

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 02/12/2014

DATED: 18/09/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.25517 of 2014 &
M.P.No.1 of 2014

P.Pradeep Chandra

...

Petitioner

Vs.

The Assistant Engineer,
(Operation & Maintenance),
Tamil Nadu Generation and Distribution
Corporation Limited,
Pulicat-601 205, Ponneri Taluk,
Tiruvallur District.

...

Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Declaration to declare the act of the respondent disconnecting the electricity service connection bearing No.080-002-245 effected to the petitioner's prawn culture, situated in the land, comprised in S.No.13/1, measuring an extent of 3.26.5 hectares (i.e.) 8.07 acres, situated at No.39, Thathaimanji Village, Ponneri Taluk, Tiruvallur District as illegal, ultravires and violation of law and principles of natural justice and consequently direct the respondent to restore the electricity service connection bearing No.080-002-245 for the prawn culture of the petitioner.

For Petitioner : Mr.V.Raghavachari &
Mr.R.Munusamy

For Respondents : Mr.P.R.Dilipkumar (TNEB)

O R D E R

The petitioner further submits that he is the absolute owner of the agricultural Nanja and Punja lands, situated at No.38, Kadappakkam Village, Ponneri Taluk, Tiruvallur District, comprised in S.No.1, measuring an extent of 0.40.5 hectares i.e, 1.00 acre, Survey No.2, measuring an extent of 0.76.5 hectares (i.e.) 1.89 acres and

Survey No.3, measuring an extent of 0.62.0 hectares (i.e.) 1.53 acres, totalling 4.42 acres of lands, having purchased the same for valid sale consideration from M/s.V.Kumar and others under a sale deed, dated 02.02.2009, registered as Document No.409/2009 before the Sub-Registrar Office, Ponneri. Similarly, the petitioner is also the owner of agricultural punjai land situated at No.39, Thathaimanji Village, Ponneri Taluk, Tikruvallur District, comprised in S.No.13/1, measuring extent of 3.26.5 hectares (i.e.) 8.07 acres, having purchased the same for valid sale consideration from M/s.V.Kumar and others under a sale deed, dated 02.02.2009, registered as Document No.410/2009 before the Sub-Registrar Office, Ponneri. The above properties are hereinafter referred to as petition mentioned property. All the revenue records in respect of the aforesaid lands are standing in the name of the petitioner and he is issued with pattas also by the authorities concerned.

2. The petitioner further submits that his father is an agriculturist. Even though, the petitioner is an engineering graduate, he is assisting his father in agricultural activities and they are also engaged in agriculture. As the ground water has become saline the aforesaid lands were kept as barren lands as it had become unfit for agriculture. Most of the agriculturists have turned to fish culture due to acute salinity of the ground water in the locality and the aforesaid lands were surrounded by prawn ponds. Therefore, the petitioner has also laid prawn ponds in the petition property. The petitioner applied for electricity service connection to the respondent for his fish / prawn culture. Having inspected the lands / site and also satisfied with the documentary evidences, an electricity service connection, bearing No.080-002-245 was effected by the respondent to his properties referred above during March 2014 and he is using the same for pumping water from the bore well and for aeration to the ponds for prawn culture. The petitioner has put prawn hatcheries / seeds in the ponds and invested a huge sum of Rs.30 lakhs to Rs.40 lakhs to the prawn culture by availing loan. The petitioner has been paying an amount ranging from Rs.70,000/- to Rs.80,000/- bi-monthly to the respondent since April 2014 for using the electricity.

3. The petitioner further submits that now the hatcheries / prawn are half grown and expected to be ready for harvesting within 45 days from now. While so, all of a sudden, the respondent herein disconnected the electricity supply effected to his lands referred above for prawn culture on 12.09.2014 without issuing any notice whatsoever. The petitioner was really shocked by the sudden disconnection of the electricity service by the respondent as the prawn culture will not survive without electricity even for 8 hours and it would cause huge financial loss and the petitioner would be financially doomed and it would cause irreparable loss. Therefore, the petitioner has immediately approached the respondents to ascertain as to why they had disconnected the electricity service connection. On enquiry, the respondent informed the petitioner that

