IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.35543 of 2015
and M.P.No.1 of 2015

D.Shanthi .. Petitioner

Versus

1.The Superintending Engineer,
Tamil Nadu Generation and Distribution Corporation,
Erode Electricity Distribution Cirlce,
Erode.

2.The Assistant Executive Engineer,
(Operation & Maintenance) / E.E.D.C.,
TANGEDCO Ltd.,
Chithode - 638 102. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the 2nd respondent in his proceeding No.AEE/O&M/CHD/C1/F.Theft/D.No.459/2015 dated 06.10.2015 and quash the same.

For Petitioner : Mr.D.Selvaraju
For Respondents : Mr.S.K.Rameshwar
Standing Counsel

ORDER

Heard Mr.D.Selvaraju, learned counsel appearing for the petitioner, and Mr.S.K.Rameshwar, learned Standing Counsel, who accepts notice on behalf of respondents.

2. With the consent of either side, the Writ Petition is taken up for final disposal, at the stage of admission itself.

3. The petitioner is running a Spinning Mill, bearing Door No.78/12, situate at Karattupalayam, Pallapalayam Village. The said Industry has been given Electricity Service Connection, bearing No.015-011-445, to the capacity of 112 Kilo Watts (KW). The petitioner would state that they have installed the Machineries, which would consume 93.213 KWs, and they had been

carrying on business without any complaints. It is submitted that there is another Industry functioning in the same premises, which has got a similar electrical connection of the same category for loading capacity of 112 KWs, bearing Service Connection No.015-011-463, and the said service connection stands in the name of one Venkateswari. It is submitted that both the Industries are run by different persons, and both of them are having the load capacity, which are distinct and different. While so, provisional assessment order under Section 126 (1) of the Electricity Act, 2003 (hereinafter referred to as 'the Act') was passed by the second respondent on 12.09.2015, proposing to levy tax of a sum of Rs.10,13,047/-. It is alleged that the petitioner has indulged in unauthorized use of electricity, and this provisional assessment order itself, was based on the inspection conducted by the second respondent, who is said to have found a wire from the meter box fixed at the petitioner's Mill, which was extended to the adjacent Factory. On receipt of the provisional assessment order, the petitioner filed her objection, vide reply letter dated 21.09.2015, wherein it was stated that the second respondent, during the course of surprise inspection, failed to verify the switch connection of S.C.No.015-011-463, where, the machineries installed in the adjacent Industry were connected to. Further, the petitioner has made certain other factual averments to state that there was no illegal distribution of energy or any unauthorised usage of electricity committed by the petitioner. Thereafter, the second respondent passed a Final Assessment Order, dated 06.10.2015 under Section 126 of the Act, stating that there is unauthorized usage of electricity. Challenging the said Final Assessment Order, the petitioner has filed this Writ Petition.

4. The learned counsel appearing for the petitioner submitted that the impugned order is in violation of principles of natural justice and has been made without granting an opportunity of hearing to the petitioner. Further, the learned counsel submitted that even at the pre-assessment stage, the petitioner should have been afforded an opportunity of personal hearing, since she is being found guilty of unauthorised use of electricity. In support of such contention, reliance is placed on the decision of Allahabad High Court in re Ashok Kumar and Ors. V. State of U.P. and Ors. In AIR 2009 (NOC) 161(ALL.)=2008 (5) ALJ 383 (DB).

5. The learned Standing Counsel appearing for the respondent-Electricity Board submitted that the question of granting any opportunity to the petitioner does not arise and the final assessment order has been passed by scrupulously following the procedures contemplated under Section 126 of the Act, and the procedures to be followed by the Authority have been adhered to, and therefore, there is no error, or illegality

in the order impugned herein. So far as the merits of the matter is concerned, it is submitted by the learned Standing Counsel that the petitioner, without exhausting the appellate remedy available to her under Section of 127 of the Act, has approached this Court and hence, the Writ Petition is not maintainable.

