

(2009) 05 MAD CK 0002

Madras High Court

Case No: Writ Petition No. 1354 of 2005

E. Dhamodharan

APPELLANT

Vs

The Superintending Engineer,
Tamil Nadu Electricity Board and
The Executive Engineer/O and M,
CEDC/North

RESPONDENT

Date of Decision: May 19, 2009

Acts Referred:

- Electricity (Supply) Act, 1948 - Section 49
- Electricity (Supply) Rules, 1956 - Rule 8

Hon'ble Judges: V. Dhanapalan, J

Bench: Single Bench

Advocate: D. Nelliappan, for the Appellant; A. Selvendran, TNEB, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V. Dhanapalan, J.

Challenging the order of the 1st respondent dated 03.01.2005 in confirming the order dated 06.06.2003 passed by the

2nd respondent and to forbear the respondents from disconnecting the service connection bearing No. 11-01-388 at Door No. 309/1, T.H.Road,

Tondiarpet, Chennai, the petitioner has filed this writ petition.

2. The petitioner, who is carrying on the business of manufacturing steel utensils, coating eversilver utensils and buffing at Door No. 309/1,

T.H.Road, Chennai-21, states that originally the electricity connection bearing S.C. No. 11-01-388/TF-11 stood in his name for the past several

years and in all these years, electricity consumption charges are constant without much variation. He would state that the said business comes

under the category of Small Scale Cottage Industries and that similar cottage industries are located in the said area.

3. According to the petitioner, on 03.01.2003, the 2nd respondent and his subordinate officers made a visit to the said area and harassed some of

the owners with a malafide intention and when he and others questioned the said attitude of the 2nd respondent, being frustrated over the same, the

2nd respondent enquired about him and threatened him with dire consequences; however, he himself gave his address and voluntarily invited the

2nd respondent to have an inspection of his service connection; immediately thereafter, some inspecting authorities entered into his premises and

meddled with the meter and when such unlawful action of the authority was questioned, the authorities challenged him that he could do whatever he

wanted.

4. The petitioner would further state that the 2nd respondent after completion of the entire work issued an inspection notice to one B.Perumal and

received an acknowledgment from him to show as if notice was issued before the inspection. The Assistant Executive Engineer (O & M) vide

proceedings in A. No. 008/03 dated 08.01.2003 issued a show cause notice to the petitioner that he had cut the sealed wire and fixed bogus seal,

thereby having committed an act of theft of energy and called upon him to submit his explanation and to attend the enquiry to be held on

27.01.2003. In the meanwhile, the petitioner made a complaint to the Electricity Department on 22.01.2003 about the illegal act committed by the

authority and he also attended the enquiry conducted on several dates, but the 2nd respondent without properly conducting the enquiry and

without giving sufficient opportunity to him concluded the enquiry abruptly.

5. It is the case of the petitioner that the 2nd respondent herein, contrary to the provisions of the terms and conditions, by his proceedings dated

06.06.2003 held that the petitioner had committed an act of theft of energy and passed an assessment order directing the petitioner to pay a sum of

Rs. 88,892/- in 5 equal instalments commencing from 26.06.2003 to 26.10.2003, failing which the service connection would be disconnected.

Challenging the same, the petitioner filed an appeal before the 1st respondent, who, by its order dated 03.01.2005, confirmed the order passed by

the 2nd respondent and directed the petitioner to deposit the balance amount in 4 equal instalments before 20th of every month commencing from

January 2005 till April 2005. According to the petitioner, the 1st respondent has passed the impugned order without properly conducting the

enquiry and hence, having no other alternative, he has approached this Court.

6. The Executive Engineer, O & M, Tondiarpet, the 2nd respondent herein has filed a counter stating that the service connection of the petitioner

was inspected on 03.01.2003 by the Assistant Executive Engineer/O & M, Tondiarpet and that he detected theft of energy by bogus seals, which

act has caused loss of revenue to the Electricity Board to the tune of Rs. 88,892/-. The 2nd respondent would also state that the AE/MRT/RC is

the competent authority authorized by the Board to check and verify the genuineness of seals and that the concerned AE/MRT/RC has clearly

confirmed in her report and also during the enquiry that the seals available in the petitioner's energy meter were different from the genuine MRT

seals and they were counterfeit. He further submitted that in the show cause notice as well as in the assessment order, it has been clearly stated that

the original MRT seals fixed in the meter by the Board were removed and replaced with counterfeit seals. The petitioner's sole intention is to steal

energy as and when required by meddling with mechanical parts of the meter, thereby indulging in theft of energy.

7. The 2nd respondent would further state that no inspection was carried out in the petitioner's service connection No. 11-01-388 by the

Electricity Board officials five months prior to the detection of theft of energy and that no revised test report has been taken. The period of theft has

been arrived at 12 months as per para 8.02 Clause 37 of the terms and conditions of supply, since the other conditions stated in the above clause

are not eligible in the case of the petitioner. He has further stated in the counter affidavit that the total loss of revenue caused to the Board is Rs.

