

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2018

CORAM :

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

W.P.Nos.36617 & 36618 of 2003
and
W.P.M.P.Nos.44486 & 44487 of 2003

M.Subramani .. Petitioner in W.P.No.36617 of 2003

R.Nallasivam .. Petitioner in W.P.No.36618 of 2003

.Vs.

1.The Government of Tamil Nadu,
rep. by its Secretary,
Electricity Department,
Fort St. George,
Chennai - 600 009.

2.The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai - 600 002.

3.The Superintending Engineer,
Tamil Nadu Electricity Board,
Mettur,
Salem District.

4.The Assistant Engineer,
(Operation & Maintenance)
Tamil Nadu Electricity Board,
Kokkarayanpettai,
Thiruchengodu Taluk,
Namakkal District.

5.The Special Officer,
SN 257, Patlur Lift Irrigation Co-op. Society,
Patlur,
Solasiramani (via),
Thiruchengodu Taluk,
Namakkal District.

.. Respondents in both writ
petitions

Prayer in W.P.No.36617 of 2018 : Writ Petition filed under

Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, calling for the records of the respondents 1 to 3 which has culminated in the order of the 4th respondent made in proceedings No.AE/O & M/Kokkarayanpettai/Ko. Varu/No.484/2003 dated 17.03.2003 demanding to pay consumption charge of Rs.250/- per Horse Power per half yearly, which has been worked out for the period of three years from first half of year 2000 and has thereupon arrived at the total sum of Rs.79,685/- towards the total consumption of 125 Horse Power connection availed by the members of the society in respect of service connection Nos.164, 167, 169, 172, 173, 175, 202, 257, 259, 265, 266 and 281 and quash the same.

Prayer in W.P.No.36618 of 2003: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records of the respondents 1 to 3 which has culminated in the order of the 4th respondent made in proceedings No.AE/O & M/Kokkarayanpettai/Ko. Varu/No.225/2002 dated 11.09.2002 demanding to pay consumption charge of Rs.250/- per Horse Power per half yearly, which has been worked out for the period of three years from first half of year 2000 and has thereupon arrived at the total sum of Rs.1,34,250/- towards the total consumption of 179 Horse Power connection respectively availed by the members of the society in respect of service connection Nos.166, 170, 171, 190, 191, 192, 258, 260, 261, 262, 264, 267, 268, 269, 271, 294 & 469 and quash the same.

For Petitioner : Mr.R.Arundattan
for M/s.C & K Law Firm
in both writ petitions

For Respondents: Mr.S.K.Rameshwar
Standing Counsel for TNEB
for R2 to R4
in both writ petitions

सत्यमेव जयते
C O M M O N O R D E R

The prayer sought for in these writ petitions are as follows :

(i) W.P.No.36617 of 2003 has been filed seeking for a writ of certiorari, calling for the records of the respondents 1 to 3 which has culminated in the order of the 4th respondent made in proceedings No.AE/O & M/Kokkarayanpettai/Ko. Varu/No.484/2003 dated 17.03.2003 demanding to pay consumption charge of Rs.250/- per Horse Power per half yearly, which has been worked out for the period of three years from first half of year 2000 and has thereupon arrived at the total sum of Rs.79,685/- towards the total consumption of 125 Horse Power connection availed by the

members of the society in respect of service connection Nos.164, 167, 169, 172, 173, 175, 202, 257, 259, 265, 266 and 281 and quash the same.

(ii) W.P.No.36618 of 2003 has been filed seeking for a writ of certiorari, calling for the records of the respondents 1 to 3 which has culminated in the order of the 4th respondent made in proceedings No.AE/O & M/Kokkarayanpettai/Ko. Varu/No.225/2002 dated 11.09.2002 demanding to pay consumption charge of Rs.250/- per Horse Power per half yearly, which has been worked out for the period of three years from first half of year 2000 and has thereupon arrived at the total sum of Rs.1,34,250/- towards the total consumption of 179 Horse Power connection respectively availed by the members of the society in respect of service connection Nos.166, 170, 171, 190, 191, 192, 258, 260, 261, 262, 264, 267, 268, 269, 271, 294 & 469 and quash the same.

2. Both the writ petitioners claimed to be the members of the fifth respondent Co-operative society, namely, Patlur Lift Irrigation Co-operative. Society, Patlur, Thiruchengodu Taluk, Namakkal District.

