

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.02.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. Nos.30257 of 2014 and 42291 of 2016 &
MP.Nos. 1 & 2 of 2014

Chinnammal

... Petitioner in both cases

versus

The Assistant Executive Engineer(O&M),
Tamil Nadu Generation and
Distribution Corporation,
(TANGEDCO), Ariyalur-621 704,
Ariyalur District.

... Respondent in both cases

Prayer in W.P. No.30257 of 2014: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the records in Letter No.AEE/O&M/AYR/C1/F Enforcement/D.No.223/14-15 dated 23.09.2014 of the respondent and quash the same and direct the respondent to restore service connection in S.C. No.288 of Muniankurichi Distribution Circle, Ariyalur Taluk, Ariyalur District.

Prayer in W.P. No.42291 of 2016: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the records in Letter No.AEE/O&M/ARLR/VA.AA/CO/Kattu/ No.434/2016 dated 03.11.2016 passed by the respondent and quash the same and consequently direct the respondent to permit the petitioner to install "Change Over Switch" in S.C. No.288 of Muniankurichi Distribution, Ariyalur Taluk, Ariyalur District.

For petitioner in both cases : Mr. S.Kamadevan

For Respondent in both cases : Mr.P.Gunaraj

COMMON ORDER

With the consent of both parties, both the petitions are taken up together for final disposal.

2.The petitioner has come up with the present writ petitions challenging the Letter No.AEE/O&M/AYR/C1/F Enforcement/D.No.223/14-15 dated 23.09.2014 and also the Letter No.AEE/O&M/ARLR/VA.AA/CO/ Kattu/ No.434/2016 dated 03.11.2016

passed by the respondent, quash the same with a direction to the respondent to restore the service connection and/or to permit her to install "Change Over Switch" in S.C. No.288 of Muniankurichi Distribution Circle, Ariyalur Taluk, Ariyalur District, respectively.

3.It is the case of the petitioner that she is owning the land in Survey No.235/3 of Reddipalayam Village and also having agricultural electricity service connection in S.C. No.288, which is a free agricultural service connection and the same is meant for agricultural operations. However, one Kolanji and others developed layouts for residential plots naming the same as "Dr.Abdul Kalam Nagar", adjacent to the said land. Without the consent of the petitioner, the said Kolanji often used to take water from the petitioner's service connection to fill the water tank in the newly formed layout. On 18.11.2010, the officials of the respondent conducted a sudden inspection and alleged that the water drawn from the petitioner's agricultural connection was utilized to fill the newly constructed water tank in the layout. In view of the same, it was further alleged that there was a theft of energy, as contemplated under Section 135 of the Indian Electricity Act, 2003 (hereinafter called as 'the Act') and a complaint would be lodged before the police for prosecution and also suggested to compound the offence. Admittedly, there was no theft or illegal extraction of energy from the petitioner's service connection. However, the water from the agricultural connection was diverted to the adjacent land owners for some other purposes. Hence, it could not be construed as a theft of energy by using illegal means or devices, which could be viewed very seriously. However, the petitioner has agreed to compound the alleged offence and thereby, the respondent collected a sum of Rs.16,000/- by way of penalty. On the same day, the respondent issued Provisional Assessment Order fixing an amount of Rs.5,78,550/- to be paid by the petitioner. That apart, the respondent also disconnected the electricity supply. Hence, the petitioner filed a Writ Petition No.1374 of 2011 before this Court raising several contentions. This Court directed the respondent to restore the service connection on payment of 1/3rd of the amount fixed in the provisional order, less the amount collected towards the compounding fee. As ordered by this Court, the petitioner remitted the amount and accordingly, service connection was restored.

3.1.This being the position, the said Kolanji and the purchasers of the plots from Kolanji have filed Writ Petitions seeking fresh service connection. As the same were filed against the Provisional Assessment Orders, this Court held that the writ petitions are liable to be dismissed. While dismissing the same, this Court, by order dated 04.02.2014, directed the respondent to pass final orders in the Assessment Proceedings. Thereafter,

the respondent passed the final Assessment Proceedings, confirming the earlier order dated 18.11.2010 without assigning any reason and directed the petitioner to remit a sum of Rs.5,78,550/- within seven days, failing which her service connection would be disconnected. As she did not remit the amount, her service connection has been disconnected. Challenging the said Assessment Order, she filed another Writ Petition No.18649 of 2014. Pursuant to the orders passed by this Court, she paid Rs.75,000/- and accordingly the service connection was restored and she made a detailed representation enclosing all the judgments and the circular issued by the Tamil Nadu Electricity Board and requested the respondent to assess the alleged loss under Section 126, instead of under Section 135 of the Act. But the respondent passed an order holding that it is a case of theft of energy committed by the petitioner and the same is required to be confirmed under Section 135 of the Act.

