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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P (MD) No.10304 of 2013

and

M.P. (MD) No.1 of 2013

Duraisamy

.. Petitioner

Vs.

The Assistant Executive
Engineer (Distribution),
Singampunari,
Sivagangai District.

.. Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records pertaining to order passed by the respondent in Ka.No.Vu.Se.Po/Distribution/Singampunari/Va.A/Ko.MinThiruttu/A No.291/13, dated 30.05.2013 and quash the same.

For Petitioner : Mr.J.Anand Kumar

For Respondent : Mr.S.M.S.Johnny Basha

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorari calling for the records pertaining to order passed by the respondent in Ka.No.Vu.Se.Po/Distribution/Singampunari/Va.A/Ko.MinThiruttu/A No.291/13, dated 30.05.2013 and quash the same.

2.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

3.It is the case of the petitioner that the petitioner was given a service connection vide electricity service connection No.488-002-618 for running a small flour mill. It appears that an inspection was done by the officials of the respondent on 22.05.2013. It is alleged that the petitioner has made some arrangements to give direct connection by-passing the meter so as to avoid recording of actual consumption of energy. The petitioner was issued with the impugned order dated 30.05.2013 demanding a sum of Rs.1,15,374/-, as per the work sheet annexed to the impugned order. Though the petitioner has raised some factual issues, the impugned order suffers from material irregularity, as the same is not preceded by a provisional assessment, as required as per the Electricity Act. This Court has earlier pointed out



that final demand can be made only after making the provisional assessment and giving an opportunity to the consumer to show cause against the provisional assessment. The learned counsel for the petitioner relied upon a judgment of this Court in the case of **S.Senthil Kumar and Another v. Executive Engineer (Distribution), Tamil Nadu Electricity Board, Coimbatore District and another** reported in **(2008) 4 MLJ 546** wherein at paragraph 9 it has been held as follows:

"9. In such circumstances, when admittedly section 135 relates to theft of electricity and section 126 relates to unauthorised use of electricity, it is not acceptable that even before the criminal liability of theft is concluded as per section 135 of the Act, any final assessment can be made without giving notice to the petitioners and giving opportunity to explain. In view of the same and on the ground that before making the provisional assessment into final order which is impugned in this writ petition, no show cause notice was issued to the petitioners, the impugned order is set aside. It is open to the respondents to give proper opportunity in accordance with the notification issued by the Government on 13.6.2007 and pass appropriate orders."

4.The view of this Court in the above judgment is also followed by this Court in **S.Anand v. Executive Engineer, Erection and Maintenance, TNEB, Hosur, Krishnagiri District and another** reported in **(2014) 4 MLJ 278** .

5. In another decision in the case of **Tamil Nadu Electricity Board, rep. by its Superintending Engineer, Coimbatore Electricity System, Coimbatore and Others V. R. Raja**, reported in **(2007) 5 MLJ 1297** and at page 1298, it is observed and held as under;

"The Electricity Board has the responsibility to properly conduct inspection, inform the consumer of electricity about the inspection and give the consumer opportunity in compliance with the principles of natural justice. Not having done so the Electricity Board's order to disconnect supply of electricity of plaintiff was unsustainable."

6.It is relevant to extract clause 23 AA of Tamil Nadu Electricity Supply Code, 2004, as follow:

(AA) The Procedure for assessment of the electricity charges, d is connection 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 is given below:



(1) The officer authorized under sub-section (2) of section 135 of the Act (hereinafter referred to as the authorized officer), may either suo- motu or on receipt of reliable information regarding theft of electricity in any premises, conduct inspection of such place or premises (The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.).

