

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.No.39336 of 2016 and

WMP.Nos.33659 and 33660 of 2016

R.Umamaheswari

[Petitioner]

Vs

- 1 The Chairman Cum Managing Director
TANGEDCO NPKRR Maaligai No.144
Anna Salai Chennai-600 002
- 2 Superintending Engineer
TANGEDCO Erode District
- 3 The Executive Engineer
Operation and Maintenance
TANGEDCO/Gobi EDC
Bavanisagar, Erode District
- 4 The Assistant Executive Engineer
Operation and Maintenance
TANGEDCO/Gobi EDC
BavaniRiver Erode District [Respondents]

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for records of the 4th respondent herein pertaining to his proceedings Lr.No: AEE/O & M/BSR/F Dkt D/156/16-17 dated 20.10.2016 and Lr.No. AEE/O&M/BSR/F Dkt/ D161/16-17 dated 03.11.2016 and quash the same.

For Petitioner .. Mr.R.Singaravelan,
Senior Counsel
for Mr.S.Karthik Raja
For Respondents .. Mr.S.K.Rameshuwar, SC

O R D E R

The petitioner, who is stated to be having electricity service connection No.362-007-1317 for agriculture purpose, has come before this Court, challenging the provisional assessment order dated 20.10.2016 and also the final assessment order dated

03.11.2016, for using the electricity connection for drawing water from Bhavani River and making use of the same for their Paper Mill.

2. According to the petitioner, the electricity connection is used only for watering his agricultural lands to an extent of 4.31.5 Hectares in S.F.Nos.480/2, 481 and 484 at Pudhupeerkadavu Village. However, according to the respondent Board, on inspection, it was found that the water using the electricity connection is being used for Aksara Paper Mills run by the petitioner.

3. The learned Standing Counsel appearing for the respondent would submit that the electricity connection misused by the petitioner was intimated to him, by virtue of notice dated 01.07.2015. In spite of the same, the petitioner has not stopped using the electricity connection for drawing water for the purpose of Paper Mill. Further, he would submit that the petitioner has challenged the said notice dated 01.07.2015 by way of filing W.P.No.20326 of 2015 before this Court and this Court, by order dated 08.07.2015 has granted an order of status-quo, but also left it open to the 2nd respondent to make a surprise inspection as to the end use of water drawn by the petitioner. Thereafter, on 20.10.2016, a provisional assessment order was passed stating that on inspection, it was found unauthorised use of electricity for drawing water from Bhavani River for Paper Mill purpose and calling upon the petitioner to stop the said unauthorised use of electricity and also to remove the equipment used for the said unauthorised use of electricity. In the said order, the petitioner was directed to submit his reply within a period of seven days from the date of receipt of a copy of the said order. Since no reply was received, the impugned final assessment order dated 03.11.2016 was passed.

4. On the other hand, Mr.R.Singaravelan, learned Senior Counsel appearing for the petitioner would submit that the provisional assessment order dated 20.10.2016 was actually posted on 22.10.2016 and was received by the petitioner on 24.10.2016. Therefore, practically, the time limit of seven days given in the said order was not available and hence sufficient time has been given to the petitioner to submit his explanation.

5. Heard the learned counsel on either side and perused the materials available on record.

6. A perusal of the documents especially the postal cover posted by the respondents and received by the petitioner would show that the provisional assessment order/show cause notice dated 20.10.2016 was posted on 22.10.2016 and the cover bears the seal upto 24.10.2016. Therefore, it is clear that only on

24.10.2016 the petitioner received the said notice. Practically, there was no sufficient time available. Hence, the impugned order dated 03.11.2016 suffers. It is the contention of the petitioner that within such time, he could not send his reply. Since sufficient time was not given for the petitioner to give the explanation, this Court is of the view that instead of quashing the impugned orders, sufficient time has be given to the petitioner to submit his explanation and on receipt of such reply, the 2nd respondent is to be directed to pass appropriate orders.

7. In view of the above, while disposing of the writ petition, this Court, gives the following directions:-

"The petitioner is directed to treat the order dated 03.11.2016 as the show cause notice and give a reply on or before 21.11.2016 and after receiving such reply, the respondents are directed to pass final orders on or before 30.11.2016".

No costs. Connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

- 1 The Chairman Cum Managing Director
TANGEDCO NPKRR Maaligai No.144
Anna Salai Chennai-600 002
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- 4 The Assistant Executive Engineer
Operation and Maintenance
TANGEDCO/Gobi EDC BavaniRiver Erode District

+1 cc to M/s.K.S.Karthik raja,advocate,sr.64591

sai(co)
krd 14/11

W.P.No.39336 of 2016