4. In this regard, learned counsel for the petitioner drew the notice of this Court to the earlier order passed by this Court in M.P. Nos.1 and 2 of 2011 in W.P. No.1374 of 2011 dated 22.01.2011, which reads as under:

"Petitioner is liable to pay 1/3rd of the demand in proceedings dated 18.11.2001 less the amount of Rs.16,000/- already paid as compounding fee. On such compliance, the respondents are directed to restore the power supply pending further orders of this Court."

4.1. While referring to the above said circular Memo.No.CE/Comml.EE1/ AEE1/F.Agl.Ser/D264/-5 dated 16.05.2005, learned counsel for the petitioner would submit that water pumped from an unmetered agricultural service pump set, found used for brick manufacturing purpose, cannot be considered as a theft of energy. When the respondent was of the view that the petitioner has committed a theft of energy warranting criminal prosecution followed by Assessment Proceedings, after a lapse of more than five years, till date, no such complaint has been lodged against the petitioner, which shows that the respondent without non application of mind has come to the conclusion that the case will fall under Section 135 of the Act. Learned counsel for the petitioner would further submit that the respondent has not established the case as theft of energy, since till date, no complaint has been lodged against the petitioner before any police station with regard to the commission of theft of energy under Section 135 of the Act. Therefore, it is a case falling under Section 126 of the Act and the respondent cannot proceed against the same under Section 135 of the Act.

4.2. Concluding his arguments, placing reliance on the order passed by this Court in W.P. (MD) No.1715 of 2011 dated

20.02.2012, he would submit that the proceeding under Section 126 of the Act is essentially a civil proceeding and the said provision permits the Electricity Board to take action to recover the electricity charges in case the inspection conducted in the premises of the consumer revealed that there was an unauthorised usage of electricity. He would further submit that the usage of electricity for a purpose other than for which the electricity was authorised is also a ground to pass an order of assessment under Section 126 of the Act and therefore, 50% of the amount paid already may be directed to be adjusted with the consumption charges of the petitioner.

5.By relying on the counter filed by the respondent, learned counsel for the respondent heavily contended that the petitioner, having misused the free electricity agricultural service connection by taking water through a pipe put up in the adjacent land owned by Mr.Kolanji taken the same to the adjacent land for the purpose of developing a layout project of the said Kolanji, therefore she has been found guilty of misuse and therefore the penalty of Rs.16,000/- was imposed on her and she had also admitted the guilt and the adjacent land owner Kolanji had also given a letter accepting to pay the said compounding charges and requested the Enforcement Wing not to arrest the petitioner. Subsequently, the compounding charges of Rs.16,000/- was collected from Kolanji vide receipt No.PR.No.005939 dated 18.11.2010 and has avoided the arrest of the petitioner.

5.1.This being the position, the Provisional Assessment Order for Rs.5,78,550/- was issued both to the petitioner and Kolanji and instead of paying the said amount of Rs.5,78,550/- being the extra levy, the petitioner and the said Kolanji filed Writ Petitions in W.P. Nos.1374 and 1375 of 2011 respectively. As per the conditional order passed by this Court, the petitioner had paid a sum of Rs.3,17,850/- and a sum of Rs.2,60,700/-alone is due and payable by the petitioner as per the Assessment Order dated 08.05.2014. Learned counsel for the respondent would further submit that the Circular dated 16.05.2005 issued by the Board is only illustrative and it is not open to the petitioner to solely rely upon the same. Therefore, the allegation has been clearly established that it is a case of theft of electricity to be brought under Section 135 of the Electricity Act and hence the impugned order passed by the respondent cannot be interfered with.

6.This Court finds no merit on the contention made by the learned counsel for the respondent. The reason is that on the earlier occasion when the petitioner questioned the correctness of the Letter No.AEE/O & M/AYR/CI/Enforcement/D.No.042/1415 dated 08.05.2014, after analysing the judgment of the Hon'ble Apex Court in the case of Executive Engineer, Southern Electricity Supply Company of Orissa Limited and another vs. Sri

Seetaram Rice Mill reported in 2012 (2) SCC 108, this Court in W.P. No.14689 of 2014 has passed a detailed order dated 18.07.2014, which reads as under:

"11. Therefore, considering the limited request made by the petitioner to remit the matter back to the authorities and in view of the fact that the petitioner had also already deposited 50% of the demand made, for considering the point, whether the action has to be taken under Section 126 or Section 135 of the Act, the matter is remitted back to the authorities for its fresh consideration.