88,892/- and that the petitioner has already paid Rs. 17,780/- vide PR No. 496701 dated 09.07.2003, Rs. 35,556/- vide PR No. 223128 dated

30.03.2005 and Rs. 17,778/- vide PR No. 223150 dated 07.04.2005 and that he has to pay the balance instalment of Rs. 17,778/-. The 2nd

respondent has also mentioned in the counter that the Electricity Board being a Public Sector Undertaking is not in a position to realise the

legitimate due from the petitioner herein and prayed this Court for a direction to the petitioner to pay the balance amount of Rs. 17,778/- in one

instalment.

8. Heard the submissions made by Mr. D.Nelliappan, learned Counsel for the petitioner and Mr. A.Selvendran, learned Counsel for the

respondents Electricity Board.

9. Learned Counsel for the petitioner would contend that the 1st respondent ought to have conducted the enquiry properly by giving reasonable

and sufficient opportunity to the petitioner and non-affording of such an opportunity amounts to violation of the principles of natural justice. He

would also contend that the respondents, while calculating the levy, have erred in taking into account 12 months average, which is contrary to the

amendment issued in Clause 37, para 8.02 of the terms and conditions of supply of electricity of the Tamil Nadu Electricity Board and that non-

consideration of the amendment vitiates the entire proceedings.

9a. It is the further contention of the learned Counsel that the 1st respondent failed to note that the meter was checked five months back and

revised test report was submitted by the authority, which could be seen from the records if called for, but the 1st respondent herein has erred in

holding that there was no such inspection. It is also his contention that the 1st respondent having noticed the alleged bogus seal, did not produce

the same along with the specimen original seal during the enquiry proceedings to establish the difference and his conclusion that all those materials

are entrusted in the criminal proceedings will not absolve the liability of the Department.

9b. Moreover, the learned Counsel would submit that the respondents have erred in relying on the evidence of Tmt.Sripriya to hold that the

petitioner has tampered the seals, whereas, a mere reading of the evidence shows that she has given only suggestions and she has neither found

fault with the petitioner nor alleged that the petitioner has tampered with the meter. To support his stand, learned Counsel for the petitioner has

relied on a decision of this Court reported in 1996 AIHC 1417 (Hindustan Engineering Industries v. The Assistant Divisional Engineer and Ors.).

Relevant portion of the said judgment is extracted as under:

5. But the mere important question is the manner of assessment of the loss suffered by the Board. For this purpose, the Board has framed

regulations u/s 49 of the Electricity (Supply) Act, 1948. Rule 8(b) provides for the manner of assessment in the case of theft of electricity

energy. There is a provision which says that such assessment shall be made for a maximum period of one year. This clause was introduced only on

13.06.1986. In the present case, the inspection had been made long earlier and therefore, the said clause will not apply to the facts of the present

case. Therefore it follows, that the respondents have to fix the date of theft on the basis of past consumption of electricity charges in the factory. In

this case, the respondents have adopted a period of one year as the period for which the loss is estimated. In my opinion, this assumption that the

Board has suffered loss for one year, is not based on any material and the respondents have not made any attempt to fix the date of theft. Further,

the petitioner had disputed the number of shifts and the number of working hours in the factory. The respondents have not made any attempt to

answer these objections raised in the writ petition. In the impugned order the respondents have simply adopted the working sheet dated

21.05.1983 which was attached to the provisional assessment order. In other words, the respondents have not given an acceptable explanation for

the assessment of damages. No doubt, an assessment like this is more or less equal to a best judgment assessment in a sales tax case and may

involve some amount of guess work. Even so, a consumer must be made known as to the basis on which an assessment is made. That is the

minimum requirement of law. Any other method of arriving at the loss without disclosing the reasons therefore can be characterised as an arbitrary

action. In view of the matter, the impugned order is set aside....

10. Per contra, learned Counsel for the respondent Electricity Board would submit that the service connection at the petitioner's premises was

inspected on 03.01.2003 by the Assistant Executive Engineer/O & M/Tondiarpet and theft of energy by way of bogus seals was detected, which has caused loss of revenue to the Board to the tune of Rs. 88,892/-. According to the learned Counsel, sufficient opportunities were given to the petitioner to defend himself during the enquiry conducted by the respondents.

10a. With regard to the contention raised by the learned Counsel for the petitioner in the detection of tampering of seals in the energy meter, learned Counsel for the respondent Board would submit that the AE/MRT/RC is the competent authority authorized by the Board to check and verify the genuineness of seals and that during the inspection, it was evidenced that the seals available in the petitioner's meter were different from the genuine MRT seals. He would contend that the petitioner's sole intention is to steal energy as and when required by meddling with the mechanical parts of the meter, thereby indulging in theft of energy. As regards the contention that the respondent Board has taken 12 months average for levy, learned Counsel would submit that the Electricity Board being a Public Sector Undertaking is not in a position to realize the legitimate due from the petitioner.

11. I have given heedful consideration to the submissions made by the learned Counsel on either side and perused the relevant material records.

