

The Superintending Engineer vs Khivaraj Tech Park Pvt Ltd

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Court : Chennai

Decided On : Mar-03-2026

Judge : Honourable Mr Justice S. M. Subramaniam, Honourable Mr. Justice K. Surender

Appeal No. : WA/1928/2023

Appellant : The Superintending Engineer

Respondent : Khivaraj Tech Park Pvt Ltd

Judgement :

2026:MHC:931

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-03-2026

CORAM

THE HON'BLE MR JUSTICE S. M. SUBRAMANIAM AND THE HON'BLE MR. JUSTICE K. SURENDER W.A.Nos. 1928 and 1936 of 2023 and C.M.P.Nos.16574 and 16609 of 2023

1. The Superintending Engineer, Tamil Nadu Electricity Board, CEDC - South 110 KV K.K.Nagar, S.S.Complex, K.K.Nagar, Chennai - 600 078.

2. The Executive Engineer,

Tamil Nadu Electricity Board, O & M Guindy, Chennai - 600 032. ... Appellants (in both W.As) Vs Khivaraj Tech Park Pvt.Ltd., Rep.by its General Manager - Operations, Mr.A.Lakshminarayanan, Plot No.1, SIDCO Industrial Estate, Guindy, Chennai - 600 032. ... Respondent (in both W.As) Common Prayer : Writ appeals filed under Clause 15 of the Letters Patent against the order dated 25.07.2022 made in W.P.Nos.36209 of 2007 and 23556 of 2008.

For Appellants : Mr.P.Wilson Senior Counsel for Mr.L.Jaivenkatesh
Page1 of 13 (in both W.As) For Respondent : Mr.Rahul Balaji (in both W.As)

COMMON JUDGMENT

(Judgment of the Court was delivered by S.M.Subramaniam J.) Under assail is the writ order dated 25.07.2022 passed in W.P.Nos.36209 of 2007 and 23556 of 2008.

2. The Tamil Nadu Electricity Board is the appellant before this Court.

The respondent Khivaraj Tech Park Private Limited, instituted the writ proceedings challenging the demand notice issued for recovery of monthly minimum charges as per Clause 31 of TNERC Electricity Distribution Code and the consequential circulars issued by the Board. Since the writ Court allowed the writ petitions, the Electricity Board has preferred the present intra- Court appeals.

3. Mr.P.Wilson, learned Senior Counsel appearing on behalf of the

Tamil Nadu Electricity Board mainly contends that the disputed facts regarding the readiness of the respondent to avail of the electricity supply

provided by the Board is the crucial issue to be considered for recovery of monthly minimum charges. Such disputed facts, if decided based on certain pleadings of the respondent, then, the Board is deprived of exercising its right to recover monthly minimum charges, which is agreed between the Page2 of 13

parties based on Clause 31 of TNERC Electricity Distribution Code. The learned Senior Counsel would refer several correspondences exchanged between the Electricity Board and the respondent and drew the attention of this Court that the first demand notice was issued to the respondent by the Electricity Board on 28.04.2007, clearly stating that the Board side works had been completed for effecting the HT supply to the respondent firm, and a request was made to avail the supply within three months from 26.04.2007, failing which, the respondent would be liable to pay monthly minimum charges as applicable. Since the respondent had not commenced consumption of electricity, a second demand notice was issued by the Superintending Engineer, Electricity Board on 07.08.2007, reiterating the first demand notice dated 28.04.2007 and requesting the respondent to comply with the same. Thereafter, reminder letters were sent to the respondent. Since the respondent has not commenced consumption of electricity within the stipulated three-month period, monthly minimum charges were quantified at Rs.2,18,00,000/-, and a notice was issued to pay the said amount. The respondent filed writ petitions challenging the second notice dated 07.08.2007 and has stated that they have not received the first demand notice dated 28.04.2007.

4. The writ Court allowed the writ petitions mainly on the ground that there was no proof to establish that the Tamil Nadu Electricity Board had sent the first demand notice dated 28.04.2007. That apart, the writ Court had Page3 of 13

proceeded on the pretext that it was an additional load of 4000 KVA demanded by the respondent, which was provided, and therefore, the liability to pay monthly minimum charges would not arise at all.

