
(2010) 12 MAD CK 0207

In the Madras High Court

Case No : Writ Appeal (MD) No. 594 of 2008

R. Fithelis V. Rayar

APPELLANT

Vs

The Executive Engineer/Urban, Tamilnadu Electricity Board

RESPONDENT

Date of Decision : 20-12-2010

Acts Referred:

Citation : (2010) 12 MAD CK 0207

Hon'ble Judges : R. Subbiah, J;R. Banumathi, J

Bench : Division Bench

Advocate : A.R.L. Sundaresan, for A.L. Gandhimathi, for the Appellant; M. Sureshkumar, for the Respondent

Judgement

R. Banumathi, J.—This Writ Appeal arises out of the order in W.P.(MD) No. 9339 of 2005 whereby the learned single Judge dismissed the Writ Petition declining to quash the impugned letter dated 27.09.2005 and also declining to issue a direction to provide service connection to the Appellant in respect of Door No. 219, Threspuram, Tuticorin.

2. Brief facts are that Door No. 219, Threspuram, Tuticorin was originally owned by Appellant's wife Anagiltammal and the same was settled in the name of Appellant on 23.06.2004. Appellant sought to put up construction in the said place for putting up ice plant for which he was in need of electricity service connection. He applied for electricity service connection on 02.06.2005 for a permanent supply of 83 HP plus 1500 Watts for the purpose of construction. His application was registered on 07.06.2005 and on payment of a sum of Rs. 38,450/-, temporary connection was provided. The Respondent issued a letter dated 27.09.2005 to the Appellant calling upon him to give an undertaking to remit the assessed amount due with respect to another Service Connection No. 298 of which the Appellant's wife was a lessee in which theft of energy was detected on

3. Service Connection No. 298 stands in the name of Tamil Nadu Fisheries

Development Corporation, Appellant's wife-Anagiltammal was a lessee under Tamil Nadu Fisheries Development Corporation during 28.11.2000 to 28.11.2003 and Tamil Nadu Fisheries Development Corporation Limited leased out the Ice plant with Service Connection No. 298 to the Appellant's wife. During the lease period, theft of electrical energy was detected and criminal case was registered in Tuticorin South Police Station in Crime No. 661/2001. Wife of Appellant, Anagiltammal was charge sheeted in C.C. No. 338/2002 on the file of Judicial Magistrate No. I, Tuticorin. In respect of theft of electrical energy, show cause notice was issued to Appellant's wife on 31.07.2001 and on 10.09.2001 and subsequently, assessment order was issued for the amount of Rs. 46,89,224/- calling upon her to pay the amount in 15 installments. The said order was set aside by the High Court in W.P. No. 19848/2001 with a direction to pass fresh order after giving opportunity to the Appellant's wife. Thereafter, enquiry was conducted and fresh assessment order was issued to the Appellant's wife calling upon her to pay the amount of Rs. 46,89,224/- in 15 installments. As against the said order, Anagiltammal filed W.P. No. 135/2002 whereby the Court has directed her to deposit a sum of Rs. 5,00,000/- and the said interim direction was not complied with. But the said Anagiltammal filed Writ Appeal in W.A. No. 195/2002 and the same came to be dismissed on 04.11.2004.

4. Door No. 219, Threspuram for which the Appellant now seeks service connection originally belonged to the said Anagiltammal. Appellant and his wife Anagiltammal are living under the same roof. On 23.6.2004, the said Anagiltammal settled the above property in the name of the Appellant. Letter dated 27.9.2005 was issued to the Appellant to give an undertaking to remit the assessed amount due in respect of S.C. No. 298 and stated that only on payment of the said dues, his application will be considered. Challenging the said notice, the Appellant has sought for Writ of Certiorarified Mandamus to quash the said letter dated 27.9.2005 issued by the Respondent and to direct the Respondent to provide Electricity Service Connection to the Appellant in respect of Plot No. 219, Threspuram, Tuticorin.

