

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.01.2017

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P. No.17912 of 2003

K.Marappa Gounder

.. Petitioner

Vs.

1.The Junior Engineer,
Tamil Nadu Electricity Board,
Nambiampalayam Post,
Avinashi - 638 654.
Coimbatore District.

2.The Executive Engineer,
Operation & Maintenance,
Kovai Electricity System (South),
Mangal Pathai, Avinashi - 638 654.
Coimbatore District.

3.Ramakrishnan,
Divisional Engineer,
Tamilnadu Electricity Board,
Kovai Electricity System (South),
Mangal Pathai,
Avinashi - 638 654.
Coimbatore District.

.. Respondents

PRAYER : Writ Petition has been filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the respondents herein in Ref.No.Ka.No.Se.Po/AV/Ee.Pe/U.Me.Po.E.Me.Ni/Kattu Me.No.274, Uppilipalayam/Ve.No.441/03 dated 31.05.2003 and Ref.No.Ka.A.E.Ni.Po.E.Pa/Nambi/No.65/03 dated 09.06.2003 and quash the same and direct the respondents to give the benefit of G.O.Ms.No.3042 Public Works (Electricity) dated 23.12.1986 and calculate arrears at the rate of 0.55 paise per unit and allow the petitioner to pay the arrears in 60 monthly instalments.

For Petitioner : Mr.K.R.A.Muthukirushnan

For Respondents : Mr.Kameshwar
for TNEB

O R D E R

This petition has been filed seeking a writ of Certiorarified mandamus, calling for the records of the respondents dated 31.05.2003 and 09.06.2003 and quash the same and direct the respondents to give the benefit of G.O.Ms.No.3042 Public Works (Electricity) dated 23.12.1986 and calculate arrears at the rate of 0.55 paise per unit and allow the petitioner to pay the arrears in 60 monthly instalments.

2.It is the case of the petitioner that he is running a Cottage Industry and in terms of G.O.Ms.No.3042 dated 23.12.1986, his Industrial Unit will be entitled to the electricity at subsidised rate. The petitioner earlier filed W.P.No.7260 of 1991 seeking benefits under the said G.O. and this Court by order dated 18.06.1991, had directed the petitioner to give a representation within a period of four months to the authorities and on such representation being given, the authorities were directed to conduct enquiry and pass orders in accordance with law. The petitioner did not comply with the order. Instead, after 17 years, the petitioner gave a representation to the authorities to give him the benefits of G.O.Ms.No.3042, which was denied by the authorities, by the impugned order dated 31.05.2003. Thereafter, the Electricity Board sent a demand notice dated 09.06.2003, challenging which, the petitioner is before this Court.

3.Heard the learned counsel for the petitioner and the learned counsel for the respondents.

4.The learned counsel for the petitioner submitted that the petitioner will be entitled to the benefits of G.O.Ms.No.3042. This allegation has been refuted by the learned counsel for the respondents.

5.On 09.09.2003, this Court had passed the following interim order:

"Interim order is very clear that the petitioner has already paid 50% of the demand which is under dispute and only on that ground, this Court directed the petitioner to pay another 25% of the demand in order to have the interim order of stay.

2. Learned counsel for the petitioner interrupted that order and submitted that 50% which the court has considered and recorded as paid by the petitioner is on the direction of the Court. I am not able to countenance such interruption of the counsel

for the petitioner. Hence, in the circumstances of the case, interim stay already granted is made absolute on condition that the petitioner deposits in addition to the 25% of the amount demanded which is said to have been paid, another 50% of the demand within a period of six weeks from today. If the amount is not paid within the said period, the stay would stand automatically vacated without any further reference to the Court."

6.This Court gave its anxious consideration to the rival submissions.

7.It is the case of the Electricity Board that the petitioner should pay a sum of Rs.1,27,216/- towards electricity charges. According to the petitioner, he would be entitled to the benefits of G.O.Ms.No.3042 dated 23.12.1986 and therefore, he need not pay Rs.1,27,216/-.

8.The Executive Engineer, Electricity Board, in his order dated 31.05.2003 has clearly stated that though the petitioner had obtained orders from this Court in the year 1991, yet he had moved the Electricity Board only 17 years later and therefore, it will not be possible for the authorities to find out whether the petitioner will be entitled to the benefits of G.O.Ms.No.3042.

9.G.O.Ms.No.3042, lays down the following three conditions for giving electricity at subsidy rates to Cottage Industries. The three conditions are;

- [a] that the Cottage Industry has a connected load not exceeding 5 Horse Power;
- [b] that no outsiders should be employed in the Cottage Industry; and
- [c] that the residence of the owner and the Unit should exist in the same place.

10.The respondents have filed a counter, wherein in paragraph No.6, it is stated as follows:

"6.The respondents respectfully submit that on 21.05.2003, the Village Administrative Officer, Karuvalur has issued a certificate that the petitioner property in Survey No.218/1B1 and Survey No.218/1B3 is separate one and there is a 10 ft. gap between the residential and non-residential building which would go to show that the petitioner is not running the cottage industry at his

residence. The Village Administrative Officer has also drafted a sketch and located the house portion and godown portion in that sketch it is very clearly seen that the petitioner is running the industry outside the residence. So the petitioner is not entitled for the benefit of G.O.Ms.No.3042 dated 23.12.1986."

11.From the above, it is clear that the Cottage Industrial Unit of the petitioner and his residence are not in the same place and therefore, the petitioner is not entitled to the benefits of G.O.Ms.No.3042.

12.As stated above, by order dated 31.05.2003, the Executive Engineer, Electricity Board, had made a total demand of Rs.1,27,216/-, out of which, the petitioner had paid Rs.31,804/- on 23.12.2000; Rs.10,000/- on 22.01.2001; and Rs.21,804/- on 03.04.2001. He has to pay the balance amount of Rs.63,608/-.

13.Since this petitioner will not be entitled to the benefits of G.O.Ms.No.3042, this Writ Petition stands dismissed. However, if the petitioner has paid any amount in the meantime, that amount may be deducted and the petitioner will have to pay the balance amount to the Electricity Board, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

sri

To

- 1.The Junior Engineer,
Tamil Nadu Electricity Board,
Nambiampalayam Post,
Avinashi - 638 654.
Coimbatore District.
- 2.The Executive Engineer,
Operation & Maintenance,
Kovai Electricity System (South),
Mangal Pathai, Avinashi - 638 654.
Coimbatore District.

+1cc to M/s.K.R.A.Muthukrishnan, Advocate sr.2331

W.P. No.17912 of 2003

ppa (co)

ss(15/02/2017)