

Abdul Rahman ... Vs. the Superintending Engineer, and ors.

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Court : Chennai

Decided On : Jun-24-2010

Judge : K.K.Sasidharan, Jj.

Acts : Constitution Of India - Article 226

Appeal No. : W.P.No.3970 of 2003

Appellant : Abdul Rahman ...

Respondent : The Superintending Engineer, and ors.

Advocate for Def. : Mr.B.K.Girish Neelakandan, Adv.

Advocate for Pet/Ap. : Mr.A. Thiagarajan, Adv.

Judgement :

1. This writ petition is directed against the order dated 20 September, 2002 on the file of the first respondent confirming the order passed by the second respondent dated 16 February, 2002. The matter relates to demand of extra levy on account of theft of energy.

THE FACTS:-

2. The petitioner was running a plastic industry in the name and style of M/s. MAR PLASTICS at No.2/51, Thiruvalluvar Nagar, Kuniyamuthur, Coimbatore. He was granted service connection by the electricity department and he was assigned

meter No.678. The petitioner has been using the service connection in connection with his industry and no complaint was made against him at any point of time.

3. While the matters stood thus, the service connection was inspected by the officials of the electricity department, Kuniyamuthur on 21 December, 2001. During the time of inspection it was found that the meter box seal was found missing and the sealing wires of the MRT seals at both sides of the meter were found cut at one end. The investigating officials arrived at a conclusion that the security seals were removed and the meter was opened to change the dial reading to show less consumption of electrical energy. Accordingly, a show cause notice was issued to the petitioner on 21 December, 2001 calling upon him to explain as to why the electricity Board should not recover the loss by imposing extra levy in accordance with the terms and conditions of supply of electricity.

4. The petitioner was also asked to appear for an enquiry on 25 January, 2002. The petitioner attended the enquiry and pleaded that there was no such incident of theft of energy. The Executive Engineer on a consideration of the matter, passed an order on 16 February, 2002 assessing the loss at Rs.13,34,721/- and the petitioner was directed to pay the same in fifteen equal instalments. The said order was taken up in appeal before the first respondent. However the first respondent was not inclined to take a different view and accordingly the appeal was dismissed as per order dated 20 September, 2002. It is the said order which is impugned in this writ petition.

SUBMISSIONS:-

5. The learned Senior Counsel for the petitioner contended that no notice was issued to the petitioner before conducting the inspection and as such, there was violation of the principles of natural justice. It was his further contention that there was no basis for fixing the amount by the officials of the Electricity Department. In short, the impugned order was challenged on the ground of violation of the principles of natural justice in the matter of conducting inspection as well as the basis adopted for arriving at the quantum.

6. The learned standing counsel for the Electricity department justified the order passed by the second respondent, which was confirmed in appeal.

ANALYSIS:-

7. There is no dispute that the service connection of the petitioner was inspected by the third respondent on 21 December, 2001. The counter affidavit filed by the third respondent gives an indication that intimation was given to the officer in-charge of the company by name Mohammed Haneefa, who is none other than the son of the petitioner. He has also acknowledged the notice. During the time of inspection, the officials found that the meter box seal was removed and the sealing wires of the meter relay test seals at both the sides of the meter were found cut. The officials were of the opinion that by removing the security seals and the meter cover they had opened the meter then and there and changed the dial reading to show as if only low quantity of electricity was consumed. They have also preferred a police complaint against the petitioner and it was registered under FIR No.990 of 2001, which was the subject matter in C.C.No.30 of 2002.

8. The second respondent after the receipt of report of the third respondent issued notice to the petitioner. However no reply was given by the petitioner even though he was enquired by the third respondent on 25 January, 2002. Though the petitioner pleaded ignorance of the theft of energy, he was not in a position to explain as to how the seal affixed to the meter box was found missing and the sealing wires of the MRTS seals at both the sides of the meter were found cut at one end. The witnesses cited on behalf of the department were cross examined by the counsel for the petitioner. However the witnesses maintained that there was theft of energy and the attempt was to show as if the petitioner has consumed less energy and the meter was tampered for the said purpose. The order passed by the second respondent contains factual details with reasons which made him to pass the impugned order of assessment.

9. The issue was considered independently by the first respondent. The consumption details for the period from December, 2000 to March, 2002 were also taken note of to come to a conclusion as to whether the consumption pattern was different both prior to the inspection as well as subsequently. It was found that

after detecting the theft of energy, the meter reading was more and the same was also taken as a pointer to show that there was theft of energy by tampering with the meter. Accordingly, the appellate authority confirmed the order passed by the second respondent.

10. The assessment of short levy was as per the terms and conditions. There is a prescribed procedure for assessment of electricity charges in case it was found that there was theft of energy. The petitioner was not in a position to point out any defect in the formula adopted by the respondents in the matter of assessment of electricity charges on account of theft of energy.

11. The Tamil Nadu Electricity Board in exercise of the powers conferred under Section 14 of the Electricity (Supply) Act, 1948 framed the terms and conditions of the supply of electricity. The petitioner has also entered into an agreement with the Board to abide by the terms and conditions. In fact the service connection was given to the petitioner only in accordance with the said terms and conditions. Therefore, those terms and conditions are statutory in nature. It is binding on both the parties.

12. Clause 8 of the terms and conditions deals with theft of energy and extra levy. There is a deeming provision as per clause 8.01 which provides that any consumer, who dishonestly abstracts or uses energy shall be deemed to have committed theft within the meaning of Indian Electricity Act, 1910 as amended by the Tamil Nadu Government and the Indian Penal Code and the existence of artificial means of such abstractions shall be prima facie evidence of such dishonest abstraction. The regulation as per clause 8.02 made a specific provision for assessment of energy based on account of theft of energy by tampering of meters/meter seals. Since there is a presumption as provided under clause 8.01, it is for the consumer to prove that he has not committed theft. The petitioner miserably failed to prove that there was no dishonest abstraction of energy within the meaning of clause 8.01 of the terms and conditions. The assessment was made as per the statutory formula. Therefore, the petitioner was not correct in his submission that there was no basis for making the assessment.

CONCLUSION

13. This court is concerned only with the decision making process. While exercising judicial review it is not open to this Court to re-appreciate the facts and to come to a different conclusion. The statutory authorities have considered the matter in the facts of the case and in the light of the terms and conditions and before passing the order of assessment, sufficient opportunity was given to the petitioner. Even before the appellate authority, the petitioner was given ample opportunity to prove his defence. The objections raised by the petitioner were duly considered by the original authority as well as the appellate authority. The order impugned in this writ petition contain reasons for arriving at a conclusion with respect to the theft of energy committed by the petitioner. Therefore I am of the view that no interference is called for in the order impugned in this writ petition. Accordingly the writ petition is dismissed. No costs.

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