IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.A.No.1523 of 2010
and M.P.No.1 of 2010

K.M.Devaraj .. Appellant

versus

Assistant Executive Engineer,
O&TEDC/TNEB,
Pakkam Division, E.B.Board,
Gudiyatham Taluk,
Vellore District. .. Respondent

Writ Appeal filed against the order dated 24.06.2010 in W.P.No.4120 of 2010.

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the final assessment order (from the file of the respondent) Letter No. AEE/O & M/PKM/DOC/D613/2010 dated h24.02.2010 from the file of the respondent relating to Electricity service connection S.C. No. 465-007-82 TF IV Assessment order and quash the same and directing the respondent to restore the electricity connection to the petitioners land K. Mottur Village, Pakkam Post, Cudiyatham Taluk.

(Prayer amended as per the order of this Court dated 08/06/2010 in M.P.2 of 2010 in W.P.No.4120 of 2010)

For Appellant : Mr.R.Margabandhu

For Respondent : Mr.Varun Kumar,
Standing counsel for TNEB

JUDGMENT

(Order of the Court was made by S.MANIKUMAR, J.)

Appellant, has been visited with a final assessment order dated 24.02.2010 by the Assistant Executive Engineer, O&TEDC/TNEB, Pakkam Division, E.B.Board, Gudiyatham Taluk, Vellore District, for the service connection, S.E.No.465-007-82-IV-82. The order reads thus.

TAMILNADU ELECTRICITY BOARD

Final Assessment Order for Theft of energy under Section 135 of the Electricity Act 2003

From
Er.R.Balasubramanian, B.E.,
Asst.Executive Engineer,
O&M/TNEB/TEDC
Pakkam

To
Thiru.K.M.Devaraj
S/o. Munisamy Gounder.
K.Mottur (Village)
Kallapadi (Post)

Lr.No.AEE/O&M/PKM/F.DOC/D.618/2010 dt: 24/02/2010

Sir,

Sub: Theft of energy-Detected in SC.No.:465-007-82 TF IV Final Assessment Order - Regarding.

Ref: 1. Provisional Assessment Order Lr.No.AEE/O&M/PKM/F.DOC/D.613/2010/ Dt: 16/02/2010
2. Your Reply dated on 22.02.2010

1.0 On 16.02.2010 at 02:35 hours the service connection in SC No.465-007-82 TF IV located at Door No- in the SF/No.156/IA.K.Mottur Village, Kallpadi Post (Full address of the service connection) which was in the name of Thiru.K.M.Devaraj, S/o.Munisamy Gounder, K.Mottur Village, Kallapadi Post, Gudiyatham Taluk was inspected by me in the present of you Thiru.K.M.Devaraj.

2.0 During the inspection it was found that an offense of theft of Energy has been committed by using the free Agricultural Service connection power Supply for Pumping the Water from the well through a separate PVC pipe filling the Tractor Water Tank for sale of water (describe the actual mode of with details of Artificial means found in the service / unauthorised reconnection of a disconnected Service connection). By committing the said offense, you have dishonestly abstracted consumed and used energy with the intention to defraud the licensee.

The above said illegal abstraction, Consumption and use of energy is punishable under Section 135(1)(a) of the Electricity Act, 2003.

3.0 A provisional assessment was issued to you in the reference cited and you were allowed to file your objection and to appear for a hearing as per the

4.0 On a detailed examination and on consideration of your explanation ordered, fact and records furnished in your letter received by me on 22.02.2010 is not acceptable since the theft of Electricity has been committed by you as described below.

"Theft of energy has been committed by using the free agricultural service connection power supply for pumping the water from the well through a separate PVC pipe filing the "Tractor water tank" "for sale of water".

5.0. The loss caused by you due to dishonest* abstraction / *illegal restoration of supply is assessed a Rs.1,58,934/- (Rupees One Lakh Fifty Eight Thousand and Nine Hundred and thirty four only) in accordance with the regulations of the Tamil Nadu Electricity Supply Code a working sheet is enclosed here with. The balance assessment amount Rs.1,24,934/- (one lakh Twenty four thousand nine hundred and thirty four only) shall be paid within fifteen days from the date of receipt of this order.

