
(1999) 08 MAD CK 0144

In the Madras High Court

Case No : Writ Petition No. 13230 of 1999

Zoro Aqua Marine

APPELLANT

Vs

Tamil Nadu Electricity Board and Others

RESPONDENT

Date of Decision : 05-08-1999

Acts Referred:

Electricity (Supply) Act, 1948 — Section 49

Citation : AIR 2000 Mad 68

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : G. Thilakavathy, for the Appellant; N. Muthusamy, for the Respondent

Judgement

P.D. Dinakaran, J.—It is stated that during the inspection conducted by the first respondent Board at 17 Hrs. on 31-3-1999 at the petitioner's aqua form at No. 44 Kovalam village at Kancheerpuram District, a theft of energy by the petitioner by tampering the security seals of the meters and manipulation of the meter recording after opening the top covers of the meters were noticed with respect to the electricity service connection No. 466/Kovalam-II. Further, the right and left sides of the meter security seals were also found tampered, hanging on the ground, the meter top screws were also found tampered and the dials of the meters were found dislocated.

2. On the basis of the alleged tampering of the meters and manipulation of the meter-recordings, the respondent Hoard initiated action against the petitioner for theft of energy in respect of their Service connection No. 466/Kovalam II. A show cause notice dated 3-4-1999 in form Appendix IV. which is applicable for the violation of the Terms and Conditions of supply of Electricity was served on the petitioner. However the said show cause notice dated 3-4-1999 was subsequently withdrawn and replaced by issuance of another show cause notice dated 19 5-1999 in form Appendix VI, which is applicable for the theft of energy/ unauthorised reconnection of a disconnected service. Along with the said show cause notice dated 19-5-1999, the respondents Board also admittedly furnished

the observation Mahazar and the Observation Report to the petitioner in support of the allegations levelled against the petitioner, which is evident from the acknowledgment made by the petitioner at the lime of inspection. To the said show cause notice dated 19-5-1999. The petitioner submitted their explanation on 9-6-1999 denying the allegations levelled against them.

3. In the meanwhile the petitioner has chosen to challenge the said show cause notice dated 19-5-1999 in W. P. No. 10318 of 1999 before this Court, in which notice of motion was ordered, Pending notice of motion in the said writ petition, it appears that the respondent Board has conducted an enquiry on 2-7-1999, and offered a personal hearing to the petitioner at the Office of the 2nd respondent. The petitioner has also participated in the enquiry on 2-7-1999. However, the respondent Board, taking note of the notice of motion in W. P. No. 10318 of 1999 before this Court, in which the show cause notice dated 19-5-1999 is assailed and notice of motion was ordered by this Court the respondent Board has made the following endorsement :

"Intimated that they have filed a writ petition at Madras.

.....

Hence any further action cannot be taken till the discussion with the Board's counsel at Madras. Hence the enquiry is adjourned indefinitely."

4. Thereafter, by proceedings dated 20-7-1999, which is impugned in the present writ petition, the respondent Board has chosen to pass an assessment order holding that the petitioner is guilty of theft of energy and accordingly imposed an extra-levy of Rs. 20,16,393/- towards the cost of energy alleged to have been stolen by the petitioner and the petitioner was permitted to pay the said extra-levy of fifteen equal monthly instalments of Rs. 1,34,420/- per month, the first instalment to be paid on or before 5-8-99 and the subsequent instalments to be paid on or before 5th of every month and the last instalment to be paid on or before 5-10-2000. It is also stated in the assessment order dated 20-7-1999 that supply of electricity will be disconnected, without any further notice, if the petitioner commits default in payment of the first instalment or any of the instalments on or before the specified date, viz.. 5th of every month. By the impugned assessment order 20-7-1999, the respondent Board has also informed the petitioner that the petitioner may prefer an appeal against the said assessment order to the appellate authority viz., Superintending Engineer/CEDC/Chengalpattu, within sixty days from the date of receipt of the order.

5. Aggrieved by the assessment notice dated 20-7-1999, the petitioner has filed the present writ petition seeking a writ of certiorarified mandamus, calling for the records of the 2nd respondent dated 20-7-1999 In Lr. No. EE/O&M/4MN/JE-P1/FAPTS/Zero Aqua/466/31399/D251/99 and consequently direct the 2nd respondent to complete the enquiry commenced pursuant to the show cause notice dated 19-5-1999.