5. Mr.Rahul Balaji, learned counsel for the respondent would

strenuously oppose the claim by stating that readiness being the crucial issue to be considered, the respondent was able to establish that the demand dated 28.04.2007 had not been received by them, and on receipt of the second demand dated 07.08.2007, the writ petitions came to be instituted. The learned counsel would rely on several letters exchanged between the Electricity Board and the respondent and also rely on orders passed by this Court in an earlier writ petition filed by the respondent in W.P.No.22629 of 2007, wherein the writ Court passed final orders on 04.07.2007 for the purpose of providing the additional new demand made by the respondent. The observations made in the said writ order would show that in identical circumstances, the writ Court had directed the Electricity Board to provide electricity supply, and on the same lines, the writ petition came to be disposed of.

6. This Court has heard the parties for a considerable length of time to resolve the issues, considering both the facts as well as the legal position. Page4 of 13

7. After hearing the parties with reference to the documents produced

between them by way of an additional typed set of papers, this Court could able to identify several discrepancies in the documents exchanged between the parties and ultimately formed an opinion that the disputed facts of this nature must be decided by the original authority as well as the appellate authority, as contemplated under the Electricity Supply Code or the Electricity Act, as the case may be.

8. In the event of considering the disputed facts of this nature by the writ

Court, there is a possibility of prejudice being caused to either of the parties or resulting in miscarriage of justice. The High Court cannot conduct a roving enquiry with reference to the numerous documents produced between the parties regarding the readiness to supply

electricity as well as the readiness to consume electricity.

9. The power of judicial review of the High Court under Article 226 of the

Constitution of India is to ensure that the process through which a decision has to be taken is in consonance with the statutes and rules in force, but not the decision itself. This is exactly the reason why the constitutional Courts have, time and again, reiterated that the Writ Court is expected to exercise restraint in adjudicating the disputed facts merely based on certain documents produced between the parties to the lis.

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10. The risk involved in recording facts based on selective documents

produced between the parties is also to be taken into consideration. In the present case, this Court made an attempt to crystallise the issues, but is unable to succeed, since there are several suspicious circumstances as well as the questions which all are yet to be answered with reference to the factual situation actually prevailed at the time of making the demand and to recover monthly minimum charges.

11. Let us now consider the legal position for recovery of monthly minimum charges by the Tamil Nadu Electricity Board.

12. Clause 31 of TNERC Electricity Distribution Code provides for

inspections, testing and effecting supply. Sub Clause (2), (3) and (5) of TNERC Electricity Distribution Code are extracted hereunder : (2) The intending consumer shall avail himself of the supply within three months in case of HT and one month in case of LT from the date of issue of notice in writing, informing him that supply is available.

(3) If the intending consumer fails to avail the supply

within the above period, a further three months notice in case of HT and one month notice in case of LT will be sent to the intending consumer to avail the supply. If he does not avail himself the supply during this notice period, the application will be treated as lapsed and cancelled in the case of Low Tension supply and the application shall be treated as cancelled, terminating the agreement, in the case

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of High Tension supply. The service connection charges and the Security Deposit/development charges, etc. except Meter Caution Deposit will be forfeited. In case the intending consumer could not avail the supply under force majeure conditions, the Security Deposit and meter caution deposit shall be refunded to the intending consumer. (4)..

(5) If the intending consumer avails supply during the

notice period of availability of supply, he shall pay the monthly minimum charges at the notified tariff rate for the period from the date of issue of first notice of supply availability till the date of availing supply.

13. Sub Clause (2) in unambiguous terms reiterates that the intending

consumer shall avail himself of the supply within three months in case of HT from the date of issue of notice in writing informing him that supply is available. Therefore, the issue of such written notice to the consumer is the crucial document to be relied upon for the purpose of demanding monthly minimum charges.

14. In the present case, the very issuance of the demand notice itself is

disputed between the parties. On the one hand, Mr.P.Wilson, learned Senior Counsel for the Electricity Board would contend that the first demand notice was issued on 28.04.2007 and that the respondent was very much aware of the said demand. Even in the affidavit, they have not

denied the said demand. They have chosen to challenge the second demand notice dated 07.08.2007, Page7 of 13

in order to circumvent the first demand, so as to escape from the payment of monthly minimum charges.

15. Per contra, Mr.Rahul Balaji, learned counsel for the respondent

would deny the same by stating that on receipt of the second demand notice, the respondent sent a letter dated 18.08.2007 to the Electricity Board, clearly stating that the respondent firm has not received the first demand dated 28.04.2007. This factual dispute requires a trial nature adjudication before the competent forum as well as the appellate authority.

16. Regarding the alternate remedy to be exhausted, it is not in dispute

between the parties that Clause 18 of the Tamil Nadu Electricity Supply Code provides a mechanism to redress grievances through the Consumer Grievance Redressal Forum and an aggrieved consumer may approach the forum for adjudication of issues on merits. The forum is functional and therefore, the respondent, at the first instance, ought to have approached the said forum in order to resolve the factual disputes relating to readiness as well as issuance of demand and the related merits in the context of Clause 31 of TNERC Electricity Distribution Code.

