

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2018

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P.No.33826 of 2002
and W.M.P.No.50021 of 2002

T.Venkatraman

...Petitioner

..Vs..

1.The Chairman,
TamilNadu Electricity Board,
Electricity Avenue,
K.R.R.Maalgai,
800, Anna Salai,
Chennai – 600 002.

2.The Executive Engineer,
(In-Charge) (O & M)
Tamilnadu Electricity Board,
Pattukkottai, Thanjavur District.

...Respondents

(R2 amended as per order dated
05.07.2018 by PDAJ in W.M.P.No.16712 of 2018
in W.P.No.33826 of 2002)

Prayer: Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent herein comprised in his impugned Assessment Notice in Lr.No.EE/O&M/PKT/IER/F Theft of Energy/D.1106/2002/dated 29.07.2002 in respect of S.C.No.58, Tariff-IIIB, Sembaipattinam Distribution/Nadium Section, Peravurani, Pattukkottai, Thanjavur District, quash the said

Assessment order as illegal and violative of the principles of Natural Justice, and consequently directing the 2nd respondent to conduct a fresh enquiry over the alleged – Complaint of the theft of energy by affording the best opportunity of cross-examining the concerned official witnesses and submitting written submissions by the Petitioner's counsel and then to pass final orders on merits.

For petitioner : Mr.M.Balasubramanian

For respondents : Mr.P.Gunaraj (TNEB)

ORDER

The prayer sought for herein in this Writ Petition is for issuance of a Writ of Certiorarified Mandamus to call for the records of the second respondent herein comprised in his impugned Assessment Notice in Lr.No.EE/O&M/PKT/IER/F Theft of Energy/D.1106/2002/dated 29.07.2002 in respect of S.C.No.58, Tariff-IIIB, Sembaipattinam Distribution/Nadium Section, Peravurani, Pattukkottai, Thanjavur District and to quash the said Assessment order as illegal and violative of the principles of Natural Justice and to direct the second respondent to conduct a fresh enquiry over the alleged complaint of the theft of energy by affording the best opportunity of cross-examining the concerned official witnesses.

2.The short facts which are required to be noticed for the disposal of this Writ Petition are as follows:-

The petitioner is a permanent resident of Thambikottai Village in Pattukottai Taluk. He is a landlord and owning a prawn culture farms at Karankud Village in Peravurani Taluk, which is 30 kms from his residential place. In the said farm, for prawn culture, the petitioner is having a service connection No.58 of Sembapattinam and bi-monthly reading of the electrical meter was being taken regularly by the staff of the respondent-TANGEDCO. As such on 23.05.2002, the assessor of the TANGEDCO came and noted the metre reading and endorsed the same in the green card given to the petitioner. However, on 27.05.2002, when steel rods of aerators kept in the meter room in the premises were drawn out by the workmen of the petitioner to replace the rods to aerators, the rods hit at the glass meter box and the glass tile of the meter was broken. With the impact of such hit by steel roads, the glass tile of the meter and the meter box got damaged. Immediately, one Ramasamy, who was in-charge of the prawn culture farm, had promptly and sincerely reported the said unexpected incident in writing to the Electricity Board Officials on the same morning (i.e) 27.05.2002 itself. However, the Executive Engineer, Peravurani, who came to the spot in the night hours on 27.05.2002,

instantaneously had made an allegation against the petitioner for theft of energy which had resulted in First Information Report, registered against the petitioner. Subsequently, a show cause notice was issued against the petitioner on 06.06.2002 directing him to show cause as to why the recovery proceedings should not be initiated for the theft of energy.

3.The petitioner had given a detailed reply on 12.06.2002 explaining all these factors. In the said reply, the petitioner sought for permission from TANGECO to cross examine the concerned employee of TANGEDCO, in order to establish his case that there had been no theft of energy. However, the said request of the petitioner made in this regard had been turned out by TANGEDCO by proceedings dated 10.07.2002 and the petitioner was directed to appear on 18.07.2002 at 11.00 a.m. to file a written reply and documents. Subsequently on 29.07.2002, shockingly the impugned order of demand was passed by the respondents stating that the petitioner had to pay a sum of Rs.8,49,713/- as a loss for the alleged theft of energy as calculated by them. Challenging the said order dated 29.07.2002 seeking demand for the alleged theft of energy from the petitioner, this writ petition has been filed.

4.I have heard Mr.M.Balasubramanian, the learned counsel for the petitioner who would submit that, on 23.05.2002, the meter reading was taken by assessor of the respondents and the same has been endorsed in the green card, which, in fact, the petitioner wanted to produce and in order to prove the case of the petitioner, the petitioner wanted to examine the said assessor himself. However, the said chance was refused to the petitioner.

