BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 21.12.2016
CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.18098 of 2013
M.P.(MD) Nos.1 to 3 of 2013

Rani Meyyammai Achi of Chettinad Charitable Trust,
Rep. by Authorised Signatory, Puliyur Cement Factory,
Karur District,
Tamilnadu - 639 114. ... Petitioner

Vs.

1.Tamil Nadu Generation and Distribution Corporation Limited,
Karur Electricity Distribution Circle,
Karur.
2.Executive Engineer,
(Operation and Maintenance),
TANGEDCO, Karur.
3.Assistant Executive Engineer,
(Operation and Maintenance),
TANGEDCO, Puliyur. ... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent in the impugned order on compounding contained in letter No.AEE/O & M/Puliyur/FAprs/D.No.Camp dated 03.11.2012 and the Inspection Report dated 03.11.2012 and to quash the same as arbitrary and illegal and violative of the provisions of the Electricity Act, 2013 and the Supply Code and consequently direct refund of the sum of Rs.13,84,205/- being the sum collected towards alleged theft of energy charges without following the procedure established by law and proceed to make a provisional assessment and final assessment after strictly adhering to the procedure set out in the Supply Code notified by the Hon'ble TNERC.

For Petitioner : Mr.Raguvaran
for M/s.Sathish Parasaran

For Respondents : Mr.S.M.S.Johnny Basha
Standing Counsel

O R D E R

The prayer in the writ petition is for a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent in the impugned order contained in letter No.AEE/O & M/Puliyur/FAprs/D.No.Camp dated 03.11.2012, and the Inspection

Report dated 03.11.2012, and to quash the same and consequently directing the respondents to refund Rs.13,84,205/- being the sum collected towards alleged theft of electricity charges from the petitioner and proceed to make a provisional assessment and final assessment after strictly adhering to the procedure set out in the Supply Code notified by TNERC.

2.On 03.11.2012, an Inspection was conducted in the premises of the petitioner, which is an educational institution campus, where it was found by the third respondent/inspecting Officer that the petitioner though had been permitted to use 15 KW in a temporary connection, had used 68 KW, which is 53 KW excess than what was permitted. Therefore, a provisional assessment order was made to the extent of Rs.9,54,000/- on 03.11.2012 and the petitioner was directed to pay the said sum within a period of 7 days. Similarly, a compounding fee of Rs.24,000/- under Section 152 of the Electricity Act also had been requested to be paid by the petitioner and both compounding charges as well as assessment charges for using the alleged excess electricity had been paid. Therefore, the petitioner had paid the assessment charges as well as compounding charges to the extent of Rs.4,06,205/- and altogether Rs.13,84,2015/- to the respondent without prejudice to his right to agitate the issue. After having paid the said amount, the petitioner has come out with the present writ petition challenging the impugned order of the third respondent dated 03.11.2012.

3.Heard both sides.

4.Mr.Raguvaran, the learned counsel appearing for the petitioner would primarily contend that the petitioner has not involved in any theft of energy. In fact, the service connection though primarily was given to the particular premises of the petitioner, where construction activities were going on and the petitioner was given permission to use only 15 KW, since the construction usage was more some excess KW was utilized. Therefore, at the time of inspection, even according to the third respondent, there was usage of 68 KW, ie. 53 KW excess of what has been authorised to use in the temporary connection and if at all anything found as excess, the same can be termed as un-authorised use of energy and cannot be termed as theft of energy. In this regard, the learned counsel for the petitioner relied on Section 126 of the Electricity Act, 2003 (herein referred to as the Act), wherein the procedure adopted in making assessment of un-authorised usage of electricity has been dealt with. Under Clause (5) of Section 126 of Electricity Act, if the Assessing Officer reaches the conclusion that un-authorised use of electricity has taken place, the assessment shall be made for the entire period during which such un-authorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately proceeding the date of inspection can be taken for ascertaining the un-authorised usage and after taking it consisting the rate equal to twice the tariff applicable for the relevant category of services shall be levelled on the person who unathorisedly used the energy. In the explanation clause in Section 126, the unauthorised use of electricity has been defined in the following terms:

> "(b) "unauthorised use of electricity" means the usage of electricity;
>
> (I) by an artificial means; or
>
> (ii) by a means not authorised by the concerned person or authority or licensee; or
>
> (iii) through a tampered meter; or
>
> (iv) for the purpose other than for which the usage of electricity was authorised; or
>
> (v) for the premises or areas other than those for which the supply of electricity was authorised."

5.The learned counsel appearing for the petitioner has relied upon a judgment of the Hon'ble Supreme Court reported in **(2012) 2 SCC 108** in the matter of **Southern Electricity Supply Co. of Orissa Ltd. v. Sri Seetaram Rice Mill**. The learned counsel drawn the attention of this Court to paragraph 71 of the said judgment, which reads thus:

> "71. Consumption in excess of sanctioned load is violative of the terms and conditions of the agreement as well as of the statutory benefits. Under explanation (b) (iv), "unauthorised use of electricity" means if the electricity was used for a purpose other than for which the usage of electricity was authorised. Explanation (b)(iv), thus, would also cover the cases where electricity is being consumed in excess of sanctioned load, particularly when it amounts to change of category and tariff. As is clear from the agreement deed, the electric connection was given to the respondent on a contractual stipulation that he would consume the electricity in excess of 22 KVA but not more that 110 KVA. The use of the negative language in the condition itself declares the intend of the parties that there was an implied prohibition in consuming electricity in excess of the maximum load as it would per se be consuming electricity in excess of the maximum load as it would per se be also prejudiced. Not only this, the language of Regulations 82 and 106 also prescribes that the consumer is not expected to make use of power in excess of the approved contract demand otherwise it would be change of user falling within the ambit of "unauthorised use of electricity".

