

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.12.2017
CORAM
THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
W.P.No.38869 of 2003

Dr. Usha Muthukrishnan

... Petitioner

Vs.

1. The Executive Engineer,
O&M/Guindy, CEDC/South,
110, K.V.S.S. Complex,
K.K. Nagar, Chennai - 78.

2. The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai -2.

... Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified Mandamus calling for the records of the First respondent in his letter No.EE/O&M/GDY/AE/R.46/ F.Doc./D/1481/03 dated 06.12.2003 and quash the same and direct the first respondent to conduct a detailed enquiry after affording opportunity to the petitioner by granting copies of documents requested by the petitioner on 11.11.2003 after making available the assessor for cross examination.

For Petitioner : Mr.A.Mudimannan

For Respondents: Mr.S.K.Rameshuwar
Standing Counsel

ORDER

The prayer sought for in this writ petition is for Writ of Certiorarified Mandamus calling for the records of the First respondent in his letter No.EE/O&M/GDY/AE/R.46/ F.Doc./D/1481/03 dated 06.12.2003 and quash the same and direct the first respondent to conduct a detailed enquiry after affording opportunity to the petitioner by granting copies of documents requested by the petitioner on 11.11.2003 after making available the assessor for cross examination.

2. The necessary facts, which are required to be noticed for disposal of this writ petition, are as follows :-

The petitioner is a doctor by profession and a specialist in Gynecology. A portion of the building at Door No.19, 4th Main Road, Nanganallur, Chennai-61 was taken out lease by this petitioner for conducting clinic. The portion of the

leased premises is only 200 sq.ft. There is a separate electric meter for the said 200 sq.ft., which was in occupation of the petitioner to run the clinic. The petitioner would run the clinic 3 hours per day and 5 days a week. There is a 3 face electricity supply connection with account No.244-184-203 available and it is a low tension service connection.

3. The petitioner claims that she had been regularly paying the electricity consumption charges under commercial tariff. The average consumption bill of the petitioner would be less than Rs.2,000/-per month. While so, all of sudden, the reading became abnormal and therefore the petitioner sent a request dated 05.05.2003 to the respondents department to replace the meter which has become fault. However, on 29.07.2003 at about 12.30 hours, when at that time the petitioner was not available, the respondents had visited the petitioner's premises for inspection and they allegedly found that there was a theft of energy on the allegation "Y" face is in reverse connection in the meter terminal.

4. Pursuant to the said inspection, show cause notice was issued on 01.08.2003 by the respondents and the same was replied by the petitioner on 16.08.2003. In the said reply, the details about the service connection and the usage of the electricity had been given. It is also mentioned that though the request was given on 05.05.2003 to change the fault meter, the same was not changed and that is the reason why the meter shown erratic consumption of units.

5. Thereafter, on 11.11.2003, the petitioner had sent a communication to the respondents sought for copies of 3 documents namely, copy of statement recorded from one Manikandan Harish who was the Assistant of the petitioner, in charge of the clinic, and copy of reply given by Aysiammal, owner of the premises, and also a copy of White Meter Card. Though the request had been made, without supplying those documents and without having conducted a proper full-fledged enquiry and without giving reasonable opportunity of being heard to the petitioner, straightaway the impugned order dated 06.12.2003 was passed and therefore, challenging the same the present writ petition has been filed.

6. I have heard Mr.A.Mudimannan, learned counsel for the petitioner and Mr.S.K.Rameshuwar, learned standing Counsel for the respondents.

7. The learned counsel for the petitioner would submit that this clinic is of three hours per day and five days a week, at 200 square feet building. Therefore, the normal consumption,

even under the commercial tariff, would not be more than Rs.2,000/- per month. While so, the impugned order directing the petitioner to pay a sum of Rs.1,50,587/- on the alleged reason of "Y" face supply reverse connection. In this regard, the learned counsel for the petitioner would submit that the petitioner is not a owner of the building and therefore what has been given by way of statement or reply by the owner of the building had not been disclosed to the petitioner. Unless the said statement alleged to have been given by the owner of the building is given to the petitioner, the petitioner would not in a position to rebut the same. In this regard, though specific request had been made by the petitioner on 11.11.2003 to supply those documents, without supplying the same, the impugned order was passed.