5. Tamil Nadu Electricity Board resisted the Writ Petition contending that the property in Door No. 219, Threspuram to which service connection is sought now by the Appellant originally belonged to his wife-Anagiltammal and only on 23.06.2004 the said Anagiltammal transferred the said Ice plant property to the Appellant with sole intention to get the service connection by defrauding the Respondent the said sum due in respect of Service Connection No. 298.

6. Learned single Judge held that in terms of Clause 6.10 of the Terms and Conditions for Electricity Supply or under the new Rules, if the intending consumer has arrears, he/she was not entitled for new service connection. Learned single Judge further held that the Ice Plant was transferred in the name of the Appellant by his wife Anagiltammal only with a view to get fresh connection and Appellant though fully aware of these past details, did not refer to the same in his affidavit and dismissed the Writ Petition with a cost of

Rs.10,000/- to be paid to the Tamil Nadu Electricity Board

7. Challenging the order of the learned single Judge, the Appellant has filed this Appeal. The total amount due is stated to be Rs. 84,17,138/-(assessment amount Rs. 46,89,224/- and interest Rs. 37,27,914/-) from the Appellant's wife in respect of S.C. No. 298. For recovery of the amount, the Respondent has also filed a Civil Suit in O.S. No. 13 of 2007 on the file of the Fast Track Court, Tuticorin. Earlier, the matter was referred to the Lok Adalat. In the Lok Adalat, the matter was settled for Rs. 28,92,250/- and that the same may be paid in 36 installments.

8. On behalf of the Appellant, Mr. AR.L. Sundaresan, learned Senior Counsel has initially advanced arguments. However, in the subsequent hearings, the learned Senior Counsel would submit that the Appellant is ready to pay the amount of Rs. 28,92,250/- in installments provided if the Appellant is given long period to enable him to pay the amount.

9. Mr. M. Sureshkumar, learned Counsel for Respondent-TNEB has submitted that because of efflux of time, Respondent Board cannot now accept the Lok Adalat settlement for Rs. 28,92,215/-. Learned Counsel for Respondent Board would further submit that for recovery of the amount of Rs. 84,17,138/-, Tamil Nadu Electricity Board has already filed O.S. No. 13 of 2007 before Fast Track Court, Tuticorin for which the Respondent has already paid Court Fee of Rs. 3,51,692/-/-.

10. As we pointed out earlier, on 05.01.2006 the matter was settled in Lok Adalat for a sum of Rs. 28,92,215/- which was payable in maximum 36 installments. On behalf of the Appellant, the learned Senior Counsel submitted that the Appellant and his wife had financial difficulties and they were suffering continuous loss in their business and therefore, they could not generate the income and settle the amount as per the Lok Adalat settlement. Learned Senior Counsel for Appellant would also submit that Appellant is ready to pay the court fee amount of Rs. 3,51,692/- paid by the Respondent in O.S. No. 13 of 2007. It was submitted that on payment of the amount, service connection may be ordered to be given so as to enable the Appellant to run the business and generate income.

11. The matter was settled in Lok Adalat for a sum of Rs. 28,92,215/- way back in 2006. Now the Tamil Nadu Electricity Board also filed the civil suit in O.S. No. 13 of 2007 on the file of Fast Track Court, Tuticorin and has also paid huge court fee of Rs. 3,51,692/-. Having regard to the subsequent developments, it would not be appropriate to direct the Respondent to accept the same Lok Adalat settlement amount of Rs. 28,92,215/-. However, having regard to the efflux of time and the difficulties expressed by the Appellant, we deem it appropriate to direct the Appellant to pay the amount settled in the Lok Adalat i.e. Rs. 28,92,215/- and also court fee of Rs. 3,51,692/- paid in O.S. No. 13 of 2007. We also deem it appropriate to direct the Appellant to pay some more amount in lieu of delay in payment of the amount settled in the Lok Adalat. In our considered

view, altogether the amount could be rounded off to Rs.35,00,000/- (thirty five lakhs) as under :-

