

(2006) 12 MAD CK 0160

In the Madras High Court

Case No : Writ Petition No. 8488 of 2006

Saraswathi Engineering Works

APPELLANT

Vs

Chief Engineer, Distribution, Vellore Region and Another

RESPONDENT

Date of Decision : 13-12-2006

Acts Referred:

Citation : AIR 2007 Mad 198

Hon'ble Judges : K. Mohan Ram, J

Bench : Single Bench

Advocate : R. Venkateswaran, for the Appellant; Murali, for M. Sureshkumar, for the Respondent

Final Decision : Allowed

Judgement

K. Mohan Ram, J.—With consent of the learned Counsel on either side, the writ petition itself is taken up for final disposal.

2. The petitioner entered into an agreement with the first respondent for supply of certain materials and the first respondent placed purchase orders on the petitioner, but the petitioner could not supply the materials, hence the first respondent demanded a sum of Rs. 1,63,519/- as liquidated damages from the petitioner. The petitioner agreed to pay the liquidated damages in ten instalments and paid a sum of Rs. 16,500/- on 8-3-2004 towards the first instalment out of the ten, but had not paid the remaining instalments. In such circumstances, on instructions of the first respondent, the second respondent issued the impugned notice demanding payment of the balance amount of Rs. 1,47,019/- and unless the amount is paid the petitioner was informed that the amount will be included in the monthly bill for March 2005 in respect of the petitioner's electricity service connection No. 209. Since the petitioner did not comply with the demand, the electricity service connection was disconnected. The said impugned notice is challenged in the writ petition. The main contention of the petitioner is that if there is any breach of contract and the respondents are entitled to claim liquidated damages, the same can be claimed only by instituting

a suit in the Civil Court and the respondents have no authority to club the liquidated damages in the monthly bills raised in respect of the electricity service connection standing in the name of the petitioner and the respondents have no authority to disconnect the electricity service connection for non-payment of the liquidated damages.

3. A detailed counter-affidavit has been filed by respondents 1 and 2. The stand taken by respondents 1 and 2 in the counter-affidavit is that in the interest of the Board and to safeguard the revenue loss caused by the petitioner, the liquidated damages was clubbed with the monthly Current Consumption charges of the electricity service connection No. 209.1 and the action of the first and second respondents-Board" is only aimed at to safeguard the public money which is due from the petitioner. It is further stated that since the petitioner has not paid the Current Consumption Charges for the month of March 2005, the supply of electricity to service connection No. 209 was disconnected on 16-4-2005 by the second respondent. It is further contended that though the impugned order was passed on 9-3-2005, the writ petition has been filed belatedly and hence the writ petition is liable to be dismissed on the ground of laches.

4. Heard the learned Counsel for the petitioner and the learned Counsel for the respondents.

5. Apart from reiterating the contentions put forth in the affidavit the learned Counsel for the petitioner submitted that there is no provision either in the Electricity Act or in the Tamil Nadu Electricity Distribution Code or in the Tamil Nadu Electricity Supply Code authorising the respondents to club the alleged liquidated damages in the monthly Current Consumption Charges payable in respect of the electricity service connection standing in the name of the petitioner. According to the learned Counsel, if at all any liquidated damages can be, claimed from the petitioner for the alleged breach of contract, it is open to the respondents to approach the civil Court and they cannot arbitrarily without any authority of law include the liquidated damages in the monthly Current Consumption Charges payable by the petitioner and disconnect the electricity service connection for non-payment of the amount. The learned Counsel further brought to the notice of this Court the order dated 9-3-2006 passed in W.P. No. 1487 of 2006 in a similar case and contended that the decision squarely applies to the facts of this case.

6. Per Contra, the learned Counsel for the respondents submitted that though there is no specific provision authorising the respondents to include the liquidated damages payable by the petitioner with the monthly Current Consumption Charges in respect of the electricity service connection standing in the name of the petitioner, to safeguard the interest of the Board and to recover the loss caused by the petitioner, the same was clubbed with the monthly Current Consumption Charges. He further contended that though the impugned proceedings were issued as early as 9-3-2006, the writ petition has been filed belatedly only on 29-8-2006 and therefore the writ petition is liable to be

dismissed on the ground of laches. The learned Counsel fairly submitted, that the order dated 9-3-2006 passed in W.P. No. 1487 of 2006 applies to the facts of this case.

7. I have carefully considered the submissions made on either side and the order dated 9-3-2006 passed in W.P. No. 1487 of 2006. As rightly contended by the learned Counsel for the petitioner and fairly accepted by the learned Counsel for the respondents, there is no provision either in the Electricity Act or in the Tamil Nadu Electricity Distribution Code or in the Tamil Nadu Electricity Supply Code authorising the respondents to club the alleged liquidated damages payable by the petitioner with the Electricity Consumption Charges in respect of the electricity service connection standing in the name of the petitioner. If any breach of contract has been committed by the petitioner, it is open to the respondents to claim liquidated damages, if they are so entitled under law, before the appropriate forum/ Court. Without resorting to such a remedy it is not open to the respondents to club the alleged liquidated damages with the monthly Current Consumption Charges and for nonpayment of the amount so clubbed to disconnect the electricity service connection. Therefore the impugned proceedings has been issued by the respondents without the authority of law in an arbitrary manner. The contention of the learned Counsel for the respondents that the writ petition is liable to be dismissed for laches cannot be accepted. The valuable right of the petitioner is effected by the arbitrary action of the respondents and if the disconnection is allowed to continue the petitioner will be put to great hardship and loss. In such circumstances though there is delay in approaching the High Court on that scope the writ petition cannot be dismissed. In similar circumstances, a learned Judge of this Court by an order dated 9-3-2006 in W.P. No. 1487 of 2006 has quashed the similar proceedings and the observations made therein squarely applies to the facts of this case.

8. For the above said reasons, the writ petition is liable to be allowed and accordingly allowed and the impugned proceedings are quashed and the respondents are hereby directed to restore the petitioner's electricity service connection No. 209 without a period of two weeks from the date of receipt of a copy of this order. However, there will be no order as to costs. Consequently the connected MP is closed.