



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.12.2017

Pronounced on : 04.01.2018

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CORAM:

**THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mrs. JUSTICE R.THARANI**

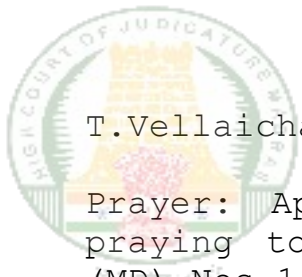
W.A. (MD) .Nos.891 and 892 of 2017
and
C.M.P. (MD) .Nos.5971; 8115 & 8116 of 2017
in W.A. (MD) No.891 of 2017
and
C.M.P. (MD) .Nos.5972; 5973 and 8117 of 2017
in
W.A. (MD) No.892 of 2017

1. The Tamil Nadu Electricity Board,
Anna Salai, Chennai
Represented by its Chairman
2. The Superintending Engineer,
Tamil Nadu Electricity Board,
Pudukottai Road, Thanjavur 613 007.
3. The Assistant Executive Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Board,
Papanasam, Thanjavur.
4. The Assistant Engineer,
Operation & Maintenance,
Tamil Nadu Electricity Board,
Ayyampettai, Thanjavur District.

... Appellants/Respondents in WA.No.891/2017

1. The Superintending Engineer,
Tamil Nadu Electricity Board,
Pudukottai Road, Thanjavur - 613 007.
2. The Assistant Executive Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Board,
Papanasam, Thanjavur.

... Appellants/Respondents in WA.No.892/2017
Vs.



T.Vellaichamy Nadar

.. Respondents/Petitioner in both WAS

Prayer: Appeals filed under Clause 15 of the Letters Patent, praying to set aside the order dated 22.03.2017 passed in W.P.(MD).Nos.16295 of 2012 and W.P.(MD).No.4831 of 2014.

Prayer in WP(MD). 16295/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records in the 3rd respondent's order in Lr.No.AEE/O&M/PPM/D.No.173/12-13 dated 25.10.2012 and quash the same and consequently direct the 3rd and 4th respondents to refund the compounding fee of Rs. 24,000/- and another amount of Rs. 87,170/- hither to collected in the said proceedings, within a time limit fixed by this Honourable Court, and pass such further or other orders.

Prayer in WP(MD). 4831/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, in the nature of writ, calling for the records in the impugned letter NO. AEE/O&M, Papa/A No. 009/2013, dated 19.01.2013 issued by the 2nd respondent and quash the same and direct the 2nd respondent to give electricity service connection for Sri. Manali Pillaiyar and Sri Malayala Karuppasamy, Sri Mariamman and Sri Madurai Veeran Thirukovil, Kuruvady, Thanjavur situated in Survey No. 121/2, 121/3 of Thittakaudu village, Thanjavur Taluk and District, within a time limit fixed by this Honourable Court.

For Appellants : Mr.S.M.S.Johnny Basha
M/s.S.Srimathy

For Respondent : Mr.C.Dhanaseelan

COMMON JUDGMENT

M. VENUGOPAL, J.

The Appellants/Respondents have preferred the instant W.A.(MD) No.891 of 2017 as against the order dated 22.03.2017 in W.P.(MD). No.16295 of 2012 passed by the Learned Single Judge.

The Appellants/Respondents have filed the present W.A.(MD). No.892 of 2017 as against the order dated 22.03.2017 in W.P.(MD). No.4831 OF 2014 passed by the Learned Single Judge.

2.Earlier, this Court, while passing the common order in W.P.(MD).No.16295 of 2012 dated 22.03.2017, wherein, in paragraph No.12, it is observed as under:

"12. The clarificatory order has been produced before me. It does not restrict its operation with regard to the period. Being a clarificatory



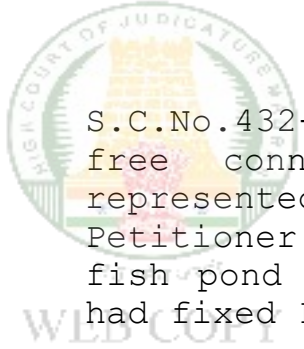
order it can only be retrospective unless it is made expressly prospective. It is not in dispute that the petitioner is basically an agriculturist and even assuming that the petitioner was doing fish culture he was doing it as an allied activity along with agriculture. Therefore, the clarificatory order issued by the Regulatory Commission dated 24.12.2012 would apply to the petitioner. Thus, it is seen that there can be no charge of theft of energy or different user in so far as the impugned demand is concerned."

and allowed the writ petition.

