

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2017

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.Nos.9671 & 9672 of 2000

R.Subburaya Gounder ...Petitioner in W.P.9671/2000

R.Nallanna Gounder ...Petitioner in W.P.9672/2000

Vs.

1. The Chairman,
Tamil Nadu Electricity Board,
No.800, Anna Salai, Chennai - 2.

2. The Executive Engineer O & M (South)
Tamil Nadu Electricity Board,
Salem - 7.

3. The Assistant Engineer (O & M)
Tamil Nadu Electricity Board,
Rasipuram, Namakkal District.

4. The Junior Engineer (O & M),
Tamil Nadu Electricity Board,
Athanur, Rasipuram,
Namakkal District.

...Respondents in both W.Ps.

Prayer in W.P.No.9671 of 2000:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents herein to reconvert S.C.No.32 of Alampatty from Tariff IV to Tariff V.

Prayer in W.P.No.9672 of 2000:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents herein to reconvert S.C.No.50 of Pazhamthinnipatty Pudur from Tariff IV to Tariff V.

For Petitioner
in both WPs : Mr.C.Prakasam

For Respondents
in both Wps : Mr.S.K.Raameshuwar
Standing Counsel, TNEB

COMMON ORDER

Since the issue raised in these writ petitions and the prayer sought for therein are either similar or common, these writ petitions are disposed of by this common order with the consent of the learned counsel appearing for the parties.

1.1. The prayer sought for in the first writ petition in W.P.No.9271 of 2000 is for writ of Mandamus directing the respondents to reconvert S.C.No.32 of Alampatty from Tariff IV to Tariff V.

1.2. The prayer sought for in the second writ petition in W.P.No.9272 of 2000 is for writ of Mandamus directing the respondents to reconvert S.C.No.50 of Pazhamthinnipatty Pudur from Tariff IV to Tariff V.

2. Since the facts are common and similar to each other, the averments made in W.P.No.9671 of 2000 and the counter filed therein are dealt with as hereunder. The necessary facts, which are required to be noticed for disposal of the writ petition are as follows:-

The petitioner claiming that he is having an agricultural land at Alampatty Village, Salem District and in order to irrigate the agricultural land, he already obtained an agricultural service connection in S.C.No.32 under tariff V on 01.04.1963. In the said agricultural land, the petitioner wanted to start brick-kiln business. Since the said brick-kiln business is a commercial activity and the power being utilised for the said purpose has to be brought under the commercial tariff, the petitioner had applied for conversion of the service connection from agricultural tariff V to commercial tariff IV. Accordingly, the tariff was converted on 03.12.1982.

2.2. After some time, it is claimed by the petitioner that the said brick-kiln business activities were to be closed and therefore, the petitioner wanted to continue only the agricultural activities. Therefore, he again requested the respondent to reconvert the service connection from tariff IV to tariff V. Since the said request of the petitioner had not been considered and the reconnection had not been made, the petitioner filed this writ petition with the aforesaid prayer.

3. The respondents have filed a detailed counter-affidavit wherein they averred that service connection No.32, Alampatty Distribution was standing in the name of R.Subbaraya Gounder i.e, the petitioner with effect from 13.05.1962 under tariff V for agricultural purpose with a load of 5 H.P.+50 Watt. During inspection of the respondent Board on 03.12.1982 by the Junior Engineer(O&M) Athanoor, it was noticed that the energy supplied through the above said service connection was utilised for pumping water for bricks manufacturing, besides agricultural

purpose. Therefore, in view of the alleged malpractice on the part of the petitioner, proper initial assessment notice was issued to stop the misuse and malpractice by the Assistant Executive Engineer, West Rasipuram on 23.03.1983.

4. According to the respondent Board, the petitioner did not stop the misuse and he applied for industrial tariff rates on 30.11.1983 and accordingly L.T.R. tariff was fixed with effect from the date of detection on 03.12.1982. The said commercial tariff fixed under tariff IV from 03.12.1982 had been paid by the petitioner upto February, 1992.

5. It is further averred in the counter affidavit that, the petitioner had made a representation to the Superintending Engineer, Salem Electricity Distribution Circle, Salem District, during October 1990 for reconversion of tariff from tariff IV to tariff V. Again the petitioner had made an application for reconversion through one R.Sundaram who belongs to India Uzhavar Uzaipaali Katchi on 20.09.1991. Thereafter, a detailed report was submitted by the Superintending Engineer, Salem Electricity Distribution Circle, Salem District on 14.11.1990. When the matter was under process, the petitioner filed a Original Suit in O.S. 1359 of 1992 on the file of the City Civil Court, Chennai against the show cause notice, claiming compensation for malpractice committed by the petitioner. The petitioner had obtained an interim injunction order in I.A.No.3563 of 1992, which was subsequently, dismissed by the learned VII Assistant Judge, City Civil Court, Chennai on 25.03.1996.