Lok Adalat settlement : Rs.28,92,215.00	Court fee paid in O.S.No.13/07 : Rs. 3,51,692.00	Amount payable because of the delay in settlement : Rs. 2,56,093.00	Total : Rs.35,00,000.00
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12. Expressing willingness to pay the amount settled in the Lok Adalat i.e. Rs. 28,92,215/- together with the court fee amount of Rs. 3,51,692/-, Appellant had also filed an affidavit undertaking to pay the amount in installments. In the affidavit, it is also stated that Appellant is ready to pay Rs. 2,50,000/- within a period of four weeks and on payment of which, the service connection may be provided to enable the Appellant to run the business and generate the income and pay the balance amount in 82 monthly installments. The relevant portion of affidavit reads as under :

10) Hence without prejudice to the contention raised by the Appellant in the present W.A. and the defence of the 2nd deponent herein in the suit in O.S. No. 13/2007 which is now pending on the file of Fast Track Court, Tuticorin with a view to amicably resolve the Issue we humbly pray we may be permitted to pay a sum of Rs. 28,92,215/-, which was offered by the Superintending Engineer on 05.01.2006 for Lok adalat settlement, the sum of Rs. 3,51,692/- paid as court fees by the Electricity board for the above referred civil suit and a reasonable interest all put together turned off to Rs. 35,00,000.00 (Rupees Thirty Five lakhs) as full and final Settlement.

Out of the said sum of Rs. 35 Lakhs we undertake to pay a sum of Rs. 2,50,000/- within a period of 4 weeks and on such payment the service connection may be provided as applied for by the 1st Appellant for the ice-plant, 219 Theraspuram, Tuticorin. Thereafter we undertake to pay the balance amount of Rs. 32,50,000/- in 82 monthly installments (comprising of Rs. 40,000/- in 81 monthly installments and Rs. 10,000/- for the 82nd instalment) we undertake to strictly comply with the above payment schedule.

13. Appellant-Fithelis V. Rayar and his wife-Anaglit ammal are present in Court. Appellant and his wife have also expressed their intention and willingness to settle the amount provided after payment of Rs. 2,50,000/- if they are provided with the service connection for the ice plant to enable them to run the business and generate the amount and settle the balance amount. Having regard to the averments stated in the affidavit and the submissions of Appellant and his wife who are present in the Court, in our considered view, the Appellant is having genuine inclination to settle the amount of Rs. 35,00,000/-.

14. In the result, Appellant is directed to pay a sum of Rs. 2,50,000/- (two lakhs fifty thousand) as part payment towards the said Rs. 35,00,000/- within a period of four weeks i.e. on or before 31.01.2011 and on such payment, Respondent-TNEB is directed to provide the service connection for the ice plant at No. 219, Theraspuram, Tuticorin.

15. In so far as, the balance amount of Rs. 32,50,000/-, the same shall be payable in 82 monthly installments comprising of Rs. 40,000/- each in 81 monthly installments and Rs. 10,000/- for the 82nd instalment. The monthly installments shall commence from February 2011 which is payable on or before 15th of every succeeding English calendar month. In case of difficulty in paying the instalment, on request in writing made by the Appellant, Respondent-Board shall grant two weeks further time to pay the instalment. In case of continuous default for two installments, it is open to the Respondent to recover the balance amount in accordance with law. Learned Counsel for Respondent submitted that the Superintending Engineer has to get approval from the Chairman, Tamil Nadu Electricity Board and also to report the same in the civil suit O.S. No. 13 of 2007 on the file of Fast Track Court, Tuticorin. It would be appropriate if the Respondents gets the approval of the Chairman, Tamil Nadu Electricity Board and report this settlement in the civil suit O.S. No. 13 of 2007.

The matter shall be listed on 10.02.2011 for reporting compliance.