his men have allegedly served a show cause notice dated 01.09.2014 and as the petitioner has not complied with the alleged demands made in the show cause notice, the electricity was allegedly disconnected. The petitioner informed the respondent that no such show cause notice was served on him. Thereafter, after much persuasion, the respondent showed him the alleged show cause notice which was said to have been served on him. On perusal of the same, the petitioner was really shocked to come to know that it was served in person to some stranger and a copy was also marked to one Mr. Ravi and other Villagers of Kammalamada. The petitioner categorically informed the respondent that neither he nor any of his officials have been served any such notice in person as was shown to have been made and it bears the signature of a stranger. But, the respondent informed him that he cannot help it. The petitioner further submits that after persistent requests and persuasion, the petitioner has been handed over a photocopy of the alleged show cause notice, dated 01.09.2014. In the alleged show cause notice, it was alleged that, the petitioner has obtained the electricity service connection (No.080-002-245) allegedly for a brick klin chamber, but the petitioner is using it for prawn culture and hence, he has been asked to submit necessary documents for getting electricity supply for fish/prawn culture within 3 days of receipt of the alleged show cause notice or else electricity service will be disconnected permanently without any notice. Unfortunately, without serving the alleged show cause notice on him, the respondent in order to satisfy someone for the reasons best known to them had disconnected the electricity supply by allegedly serving a copy of the alleged show cause notice on a stranger. The petitioner further submits that even assuming without admitting that he was allegedly served with three days to show cause, the petitioner failed to submit any explanation as per Section 56 of the Electricity Act, 2003, not less than 15 clear days notice has to be given to a consumer, who failed or defaulted to pay the electricity charges, before disconnection of electricity supply. Unfortunately, in the petitioner's case, no notice was served and further the alleged notice is dated 01.09.2014, but the electricity service connection was disconnected on 12.09.2014, which is highly arbitrary, unjustifiable and illegal.

4. The petitioner further submits that he has been paying the electricity consumption charges according to the calculation of the respondent regularly without any default. The petitioner further submits that he has complied with all the formalities and also furnished all the necessary documents to the respondent along with application for service connection and the respondent also inspected the petitioner's property / prawn ponds and effected service connection. Therefore, only after being satisfied in all respects, the respondents effected the electricity service connection to his lands for fish / prawn culture and he has been using the same for prawn culture for the past 5 months. The petitioner further submits that prawn culture would not survive without electricity for even a

minute, as the aeration is most essential for surviving and breathing of oxygen. The petitioner could not afford to spend Rs.20,000/- per day for electricity through generators and if electricity is not restored immediately, he will be left with no other option except abandon the prawn culture, which would cause financial havoc and he would be financially doomed and debt ridden. The petitioner further submits on perusal of the photocopy of the show cause notice handed over to him, he was informed that the respondent issued the service connection under Tariff-V as if it is for Brick kiln chamber, temporary construction and other temporary purpose, which carries highest charge. Though the fish / prawn culture falls under the category of Tariff-III-A and for which alone the electricity service connection was effected to him by the respondent, but that charges are much lesser than Tariff-V. The petitioner has been paying electricity under Tariff-V to the respondent all along without knowing the same. Hence, the action of the respondent in allegedly serving the alleged show cause notice on some stranger in person and the consequent immediate disconnection of his electricity supply without notice is nothing but arbitrary and capricious exercise of authority. Hence, the petitioner entreats the Court to allow the above writ petition.

5. The respondent has filed a counter affidavit and resisted the above writ petition. The respondent submits that the writ petitioner submitted his application for getting service connection for the purpose of his Brick work at No.38, Kadappakkam Village, Ponneri Taluk, Tiruvallur District on 01.03.2014 and the application was registered on same day and subsequently service connection estimate was sanctioned on 04.03.2014 and the writ petitioner paid the estimate cost on the same day. The respondent further submits that the respondent Board effected the service on 05.03.2014 for the purpose of brick work under Tariff-V, but the petitioner falsely stated in his affidavit that he has applied for service connection for the purpose of fish/prawn culture but in reality he has submitted his application dated 01.03.2014 only for the purpose of brick kiln and not for fish/prawn culture purpose and presumably he has done so to avoid getting No Objection Certificate from the Pollution Control Board and the Board has also issued circular to get the NOC from the Pollution Control Board and enable the Board to effect service connection for the purpose of fish/prawn culture. The respondent further submits that on 01.09.2014, the respondent issued a letter to the petitioner stating that he is using the electricity connection for the purpose of prawn culture instead of brick work for which he had obtained the said connection and hence, he was informed to get the necessary documents for getting electricity connection for prawn culture and hand over the same within three days, failing which, the electricity connection will be cut off permanently. But, the petitioner has failed to produce any documents required by the respondent. In the mean time, the Revenue Divisional Officer, Ponneri issued a letter in Na.Ka.No.1949/2014/A1, dated 03.09.2014 directing the Assistant Executive Engineer to cut

off the electricity connection given for the prawn culture since the Arani River is getting polluted and consequently the agricultural work is getting spoiled because of the wastage coming from prawn culture which were sent through Kammalamadam Village in which the Arani River having passage was getting affected.

6. The respondent further submits that the Electricity charges collected under Tariff-V is for brick klin chamber, temporary construction and other temporary purposes and not for prawn culture as alleged by the petitioner. The respondent further submits that the impugned order was served in the petitioner's premises and was received by the petitioner's authorized person and hence, it is an utter false statement on the part of the petitioner that no show cause notice was served on him. The respondent further submits that after issuing notice on 01.09.2014 to the petitioner, the service connection was disconnected on 12.09.2014 which is after expiry of 11 days. Hence, there is no violation on the part of the respondent to cut of the electricity connection since the petitioner obtained electricity connection for brick work but using the same for developing the prawn culture by which the petitioner is creating pollution to the river and besides, the respondent was directed by the RDO through his letter to cut off electricity connection with immediate effect. Hence, the respondent entreats the Court to dismiss the above writ petition.