6. Mrs. G. Thilakavathy, learned counsel for the petitioner contends that once the respondent Board has issued the show cause notice on 19-5-1999, initiated an enquiry against the petitioner, the petitioner has also participated in the enquiry on 2-7-1999, and the said enquiry as adjourned indefinitely by the respondent Board on 2-7-1999, the respondent Board ought not to have passed final assessment order dated 20-7-99. which is impugned in the above writ petition even before concluding the enquiry. Learned counsel for the petitioner invited my attention to Sub-clause 6.02 of Main Clause 37 of Schedule Part-I of Terms and Conditions of Supply of Electricity, which reads as follows :

"If the consumer fails to send the explanation within the stipulated time or if the explanation is not satisfactory, the Officer authorised to issue show cause notice will send a report to the Assessing Officer. The Officer authorised to make assessment if convinced that there has been a violation after conducting a detailed enquiry within 15 days from the date of issue of show cause notice by giving a reasonable opportunity to the consumer to represent and after examining the material available in the case will assess the compensation charges payable and issue speaking order to the consumer directing him to pay the charges in equal monthly instalments with a maximum of (a) Five instalments for amount up to Rs. 1,00,000/-; (b) Ten instalments for amount above Rs. 1,00,000/- and up to Rs. 10,00,000/- and (c) Fifteen instalments for amount exceeding Rs. 10,00,000/-.

The first instalment will be paid within 15 days from the date of receipt of the Assessment Order by the Consumer. Failure to pay any of the instalments within due date will result to disconnection of supply to the service connection of the consumer without any further notice."

The learned counsel for the petitioner contends that as on 2-7-1999 the enquiry was not completed as the same was adjourned indefinitely by the respondent Board and therefore unless and until the enquiry is completed the respondent Board ought not to have passed the impugned order dated 20-7-99.

7. Per contra, Mr. N. Muthusamy, learned counsel for the respondent Board contends that inasmuch as after the issue of show cause notice dated 19-5-99 the petitioner was given an opportunity for a personal enquiry on 2-7-99 and the petitioner also had attended the personal enquiry on 2-7-99, the petitioner could not have any grievance in the matter as the respondent Board was constrained to adjourn the enquiry indefinitely only due to the fact that this Court ordered notice of motion in W. P. No. 10318 of 1999, wherein the petitioner has challenged the very show cause notice dated 19-5-99, and therefore Mr. N. Muthusamy, contends that Sub-clause 6.02 of Main Clause 37 of Schedule Part-I to the Terms and Conditions of Supply of Electricity is not violated while passing the impugned assessment order dated 20-7-99. The enquiry was adjourned indefinitely because of the pendency of W. P. No. 10318 of 1999 before this Court and to ascertain from the Board's counsel for further orders of this Court in W. P. No. 10318 of 1999. After coming to know that no interim orders were granted by

this Hon"ble Court in the said writ petition, the respondent Board proceeded with the matter and passing the final assessment order on 20-7-99. Even assuming that the petitioner is aggrieved by the order dated 20-7-1999, the petitioner can very well file an appeal against the same before the Superintending Engineer, Chengaipattu, under Sub-clause 6.02(c) of Main Clause 37. Schedule Part-I of the Terms and Conditions of Supply of Electricity, which reads as follows :--

"After receipt of assessment Notice the consumer can also request the Appellate Authority in writing to stay disconnection of the service. Before considering the appeal, the Appellate Authority can order the consumer to pay not less than a minimum No of instalments as below :

(a) Two Instalments out of five instalments for amount up to Rs. 1,00,000/-.

(b) Four instalments out of ten instalments for amount above Rs. 1,00,000/- and up to Rs. 10,000/-.

(c) Six Instalments out of fifteen, instalments for amount exceeding Rupees 10,00,000/-.