12. It is brought to the notice of this Court that the petitioner is a widow and senior citizen aged about 75 years. Hence, the authority is directed to pass appropriate orders in accordance with the aforesaid judgments and also in consonance with the Board's Circular issued in Circular Memo No. CE/Comml.EE1/AEE1/F.Agl.Ser/D264/-5 dated 16.05.2005 as expeditiously as possible. The petitioner is also granted 15 days time from the date of receipt of a copy of this order to file her detailed objections. The authority shall not take this as a positive direction given by this Court and it is for the authority to decide in accordance with law after considering the objections to be filed by the petitioner and also after affording opportunities to the parties concerned."

7. A perusal of the above clearly shows that the matter has been remitted back to the authorities for their fresh consideration as to whether action has to be taken under Section 126 or Section 135 of the Act. The respondent dealt with the case of the petitioner succinctly, that there was dishonest intention while taking up the water, but no such finding has been given. Secondly, till date, either at the time of inspection by the Electricity Board or subsequently, no complaint has been lodged against the petitioner on the file of the concerned Police Station for theft of electricity. Thirdly, the circular dated 16.05.2005 issued by the Electricity Board also clearly shows that any extra lighting had during night hours other than the permitted is found connected unauthorisedly or misuse of tariff is detected in agricultural services during inspection, action may be taken as per Section 126 of Electricity Act, 2003 and the said circular further reads that the water pumped from the un-metered service pump set used for brick manufacturing purpose is to be dealt with under Section 126 of the Act.

8. The Apex Court in the case of Executive Engineer, Southern Electricity Supply Company of Orissa Limited (Southco) and another vs. Sri Seetaram Rice Mill reported in 2012 (2) SCC 108, while making distinction between Sections 126 and 135 of the Electricity Act 2003 has ruled that both provisions are

operating in different fields and have no common premise in law. Section 135 of the Act deals with the offence of theft of electricity and use of electricity. The Section opens with words "whoever, dishonestly" does any or all of the acts specified under clauses (a) to (e) of sub-section (1) of Section 135 of the 2003 Act so as to abstract or consume or use electricity, shall be punishable for imprisonment for a term which may extend to three years or with fine or with both. In addition thereto, the imposition of punishment as specified above, sub-section (1-A) of Section 135 of the 2003 Act provides that without prejudice to the provisions of the 2003 Act, the licensee or supplier, as the case may be, through officer of rank authorised in this behalf by the appropriate commission, may immediately disconnect the supply of electricity and even take other measures enumerated under sub-sections (2) to (4) of the said section. In contra distinction to Sections 135 and 126 of the 2003 Act, the Act deals with cases of un-authorized user. Therefore, it is relevant to extract paragraphs 26 to 30, 35 and 38 of the said judgment:

" 26. In order to explain these expressions, it will be necessary for us to refer to certain other provisions and the Regulations - as well. These expressions have to be understood and given meaning with reference to their background and are incapable of being fairly understood, if examined in isolation. It is always appropriate to examine the words of a statute in their correct perspective and with reference to relevant statutory provisions.

27. The expression 'unauthorized use of electricity' on its plain reading means use of electricity in a manner not authorized by the licensee of the Board. 'Authorization' refers to the permission of the licensee to use of electricity', subject to the terms and conditions for such use and the law governing the subject. To put it more aptly, the supply of electricity to a consumer is always subject to the provisions of the 2003 Act, State Acts, Regulations framed thereunder and the terms and conditions of supply in the form of a contract or otherwise. Generally, when electricity is consumed in violation of any or all of these, it would be understood as 'unauthorized use of electricity'. But this general view will have to be examined in the light of the fact that the legislature has opted to explain - this term for the purposes of Section 126 of the 2003 Act. The said provision, along with the Explanation, reads as under: -

The Executive Engineer vs M/S Sri Seetaram Ricemill on 20 October, 2011

"126. Assessment.- (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom an order has been served under subsection

(2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven - days of service of such provisional assessment order upon him:

(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised 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 preceding the date of inspection.;

(6) The assessment under this section shall be made at a rate equal to twice the tariff applicable for the relevant category of services specified in sub-section (5).

