

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.04.2016
Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.14596 of 2016
and
W.M.P.No.12764 of 2016

Kumaravel

...Petitioner

Vs.

1. The Chairman,
Tamil Nadu Electricity Board,
220, Anna Salai,
Chennai - 600 002.
2. The Executive Engineer,
Operation and Maintenance,
Tindivanam Division,
TANGEDCO,
Tindivanam, Villupuram District.
3. The Assistant Audit Officer,
Tamil Nadu Electricity Board,
Audit Party No.2,
Villupuram Region, Villupuram.
4. The Junior Engineer, Operation and Maintenance,
Tamil Nadu Electricity Board,
Marakkanam, Villupuram District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records of the Executive Engineer, Operation and Maintenance, Tindivanam Division, TANGEDCO, Tindivanam, Villupuram District, the second respondent herein, culminating in Ka.No.EE/General/E.Pa.Land/Utha-A/V-B/K.M./G/Audit/2016, dated 16.03.2016, and to quash the same, and further, to direct the second respondent not to collect the audit amount, the sum of Rs.3,21,089/- from the petitioner.

For Petitioner : Mr.K.Balakrishnan

For Respondents : Mr.M.Varun Kumar
Standing Counsel

O R D E R

Heard Mr.K.Balakrishnan, learned counsel appearing for the petitioner and Mr.M.Varun Kumar, learned Standing Counsel, accepting notice for respondents. With the consent of parties, the main Writ Petition is taken up for final disposal at the stage of admission.

2. The petitioner has filed this Writ Petition, challenging the impugned demand, dated 16.03.2016, stating that the same has been issued without even affording an opportunity of being heard. Earlier, the petitioner filed a Writ Petition, in W.P.No.38811 of 2015, for issuance of a writ of certiorarified mandamus, to quash the order passed by the fourth respondent, dated 5.11.2015, and to direct the fourth respondent not to collect the audit amount of Rs.3,21,089/- from the petitioner. The said Writ Petition was allowed, by this Court, by order, dated 10.12.2015, wherein, a reference was made to the another Writ Petition, viz., W.P.No.36622 of 2015. The said order, dated 10.12.2015 reads as follows:-

" 3. The petitioner is aggrieved by the impugned demand, demanding a sum of Rs.3,21,089/- from him alleging that it is the amount payable on account of audit shortfall. Earlier the petitioner had filed a Writ Petition before this Court in W.P.No.36622 of 2015, challenging the proceedings of the fourth respondent dated 1.10.2015 and to direct the fourth respondent not to collect the audit shortfall. The said writ petition was disposed of by an order dated 18.11.2015 and the operative portion of the order reads as follows:-

"3.The primary ground, on which, the impugned order has been questioned is by contending that the electricity consumption charges for the petitioner's service connection have been computed without any notice to the petitioner.

4.On a perusal of the impugned notice, it is evident that there was no opportunity given to the petitioner prior to the issuance of the same. Therefore, on this short ground, the impugned notice is liable to be set aside.

5. Accordingly, the writ petition is allowed, the impugned notice is set aside and a direction is issued to the third respondent to issue a show cause notice to the petitioner clearly setting out the manner in which, the additional current consumption charges have been proposed to be recovered and after affording an opportunity to the petitioner to submit his objections, fresh orders shall be passed by the third respondent. No costs. Consequently, the above MP is closed."

4. In spite of the above order having been served on the fourth respondent herein, now the impugned demand has been raised. Since the impugned demand is contrary to the directions issued by this Court in the earlier writ petition, the same cannot be sustained.

5. The learned Standing counsel for the respondents submitted that the impugned demand is pursuant to the usual practice followed by the respondent Board.

6. In my view, the practice said to have been followed uniformly is not in accordance with law, as they violate the principles of natural justice. Assuming there is shortfall, the consumer is entitled to know on what basis the amount was arrived at and he should be given an opportunity to contest his claim. Without doing so, directly serving the demand notice on the petitioner is incorrect. Furthermore, in the instant case, the earlier notice was set aside and a direction was issued to the fourth respondent herein to issue show cause notice and proceed in accordance with law.

