



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.12.2017

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P (MD) No.5390 of 2014

and

M.P. (MD) .Nos. 1 to 3 of 2014

Shanmugasundaram

... Petitioner

vs.

1. The Junior Engineer,
Distribution/ City Wing,
Tamil Nadu Generation and Distribution Co., Ltd.,
Nanguneri,
Tirunelveli District.

2. The Inspector of Police,
Nanguneri Police Station,
Nanguneri,
Tirunelveli District.

... Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to impugned order passed by the first respondent in his proceedings in Ka.No.Junior Engineer/Vi/Na. Nanguneri/Ko.Accident/No.431/13-14, dated 17.03.2013 (Wrongly dated) and quash the same and consequently, directing the 1st respondent not to disconnect the petitioner's service connection number in 024-013-435.

For Petitioner : Mr.T.A.Ebenezer
For Respondent No.1 : Mr.G.Kasinathadurai
Standing Counsel

For Respondent No.2 : Mr.S.Kumar
Additional Government Pleader

ORDER

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to impugned order passed by the first respondent in his proceedings in Ka.No.Junior Engineer/Vi/Na. Nanguneri/ Ko.Accident/No.431/13-14, dated 17.03.2013 (Wrongly dated) and quash the same and



consequently, directing the 1st respondent not to disconnect the petitioner's service connection number in 024-013-435.

2. The brief facts of the case are as follows:

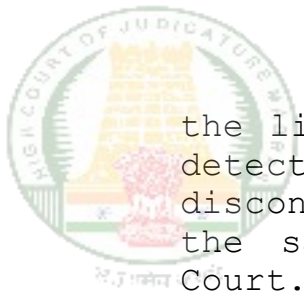
The petitioner is an agriculturist, who is owning some Nanja land along with Well, and also having free electricity service connection for agricultural purpose. According to him, on 08.11.2013, when he was out of town, he came to know that one boy climbed on a coconut tree nearby his land and in that process he came into contact with the electric wire and died due to electrocution. Since the petitioner is the vice President of the Panchayat, on the influence of his adversaries led by the first respondent, the mother of the boy preferred a complaint stating that the accident would perhaps be on account of the illegal hooking of wire made by the petitioner. Hence, based on the complaint, first information report was registered in Crime No.295 of 2013, on the file of the second respondent police for the offence punishable under Section 304-A of IPC.

(2.1) He would further submit that there is no single piece of evidence to show that there was a theft of electricity committed in his field. Moreover, he would allege that due to the negligence on the part of the first respondent /Electricity Department in maintaining the service wires, the boy died out of electrocution and in order to suppress the Department's negligence, the Electricity Department took action against the petitioner by using his official capacity by way of passing the impugned order vide, proceedings in Ka.No.Junior Engineer/ Vi/ Na. Nanguneri/ Ko. Accident/No.431/13-14, dated 17.03.2013, by which the petitioner was directed to pay a sum of Rs.26,915/- as arrears and Rs.2,000/- as fine amount, failing which the service connection will be disconnected. Aggrieved by the said order, the petitioner has preferred this writ petition.

3. The counter filed by TANGEDCO would show that there was an illegal loop connection of electricity, which was taken by the petitioner for the purpose of pumping water from nearby Odai (Channel) to his land and due to the electrocution, the boy died. The respondents also denied the allegation that the negligence was on their part and in fact, periodical maintenance work is being conducted from time to time. The second respondent has registered a first information report against the petitioner and provisionally assessed for the unauthorised use of electricity as per Tamilnadu Electricity Act, 2003 and directed him to pay a sum of Rs.28,915/- dated 17.03.2013 for the said theft. To support his contention he has pointed out the relevant Sections and Rules which are as follows:

(i) **Section 135(1)(1A) of the Tamil Nadu Electricity Act, 2003 reads as follows:**

"Without prejudice to the provisions of this Act,



the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity." Section 153 of the said Act deals with the constitution of Special Court.

"(1) The State Government may, for the purposes of providing speedy trial of offences referred to in (Sections 135 to 140 and Section 150), by notification in the official Gazette, constitute as many Special Courts as may be necessary for such area or areas, as may be specified in the notification."

(ii) **Section 154 deals the Procedure and Power of Special Court as follows:**

"(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under [Sections 135 to 140 and Section 150] shall be triable only by the Special Court within whose jurisdiction such offence has been committed.

(2) Where it appears to any Court in the course of any inquiry or trial that an offence punishable under Sections 135 to 140 and Section 150 in respect of any offence that the case is one which is triable by a Special Court constituted under this Act for the area in which such case has arisen, it shall be transfer such case to such Special Court, and thereupon such case shall be tried and disposed of by such Special Court in accordance with the provisions of this Act."

4. Only after verification and spot inspection, the provisional assessment order was issued to the petitioner to a sum of Rs.28,915/- for theft of energy. When the first respondent went to the petitioner's premises for inspection and after verifying, they went for disconnecting the agricultural service connection with the help of the second respondent police. The petitioner obstructed the respondents from discharging their duty. The petitioner only in order to escape from the clutches of law or to evade the court proceedings regarding payment of any compensation to the deceased boy's family has approached this Court suppressing all the relevant factors.

5. It is further stated in the counter affidavit filed by the first respondent that the Tamil Nadu Electricity Supply Act, 2004, Regulation 19(5) also deals with the conclusion of assessment in case un-authorized use of electricity has taken place and as per the said conclusion, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place, however, if the period during which such unauthorized 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. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the second respondent as well as the learned counsel appearing for TANGEDCO/first respondent.

7. It is seen from the records that in connection with the incident that had taken place on 08.11.2013 in which a boy died due to electrocution, criminal proceedings are initiated against the petitioner and the same is pending before the Criminal Court. While so, this Court cannot express any opinion as regards the correctness or otherwise of such proceedings and it is a matter of trial. Therefore, it is for the petitioner to participate in the criminal proceedings and to prove his innocence in such criminal proceedings. In such circumstances, this Court hesitate to interfere with the criminal proceedings pending against the petitioner.

8.As regards the order, which is impugned in this writ petition, it is seen that the respondents have conducted an inspection and ascertained that there was a theft of electricity energy committed by the petitioner. Therefore, in exercise of the Rules and Regulations of the Board, a provisional conclusion has been arrived at by the first respondent and imposed the penalty payable by the petitioner. While so, if the petitioner is aggrieved by such an order, he has to work out his remedy before the appellate Forum and the invocation of the writ jurisdiction under Article 226 of The Constitution is not maintainable. When there are disputed question of facts involved in the present case, this Court cannot go into such disputed question of facts and it is for the petitioner to work out his remedy in the appropriate forum.

9. At this stage, the learned counsel appearing for TANGEDCO would submit that the petitioner has already deposited 75% of the amount awarded by this Court, by order, dated 15.04.2014. Hence, this Court directs the petitioner to deposit the balance amount within a period of four weeks from the date of receipt of the copy of this order and the petitioner can raise all the grounds which he had raised before this Court, before the competent Forum and prove that he did not commit theft of electricity.

10.Accordingly, this writ petition is dismissed as not maintainable. Consequently, connected miscellaneous petitions are also dismissed. No Costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/



To

The Inspector of Police,
Nanguneri Police Station,
Nanguneri,
Tirunelveli District.

+ 1 cc TO Mr.T.A.Ebenezer , Advocate in SR No. 91162
+ 1 cc TO Mr.G.Kasinathadurai , Advocate in SR No. 91434
+ 1 cc TO The Special Government Pleader in SR No. 91126

PJL

AE/KKR/SAR2/09.01.2018/5P/5C

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