

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2010

CORAM

THE HONOURABLE Mr. JUSTICE M.M.SUNDRESH

W.P.No.8805 of 2002

Jain Packiamani

... Petitioner

Vs.

The Superintending Engineer,  
Madurai Electricity Distribution Circle,  
Tamil Nadu Electricity Board,  
K.Pudur,  
Madurai-7. .... Respondent.

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari or any other writ or order or direction in the nature of Writ of Certiorari, calling for the records relating to the impugned order dated 7/15-2/2002 made in No.SE/MEDC/MDU/AEE/G1/Varai/F.Appeal No.85/A.No.403/2002 passed by the respondent and quash the same as illegal.

For Petitioner : Mr.Karl Marx for  
Mr.S.Murugaiyan

For Respondent : Mr.P.Srinivas (TNEB)

O R D E R

The Writ Petition has been filed by the Petitioner seeking to quash the Proceedings of the Respondent dated 15.02.2002 whereby the appeal filed by the Petitioner was rejected.

2. The Petitioner herein is the owner of the property situated in Door No.12-1-6, Kulamangalam Road, Madukkathan, Madurai-17. In the said property, the Petitioner has put up a small Wet Grinding Unit. The Petitioner has been given service connection for the above said property by the Respondent.

3. A show cause notice was given by the Executive Engineer dated 08.01.2001 on the ground that an inspection was made on the meter fixed in the premises of the Petitioner by the Assistant Executive Engineer along with the other officials of the Electricity Board in the presence of the Petitioner's representative and a theft of electricity was found. In pursuant to the said show cause notice, the Petitioner was asked to give her explanation. The Petitioner has not given any explanation

and therefore, considering the available materials on record, the Executive Engineer/Electrical/Madurai Division/Madurai-14 came to the conclusion that there was theft of electricity committed by the Petitioner by tampering with the wires attached to the seal. Accordingly, an order was passed imposing a demand for a sum of Rs.4,38,405/-. The said amount was calculated in accordance with the Clause 37 of sub-clause 8.02 of the Terms and Conditions of the Tamil Nadu Electricity Board. The Petitioner has filed an appeal challenging the said order on 01.04.2001.

4. The Petitioner has filed Writ Petition before this Court in W.P.No.14736 of 2001 to quash the communication of the Assistant Engineer dated 27.07.2001 stating that until and unless he pays the instalments, the service connection shall be disconnected. However, in the mean while, the service connection was disconnected by the Assistant Engineer. This Hon'ble Court in and by an order dated 14.08.2001 has set aside the order dated 27.07.2001 passed by the Assistant Engineer and directed the appeal to be decided on merits after affording an opportunity to the Petitioner. Thereafter, the Petitioner was given an opportunity and final orders were passed rejecting the appeal and therefore, challenging the same, the Petitioner has filed the present Writ Petition.

5. Mr.Karl Marx, the learned counsel for the Petitioner has submitted that the impugned order is liable to be set aside since the same has been passed contrary to the provision contained in Sec.26(6) of Indian Electricity Act, 1910. The inspection has been made behind the back of the Petitioner. The Petitioner has not been given sufficient opportunities before passing the order impugned as directed by this Hon'ble Court. It is the further case of the Petitioner that there is no basis indicated for levying the demand. Therefore, the learned counsel has submitted that under those circumstances, the Writ Petition will have to be allowed.

6. Mr.P.Srinivas, the learned counsel appearing for the Respondent has submitted that the Petitioner's representative was present at the time of inspection and the regulation does not mandate the presence of the consumer during the surprise inspection. It is the further submission of the learned counsel for the Respondent that Clause 37 of sub-clause 8.02 of Terms and Conditions of Electricity Board clearly specifies the procedure to be followed in case of theft of electricity. It is the further submission of the learned counsel for the Respondent that sufficient opportunity has been given to the Petitioner and therefore, no interference is called for.

7. Sec.26(6) of Indian Electricity Act, 1910 speaks about the reference to be made to an Electrical Inspector in case of any dispute or difference in the meter between the parties. A perusal of the above said section would make it clear that such

reference has to be made by either of the parties or on an application in a case where there is a difference or dispute regarding the correctness of the meter reading. It does not apply to a case where it involves a theft of electricity. Therefore, Sec.26(6) of Indian Electricity Act, 1910 deals with a genuine case where there is a dispute or difference about the proper running of the meter and not to a case where meter is said to have been tampered by the consumer. It also mandates that an application has to be made by either of the party viz., consumer or department as the case may be provided that the dispute involves a difference in running of the meter. The facts involved in the present case would exemplify the fact that, there is no dispute regarding the running of the meter and the Petitioner has not made any application to refer the meter to the Electrical Inspector. But it involves theft of electricity by removing the sealing wires fixed on the meter thereby causing loss to the Respondent. Therefore, the contention of the learned counsel for the Petitioner that the meter ought to have been referred to the Electrical Inspector under Sec.26(6) of Indian Electricity Act, 1910 cannot be countenanced.

8. It is seen that the inspection has been made in the presence of the Petitioner's representative. Under the rules and regulations, there is no procedure that the inspection will have to be made necessarily in the presence of the consumer concerned. When a theft of electricity is detected, an element of surprise is required and prior notice to the consumer will defeat the very purpose of the inspection itself. Therefore, in the absence of any rule or regulation providing prior notice, the contention that the consumer will have to be given prior notice cannot be accepted. As observed earlier, in the present case on hand, the said situation has not occurred in as much as the Petitioner's representative was present.

9. In pursuant to the order passed by this Hon'ble Court in W.P.No.14736 of 2001 dated 14.08.2001, the Petitioner was given an opportunity of being heard. The Petitioner appeared before the Respondent. However, a request was made for the assistance of a lawyer. The said request was rejected and thereafter, the enquiry was conducted in the presence of the Petitioner. It is well settled principle of law that unless and until the Statute prescribes for the appearance of lawyer, the assistance of a lawyer cannot be sought for as a matter of right. This Hon'ble Court has merely directed that opportunity is to be given to the Petitioner which was complied with by the Respondent and therefore, the said contention cannot be accepted.

10. Similarly, a perusal of Clause 37 of sub-clause 8.02 of the Terms and Conditions of Tamil Nadu Electricity Board would make it clear that a separate procedure has been adopted in the case of theft of electricity. Even in the order passed by the Executive Engineer, the said procedure has been clearly spelt out

and a separate calculation sheet for arriving at the said amount demanded has been provided to the Petitioner. Therefore, the contention of the learned counsel for the Petitioner is that there is no basis for fixation of the amount demanded also cannot be countenanced.

11. In fine, the Writ Petition filed by the Petitioner is liable to be dismissed and accordingly, the same is dismissed. The learned counsel for the Petitioner has submitted that a sum of Rs.2,75,365/- has been paid by the Petitioner and the remaining amount may be permitted to be paid in instalments. Considering the same, the Petitioner is permitted to pay the remaining amount in six monthly instalments starting from the month of January 2011.

Sd/-  
Asst.Registrar.

/true copy/

Sub Asst.Registrar.

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To

The Superintending Engineer,  
Madurai Electricity Distribution Circle,  
Tamil Nadu Electricity Board,  
K.Pudur, Madurai-7.

1 cc to Mr.S. Murugian, Advocate, Sr. 85715

1 cc to Mr.P. Srinivas, Standing Counsel for EB, Sr. 86049

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W.P.No.8805/2002

BVR (CO)  
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