3. Likewise, this Court, while passing the common order in W.P. (MD).No.4831 of 2014 dated 22.03.2017, wherein in paragraph Nos.15 & 16, it is observed as under:

"15. The petitioner seeks issuance of writ of Certiorari to quash the order dated 19.01.2013 in and by which the Assistant Executive Engineer, TANGEDCO, Papanasam has rejected the request of the petitioner for new service connection for the Temple constructed inside the premises of the polytechnic run by the petitioner. The said rejection order is passed on the fact that certain amounts remained unpaid by the petitioner in respect of two service connections namely S.C.No.96/V and S.C.No.136 (Agriculture.)

16. Today the Writ Petitions challenging the demand made for the said two service connections have been allowed in W.P.(MD) No.3903 and 16295 of 2010 and the said demands have been quashed. Therefore, reason for rejection of a new service connection to the petitioner does not survive. Hence the order impugned in this writ petition dated 19.01.2013 is quashed. The respondent is directed to provide a new service connection to the temple constructed by the petitioner within a period of 8 weeks from the date of receipt of copy of this order. Accordingly, the Writ petition in W.P. (MD) No.4831 of 2014 is disposed of. Consequently, connected miscellaneous petitions are closed."



S.C.No.432-002-136 and that the said agricultural service is a free connection granted under Tariff IV. Further, it is represented on behalf of the Appellants that the Respondent/Writ Petitioner had used the free agriculture service connection for fish pond and there are three fish ponds with 80 x 40 meter and had fixed PVC pipes on the ground to take water to three ponds.

5.The Learned Counsel for the Appellants strenuously contends that since the theft was detected on 21.12.2009, the Tariff Order applicable is Tariff Order 1 of 2002 with effect from 16.03.2003. In this connection, the Learned Counsel for the Appellants refers to the said Tariff Order under "10.0 Low Tension Tariff IV" wherein it was mentioned under Clause (vii) as under:

"If it is established that the water pumped from such services under this category is used for purposes other than agriculture or sold to others, the service category shall be changed to LT Tariff V."

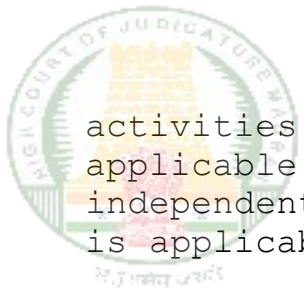
6.Advancing her arguments, the Learned Counsel for the Appellants projects an argument that in the Tariff Order No.1/2002, there is no such category as fish farming at all and Tariff III A and B are not applicable to agriculture at all and that apart, the Tariff Order 1 was passed in the year 2012 and under Tariff III-A(1) in 10.17.6, it is mentioned as under:

"This tariff is applicable for sericulture, floriculture, horticulture, mushroom cultivation, cattle farming, poultry and bird farming, dairy units and fish/prawn culture who have not been covered under Tariff IV and which are run on commercial lines."

7.Besides the above, the Learned Counsel for the Appellants draws the attention that under Tariff IV 10.20.1, it is stated as under:

"This tariff is applicable to all agricultural and allied activities such as cultivation of food crops, vegetables, seeds, trees, and other plants. Sericulture floriculture, horticulture, mushroom cultivation, cattle farming, poultry and bird farming, dairy units and fish/prawn culture carried out as allied activities of agriculture shall be construed as agricultural activities."

8.Expatiating her submission, the Learned Counsel for the Appellants points out that since same activities are covered under services and under different tariffs, a clarification order was passed and it was clarified that other activities are carried out as allied



activities along with agriculture, then, Tariff IV will be applicable. But, when the other activities are carried out independently and on commercial lines, then, the Tariff III-A(1) is applicable.

9.The Learned Counsel for the Appellants submits that retrospective effect cannot be granted to the Tariff Order 1 of 2012 or the Clarification order and the present writ appeals are filed by the Appellants.