6.By relying upon the said judgment, the learned counsel for the petitioner would contend that the "unauthorised use of electricity" means if the electricity was used for the purpose other than for which the usage of electricity was authorised. It would cover the cases where electricity is being consumed in excess of sanctioned load, particularly when it amounts to change of category and tariff. Therefore, the said explanation as has been given in the

Section 126 of the Electricity Act has been interpreted in the case above cited, especially what had happened in the case of the petitioner is that admittedly it has consumed excess energy than the sanctioned load, which would certainly cover in the category of unauthorised use of electricity and certainly not come under the category of theft of energy. Therefore, the learned counsel for the petitioner contended that the procedure for assessment should have been made only under section 126 of the Act instead, in the case on hand, the impugned order was passed as if the petitioner has involved in theft of excess electricity and Section 135 was invoked. The learned counsel for the petitioner also contended that it is only disowning because as has been claimed under Section 135 I(2) of the Electricity Act, 2007, it cannot be considered as theft of energy because here in this case admittedly the petitioner has used only excess energy than the one permitted in the service connection given to the petitioner and therefore, the same cannot be termed as theft of electricity. He would further submit that though the provisional assessment order said to have been served on the petitioner, to the best knowledge of the petitioner no such order has been served on the petitioner and had it been served on the petitioner he would have replied to it and the learned counsel for the petitioner would further contend that if such a reassessment is made and the order of the third respondent is served on the petitioner, the petitioner would give suitable explanation. Therefore, it will not come under Section 135 of the Act but it will of course come only under Section 126 of the Act.

7.Per contra, the learned Standing Counsel for the respondent would contend that their record would show that the initial assessment order dated 05.11.2012 has been served on the petitioner and some one on behalf of the institution has received it. Since the petitioner had knowledge that the permitted limit was only 15 KW, which had been given to the said service connection, which was given temporarily for construction work and the same was utilised for some other work, including the construction of other buildings belonging to the petitioner and at the inspection 68 KW was in consumption by the petitioner and therefore, the intention of the petitioner squarely comes within the meaning of “dishonesty” as has been given under Section 135 of the Act. Therefore, the respondents have rightly invoked Section 135 of the Act by considering the usage of energy unauthorisedly by the petitioner. Therefore, there is no infirmity in such procedure being adopted by the respondents and therefore, no interference is required in this matter.

8.This Court considered the rival submissions of the learned counsel for the petitioner as well as the learned Standing Counsel for the respondents.

9.As has been pointed out by the learned counsel for the petitioner, there is a clear interpretation of Section 126 as to what is the meaning of unauthorised usage of electricity. While the said provision has been considered and interpreted in the above judgment, their Lordships have stated that the said unauthorised usage would also cover the case of electricity being consumed in excess of the sanctioned load. Here in the instant case what has happened is that excess load has been consumed by the petitioner more than the one actually authorised. Therefore, certainly the present excess consumption made on behalf of the petitioner shall be considered as unauthorised use of electricity and not under the caption of theft of energy. Therefore, this Court is of the view that there is force in the contention of the learned counsel appearing for the petitioner and in that view of the matter the procedure adopted by the third respondent in making the assessment, de-hors the procedure contemplated under Section 126 of the Act is liable to be interfered with. Accordingly, the impugned order is also liable to be interfered with and liable to be quashed. However, the matter is to be remanded back to the third respondent for reconsideration by strictly adhering to the procedure contemplated under Section 126 of the Act and giving a reasonable opportunity of being heard to the petitioner and the final assessment has to be made, if it is feasible, to do so by the third respondent as informed under Clause 5 of Section 126 of the Act and ultimately a reasoned order of assessment shall be passed.

10.In the result, the Writ Petition is allowed with the following directions:

(i) The impugned order of the third respondent dated 03.11.2012 is quashed.

(ii) The matter is remanded to the third respondent for reconsideration and reassessment by taking into account the alleged excess use of the petitioner on the given time or period as unauthorised use of energy and such re-assessment shall be made only in accordance with the procedure as contemplated under Section 126 of the Act.

(iii) While making such reassessment, reasonable opportunity of being heard be given to the petitioner, including getting explanation from them and thereafter, final assessment has to be made strictly in accordance with law and in accordance with the relevant procedures of the Act.

(iv) Since the petitioner has already deposited the entire amount as demanded, if the third respondent ultimately decides anything to be recovered from the petitioner for the alleged unauthorised use of electricity, the same can be quantified and the said amount quantified by the third respondent shall be adjusted with the amount already paid by the petitioner and still any amount is available, the same has to be refunded to be petitioner, if otherwise, the amount quantified comes above the amount paid by the petitioner, the excess amount shall be paid by the petitioner to the third respondent.

(v) This exercise has to be completed within a period of two months from the date of receipt of a copy of this order.

11.No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1.Tamil Nadu Generation and Distribution Corporation Limited,
Karur Electricity Distribution Circle,
Karur.

2.The Executive Engineer,
(Operation and Maintenance),
TANGEDCO, Karur.

3.The Assistant Executive Engineer,
(Operation and Maintenance),
TANGEDCO, Puliyur.

+1cc to M/S.SATHISH PARASARAN, Advocate, SR.No:82773

sj
AE/SV MMS/SAR2/06.03.2017/6P/5C

W.P.(MD)No.18098 of 2013
M.P.(MD) Nos.1 to 3 of 2013
21.12.2016