3. It is the case of the petitioners that, they are agriculturalists and the beneficiaries of the Lift Irrigation System in the River Cauvery basin and the petitioners and other similarly placed agriculturalists formed the fifth respondent society. On behalf of the petitioners and other agriculturalists, the fifth respondent society obtained service connections for lift irrigation motors. Accordingly, number of service connections had been given in the name of the President of the fifth respondent society. Based on the service connections effected by the respondent TANGEDCO to the fifth respondent society, the members including the petitioners had been enjoying the benefit of Lift Irrigation System on the basis of without cost of any tariff to the respondent TANGEDCO.

4. However, all of a sudden, in the year 2002, the respondent TANGEDCO issued demand notices issued in the name of the President of the fifth respondent society, directed to pay SFS rate for each service connection at the rate of Rs.250/- per Horse Power. The said demand was made not only prospectively, but also retrospectively, for the arrears of three years. Based on the said demand notice issued by the respondent TANGEDCO, the fifth respondent society, passed on the said communication/demand letters to the individual members of the society. Therefore, being aggrieved over the said demand, these two petitioners had come forward to challenge those demand notices, which are impugned herein, and filed these writ petitions with the aforesaid prayer.

5. I have heard Mr.R.Arundattan, learned counsel appearing for the petitioners and Mr.S.K.Rameshwar, learned Standing Counsel appearing for the respondent TANGEDCO.

6. In fact, the impugned demand notices were issued only to the fifth respondent society by addressing to the President of the society. In each of these two writ petitions, the respective petitioners have challenged a number of such demand notices issued in the name of the President of the society, of course for various service connection numbers. Since these petitioners are only individual members of the society and these two writ petitions were filed in their individual capacity and not on behalf of the society nor the fifth respondent society, had come forward to challenge these demand notices on behalf of its members, this Court is at loss to understand, as to how, the writ petitions can be maintained by these two writ petitioners, on the ground that, no demand notices had been issued to the petitioners, nor the petitioners have not only filed these writ petitions to challenge the demand notices issued pertaining to their service connections alone, but also for a number of demand notices in each of the writ petitions, which are no way connected to these petitioners.

7. That apart, the learned standing counsel appearing for the respondent TANGEDCO has produced a copy of the circular memo No.SE/Comm1./EE/T/AEE2/F.LIS/CR.No.3867-1/02 dated 19.07.2002, which is having the following contention :

"It is brought to the notice that in some of distribution circle, lift irrigation services are being billed under commercial tariff and in some other distribution circles such services are being charged at SFS rate of Rs.250/- per HP per year. In some distribution circles lift irrigation services are continued to be under free supply pending clarification from Head Quarters.

In view of the Board's inability to extend free supply to Lift Irrigation services due to its precarious financial condition and to have uniform procedure in adopting tariff to existing Lift Irrigation services it is decided that SFS rate of Rs.250/HP/Year may be extended to all Lift Irrigation services availed under LT supply.

The arrears for the back period of maximum 3 years at this SFS rate (Rs.250/HP/Year) may also be demanded and collected. If necessary, easy instalments may be allowed as per clause 19.14 of Terms and Conditions of Supply of Electricity.

In respect of existing Lift Irrigation Services for which the Court Cases, demanding either restoration of free supply or exemption from payment

of back period arrears under LT commercial tariff are pending, the same SFS rate of Rs.250/HP/Year may be adopted, if they withdraw the court case and accept to pay the back period arrears under SFS rate (ie. Rs.250/HP/Year) for the maximum back period of 3 years.

All Chief Engineers of Distn. Region and Superintending Engineers of Distn. Circles are instructed to follow the above instructions scrupulously."

8. By relying upon this circular issued by the respondent Board, the learned Standing Counsel would further submit that, though it was the decision taken by the Government to effect service connection for agricultural purpose on free of cost, due to heavy financial burden and instability, the Board decided to collect SFS rate of Rs.250/- per Horse Power per year from the agricultural service connection and accordingly, a decision was taken to implement the same at least from 3 years prior to the issuance of the circular retrospectively.

9. The learned standing counsel would further submit that, only pursuant to the circular, the impugned demand notices were issued. Since the service connections stand in the name of the society, the demand notices were sent to the society, after giving them proper opportunity and therefore, the question of giving separate notices to hear the views of individual members of the society does not arise in this case.

10. It is further submitted by the learned Standing Counsel appearing for the respondent TANGEDCO that, the said circular dated 19.07.2002 has not been put under challenge, which alone enables the Board to make a demand and therefore, the subsequent challenge made only against the demand, that too, by the individual members on behalf of the society is not entertainable and therefore, on that ground itself, these writ petitions are liable to be rejected.

