

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2016

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THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.7877 of 2010

and M.P.1,2 & 3 of 2010

P.K.Deivasigamani

... Petitioner

Vs.

1. The Tamil Nadu Electricity Board,
Rep.by its Chairman,
Anna Salai, Chennai 600 002.

2. The Superintending Engineer,
Tamil Nadu Electricity Board,
Mettur Electricity Distribution Circle
Mettur Dam.

3. The Assistant Executive Engineer (O&M)
Tamil Nadu Electricity Board,
Pallipalayam,
SPB Colony 638 010.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India pleased to issue a writ of certiorarified mandamus or any other writ or order or direction in the nature of writ of certiorarified mandamus calling for the records of the third respondent comprised in his Final Assessment order bearing No.AEE/O&M/PPM/CI/FDOC/PR204/10 dated 12.03.2010 as being arbitrary, illogical and contrary to the provisions of the Electricity Act, 2003 and consequently directing the respondents to forthwith and in any manner within the time as may be determined by this Hon'ble Court to refund a sum of Rs.1,07,557/- and Rs.16,000/- which was collected from the petitioner towards penal charges and compounding fees respectively, in all aggregating a sum of Rs.1,23,557/-

For Petitioner : Mr. Sathish Parasaran

For Respondents: Mr. S.K.Raameshuwar, Senior Counsel
for TNEB

O R D E R

The prayer in the writ petition is for certiorarified mandamus calling for the records of the third respondent comprised in his Final Assessment order bearing

No.AEE/O&M/PPM/CI/FDOC/PR204/10 dated 12.03.2010 as being arbitrary, illogical and contrary to the provisions of the Electricity Act, 2003 and consequently directing the respondents to forthwith and in any manner within the time as may be determined by this Hon'ble Court to refund a sum of Rs.1,07,557/- and Rs.16,000/- which was collected from the petitioner towards penal charges and compounding fees respectively, in all aggregating a sum of Rs.1,23,557/-

2. Heard both sides.

3. Though the writ petition has been filed with aforesaid prayer, today, the learned counsel appearing for the petitioner would contend that the very impugned order dated 05.03.2010 and 12.03.2010 passed by the third respondent show that the petitioner has found committed an offence of unauthorised usage of electricity energy. The final working sheet dated 12.03.2010 also states that the petitioner had extra levy duty for unauthorised usage of electricity energy. In view of that categorical assertion made on behalf of the respondents, the remedy open to the petitioner, even as per Electricity Act 2003 is to file an appeal to the Appellate Authority as provided under Section 127 of the Electricity Act r/w clause 20 of the Electricity Supply Code 2004.

4. The learned counsel appearing for the respondent would contend that the said orders which are impugned herein disclose that it was an unauthorised usage of electrical energy, while counter affidavit proceeds to say that it is a theft. It is settled law that the impugned order on merits, cannot be improved by any subsequent pleadings including counter affidavit and therefore in that view of the matter, the plea raised by the learned counsel for the petitioner as to the alternative remedy available to the petitioner would be worthy to be considered.

5. In that view of the matter this Court is of the view that since the petitioner is having effective alternative appeal remedy u/s.127 of the Tamil Nadu Electricity Act 2003 r/w clause 20 of the Tamil Nadu Electricity Supply Code 2004 the petitioner may be given liberty to approach the said Appellate Authority by filing the appeal as provided therein as against the impugned order within a period of two weeks from the date of receipt of a copy of this order.

6. Therefore this writ petition is disposed with following directions.

(i) Petitioner is given liberty to approach the appellate authority by filing the appeal against the impugned order u/s.127 of the Tamil Nadu Electricity Act 2003 within two weeks from the date of receipt of a copy of this order.

(ii) On receipt of such appeal the appellate authority shall consider the same in accordance with law, on merits, after affording an opportunity of being heard and pass final orders there on within a period of four weeks thereby.

7. With these observations this writ petition is disposed of. No costs. Connected miscellaneous petition are also closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

dpq

To

1. The Chairman
The Tamil Nadu Electricity Board
Anna Salai Chennai-600 002
2. The Superintending Engineer,
Tamil Nadu Electricity Board,
Mettur Electricity Distribution Circle
Mettur Dam.
3. The Assistant Executive Engineer (O&M)
Tamil Nadu Electricity Board,
Pallipalayam,
SPB Colony 638 010.

+1 cc to Mr. Satish Parasaran Advocate sr64174

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aa20/12/2016

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