17. After the final order passed by the Consumer Grievance Redressal

Forum, Section 42 (6) of the Tamil Nadu Electricity Act, 2003 contemplates that any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5) may make a representation for the redressal of his grievance Page8 of 13

to an authority to be known as Ombudsman, to be appointed or designated by the State Commission. The Ombudsman is also functional. These being the remedial mechanisms contemplated under the Electricity Act as well as the Electricity Supply Code, an aggrieved person has to exhaust the statutory remedies before approaching the High Court under Article 226 of the Constitution of India.

18. In this context, the legal principles laid down by the Supreme Court

in the case of Jaipur Vidyut Vitran Nigam Limited and Others Vs. MB Power (Madhya Pradesh) Limited and Others reported in (2024) 8 SCC 513, would be useful in deciding the present case. The relevant paragraph Nos.128 and 133 are extracted hereunder : 128. We find that the High Court was not justified in entertaining the petition. The Constitution Bench of this Court in PTC India Ltd., V. CERC, (2010) 4 SCC 603 : 2010 INSC 146 has held that the Electricity Act is an exhaustive code on all matters concerning electricity. Under the Electricity Act, all

issues dealing with electricity have to be considered by the

authorities constituted under the said Act. As held by the Constitution Bench of this Court, the State Electricity Commission and the learned APTEL have ample powers to adjudicate in the matters with regard to electricity. Not only that, these Tribunals are tribunals consisting of experts having vast experience in the field of electricity. As such, we find that the High Court erred in directly entertaining the writ

Page9 of 13 petition when Respondent 1 i.e., the writ petitioner before the High Court had an adequate alternate remedy of approaching the State Electricity Commission.

133. This Court has clearly held that when a right is

created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before

invoking the discretionary remedy under Article 226 of the Constitution of India.

19. The Courts have time and again reiterated that the alternate

remedies contemplated under the statutes and rules ought to be exhausted before approaching the High Court by way of writ proceedings. The factual findings rendered by the original authority as well as the appellate authority would be of greater assistance to the High Court for exercising its powers of judicial review in an effective manner.

20. As far as the facts in the present case are concerned, it is disputed,

and the validity of the documents are questioned and certain documents said to have been not received by the consumer. All these disputes cannot be resolved in writ proceedings merely based on the photocopies of the documents produced before the writ Court as well as before the writ appellate Court. The original documents ought to be examined, scrutinised, and the evidences considered, if required, oral evidence is to be taken. All factors relating to the documents are to be considered by the competent authority for Page10 of 13

forming a final opinion. This being the legal position to be followed, this Court is inclined to interfere with the writ orders impugned.

21. However, the fact remains that the respondent has spent

considerable time in pursuing multiple writ petitions as well as defending writ appeals filed by the Board. Therefore, the respondent is at liberty to file an appropriate application before the Consumer Grievance Redressal Forum constituted under Clause 18 of the Tamil Nadu Electricity Supply Code within a period of four weeks from the date of receipt of a copy of this order. The Consumer Grievance Redressal Forum, on receipt of such application, shall take the application on file and decide the same on merits and in accordance with law, by condoning the delay in filing the

application. The respondent is also at liberty to file interlocutory applications seeking an interim relief, if so required.

22. This Court holds that the writ petitions filed against the demand

notices issued by the Board as well as the authorities are not maintainable. Such demand letters, per se, cannot provide a cause of action unless such demand is made by an incompetent authority having no jurisdiction or is tainted with the allegations of mala fides. In all other circumstances, the demand notice is to be challenged before the competent authority by exhausting the alternate remedies contemplated under the statutes and Rules. Entertaining such writ petitions by the High Court results in prejudice to either of the parties, and that being the situation, the writ Courts are expected to Page11 of 13

exercise restraint in entertaining such writ petitions filed challenging the demand notices or show cause notices.

23. With these observations, the impugned order dated 25.07.2022

passed in W.P.Nos.36209 of 2007 and 23556 of 2008 is set aside and Writ Appeals stand allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs. (S.M.S.,J.) (K.S.,J.) 03-03-2026 Index: Yes

Speaking order

Neutral Citation: Yes ms Page12 of 13 S.M.SUBRAMANIAM J. AND K.SURENDER J. ms and C.M.P.No.16609 and 16574 of 2023 03-03-2026 Page13 of 13

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