11. However, Mr.R.Arundattan, learned counsel appearing for the petitioners has relied upon the order of this Court made in similar circumstances in W.P.No.465 of 2003, dated 08.12.2008, in the matter of M.Chinnusamy v. Government of Tamil Nadu, rep. by its Secretary, Electricity Department and others. In the said case, the learned Judge of this Court has passed the following order :

"2.The petitioner has stated that he is a member of the fifth respondent Society. The members of the fifth respondent Society are land owners who are irrigating their lands by Lift Irrigation from the Cauvery Basin. Even though the petitioner is not liable to pay the electricity consumption charges, the

fourth respondent has passed the impugned order without issuing any notice to the petitioner and without specifying the amount to be paid by the petitioner.

3.The main contention of the learned counsel for the petitioner is that the impugned proceedings of the fourth respondent, dated 5.11.2002, is arbitrary and without jurisdiction, as it has been issued without giving an opportunity to the petitioner before revising the electricity tariff applicable to him, with retrospective effect.

4.The learned counsel appearing on behalf of the respondents has not been in a position to show that the impugned proceedings of the fourth respondent, dated 5.11.2002, has been issued after giving an opportunity to the petitioner to put forth his case. It has not been shown that prior notices had been issued to the petitioner before revising the electricity tariff applicable to him. Further, no records had been placed before this Court to show that the fourth respondent has the power or the authority to issue the impugned proceedings, dated 5.11.2002.

5.In such circumstances, the impugned proceedings of the fourth respondent, dated 5.11.2002, is quashed in so far as it demands the payment of Rs.9375/- being the electricity charges for three years preceeding the date of the issuance of the said proceedings. However, the petition would be liable to pay the revised tariff applicable to him from the date of the impugned proceedings, dated 5.11.2002. However, It is open to the appropriate authorities to fix the electricity tariff for the preceding years, after issuing the necessary notices to the petitioner and after giving him an opportunity to put forth his case in accordance with law. The writ petition is ordered accordingly. No costs."

12. By relying upon the said decision, the learned counsel for the petitioners would submit that, since the petitioners are also similarly placed, as admittedly, no notice were issued to the petitioners before issuance of the impugned demand notices, applying the said principle as enunciated in the order cited supra, the case of the petitioners can be accepted and the impugned demand notices can be quashed and the matter can be remitted back to the respondents for reconsideration and further decision.

13. I have considered the rival submissions made by the learned counsel for both the parties and also have perused the materials placed before this Court.

14. As has been mentioned above, whether the petitioners have any locus to file these writ petitions challenging the impugned demand notices issued in the name of the 5th respondent society, is a preliminary question to be decided first. In this regard, it is an admitted fact that, both the petitioners are the only members of the 5th respondent society. All the service connections were effected in the name of the President of the society and not on individual members of the society. Therefore, if at all the 5th respondent society is aggrieved over the demand notices, it should have approached this Court by filing the writ petition challenging the impugned notice, however, the society has not chosen to challenge the notices.

15. Further, in each of the writ petition, a bulk of demand notices issued by the respondents to various service connection numbers have been under challenge. In respect of those service connections are concerned, the petitioners are no way connected, as both these petitioners are concerned only with their service connections alone. Therefore, the petitioners cannot step into the shoes of the other members of the society and make a challenge collectively against all the demand notices issued by the respondents to various service connections stand in the name of the 5th respondent society. Therefore, this Court has no hesitation to hold that these writ petitions by these writ petitioners cannot be maintained for more than one reason as has been discussed above.

16. Apart from the aforesaid defect, even on merits also, it is the case of the petitioners that, before issuing the impugned demand notices, opportunity should have been given to the petitioners. Only in that context, the learned counsel has relied upon the aforesaid judgment.

17. I have gone through the said judgment of the learned Judge. The learned Judge in the said order has mentioned that, before deciding the tariff rate, opportunity should have been given to the consumers.

18. Here, in the case in hand, it is not the tariff fixed by the TANGEDCO. It is only a SFS rate which is a fixed one, i.e. Rs.250/- per Horse Power per year. Even assuming for the sake of argument, if notices are given to these individual petitioners or members of the 5th respondent society, that would no way improve the case of the petitioners, since, the fixation made by the respondent Board is not a tariff rate, but only a SFS rate, which is a fixed one for each Horse Power.