8. The learned counsel for the petitioner would further submit that in spite of the detailed reply having been given by the petitioner on 16.08.2003, nothing has been considered in the impugned order and without considering any of them, they simply stated in one line that the reply of the petitioner had been considered and the respondents proceeded to issue the impugned demand letter, therefore it is liable to be quashed.

9. Per contra, the learned Senior Counsel appearing for the respondents Board would submit that after found that "Y" face reverse connection was available with the petitioner's premises, on the inspection taken place on 29.07.2003, show cause notice was issued to the petitioner on 01.08.2003. In response to the said notice, reply had been given by the petitioner on 16.08.2003. The said reply given by the petitioner dated 16.08.2003 had been duly considered by the respondents.

10. Insofar as the documents claimed by the petitioner is concerned, those documents are no way connected with the defence to be taken by the petitioner and therefore, in order to prolong the proceedings, the petitioner requesting those documents. Hence those documents were not given to the petitioner. In view of the "Y" face reverse connection, whereby the connection in the meter was tampered and therefore, the meter did not reflect the real consumption and as per the terms and conditions, the respondents proceeded to come to the conclusion that the compensation charges payable by the petitioner for the violation was worked out as Rs.1,50,587/- and the same was directed to be paid by the petitioner in 10 equal monthly installments starting from 06.01.2004 to 06.10.2004. Therefore, the learned Standing Counsel would submit that the impugned notice requires no interference from this Court.

11. I have considered the said rival submissions made by both sides and perused the materials placed before this

Court. It is not in dispute that the petitioner's electricity service connection is under commercial tariff and since the petitioner being a Doctor running clinic for 3 hours per day and 5 days a week, she claims that the normal consumption for every month would not be more than two thousand rupees. More over, it is the definite case of the petitioner that the meter was faulty and therefore, she made a specific request dated 05.05.2003 to change the meter. Even at the time of inspection, the petitioner was not available. Therefore, based on the statement given by the Assistant, who was in-charge of the petitioner's clinic and the reply given by the owner of the premises, the respondent proceeded to pass the order of payment dated 06.12.2003.

12. When the petitioner sought for two important documents namely the statement given by the Assistant of the petitioner as well as the owner of the premises, which are seems to be the base for the conclusion on the part of the respondents, those documents, in the opinion of the Court, should have been supplied to the petitioner before concluding the enquiry. More over, when the petitioner made a written request in the reply, seeking for a personal enquiry, the same not have been given to the petitioner and only based on the reply given by the petitioner, the respondents proceed to conclude the enquiry and issued the impugned order.

13. On perusal of these documents, in my view, it shows that the adequate opportunity, as claimed by the petitioner to prove her case, has been denied to the petitioner. Therefore, as the proceedings concluded without giving adequate opportunity to the petitioner to put forth her case, the impugned order is liable to be interfered with. Accordingly, the impugned order is quashed and the matter is remitted back to the respondents for fresh de novo enquiry, wherein the documents sought for by the petitioner shall be furnished to her and after giving an opportunity to reply on those documents on the side of the petitioner, the enquiry can be conducted and based on that enquiry, conclusion can be reached by the respondents-Department. The aforesaid exercise shall be done by the respondents within a period of three months from the date of the receipt of a copy of this Order. It is needless to mention that once the respondents want to conduct the enquiry by fixing a date, the same shall be communicated to the petitioner, before which the documents sought for by the petitioner shall also be supplied to the petitioner.

14. With the above observations, the writ petition is ordered. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Executive Engineer,
O&M/Guindy, CEDC/South,
110, K.V.S.S. Complex,
K.K. Nagar, Chennai - 78.
2. The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai -2.

+1cc to Mr.S.K.Rameshuwar, Advocate, S.R.No.88496

+1cc to Mr.K.Jayachandran, Advocate, S.R.No.88804

W.P.No.38869 of 2003

ssd(CO)
GSP(19/02/2018)

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