



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.11.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD)No.13625 of 2015
and
M.P(MD)No.1 of 2015

Sri Venkatagiri Modern Rice Mill,
No.37A, Pillayarpalayam Road,
Therkkuvasal, Madurai - 625 001,
rep. by its Partner S.Baskaran.

.. Petitioner

Vs.

The Assistant Executive Engineer,
Distribution/Kovil, TANGEDCO,
Subramaniyapuram, Madurai.

.. Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the respondent in the event of the respect of the impugned Final Assessment order under proceedings No.Ka.No.U.Se.Po./Pa/Ko/Va.Aa./ Ko/Minthiruttu / A.No.062/2014-15, dated 06.06.2014, quash the same as illegal, ultra virus, arbitrary, malafide and not valid in law and in consequence directing the respondent to repay a sum of Rs.10,60,000/- to the petitioner within a time frame as may be fixed by this Court.

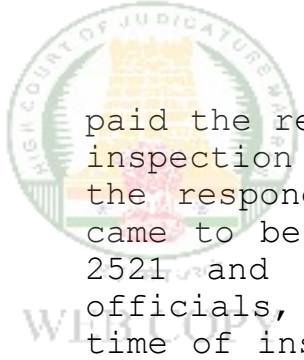
For Petitioner	: Mr.M.Ponniah
For Respondent	: Mrs.S.Srimathi

ORDER

This writ petition has been filed seeking a writ of Certiorarified Mandamus to quash the impugned Final Assessment Order passed by the respondent dated 06.06.2014 and direct the respondent to repay a sum of Rs.10,60,000/- to the petitioner, within a time frame as may be fixed by this Court.

2.Heard both sides.

3.The case of the petitioner is that the petitioner's firm was provided with 73 HP capacity service connection and the same came to be increased periodically on request. One such request was considered in the year 2013 and the petitioner claims that he has



paid the required consumption charges to the Department. A surprise inspection was conducted on 23.05.2014 in the petitioner's firm by the respondent officials, who noticed that the electric meter box came to be tampered with and the coils related to Serial Nos.2511, 2521 and 2543 also got damaged. According to the inspecting officials, the ratio of coils as fixed by the authorities during the time of installation was 200/5 Amps, but the same was tampered with by replacing CT ratio coils of 400/5 Amps. Pointing out such irregularities by tampering the instruments, it was alleged by the respondent authorities that the petitioner involved in theft of electricity energy and accordingly, the impugned order came to be passed. The petitioner challenges the said order on the ground that all installations were done only by the officials of the respondent and no such tampering of electric meter box as well as replacement of coils committed by the petitioner. Therefore, the petitioner is before this Court with the aforesaid prayer.

4.The learned counsel appearing for the petitioner submitted that without following the guidelines as well as procedures given in the Electricity Act, 2003, the impugned order came to be passed and that too, without following the principles of natural justice. According to the learned counsel, no opportunity of hearing was provided to submit written objections to the proposal alleging theft of electricity energy committed by the petitioner. The learned counsel also submitted that the petitioner was forced to pay a sum of Rs.10,60,000/- with regard to the alleged theft of power. The learned counsel also brought to the notice of this Court that the petitioner also filed an appeal under Section 127 of the Electricity Act, 2003, questioning the improper orders passed by the respondent and since the appeal filed by him has been returned by the authority, he has also filed W.P(MD)No.21016 of 2016 and therefore, the petitioner seeks to quash the impugned order and thereby to refund the entire amount deposited by the petitioner.

5.The learned counsel appearing for the respondent, on the other hand, stoutly refuted the contentions raised on the side of the petitioner and stated that tampering is proved in the presence of the petitioner and adequate opportunity had already been granted, for which the petitioner failed to avail the same and hence, final assessment order, affirming the theft of electricity energy, came to be passed, against which, no appeal provisions are available in the Act.

6.I have considered the rival submissions made on either side and perused the materials available on record.

(*)7. Upon perusal of the impugned order, though the subject matter is elaborately discussed therein relating to theft of electricity energy, it is also apparent that no proper opportunity of being heard was provided to the petitioner. On that particular ground alone, the impugned order is liable to be set aside and accordingly, the same is set aside and the matter is remitted back



to the concerned competent authority for fresh consideration and the concerned competent authority shall consider the same and pass appropriate orders on its own merit and in accordance with law, after affording an opportunity of hearing to the petitioner, within a period of six weeks from the date of receipt of a copy of this order. Pending disposal of the same, the amount already deposited by the petitioner shall be kept in an interest bearing account in anyone of the Nationalised Banks and thereafter an appropriate decision be taken by the said authority based on the decision rendered in the appeal."

8.The writ petition is allowed on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

**(*) AMENDED AS PER ORDER OF THIS COURT
DATED 20.12.2017**

/True Copy/

Sub Assistant Registrar

(*) TO BE SUBSTITUTED TO THE ORDER ALREADY DESPATCHED ON 30.11.2017

To

The Assistant Executive Engineer,
Distribution/Kovil, TANGEDCO,
Subramaniyapuram, Madurai.

+ 1 CC TO Mr.M.PONNIAH, ADVOCATE IN SR No. 94716
+ 1 CC TO M/s.S.M.S.JOHNNY BASHA, ADVOCATE IN SR No. 87223

SMN

TE/SKN-RSK/SAR-1 : 30/11/2017 : 3P/4C
RL/4C/3P/KK/SAR1/5/1/2018

ORDER MADE IN
W.P (MD) No.13625 of 2015 and
M.P (MD) No.1 of 2015
13.11.2017 (1/3)