7. The highly competent counsel Mr.V.Raghavachari appearing for the petitioner submits that the petitioner is the absolute owner of the agricultural lands to the extent of 8.07 acres, situated at Thathaimanjai Village, Ponneri Taluk. The ground water has become saline and therefore, the subject matter of the lands have been kept vacant as barren lands and it is not suitable for agricultural purpose. Hence, the petitioner started prawn culture over the said lands. Thereafter, the petitioner obtained electricity service connection bearing No.080-002-245 in the month of March 2014. The motor pump-sets have been set up for pumping water from the bore well to the ponds for prawn culture. The petitioner had invested Rs.40 lakhs after availing loans from the private individuals. The petitioner also is remitting consumer charges of a sum of Rs.80,000/- once in five months, to the respondents without default. Under the circumstances, the respondents disconnected the electricity service connection without assigning any reasons and without prior notice. The highly competent counsel further submits that the petitioner had not committed any irregularities or illegalities which is unjustifiable for using the electricity service connection. Further, before giving new electricity connection to the petitioner's property, they had scrutinized the entire title deeds and also inspected the petitioner's lands. Now, the petitioner has engaged heavy generators on daily rental basis from private suppliers for generation of power for pumping of water from the bore well. As such, heavy expenditure has been incurred to maintain the prawn culture. Hence, the highly competent counsel entreats the Court to quash the

impugned order passed by the respondent.

8. The highly competent counsel Mr.P.R.Dilipkumar appearing for the respondent submits that he had submitted an application on 01.03.2014 and thereafter, service connection estimate was sanctioned on 04.03.2014 and the estimate cost was paid. The very next day, i.e., 05.03.2014, the respondents Board effected the service connection for the purpose of brick work under Tariff V, but the petitioner falsely stated that he has applied for service connection for the purpose of prawn culture. As such, the petitioner had given false statement before respondents as well as this Court. If the petitioner is going to start prawn culture, he has to obtain no objection certificate from the Pollution Control Board. Therefore, the respondent had issued notice to the petitioner and informed him that he is using the electricity power supply for the purpose of prawn culture instead of brick work. Further, the petitioner was directed to produce necessary documents for getting electricity service connection for prawn culture purpose. The same had not been complied with. After prior notice, the impugned order has been passed and the electricity service connection was disconnected. The petitioner is doing prawn culture. As such, the Arani river is getting polluted and consequently the cultivation is getting spoiled because of the wastage coming from the prawn culture ponds. The respondent had collected electricity consumer charges under Tariff V which is for brick kiln chamber and also for temporary construction. The petitioner never applied for electricity connection for prawn culture. After granting sufficient opportunity to the petitioner, the electricity service connection has been disconnected. Besides, the top Revenue Officer of the District, viz., RDO has sent a letter to the respondent to disconnect the electricity service connection since the petitioner's prawn culture wastage water is being mixed into the Arani river water and as a result, the agricultural operations have been affected in the particular area. Hence, the highly competent counsel entreats the Court to dismiss the above writ petition.

9. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side and on perusing the typed-set of papers, this Court is of the view that the respondent had issued letter on 01.09.2014 to the petitioner and asked explanation within 3 days. As such, only a short period had been given by the respondent to the petitioner to submit his explanation. Further, the Revenue Divisional Officer had sent a communication on 03.09.2014 to the respondent and directed him to disconnect the electricity service connection within a period of one week. The decision / final order of the Revenue Divisional Officer is violating the principles of natural justice, since he had not sought any explanation from the petitioner after prior notice. As such, the final order is not sustainable under law. Therefore, this Court directs the respondents to issue fresh show cause notice to the petitioner, 15 days in advance and conduct a comprehensive enquiry and also inspect the petitioner's lands and take valid decisions on

this issue. Further, the respondent has to conduct the enquiry with the Village Administrative Officer, who is the subordinate to the topmost Revenue Divisional Officer. Before issuing Memo, the Electricity Service Connection bearing No.080-002-245 is to be restored forthwith by the respondents. The restoration of the electricity service connection is subject to the findings of the respondents enquiry.

10. In the result, the above writ petition is disposed of. There is no order as to costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

r n s

To

The Assistant Engineer,
(Operation & Maintenance),
Tamil Nadu Generation and Distribution
Corporation Limited,
Pulicat-601 205, Ponneri Taluk,
Tiruvallur District.

+1 cc to Mr.R.Munuswamy Advocate sr.51064

+1 cc to Mr.P.R.DhilipKumar Advocate sr.50856

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