You are requested to acknowledge the receipt of this order immediately.

Yours faithfully,

ASSISTANT EXECUTIVE ENGINEER,
O&M/TEDC/TNEB
PAKKAM

Encl.:
1) Report
2) Mahazar
3) Provisional Assessment Order
4) Working sheet and payment details,

Copy submitted to Super intending Engineer / TEDC / Thirupathur,
Copy submitted to Executive Engineer/O&M/Gudiyatham,
Copy to the junior Engineer /O&M/Pakkam

He is instructed to arrange to serve this order to the accused person with dated acknowledgment and send the acknowledge to this office."

2. When the appellant filed W.P.No.4120 of 2010, for issuance of writ of certiorarified mandamus, to quash the same and prayed for a direction to the respondent to restore electricity service connection, to his land in K.Mottur Village, Pakkam post, Gudiyatham, Taluk, Vellore District and also made a specific contention that no opportunity of personal hearing was given and therefore the final assessment order dated 24.02.2010, has to be set aside, writ Court after considering the variation in the letter dated 18.02.2010, given by the appellant/petitioner and the averments made in the supporting affidavit to the writ petition, dismissed the writ petition holding that there are contrary statements. Being aggrieved by the same, instant writ appeal has been filed.

3. Though, several grounds have been raised, Mr.Margabandhu, learned counsel for the appellant/assessee reiterated that both the respondent, as well as the writ Court have failed to consider that when the statute provides for personal hearing, before an order of final assessment is passed the same ought to have been given. He submitted that dehors the variation stated supra, violation of a statutory provision ought not to have been given a stamp of approval by the Writ Court. He also invited the attention of this Court to paragraph No.12 of Clause 23-AA of the Tamilnadu Electricity Supply Code, which deals with the procedure for assessment of electricity charges, disconnection of supply of electricity and removing the meter, electric line, electric plant and other apparatus, in case of theft of electricity, as detailed in section 135 of the Act.

4. Mr.Varun Kumar, learned standing counsel for the respondent/TNEB fairly submitted that personal hearing was not given to the appellant / assessee before an order of final assessment dated 24.02.2010 was passed. Submission of the learned standing counsel for the respondent/TNEB is placed on record.

5. Section 126 under the Part-XII of the Electricity Act, 2003, deals with Investigation and Enforcement. Section 126 (1) (2) and (3) of the Electricity Act, 2003, reads as follows:

126 (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the

> assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use.
>
> (2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.
>
> (3) The person, on whom a notice has been served under subsection (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who may, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment of the electricity charges payable by such person."

6. Reading of the above makes it clear that in respect of unauthorised use of electricity there is a provisional assessment to the best of judgment and before the final order of assessment is passed, the assessee is entitled to file objections and an opportunity of hearing has to be given.

7. The State Electricity Regulatory Commission, has framed Tamil Nadu Electricity Supply Code, 2004 to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply, tampering, distress or damage to electrical plant, electric lines or meter, entry of distribution Licensee or any person acting on his behalf for disconnecting supply and removing the meter, entry for replacing, altering or maintaining electric lines or electrical plant or meter. Notification No.TNERC/SC/7/1 dated 21.07.2004 No.VI(2)/2484/2004 has been issued.

8. Clause 23-AA of the Tamilnadu Electricity Supply Code, 2004, provides for the procedure for assessment of the electricity charges, disconnection of supply of electricity and removing the meter, electric line, electric plant and other apparatus, in case of theft of electricity, as detailed in section 135 of the Act.

9. As per paragraph No.12 of Clause 23-AA, within seven working days from the date of submission of such accused person's reply, if made within the seven working days from the date of receipt of provisional assessment order, the authorized officer shall arrange a personal hearing with such accused

person. For this purpose the authorized officer shall serve a three days notice to such accused person to allow him for a personal hearing and shall also allow any additional submission of new facts or documents if any, during the course of hearing by such accused person. If such accused person does not respond to the notice in the matter, the authorized officer shall proceed to issue the final assessment order, as per the procedure specified therein.

