or the Indian electricity Rules, 1956 or its Restriction

and Control orders of the terms and conditions of supply of electricity or the agreement with the Department. That is the matter which has to be

decided only on giving prior notice to the consumer and after conducting an enquiry in the presence of the consumer. In this regard, it is beneficial

to refer to Section 24 of the Indian Electricity Act, 1910 which provides for disconnection of electricity supply when the consumer neglects to pay

the charges. Even in such cases, it is made clear that a notice is obligatory on the part of the Department before disconnection of such supply of

electricity. Though not such obligation is not created under Clause 88, applying the principles of natural justice, a notice is required while exercising

powers under the said clause of the terms and conditions of supply of electricity.

8. That was a case arisen on account of contravention of the provisions of the Indian Electricity Act. It appears that the energy meter fitted in the

premises of the plaintiff therein was not recording actual energy consumed and as a consequence, a notice asking the plaintiff therein to show cause

as to why extra levy for the violations set out in the notice should not be collected from him was issued. The Honourable Bench having referred to

Clause-88 of the Electricity (Supply) terms and conditions, observed that though the said Clause did not contemplate issuing of prior notice before

disconnection of electricity connection, principles of natural justice warrant giving an opportunity to the consumer to explain his case and only after

conducting an enquiry in the presence of the consumer, the electric supply can be disconnected.

9. The electric consumption meter is provided by the Electricity Board to record the reading of consumption. That was not a case of setting up a

meter stealthily by the consumer behind the back of Electricity Board. Power connection had been cut off in the aforesaid case as the meter

provided by the Electricity Board did not record the actual energy consumed by the consumer. It might have been a case, where the meter fitted

by the Electricity Board without any external influence would have become either defective or defunct due to wear and tear. The disconnection of

electricity supply under such circumstances would cause hardship to the innocent consumer who has not tampered with the meter.

10. In the instant case, the petitioner is debarred from using electric motor to pump large quantity of water. It is not a case where the consumer is entitled to draw water through electric motor. The inspection has revealed that the consumer had fitted electric motor quite against the Government (Standing) Order No. 81 dated 21.06.2002. When there is a flagrant violation of the order by drawing water supplied by the Municipality through electric motor and the same was spotted by the inspecting official who has no grouse as against the consumer, we cannot expect the Department to close its eyes till an enquiry is conducted, receiving explanation from the consumer to the notice of violation brought to his knowledge. By the time the enquiry is concluded, the consumer who fitted electric motor to draw sumptuous water illegally would have caused irreparable damage to the interest of the public who are entitled to even distribution of drinking water by the Municipality. In such circumstances, nature of justice demands immediate seizure of the electric motor and disconnection of water supply so as to avoid any further public injury. The petitioner has prayed for the return of the electric motor seized by the Municipality. Therefore, it is not as if the Municipality hastily disconnected the water supply to settle scores with the petitioner herein.

11. Therefore, rejecting the plea of the petitioner that the respondents should have given show cause notice before ever disconnection of the water connection was made by the respondents, the Court finds that the first respondent has rightly passed an order disconnecting the water connection to the premises of the petitioner on finding that an electric motor was fitted for the purpose of the drawing drinking water directly from the water pipe. The petitioner can very well pay the penalty and other charges as directed and secure reconnection. The petition, therefore, merits no consideration, it stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.