5.The learned counsel would further submit that, the detailed explanation given by the petitioner dated 12.06.2002 was not at all considered and there is no mentioning about the said reply given by the petitioner in the impugned order itself, which shows that, the respondents have mechanically passed the impugned order of demand without any basis and without even considering the petitioner's reply in this regard. The learned counsel for the petitioner would also submit that a criminal case filed against the petitioner for the alleged theft of energy has been ended in acquittal.

6. On the other hand, Mr.P.Gunaraj, the learned Standing Counsel for TANGEDCO would submit that, merely because the criminal case ended in acquitted against the petitioner that would not have a direct bearing or bar on the decision taken by the TANGEDCO in assessing the theft of energy and the loss caused to TANGEDCO.

7. On 27.05.2002 since the broken meter was detected based on which, theft of energy was calculated, accordingly, the loss sustained by the TANGEDCO had also been calculated along with the order of demand, which is impugned in this writ petition. Further, a working sheet has also been annexed to the order of demand. The petitioner has not made out any case to state that his reply pursuant to show cause notice issued by TANGEDCO has not been considered.

8. I have considered the submissions made by the learned counsel appearing for both sides and perused the materials placed before this Court.

9. As has been rightly pointed out by the learned counsel for the petitioner, he has given a detailed reply on 12.06.2002 pursuant to show

cause notice issued by the respondent-TANGEDCO. In the said reply, the petitioner has specifically stated that on 23.05.2002, the assessor made the meter reading assessment and has made an endorsement in the green card as on 23.05.2002. The meter was intact and there was no broken or tampering of meter noticed by the employer of the respondents.

10. On 27.05.2002, it is the definite case of the petitioner that the meter got damaged by the workmen of the petitioner who wrongly replaced the rods to aerators thereby the rods hit the glass meter box, with the result the meter had broken. The said fact was brought to the notice of the respondent-department by the employee of the respondent one Ramaswamy on the very same day i.e. on 27.05.2002. If that being so, whether the meter was intact till 23.05.2002 and whether any report voluntarily made by the petitioner through his employee on the same day and the meter got damaged because of replacement of the rods to aerator for the work undertaken by the petitioner on the said date at the prawn culture farm of the petitioner, has to be examined and assessed.

11. Without examining these aspects, the respondent-TANGEDCO cannot come to a sudden conclusion that there had been tampering of

meter taken place. Moreover, the calculation made by the respondent department annexed with the impugned demand is for longer period and thereby huge units had been shown as allegedly stolen and with the result, a sum of Rs.8,50,000/- has been demanded from the petitioner. Such a huge demand is made from the petitioner without considering his reply given in this regard or without any reasoning. Moreover, there is absolutely no whisper to say that the said reply given by the petitioner on 12.06.2002, has been considered by the respondent, as there is no mentioning of the said reply in the order impugned passed by the respondents. The respondents, therefore has to consider the same and thereafter, if there are plausible reasons for the respondent to reject the same, by giving such reasons as to why the claim made by the petitioner has been rejected, they can reject the same.

12. In view of the above, this court has no hesitation to hold that the impugned order has been passed without even considering the reply given by the petitioner and without even giving opportunity of hearing to the, petitioner to establish his case that there had been no theft of energy. Hence, the impugned order since having civil consequences, which ought to have been considered by the respondents before passing the impugned

order by following the principle of natural justice, hence, the said order is liable to be interfered with.

13. In the result, the impugned order is quashed. The matter is remitted back to the respondent for reconsideration. While making such reconsideration, the respondent shall consider the reply given by the petitioner dated 12.06.2002 in proper perspective by taking into account the reasoning given by the petitioner as to whether the meter was intact on 23.05.2002 and if so, whether the respondent has got any justification to calculate the units as loss towards recovery of amount for the alleged theft for such huge sum also has to be verified and decided.

14. In this regard, the petitioner on receipt of copy of this order, within a period of two weeks, shall give a copy of the reply dated 12.06.2002 along with copy of this order and on receipt of the same, the respondent shall consider the same and after giving an opportunity of hearing to the petitioner to establish his case, final order can be passed by the respondent accordingly on merits, within a period of eight weeks thereafter.

R. SURESH KUMAR, J.,

srn/mbi

15. With the above direction, the Writ Petition is allowed as indicated above. No costs. Consequently the connected miscellaneous petition is closed.

03.09.2018

Index: Yes
Internet: Yes
Speaking Order/Non Speaking Order

To

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Electricity Avenue,
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