The Appellate Authority can simultaneously order stay of collection of compensation charges and disconnection i.e. stay of Assessment order on payment of the minimum installments "

Therefore. Mr. N. Muthusamy, learned counsel for the respondent Board contends that there is no violation of principles of natural justice nor violation of Sub-clause 6.02 of Main Clause 37 of Schedule Part-I of Terms and Conditions of Supply of Electricity and in any event, the above writ petition is not maintainable in view of the efficacious alternative remedy of appeal under Sub-clause 6.02 of Main Clause 37 of Schedule Part-I of Terms and Conditions of Supply of Electricity referred to above.

8. I have given careful consideration to the rival submission.

9. It is, of course, unfortunate, that the petitioner has chosen to challenge the show cause notice dated 1-5-99, in W. P. No. 10318 of 1999, in which this Court ordered notice of motion and at the same time, seeks a direction in the present writ petition to the second respondent to complete the enquiry already commenced pursuant to the show cause notice dated 19-5-99. However, since the petitioner has now withdrawn the W. P. No. 10318 of 1999, I am obliged to consider the grievance of the petitioner, challenging the impugned assessment order dated 20-7-99.

10. As per Sub-clause 6.02 of the Main Clause 37. Schedule Part-I of the Terms and Conditions of Supply of Electricity, the respondent Board is under a statutory obligation to comply with the following requirements, viz., (i) the Officer authorised should assess the compensation charges payable by the consumer; (ii) such assessment order should be a speaking order to that effect directing him to pay the compensation charges in equal monthly instalments; (iii) before

issuing such assessment order, by way of speaking order, the authorised officer should conduct a detailed enquiry within fifteen days from the date of issue of notice (iv) the consumer should be given a reasonable opportunity to represent his case; (v) the assessing authority should examine the materials available in the case; (vi) assessing authority should be convinced that there has been a violation and (vii) there should be a finding to hold the consumer liable for the compensation charges while issuing such assessment order which should be supported with reasons to qualify the same as a speaking order.

11. In the instant case the respondent Board having rightly issued the show cause notice dated 19-5-1999, as in Appendix VI. which is applicable for theft of energy/unauthorised reconnection of a disconnected service connection, enclosing the observation Mahazar and the Observation Report therewith, received an explanation from the petitioner on 9-6-1999, initiated an enquiry against the petitioner on 2-7-1999 given an opportunity to the petitioner to represent his case, however adjourned the enquiry indefinitely to discuss the matter with the Board's counsel, ought not to have passed the final assessment order dated 20-7-1999, which is impugned in the above writ petition, before concluding the enquiry and therefore the impugned assessment order dated 20-7-1999 suffers from an error apparent on the face of the record and therefore the same is per se illegal and not in full compliance of Clause 6.02 of Main Clause 37 Schedule Part-I of the Terms and Conditions of Supply of Electricity, which mandates a detailed enquiry, after giving a reasonable opportunity to the consumer and requiring the office authorised to get convinced himself that there has been a violation and then to give a finding to that effect by way of a speaking order. On this short but strong ground I am obliged to interfere with the impugned assessment order dated 20-7-1999. Accordingly, the assessment order issued, dated 20-7-1999, by the second respondent in I,r. No. EE/O&M/MMN/JE-PI/FAPTS/Zoro Aqua/456/31399/D251/99 is hereby quashed. Under the facts and circumstances of the case, I am also unable to countenance the contention of the learned counsel for the Respondent Board that even if the petitioner is aggrieved by the impugned assessment notice, the petitioner can challenge the same seeking redressal of their grievance by filing an appeal before the appellate authority, viz., Superintending Engineer, Chengalpattu. which is notified in the very impugned order itself as the very assessment order dated 20-7-1999, is per se illegal and stands quashed.

12. In the result, the matter is remitted to the 2nd respondent, viz., Executive Engineer/O&M, Chengalpattu Electricity Distribution Circle. TNEB Maraimalai Nagar to proceed with the enquiry where it was left on 2-7-1999 to complete the same after giving fair and reasonable opportunity to the petitioner in conformity with the procedure provided under Sub-clause 6.02 of Main Clause 37 Schedule Part-I of the Terms and Conditions of Supply of Electricity as indicated above and pass appropriate orders in the matter on merits within fifteen days from the date of receipt of copy of this order. Till such assessment orders are passed in the enquiry as directed above, the service connection in question shall not be

disconnected.

13. The writ petition is ordered accordingly. No costs. Connected W. M. P. No. 18982 of 1999 is rejected.