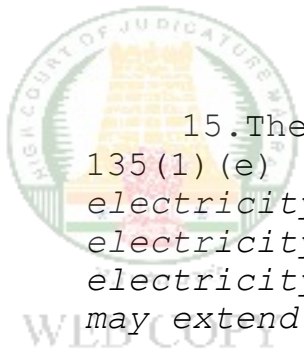
10.Therefore, it is the contention of the Learned Counsel for the Appellants that the Respondent/Writ Petitioner is liable to pay the amount of compensation and the compounding charges ought not to be refunded and therefore, prays for setting aside the impugned common order dated 22.03.2017 passed in W.P.(MD).No.16295 of 2012 and in W.P.(MD).No.4831 of 2014.

11.Per contra, it is the submission of the Learned Counsel for the Respondent that the allegation of 'Theft of Energy' is denied by the Respondent and that the ponds situated inside of the Agricultural lands are not fish pond and they are for temporary storage of water and also used as 'Water Leakage Puddle' and the use is for agriculture only.

12.The Learned Counsel for the Respondent contends that two channels drawing Mettur Dam water runs across the land and they are 'Vettaru' and 'Thottakadu Kalvai' and that the agricultural service connection in S.C.No.136 TF IV is only for draught seasonal requirements. Added further, it is the plea of the Respondent that no material seized, photograph taken to show that the ponds are fish ponds.

13.The Learned Counsel for the Respondent proceeds to point out that no reason is ascribed on the part of the Appellants that their failure to seize materials if any or to take photographs which are the best form of proof, if really agricultural water (SC.No.136 TF IV) was used to feed fish pond.

14.The Learned Counsel for the Respondent refers to Rule 23 (AA) (2) of the Electricity Supply Code, which enjoins that all circumstantial evidence including material objects shall be duly recorded in the report indicating whether conclusive evidence substantiate the theft was found or not and in the instant case, no such evidence is available or collected. Moreover, Section 135 (1-A) (3) of the Tamil Nadu Electricity Act, 2003 speaks of the fact that 'The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and signed by such occupant or person who shall sign the list etc.'



15.The Learned Counsel for the Respondent adverts to Section 135(1)(e) of the Act enjoins that 'Whoever, dishonestly uses electricity for the purpose other than for which the usage of electricity was authorised, so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both'.

16.The Learned Counsel for the Respondent submits that the date of inspection was 21.12.2009 by four officials team including the 3rd and 4th Appellants herein and on 22.12.2009, complaint was sent by the Respondent/Writ Petitioner to the Hon'ble Chief Minister's Special Cell and the 2nd and 3rd Appellants. Further, on 23.12.2009, complaint was sent to the Chief Minister's Special Cell and the 2nd Appellant. As a matter of fact, the Respondent gave a written explanation on 13.02.2010 denying the charge at the time of enquiry before passing of the original final Assessment Order.

17.Besides this, it is represented on behalf of the Respondent that in the original final Assessment Order dated 24.02.2010, the 3rd Appellant took a stand that the diversion of water into the so called fish pond will be construed as theft of energy. In the Assessment Order, the 3rd Appellant (Assessment Officer) mentioned that using of agricultural water to fish pond is permissible from 01.04.2012 and not before that and that the significance of the date 01.04.2012 is alone put forth in W.A.(MD)No.891 of 2017.

18.The Learned Counsel for the Respondent contends that the Respondent/Writ Petitioner is denying the charge from the very beginning and further, he was threatened, detained in his office room up to 7.00 p.m. by the Inspection Squad and by threat of police arrest, forcibly collected cheque for Rs.24,000/- towards compounding fee and that collection of compounding fee before registration of F.I.R. is an illegal and unauthorised one.

19.The Learned Counsel for the Respondent contends that without lodging the F.I.R., powers under Section 152 of the Act, compounding of offence will be misused as in the present case and in respect of a 7.5 HP Submersible motor pump as mentioned in the Inspection Report, the compounding fee could be Rs.15,000/- i.e. Rs.2,000/- per HP vide Rule 24(1) of the Supply Code, 2004.