Explanation : For the purposes of this section,--

(a) "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b) "unauthorised use of electricity" means the usage of electricity--

(i) by any 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 Authorized; or
(v) for the premises or areas other than those for which the supply of electricity was authorised."

28. The 'unauthorized use of electricity' means the usage of electricity by the means and for the reasons stated in subclauses (i) to (v) of clause (b) of Explanation to Section 126 of the 2003 Act. Some of the illustratively stated circumstances of 'unauthorised use' in the section cannot be construed as exhaustive. The 'unauthorized use of electricity' would mean what is stated under that Explanation, as well as such other unauthorized user, which is squarely in violation of the above mentioned statutory or contractual provisions.

29. The Black's Law Dictionary (Eighth Edition) defines 'unauthorized' as 'done without the authority, made without actual, implied or apparent authority'. 'Unauthorized' is a concept well-recognized under different statutes, for example, under Section 31A of the Delhi Development Act, 1957 (the 'DDA Act') the authority has the power to seal the 'unauthorized' development, if the misuser of the premises would come within the ambit of unauthorized development. But if such misuse does not come within the ambit of - 'unauthorized development', such power is not available to the authority. Simplicitor misuse, therefore, may not fall within the ambit of unauthorized development under the provisions of the DDA Act. In M.C. Mehta v. Union of India [(2006) 3 SCC 391], this Court held that if the misuse was in violation of the permission, approval or sanction or in contravention of any conditions, subject to which the said permission/approval has been granted in terms of Section 30 of the DDA Act, then it will be 'unauthorized use'.

30. We have primarily referred to this case to support the reasoning that 'unauthorized development' is one which is contrary to a master plan or zonal development plan as was the case under the DDA Act. Just as the right to develop a property is controlled by the restrictions of law as well as the terms and conditions of the permission granted for that purpose, the use of electricity is similarly controlled by the statutory provisions and the terms and conditions on which such permission is granted to use the electricity.

35. Another similar rule is the rule of practical interpretation. This test can be effectuatedly applied to the provisions of a statute of the present kind. It

must be understood that an interpretation which upon application of the provisions at the ground reality, would frustrate the very law should not be accepted against the common sense view which will further such application.

38. The expression 'means' would not always be open to such a strict construction that the terms mentioned in a definition clause under such expression would have to be inevitably treated as being exhaustive. There can be a large number of cases and examples where even the expression 'means' can be construed liberally and treated to be inclusive but not completely exhaustive of the scope of the definition, of course, depending upon the facts of a given case and the provisions - governing that law. In the case of K.V. Muthu v. Angamuthu Ammal [(1997) 2 SCC 53], this Court was dealing with a case under the Tamil Nadu Rent Act and the expression 'member of his family' as defined under Section 2(6-A) of that Act. Section 2(6-A) provides that 'member of his family' in relation to a landlord means his spouse, son, daughter, grand-child or dependent parents. If the principle of construction advanced by the learned counsel appearing for the respondent is to be accepted, then even in that case, the Court could not have expanded the expression 'members of his family' to include any other person than those specifically mentioned under that definition. The definition and the expression 'means', if construed as exhaustive would necessarily imply exclusion of all other terms except those stated in that Section but this Court, while adopting the principle of purposive construction, came to the conclusion that even a foster son, who is obviously not the real son or direct descendant of a person, would be included. This Court, observing that there was consensus in precedent that the word 'family' is a word of great flexibility and is capable of different meanings, held as under :

"While interpreting a definition, it has to be borne in mind that the interpretation placed on it should not only be not repugnant to the context, it should also be such as would aid the achievement of the purpose which is sought to be served by the Act. A construction which would defeat or was likely to defeat the purpose of the Act has to be ignored and not accepted. Where the definition or expression, as in the instant case, is preceded by the words "unless the

context otherwise requires", the said definition set out in the section is to be applied and given effect to but this rule, which is the normal rule may be departed from if there be something in the context to show that the definition could not be applied."

9.A perusal of the above observation of the Apex Court candidly shows the distinction between the scope of Section 126 and 135 of the Electricity Act 2003, which indicates the expression 'un-authorized use of electricity'. Section 126 deals with the case of un-authorized use in the absence of intention. For example, If a consumer has used excessive load as against the installed load simpliciter and there is violation of the terms and conditions of supply, then the case would fall under Section 126 of the 2003 Act. On the other hand, where a consumer, by any of the means and methods as specified under Sections 135(a) to 135(e) of the 2003 Act, has abstracted energy with dishonest intention and without authorisation, like providing for a direct connection bypassing the installed meter, the case would fall under Section 135 of the Act. Therefore, there is clear distinction between the cases that would fall under Section 126 of the 2003 Act on the one hand and Section 135 of the 2003 Act on the other hand.