10. Thus, as per Paragraph No.12 of Clause 23-AA of the Tamil Nadu Electricity Supply Code, even in the case of theft, an accused person is provided with an opportunity of personal hearing. As rightly contended by Mr.R.Margabandhu, learned counsel for the petitioner, if there is a mandate that an opportunity of personal hearing has to be given before an order of final assessment is passed either in the case of unauthorised use of electricity or theft, the same has to be given.

11. When statute contemplates a thing to be done in a prescribed manner, the same has to be done, in the manner as provided under law. Useful reference can be made to the following decisions.

(i) In T.Ramamoorthy v. The Secretary, Sri Ramakrishna Vidyalaya High School, etc. & Others reported in 1998 Writ. LR 641, at Paragraph 6, held as follows:

> "If the statutory provision enacted by the Legislature prescribed a particular mode for terminating the service or dismissing the teaching or a non-teaching staff of a school, it can and has to be done not only in that manner alone, but it cannot be done in any manner too. This principle that where a power is given to do a certain thing in a certain way, things must be done in that way and not otherwise and that the other method of performance is necessarily precluded, is not only well settled, but squarely applies to this case also in construing the scope of the power as also its exercise by the management under Section 22 of the Act."

(ii) The Hon'ble Supreme Court in State of Jharkhand v. Ambay Cements reported in 2005 (1) CTC 223, at Paragraph 27, held as follows:

> "27. Whenever the statute prescribes that a particular act is to be done in a particular

manner and also lays down that failure to comply with the said requirement leads to severe consequences, such requirement would be mandatory. It is the cardinal rule of the interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way. It is also settled rule of interpretation and where a statute is penal in character, it must be strictly construed and followed. Since the requirement, in the instant case of obtaining prior permission is mandatory, therefore, non-compliance of the same must result in cancelling the concession made in favour of the grantee-the respondent herein."

(iii). In Pandit D Aher v. State of Maharashtra reported in 2007 (1) SCC 437, the Supreme Court, at Paragraph 19, held as follows:

"It is now well settled that a judicial review would lie even if there is an error of law apparent on the face of the record. If statutory authority uses its power in a manner not provided for in the statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may attract the principles of judicial review."

12. When the statute contemplates personal hearing, and when the authority has failed to adhere to the same, Writ Court ought not to have allowed such action to be sustained, merely, because there are variations in the case of the petitioner in letter submitted to the authority and the averments made in the writ petition. In the light of the above discussion and decisions impugned final assessment order dated 24.02.2010, passed by Assistant Executive Engineer, O&TEDC/TNEB, Pakkam Division, E.B.Board, Gudiyatham Taluk, Vellore District, is liable to be set aside.

13. Material on record discloses that when the provisional assessment notice was issued, the appellant has paid a sum of Rs.50,000/-. Record of proceedings shows that earlier when the writ appeal came up for hearing, vide order made in M.P.No.1 of 2010 in W.A.No.1523 of 2010 dated 09.08.2010, a Hon'ble Division Bench of this Court has directed the appellant to deposit a sum of Rs.50,000/- within seven days and supply of electricity shall not be disconnected.

14. According to the Assistant Executive Engineer, O&TEDC/TNEB, Pakkam Division, E.B.Board, Gudiyatham Taluk, Vellore District, as per the final assessment order, the balance assessment amount is Rs.1,24,934/-.

15. Final assessment order dated 24.02.2010 and the order made by the writ Court in W.P. No.4120 of 2010 dated 24.06.2010, are set aside. Whatever amount already been remitted before the order of final assessment is passed and in compliance of the direction of this Court dated 09.08.2010 be taken note of. Respondent is directed to provide an opportunity of personal hearing to the appellant and pass a fresh final asessment order in accordance with clause 23-AA . The said exercise shall be completed within four weeks from the date of receipt of a copy of this order.

16. In the result, Writ Appeal is allowed, as indicated above. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
Assistant Executive Engineer,
O&TEDC/TNEB,
Pakkam Division, E.B.Board,
Gudiyatham Taluk,
Vellore District.

+1cc to Mr.Margabandhu, Advocate, S.R.No.74973
+1cc to Mr.Varun Kumar, Advocate, S.R.No.74241

PK(CO)
RS(12/01/2017)

W.A.No.1523 of 2010
and M.P.No.1 of 2010