20.The Learned Counsel for the Respondent takes a stand that no notice was issued in Form No.11 Rule 23(2A) 22 of the Supply Code, 2004 and that the quantum of Penal Assessment is bad and this plea, on behalf of the Respondent, is without prejudice to the contention that the ponds are not fish pond.

<https://hcservices.courts.gov.in/hcservices/> 21.The Learned Counsel for the Respondent vehemently takes a stand that the classification of agricultural service connection under Tariff No.IV is already in existence even prior to the



Tariff Order No.1 of 2012 and the clarification is to an existing state of affairs only and the rationale behind the policy of the giving free electricity is to encourage food production and to help agriculture.

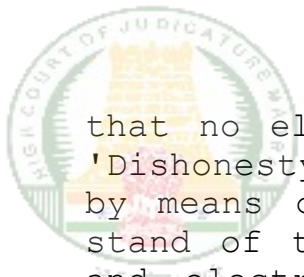
22. Besides the above, it is contended on behalf of the Respondent that the allied activities also share the same rationale behind the policy as all allied activities are also intended for production of food and helping the agriculture, agriculturist and as such, the finding of the Learned Single Judge that being a Clarificatory Order is retrospective in nature is perfectly correct.

23. The Learned Counsel for the Respondent seeks in aid of the Tariff Order 2002 which points out that allied activities will be construed as Agricultural as long as it is allied to another main agricultural activity for which the service connection was obtained and therefore, it is the plea of the Respondent/Writ Petitioner that the same would attract such allied activities which were in existence prior to the date of Tariff Order No.1 of 2012 and if such allied activities were taken as theft before 2012, it is wrong.

24. The Learned Counsel for the Respondent contends that the original Assessment Order dated 24.02.2010 was challenged in W.P. (MD) No.3902 of 2010 which was allowed and re-enquiry was ordered and that the 3rd Appellant once again passed the same order. As such, W.P. No.7057 of 2012 came to be filed, which was allowed and again fresh enquiry was ordered. Again the present impugned order dated 25.10.2012 was passed in the subject matter in the writ petition and according to the Learned Counsel for the Respondent, the Appellants have virtually given up the charge of fish breeding and even the diversion and storage of water in the pond and using it will also be theft of energy before 2012.

25. The Learned Counsel for the Respondent submits that the aspect of 'Theft of Energy' ought to be proved independently when the Appellants have taken a stand that the Clarificatory Order is with prospective effect. But, there is no such proof and in fact, the allegation of fish breeding was given up and the Appellants took the contention that the diversion of water will be construed as 'Theft of Energy'. However, Section 135(1)(e) of the Supply Code Act, refers to "Dishonest" unauthorised use alone 'Theft of Energy' and mere diversion or storing for the purpose of agriculture is not a separate use for calling it unauthorised one.

26. The Learned Counsel for the Respondent points out that the use of water for agriculture is not disputed and in the present case, the Assessment Order says that the using of water [for agriculture] after storing it in the so called fish pond will be construed as 'Theft'. In short, it is the plea of the Respondent



that no element of dishonesty was stated or proved and the term 'Dishonesty' is defined under Section 24 of the Indian Penal Code by means of unlawful gain to another party. Further, it is the stand of the Respondent that the prudent way of using the water and electricity would not cause any loss to the TANGEDCO and according to the Respondent, he had not attained any gain unlawfully by the temporary storing of the water in the pond.

27. The Learned Counsel for the Respondent contends that the Appellants in W.A.(MD)No.891 of 2017 may be allowed to refund a sum of Rs.1,11,170/- i.e. Rs.87,170/- collected in pursuance of the interim stay order including the compounding fee of Rs.24,000/-.

28. The Learned Counsel for the Respondent cites the decision in **J.Loganathan V. Union of India rep. By its Secretary to Government and others** reported in 2010 4 CIJ 679, wherein at paragraph 22 to 25, it is observed as under:

"22. Further more, the Resolution passed by the fourth respondent dated 11.2004 is in the nature of clarification to the Resolution published by them earlier in No.12011/68/93 BCC (C), dated 9.1993, in which event, it will have the effect of retrospective operation as has been held by the Honourable Apex Court in S.S.Grewal Vs. State of Punjab and Others [1993 Supp. (3) SCC234], wherein has been held that the explanatory or clarificatory statute or statutory rules or order to be read as part of the main statute / rules / order and as such would operate retrospectively.