(2)(a) The authorized officer shall prepare a report at the place or premises giving details such as connected load, condition of seals, working of meter and record, modus operandi adopted for theft of energy. Any damage or destruction to the electric meter, metering equipments, apparatus, line, cable or electrical plant of the Licensee or supplier concerned, caused or allowed to be caused by the accused person so as to interfere with the proper or accurate metering of electricity or for theft of electricity shall also be duly recorded in the report indicating whether conclusive evidence substantiating the fact that theft of energy was found or not. The authorized officer may also take photo or prepare a diagram illustrating the arrangements found to have been made for theft of electricity, wherever feasible and such photo or diagram shall form a part of inspection report. Upon detection of such theft of electricity, the officer of the licensee or supplier, as the case may be, as authorized for the purpose by the Commission, may, immediately disconnect the supply line of electricity and a complaint shall be lodged in the police station as per the procedure stipulated in section 135 (1A) of the Act on the basis of the materials collected by the Assessment officer who has conducted the inspection. The supply to the premises shall be restored only after satisfying the stipulation of the third proviso of section 135 (1A) of the Act. (b) To carry out all or any of the above acts specified in subsection (1A) of section 135 of the Act, the Commission authorises the same officers of the Licensee or the supplier as authorised by the Government of Tamil Nadu to do all or any of the acts specified in clauses (a) to (c) of sub-section (2) of section 135 of the Act.

(3) In case of suspected theft by tampering of meter or metering equipment, meter connection security seal or by replacing original seal by bogus seal, the meter Tamil Nadu Electricity Supply Code



case may be, who accompanied the authorized officer shall sign the inspection report in all the above cases and obtain signatures of the accused person or his representative and the same must be handed over to the accused person or his representative at site immediately under proper receipt. In case of refusal by the accused person either to sign or accept or give a receipt, a copy of inspection report must be pasted at a Tamil Nadu Electricity Supply Code (Amendments updated upto 31-12-2009) 48 conspicuous place in or outside the premises and a note recorded on the office copy of the inspection report to the effect that the copy of the report has been pasted at the conspicuous place of the premises. A copy of the report shall be subsequently sent to the accused person of the premises under registered post within three days of inspection.

(7) Where it is established that there is a case of theft of energy, the authorized officer shall assess the quantum of energy consumption for the past twelve months as per the assessment formula given in Form 8 in Appendix to this code and prepare provisional assessment order for the charges for such consumption at two times of the tariff applicable (i.e the applicable tariff for the purpose for which the pilfered energy was used) and serve on the accused person under proper receipt. The authorized officer may reduce the period for such billing if it is established by the facts or documents submitted in the representation of the accused person or any such other evidence observed by the authorized officer. Wherever electronic meters are installed and the load curves are studied periodically, the period of theft could be limited to the exact period as could be determined scientifically. The authorized officer shall record reasons for such reduction in the period of billing, in the assessment order. The energy consumption arrived at as per the formula referred to in the said Form 8 will be charged excluding the energy consumption recorded by the meter as per the rates specified by the Commission's Tariff Order.

(8) Within five days of inspection, the authorized officer shall serve on the accused person, provisional assessment order in the Form 9 in Appendix to this code for the charges for the theft of electricity based on the evidence recorded during the course of inspection. The order should clearly



state the time, date and place at which the reply has to be submitted and the designation/ address of the officer to whom it should be addressed. The accused person shall be required to submit his representation within seven days of issue of the provisional assessment order.

(9) In case of suspected theft through a tampered meter, such tampered meter taken out and sealed at the time of inspection, as prescribed in sub regulation (3), shall be sent to the third party accredited meter testing laboratory as arranged by the licensee or supplier concerned, as the case may be, or to the Chief Electrical Inspector to the State Government till such time the third party meter testing arrangement is established by the licensee or Tamil Nadu Electricity Supply Code (Amendments updated upto 31-12-2009) 49 supplier concerned, as the case may be. The accused person shall be given a notice of seven working days for witnessing the test of such meter at such meter testing laboratory. The notice shall clearly indicate the time, date and place wherein the suspected tampered meter shall be tested and the accused person shall be allowed to witness the test. The accused person shall duly sign the test results report after witnessing it. If such accused person does not turn up at the meter testing laboratory on the appointed date and time indicated in the notice to witness the test or refuses to sign the test results, the licensee or supplier concerned, as the case may be, shall carryout the test in the absence of such accused person and shall send a copy of results to the accused person through registered post within three days of the date of testing.

(10) In cases where the meter has been tested at such meter testing laboratory and where it is established that there is a case of theft of energy, the procedure for assessment as specified in sub regulation (7) shall be followed.

