

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 02.09.2016

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.No.30782 of 2016
and WMP No.26676 of 2016

D.Shanthi

... Petitioner

Vs.

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

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

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India for a Writ of Certiorari, to call for records of the 2nd respondent in his proceeding No.AEE/O&M/CHD/C1/F-39D/No.214/2016-17 dated 01.08.2016 and quash the same.

For Petitioner : Mr.D.Selvaraju

For Respondents: Mr.S.K.Raameshwar
Standing Counsel for TNEB

O R D E R

The petitioner is having an Industrial Electricity Service connection with the second respondent in S.C.No.015-011-463 and her neighbour Mrs.Venkateswari is having electricity service connection in S.C.No.015-011-445. Alleging that the petitioner is using unauthorised electricity power from the other connections, the respondent charged provisional assessment tax on the petitioner to a sum of Rs.10,13,047/- without conducting any enquiry. Therefore, the petitioner challenged the said order dated 01.08.2016 in W.P.No.35543/2015 and this court partly allowed the writ petition on 04.11.2015 remanding the matter to the 2nd respondent to give opportunity to the petitioner to put forth her case and decide the matter.

2. The petitioner sought for details of the consumption with regard to electricity connection in S.C.No.015-011-463 and her neighbour's electricity connection in S.C.No.015-011-445 through representations dated 18.03.2016, 26.04.2016, 27.04.2016

and 27.05.2016. A reply was received from the respondent on 15.07.2016 stating that as per order of this court, enquiry will be conducted and they will provide the details regarding S.C.No.015-011-463 alone. In the enquiry also, it is pointed out that the details sought for with regard to S.C.No.015-011-445 belonging to the neighbour was not disclosed, still the impugned order has been passed calling upon the petitioner to pay a sum of Rs.10,13,047/- as compensation charges payable as per sub-section (5) & (6) of Section 126 of the Electricity Act, 2003. The said order is being challenged before this court .

3. Heard Mr.D.Selvaraju, learned counsel appearing for the petitioner and Mr.S.K.Raameshwar, learned counsel who takes notice on behalf of the respondents.

4. It is evident from the records that the petitioner has already challenged the demand of compensation charges by virtue of W.P.No.35543/2015 and this court, on 04.11.2015 set aside the order and remanded the matter to the second respondent. Paragraph 9 of the said order is extracted as follows:

"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."

5.A scrutiny of the above order would reveal that the petitioner has to be granted an opportunity. Meanwhile, the petitioner also sought for the details regarding consumption details of S.C.No.015-011-463 & S.C.015-011-445 through representations dated 18.03.2016, 26.04.2016, 27.04.2016 and 27.05.2016. The respondents only provided the consumer ledger of the petitioner's service connection in S.C.No.015-011-463 alone whereas the consumer ledger of Mrs.Venkateswari, the neighbour's service connection in S.C.No.015-011-445 has not been provided. Since the tax is being claimed for unauthorisedly using the electricity power from S.C.No.015-011-445 by the petitioner, to give a correct picture and contradict the respondents claim, the petitioner would be in a position to put forth his defence, only if details of service connection No.015-011-445 are given. Without providing with those information, the issue cannot be decided by the second respondent. Therefore, the enquiry conducted by the second respondent is vitiated and therefore the demand is not

sustainable and the order is set aside. Further, the matter is remanded to the second respondent to give all the details sought for by the petitioner within a period of two weeks from the date of receipt of a copy of this order and conduct enquiry within four weeks thereafter and pass appropriate orders.

6. Though this court in the earlier occasion, in W.P.No.35543/2015 dated 04.11.2015 set aside the earlier order and remanded, to give an opportunity to decide the matter, the second respondent has not properly utilized the opportunity. If such an attitude is exhibited, it would only prolong the issue prejudice to both the petitioner as well as the second respondent. Though cost has to be awarded against the second respondent personally, taking a lenient view, this court has not awarded any cost, with a warning that the second respondent should not make any such mistakes in future.

7. With the above observation, this Writ Petition is allowed. No costs. Consequently connected Miscellaneous Petition is also closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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

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

+1 cc to Mr.D.Selvaraju Advocate sr 49937

+1 cc to Mr.S.K.Raameshuwar Advocate sr 50445

W.P.No.30782 of 2016

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