23. By applying this principle as has been enunciated by the Honourable Apex Court, it must be held that the present Resolution dated . 11.2004 passed by the fourth respondent, being in the nature of clarification to its earlier notification dated 9.1993, it would operate retrospectively ie., from 9.1993 onwards.

24. Another argument advanced on the part of the respondents is that if the plea of the petitioner is entertained, many such plea would flood the authorities and the Courts and therefore, such an attempt on the part of the petitioner should be nipped and thrown to winds.

25. This argument advanced on the part of the respondents does not appeal to us. In a series of Judgments like Zee Telefilms Ltd., V. Union of India [(2005) 4 SCC 649] and Guruvayoor Devaswom Managing Committee V. C.K.Rajan [(2003)



7 SCC 546 which are followed in *Coal India Ltd., and Others Vs. Saroj Kumar Mishra* [(2007) 9 SCC 625], the Honourable Apex Court has consistently held that only because there is possibility of floodgate litigation, a valuable right of a citizen cannot be permitted to be taken away. This proposition laid down by the Honourable Apex Court would be a straight answer to the desperate argument advanced on the part of the respondents.

29. The Learned Counsel for the Respondent relies on the decision of the Hon'ble Supreme Court in *Union of India V. Mustaq @ Mustafa and others* reported in 2016 3 Crimes (SC) 112, wherein at paragraph Nos.3 to 5, it is observed as follows:

"3. The learned Additional Solicitor General has pointed out a decision of this Court in "Assistant Electrical Engineer V. Satyendra Rai and Anr." reported in (2014) 4 SCC 513 where this Court has specifically held in Paragraph 9 as follows:-

"....Therefore, considering the language of para 4 of the Statement of Objects and Reasons, it is clear that the amendment brought in is clarificatory in nature and as such, it would take into its ambit even the pending matters and in that sense, it would be a retrospective amendment."

4. To that extent, the other decision of this Court in "Vishal Agrawal & Anr. V. Chhattisgarh State Electricity Board and Anr." reported in (2014) 3 SCC 696 also pays the same role.

5. In view of the above cited decisions of this Court, wherein it has been specifically stated that it is clear from the language of para 4 of the Statement of Objects and Reasons that the amendment brought in is clarificatory in nature and as such it would be a retrospective amendment, we hold that the impugned order passed by the High Court cannot be given effect to and is hereby set aside and direct that the orders passed by this Court, which we have cited hereinabove, be followed.

In view of the above, the appeal is allowed."

30. The Learned Counsel for the Respondent refers to Rule 23



of the Tamil Nadu Electricity Supply Code, 2004 which runs as under:

"Rule 23. The Act deals elaborately under Sections 135 to 141 regarding the tampering, distress, etc., Hence in this Code, for the sake of completeness and to provide consolidated information to the consumers on electric supply the relevant provisions of the Act as well as procedure for assessment of the electricity and removing the meter, electric line, electric plant and other apparatus in case of theft of electricity and measures to prevent diversion of electricity, theft or unauthorized use of electricity or tampering, distress or damage to electrical plant, electric lines or meter are set out below]"

31. The Learned Counsel for the Respondent adverts to Rule 23 (AA) (2) of the Supply Code, 2004, which reads as under:

"Rule 23. (AA) The procedure for assessment of the electricity charges, disconnection of supply of electricity and removing the meter, electric line, electric plant and other apparatus in case of theft of electricity as detailed in section 135 of the act is given below:

(2) (a) The authorized officer shall prepare a report at the place or premises giving details such as connected load, condition of seals, working of meter and record, modus operandi adopted for theft of energy. Any damage or destruction to the electric meter, metering equipments, apparatus, line, cable or electrical plant of the Licensee or supplier concerned, caused or allowed to be caused by the accused person so as to interfere with the proper or accurate metering of electricity or for theft of electricity shall also be duly recorded in the report indicating whether conclusive evidence substantiating the fact that theft of energy was found or not. The authorized officer may also take photo or prepare a diagram illustrating the arrangements found to have been made for theft of electricity, wherever feasible and such photo or diagram shall form a part of inspection report. Upon detection of such theft of electricity, the officer of the licensee or supplier, as the case may be, as authorized for



the purpose by the Commission, may immediately disconnect the supply line of electricity and a complaint shall be lodged in the police station as per the procedure stipulated in Section 135 (1A) of the Act on the basis of the materials collected by the Assessment officer who has conducted the inspection. The supply to the premises shall be restored only after satisfying the stipulation of the third proviso of section 135(1A) of the Act.