(11) In case the accused person does not respond to the provisional order within seven working days, the licensee or supplier concerned, as the case may be, may proceed to initiate the recovery against the provisional assessment order.



report, submissions made by accused person in his written reply as well as during his personal hearing and reasons for acceptance or rejection of the same and the assessment charges as per sub-regulation (12). In the final assessment order, charges, if any, paid by the accused person during the period for which the assessment is done shall be duly credited, if warranted, to avoid duplication of billing for such period.

(16) The final assessment amount and the last date should be clearly stated in the speaking order. A copy of the speaking order shall be handed over to the accused person under proper receipt on the same day.

(17) The accused person shall be required to make the payment within seven working days of receipt of final assessment order. On deposit or payment of the assessed amount or electricity charges by the accused person, supply to the premises shall be restored as referred to in the third proviso of section 135 (1A) of the Act.

(18) In case of default in payment of the assessed amount, the licensee or supplier concerned, as the case may be, shall, after giving a fifteen days' notice in writing, remove meter and service line and also electrical plant for giving supply to this connection. However if the accused person makes payment within notice period, surcharge applicable to that category shall also be payable as prescribed in this code.

(19) In case where the theft of electricity in the premises which does not have regular electricity connection, has been detected and the licensee or supplier concerned, as the case may be, shall forthwith disconnect the supply to such premises. In such premises supply shall be given only after the accused person has cleared the dues to be paid on account of charges assessed for theft of electricity in full including surcharge if any and has availed a regular new connection after completing the required formalities.

(20) If the accused person does not make payment, the licensee or supplier concerned, as the case may be, may proceed to recover its dues against such order and take such further action as is permitted under the Act.



(21) If no person is available to whom the provisional or final assessment order can be served with reasonable diligence or if any person refuses to accept or avoids to receive such order, it shall be affixed at the inspected premises in the presence of two witnesses and in such case an endorsement to the effect shall be made in the copy of such order. An assessment order so affixed shall be deemed to have been duly served to the person or occupier of the premises.

(22) In case of compounding the notice as in Form 11 in Appendix to this code may be issued and the amount collected as per section 152 of the Act.

Explanation: For the purpose of this regulation and regulation 23-BB:

(a) "accused person" shall mean and include the owner or occupier of the premises or his authorized agent or representative or any other person who is in occupation or possession or in charge of the premises at the relevant time of detection of theft of electricity or any other person who has been benefited by the theft of electricity.

(b) "authorised officer", shall in case if he is not an officer of the licensee or supplier, as the case may be, mean and include an officer designated or appointed as an authorised officer by the State Government for the purpose of dealing with theft of electricity as provided in the Act, including the assessment of theft of energy empowered under this code.

(c) "licensee or supplier" means and includes the licensee or supplier, as the case may be or his franchisee or his authorized agent or representative who alleges the occurrence of theft of electricity.]

Thus clause 23 AA (8) and 23 AA (12) prescribes the manner in which the provisional assessment and final assessment are to be followed.

7. Admittedly, in this case, there was no provisional assessment and there was no further opportunity to the petitioner before making final assessment.



8. In view of the relevant provisions under Tamil Nadu Electricity Supply Code, 2004, the impugned order is set aside and it is open to the respondent to pass fresh order following the procedure as contemplated under Clause 23 AA of Tamil Nadu Electricity Supply Code, 2004.

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9. It is also stated by the petitioner that he has deposited an amount of Rs.50,000/- with the respondent in compliance of the interim direction given by this Court on 04.07.2013. Depending upon the nature of order that may be passed by the respondent, the amount of deposit lying with the respondent will be either adjusted or refunded by the respondent within a period of two weeks thereafter.

10. The Writ Petition is allowed with the directions indicated above. However, there is no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To

The Assistant Executive Engineer (Distribution),
Singampunari,
Sivagangai District.

+1 cc to M/s.J.Anand Kumar, Advocate in SR.No.41439/16

SRM

CSL/KP/12.08.2016 :10P/3C

W.P. (MD) No.10304 of 2013

01.08.2016