12. The petitioner's case is that some inspecting authorities of the 2nd respondent's office entered into his premises and meddled with the energy meter and that he is not responsible for the alleged fixing of bogus seal and cut in the sealed wires in the energy meter as stated by the Assistant Executive Engineer (O & M), Tondiarpet in her proceedings dated 08.01.2003. According to the petitioner, if the seal in the energy meter at his premises is bogus, then the 1st respondent ought to have produced the specimen of the original seal during the enquiry. It is his case that he had attended the enquiry on several dates, but the 2nd respondent without properly conducting the enquiry and without giving sufficient opportunity to him concluded the enquiry abruptly.

13. The enquiry conducted by the Electricity Board at the petitioner's premises on 11.04.2003 as per the terms and conditions of supply of

Electricity, as seen from the order dated 06.06.2003 of the 2nd respondent, would reveal the following:

A letter of intimation for inspecting the S.C. No. 11-01-388/TF III B was given by the inspection team to Thiru B.Perumal (enjoyer of the S/C).

The inspection team inspected the Service Connection No. 11-01-388/TF III B along with Thiru B.Perumal had shown the Bogus seals instead of

original MRT/seals provided by the TNEB in the Energy Meter cover by inspecting officers to Thiru B.Perumal, the enjoyer.

14. In the order of the 2nd respondent, it is stated that the bogus seals provided on the meter in question was also acknowledged by

Thiru.Perumal, the enjoyer during the inspection by the inspection team and the said acknowledgement was also verified as correct. It is further

stated therein that the Meter Cover can be opened while replacing the bogus seals provided on the meter as and when required as per wishes to

reduce the recording of the actual consumption by meddling with the mechanical recording parts of the meter in the service connection in question.

It is seen that the 2nd respondent has held that the provisional assessment issued in the show cause notice as valid on the above grounds and after

giving sufficient opportunity to the petitioner to produce additional documents to defend the case of the petitioner.

15. When the order of the 2nd respondent was taken on appeal by the petitioner before the 1st respondent, the 1st respondent has held that the

order of the 2nd respondent dated 06.06.2003 is categorical to the effect that as far as the meter seals are concerned, the AE/MRT/RC is the

competent authority authorised by the Board to check and verify the genuineness of seals and based on the statement of the AE/MRT/RC in her

report and her evidence during the enquiry that the seals in the petitioner's meter were different from the genuine MRT seals, the 2nd respondent

has issued the assessment order.

16. As regards the contention of the petitioner that the respondents erred in taking 12 months average while calculating the levy, the 1st respondent

has stated that the period of theft has been arrived at 12 months as per para 8.02 Clause 37 of the terms and conditions of supply only since the

other conditions stated in the said clause are not eligible in the case of the petitioner. The 1st respondent has also stated that the AE/MRT/RC is the sole authority to verify the genuineness of the meter seals and that she has not suggested but confirmed that by using counterfeit seals, the petitioner has stolen energy as and when required.

17. With regard to the contention of the petitioner that the specimen of the original seal had not been produced in the enquiry proceedings, the 1st respondent in his order has stated that the available meter seals and sealing wires in the energy meter at the petitioner's premises at the time of inspection have been handed over to the police authorities as "seized materials" to pursue the criminal case and hence, the same was not produced during the enquiry. The 2nd respondent has clearly stated in his order that no inspection was carried out in the petitioner's premises by the Electricity Board officials five months prior to the date of detection and also no revised test report has been taken and accordingly rejected the claim of the petitioner.

18. A circumspection of the case coupled with the Report of the Assistant Engineer would reveal that bogus seals were fixed in the energy meter at the petitioner's premises in order to steal energy. There is no doubt in the statement of the respondent Board that the AE/MRT/RC is the competent authority authorised by the Board to check and verify the genuineness of the seal. Moreover, the respondent Board has given sufficient opportunity to the petitioner to produce documents and evidence to defend himself from the theft of energy committed by him. The reason assigned by the respondent Board for non-production of the alleged meter seal and sealing wires at the time of enquiry is also acceptable. Further, the calculation period of levy as 12 months as per para 8.02 Clause 37 of terms and conditions of the supply of electricity is also in order. It is further seen that pursuant to the order of the 1st respondent directing the petitioner to pay the balance amount of Rs. 71,112/- in 4 instalments, Rs.

17,778/- in each instalment, the petitioner has paid three instalments and only one instalment of Rs. 17,778/- has to be paid by him.

19. The competent authority, after conducting enquiry as per the procedures contemplated in law and after affording an opportunity to the

petitioner to produce documents in order to defend himself from the theft of energy and on consideration of the material evidence, found that bogus

seals were fixed in the energy meter and imposed levy on the petitioner. Therefore, this Court does not find any infirmity in the order of the first

respondent dated 03.01.2005 and it is accordingly confirmed. However, the petitioner is directed to pay the balance amount of levy of Rs.

17,778/- to the respondent Board within a period of four (4) weeks from the date of receipt of a copy of this order.

Accordingly, the writ petition is dismissed with the above direction. No costs.