6. Heard the learned counsel appearing for the parties and perused the materials placed on record.

7. The only ground of challenge before this Court is by contending the impugned order has been passed without affording an opportunity of hearing to the petitioner to putforth her submissions. The facts are not in dispute that the petitioner was served with provisional assessment order by the second respondent on 12.9.2015. This provisional assessment order was, pursuant to the surprise inspection conducted in the petitioner's premises on 11.09.2015 at 16:20 hours (04.20 p.m) A copy of the Inspection Report submitted by the Inspecting Officer, the Mahazar prepared at the time of inspection, in which, the signature of the representative of the petitioner is said to have obtained, and a copy of the statement recorded from the representative of the petitioner, are enclosed along with the Provisional Assessment Notice. In the said notice, it was mentioned that the Provisional Assessment works out to Rs.10,13,047/-, in terms of sub-section (5) and (6) of Section 126 of Electricity Act 2003, and the amount should be deposited within a period of seven days from the date of receipt of the notice. However, if the petitioner was desirous of filing any objection against the Provisional Assessment Notice, the petitioner may send explanation with sufficient proof of her innocence within seven days on the receipt of the order. Further, it was stated that the petitioner may choose to appear either in person or through her representative with relevant documents for enquiry before the second respondent within the stipulated period. Further the provisional assessment order states that if no objection is received from the petitioner against the provisional assessment order within the stipulated period, or if the objection/explanation received is not found to be convincing, further action of passing final order of assessment will be taken, without issuing further notice. It is not in dispute that the petitioner objected to the provisional assessment order, and submitted her objection/reply on 21.09.2015. It is not the case of the respondent-Board that the objection given by the petitioner was belated or made beyond the period stipulated. Therefore, it is to be seen as to what has to be followed by the second respondent before passing the final order. The answer to the question lies in the provisional assessment order itself. Clause 6.0 of the provisional assessment order details the procedures to be followed by the authority, on an objection being given by the consumer, and for

better appreciation, the same is quoted hereunder:-

> " 6.0. If you are desirous of filing objections, if any, against this provisional assessment, you may send your explanation with sufficient proof of your innocence, within seven days from the date of receipt of this order. You may also choose to appear in person or through a representative with relevant documents for an enquiry before the undersigned within the stipulated period."

8. Thus, as per clause 6.0, as quoted supra, a person aggrieved by the provisional assessment, is entitled to submit his objection to establish his/her innocence, and in case objection is filed within the time permitted, then, the petitioner, or his authorised representative, is entitled to appear in person with relevant documents for an enquiry before the undersigned. It is no doubt true that the petitioner has not specifically sought for a personal hearing. However, the consequence of the impugned order is that the petitioner has to pay a sum of sum more than of Rs,10,00,000/-. Therefore, the impugned order definitely results in civil consequences. That apart, the charge against the petitioner is quasi-criminal, since the allegation is unauthorized usage of electrical energy. It is not known as to whether any criminal complaint has been given against the petitioner. Be that as it may, when the second respondent proposes to finalise the provisional assessment order into final assessment, the minimum principles of natural justice that would be required to be followed is to conduct an enquiry. This basic principle has not been clearly stipulated under the statute, in which, the authority exercises power to levy taxes, and though the statutory provisions does not specifically provide for such an opportunity, the Provisional Assessment Order having provided for an enquiry being conducted, the second respondent could not have finalized the provisional assessment without conducting enquiry. It may be true that in Clause 6.0 of the Provisional Assessment Order, mentioned supra, the expressions used are "You may also choose to appear in person or through a representative with relevant documents for an enquiry before the undersigned within the stipulated period." However, in my view, this cannot be deduced to mean that unless and until the consumer, or the person against whom, the provisional assessment has been made, chooses to appear, only then enquiry would be conducted. The charges against the petitioner being quasi-criminal, and the allegation is being one of them, it is all the more necessary for an enquiry to be conducted, for, this procedure would not only afford an opportunity to the petitioner/consumer to putforth all the points to defend him, but it would also enable the second respondent/competent authority to clarify on the factual issues, since the inspection done is a surprise

inspection, and for the first time, report of the Inspection Officer, the Mahazar and the statement of the alleged representative of the petitioner have been forwarded along with the provisional assessment order. Therefore, though the provisional assessment order quantifies the amount payable by the petitioner, it is, in fact, in the nature of a show cause notice. Therefore, the second respondent should not have passed the impugned final assessment order, without conducting enquiry in the matter and without even affording an opportunity of personal hearing to the petitioner, and therefore, on these technical grounds, the petitioner is entitled to succeed.

9. In the result, the Writ Petition is allowed and the impugned order is quashed. However, setting aside of the impugned order will not in any way prevent the second respondent from initiating fresh proceedings and after affording an opportunity of personal hearing to the petitioner and passing fresh orders after conducting an enquiry. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CCC )

/true copy/

Sub Asst. Registrar

ds/sd

To

1.The Superintending Engineer,
Tamil Nadu Generation and Distribution Corporation,
Erode Electricity Distribution Cirlce,
Erode.

2.The Assistant Executive Engineer,
(Operation & Maintenance) / E.E.D.C.,
TANGEDCO Ltd.,
Chithode - 638 102.

+1 cc to Mr.S.K.Raameshuwar, Advocate, sr.61389
+1 cc to Mr.D.Selvaraju, Advocate, sr.61355

WP.No.35543 of 2015

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kra 26.11.2015