10. Therefore, in the present case, for the alleged violation said to have taken place, to bring him under Section 135 of the Act, till date, no criminal case has been registered against the petitioner and hence, it is not open to the respondent to bring the case under Section 135 of the Electricity Act 2003. As the petitioner has allowed her agricultural service connection for taking water through pipe by the adjacent land owner Mr. Kolanji for the purpose of developing lay out by others, it has been found by the Enforcement Wing that water has been taken for the purpose of developing layout project in the adjacent land. Hence it is a case of un-authorized use of electricity as per Section 126 of the Act.

11. Therefore, this Court is of the view that the case of the petitioner cannot be brought under Section 135 of the Act as there is no theft of energy. Hence, the respondent is directed to adjust the amount already deposited by the petitioner by treating the same as under Section 126 of the Act and return the balance amount. Accordingly, the letter impugned in W.P.No.30257 of 2014 is set aside and consequently, the respondent is directed to assess the proceedings under Section 126 of the Indian Electricity Act and after adjusting the amount towards the said proceeding, refund the balance amount to the petitioner. In view of the above order, W.P. No.42291 of 2016 is disposed of with a direction to the respondent to consider S.C.

No.288 of Muniankurichi Distribution Circle, Ariyalur Taluk,
Ariyalur District permitting the petitioner to install the
Change Over Switch. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

vga

To

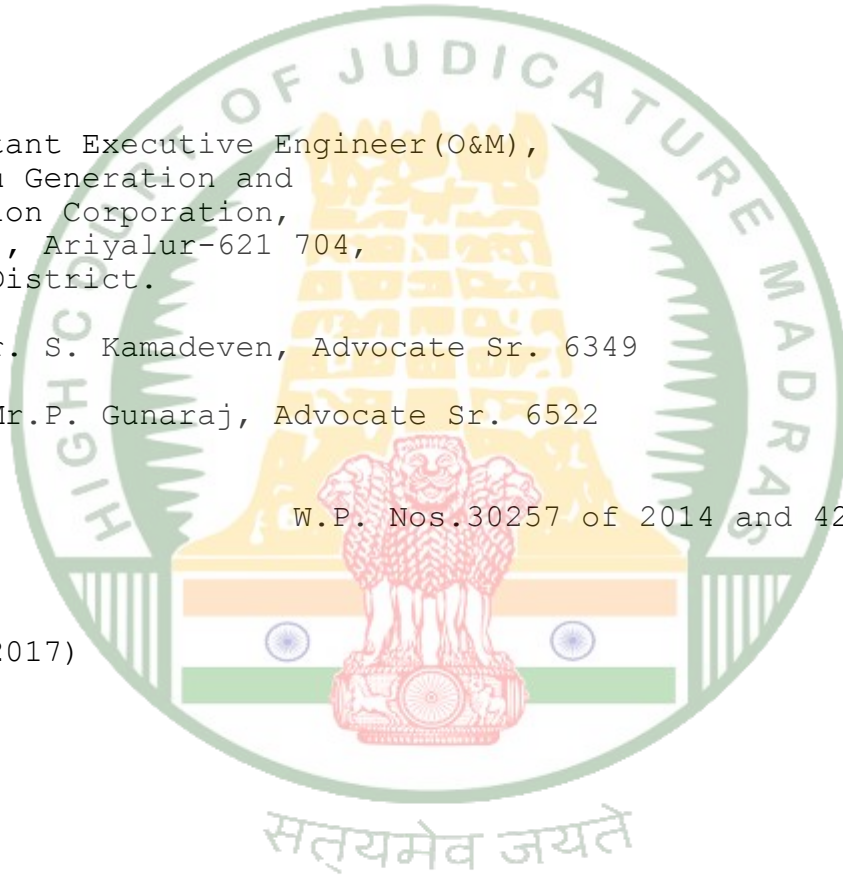
The Assistant Executive Engineer(O&M),
Tamil Nadu Generation and
Distribution Corporation,
(TANGEDCO), Ariyalur-621 704,
Ariyalur District.

+1cc to Mr. S. Kamadeven, Advocate Sr. 6349

+2ccs to Mr.P. Gunaraj, Advocate Sr. 6522

W.P. Nos.30257 of 2014 and 42291 of 2016

KJ(CO)
VR(11/04/2017)



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