6. Thereafter, the respondents issued necessary notice detailing the arrears of compensation for malpractice committed by him to be paid by him from March, 1992 to June, 1997 and the said notice was issued on 10.09.1997. Without responding to the said notice, the petitioner filed an appeal against the judgment in I.A.No.3563 of 1992 in O.S.No.1359 of 1992 dated 25.03.1996 and obtained an injunction in C.M.P.No.232 of 1997 in A.S.No.34 of 1997 on the file of the City Civil Court, Chennai. The said first appeal was ultimately dismissed in favour of the respondent Board on 16.07.1997.

7. Thereafter, the respondents issued notice to the petitioner on 29.07.1997 to pay the arrears of Rs.16,944/-. The petitioner again approached the City Civil Court, Chennai and filed C.M.P.Nos. 940 to 945 of 1997 on 05.08.1997 to stay the operation of the order passed in the appeal in A.S.Nos.34 to 39 of 1997. The City Civil Court passed an order staying the operation of the orders passed in A.S.34 - 39 of 1997 batch of cases by similarly placed consumers, including the petitioner, on condition that the petitioner shall pay 50% of arrears on or before 18.08.1997. Pursuant to the said conditional order, the petitioner has also deposited 50% of arrears amount i.e,

Rs.8,497/- in the City Civil Court, Chennai on 18.08.1997. When the matter stood thus, the present writ petition has been filed seeking for a Writ of Mandamus as stated above.

8. I have heard Mr.C.Prakasam, learned counsel for the petitioner and Mr.S.K.Raameshuwar, learned Sanding Counsel for TNEB appearing for the respondents.

9. It is not disputed that the service connection in question stands in the name of the petitioner. Originally, the service connection was given to the petitioner for agricultural tariff undr tariff V and subsequently, on his request, it was converted to tarriff IV for sometime in 1982. Subsequently, since the petitioner wanted to utilize the entire energy being supplied through the said service connection only for agricultural purpose, he had made an application during October, 1990 and thereafter on 20.09.1991 through his representative. It is also admitted fact that the said applications were pending before the respondents and when applications were under scrutiny and the process was taken place, these litigations as referred to above had been initiated by the petitioner, with result the said applications have not finally been decided by the respondents. Even according to the averment made by the respondents, arrears payable by the petitioner towards compensation of alleged misuse of energy, was only Rs.16,944/- and out of which a sum of Rs.8,497/- had already been paid. Only the remaining amount has to be paid by the petitioner. If that amount is paid, there can be no further impediment to the respondents to consider the request of the petitioner for reconversion of the service connection to agricultural tariff V.

10. Similarly, the prayer sought for in writ petition in W.P.No.9672 of 2000 also is for a writ of Mandamus directing the respondent to reconvert service connection in S.C.No.50 of Pazhamthinnipatty Pudur from Tariff IV to Tariff V.

11. With the above said facts and circumstances, I am inclined to pass the following orders:-

(1) The petitioner in W.P.No.9671 of 2000, shall pay a sum of Rs.8,497/- being the remaining arrears amount payable to the respondents towards the compensation for the alleged misuse of the energy within a period of four weeks from the date of the receipt of a copy of this Order.

(2) On receipt of such payment, the respondents shall consider the applications of the petitioner filed initially in October, 1990 and on 20.09.1991 for reconversion of the service connection from commercial tariff to agricultural tariff and such an action shall be completed by the respondents within the period of 30 days thereafter. It is made clear that, if at all, any further amount has to be paid by the petitioner, the same shall be communicated to the petitioner by the respondents through notice, wherein, after giving an opportunity and being

heard the petitioner, the said arrears if any, can be resolved amicably and based on such decision, the aforesaid direction shall be complied with, within the time stipulated by this Court as above.

(3) Insofar as the petitioner in W.P.No.9672 of 2000 is concerned if the petitioner is due of any payment payable to the respondent, the respondent shall be permitted to collect the same and after having receipt of the said due from the petitioner in this writ petition, the respondent shall consider the application of the petitioner for reconversion of the service connection in S.C.No.50 of Pazhamthinnipatty Pudur from Tariff IV to Tariff V and pass orders on its own merits and in accordance with law.

12. With these directions, the writ petitions are ordered. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

rts

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+2cc to Mr.C.Prakasam, Advocate sr.87927

W.P.Nos.9671 & 9672 of 2000

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