7. Hence, for all the above reasons, the impugned demand cannot be sustained and accordingly the same is quashed. However, liberty is granted to the fourth respondent to issue show cause notice enclosing the copy of the audit report, etc., to the petitioner and thereafter proceed in accordance with law. "

3. Pursuant thereto, action has been initiated for recovery of the money. The petitioner would state that without affording reasonable opportunity to the petitioner, the amount is now being demanded. On the other hand, the learned Standing Counsel for respondents would state that the show cause notice was sent to the petitioner, by registered post on 06.01.2016, however, the respondents are not able to produce any postal acknowledgment, as proof, to show that the notice, dated 05.01.2016, sent on 06.01.2016, was received by the petitioner.

4. Be that as it may, this Court is of the view that one more opportunity should be granted to the petitioner to place his objection on record. Accordingly, the petitioner is directed to treat the impugned proceeding as a show cause notice, and submit his written objection and appear before the fourth respondent on 4th May, 2016, after which, the fourth respondent shall consider the petitioner's objection and pass a reasoned order on merits and in accordance with law. It is needless to say that the petitioner shall continue to pay the current consumption charges till orders are passed by the fourth respondent.

5. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

sd

To

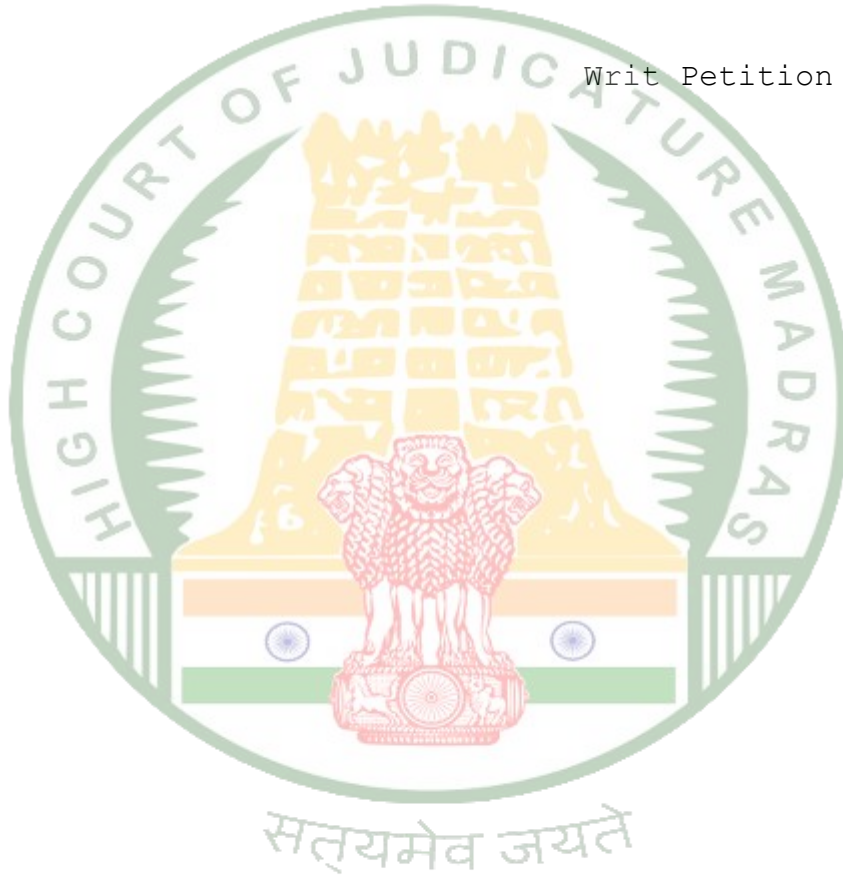
1. The Chairman,
Tamil Nadu Electricity Board,
220, Anna Salai,
Chennai - 600 002.
2. The Executive Engineer,
Operation and Maintenance,
Tindivanam Division,
TANGEDCO,
Tindivanam, Villupuram District.

3. The Assistant Audit Officer,
Tamil Nadu Electricity Board,
Audit Party No.2,
Villupuram Region, Villupuram.
4. The Junior Engineer, Operation and Maintenance,
Tamil Nadu Electricity Board,
Marakkanam, Villupuram District.

1 cc to M/s.K. Balakrishnan, Advocate, Sr. 25966
1 cc to Mr.M. Varunkumar, Advocate, Sr. 26563

Writ Petition No.14596 of 2016

UG (CO)
kk 29/4



WEB COPY