19. Therefore, this Court is of the considered view that, non-issuance of the notice before issuing the impugned demand notices, if it is insisted upon, that would be only an empty formality, through which, nothing would be found in favour of the petitioners. The law is well settled in this regard by a

number of decisions of the Hon'ble Apex Court that, by pressing into service the useless formality theory. The demand of opportunity or notice in the case like this is nothing but a useless formality and therefore on that ground, the impugned demand notices cannot be successfully assailed.

20. Further, based on the circular, dated 19.07.2002 issued by the respondent Board, these demand notices have been issued. However, the petitioners have not chosen to challenge the said circular, which is the genesis, which paved the way to make these demands. Therefore unless the said circular, dated 19.07.2002 is challenged, the petitioners cannot challenge these demand notices. Therefore, looking from any angle, the writ petitions as projected by these two petitioners cannot be entertained on the ground of maintainability, for want of locus of petitioners and also on the merits. Therefore, this Court feels that both the writ petitions are liable to be rejected.

21. In the result, the impugned demand notices cannot be challenged by the petitioners and therefore, the writ petitions fail. Accordingly, both the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (JJ Act)

//True Copy//

Sub Assistant Registrar

mkn/tsvn

To

1.The Secretary,
Government of Tamil Nadu,
Electricity Department,
Fort St. George,
Chennai - 600 009.

2.The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai - 600 002.

3.The Superintending Engineer,
Tamil Nadu Electricity Board,
Mettur, Salem District.

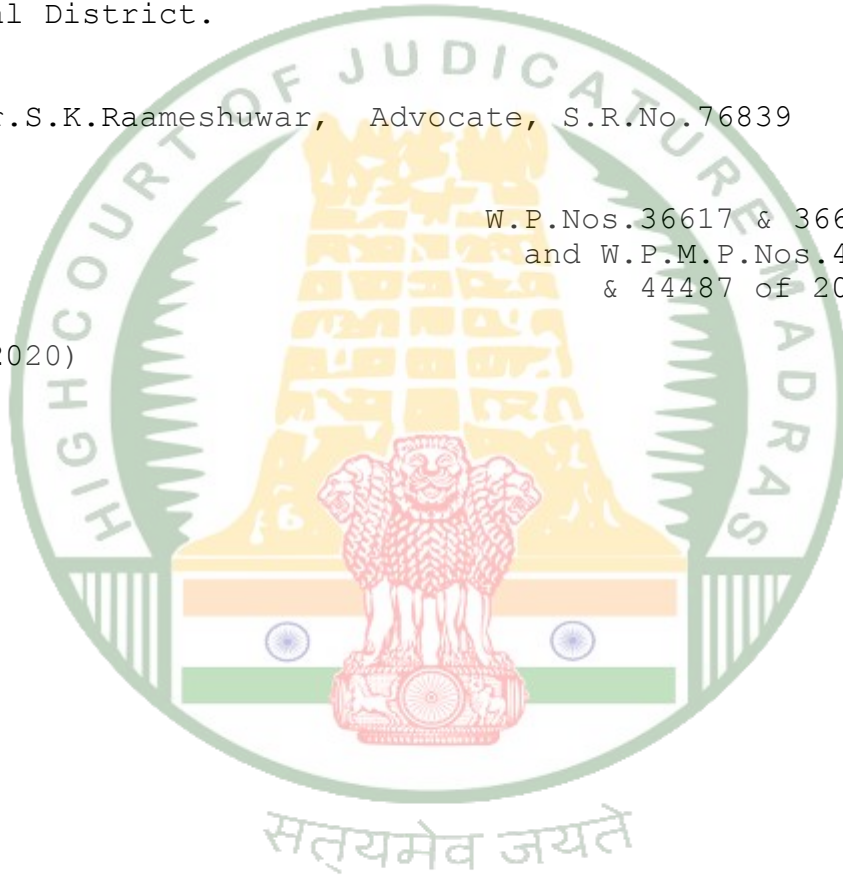
4.The Assistant Engineer,
(Operation & Maintenance)
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Namakkal District.

5.The Special Officer,
SN 257, Patlur Lift Irrigation Co-op. Society,
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Solasiramani (via),
Thiruchengodu Taluk,
Namakkal District.

+1cc to Mr.S.K.Raameshuwar, Advocate, S.R.No.76839

W.P.Nos.36617 & 36618 of 2003
and W.P.M.P.Nos.44486
& 44487 of 2003

NRL(CO)
GN(11/02/2020)



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