32.Also, the Learned Counsel for the Respondent draws the attention of this Court to Rule 23(AA) (22) which speaks as under:

(22) In case of compounding the notice as in Form 11 in Appendix to this code may be issued and the amount collected as per Section 152 of the Act.

33.The Learned Counsel for the Respondent points out that Rule 24 of the Tamil Nadu Electricity Supply Code, 2004 deals with 'Compounding of Offences' and Form 11 [Regulation 23(AA)(22)] relates to 'Compounding of offence under Section 152 of the Electricity Act, 2003.'

34.At this stage, a perusal of the Affidavit of the Respondent/ Writ Petitioner in W.P.(MD)No.16295 of 2012 indicates that at para 4, the Respondent had averred that '... on 21.12.2009 at about 11.30 a.m., some officials of the TNEB, including the Respondents No:3 & 4 inspected our college electricity supply service connections, including the above said S.C.No.136/Tariff IV - Agricultural purpose. The Officials objected the pumping of bore well water into a pond and then discharging it into the paddy fields. They contended that the water pumped from the bore well should go directly to the agricultural land as the electricity connection is for agricultural purpose'. Also, at para 5 of the Affidavit in W.P.(MD).No.16295 of 2012, the Respondent had stated that 'He explained to the officials that the ponds are not fish pond and there is no fish unit; that the ponds serve for recharging the land and for storing percolation of water and the water slipping from the paddy fields in higher levels; that they were in drying condition; that the water level in it was about 1 to 1 ½ ft in height and unsuitable for any commercial fish breeding etc.' Furthermore, in the Affidavit in W.P.(MD)No.16295 of 2012, the Respondent/Writ Petitioner, at para 7, had averred that '... In his case originally the electricity was disconnected on 23.12.2009 and no complaint was lodged and compounding of an offence will arise only after lodging of a complaint. But, the officials conducted themselves in an arbitrary manner without following the mandatory provisions of this Act and in spite of his objections, sent to higher authorities, penal assessment order

dated 24.02.2010 was passed to the tune of Rs.1,37,170/- etc.'

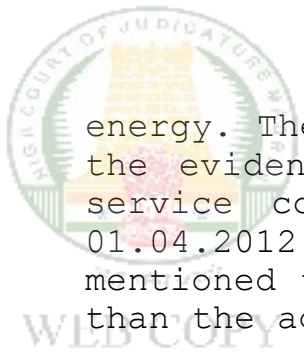
35. The primordial plea taken on behalf of the Respondent/Writ Petitioner is that the 3rd Appellant/3rd Respondent in W.A.(MD) No.891 of 2017 had failed to note that the storing of bore well water in a pond and releasing the water along with the water percolated into the pond for agricultural purpose would not constitute 'Theft of Energy'. Also that, in Ground (e) of the Writ Affidavit in W.P.(MD) No.16295 of 2012, the Respondent/Writ Petitioner had in a crystalline fashion taken a plea that '*... In the absence of availability of any material to support a presumption or inference that the ponds are for breeding fish, or fish farming, the accusation of theft of energy is unsustainable in law*'. Besides this, it is the stand of the Respondent/Writ Petitioner that it is an unreasonable accusation levelled against him that he used 7.5 HP Submersible motor pump to feed the ponds, especially when the three ponds are considerably large in size (200 mtr x 20 mtr, 50 mtr x 40 mtr and 50 mtr x 40 mtr) and further that, a single 7.5 HP Submersible motor pump cannot pump water to fill up the ponds to the required level useful for fish breeding.

36. Moreover, it is the version of the Respondent/Writ Petitioner that the Inspection Officials had failed to consider for the map attached with Inspection Report discloses that the said agricultural service connection was used for pumping water from the bore well and to use the same directly into the paddy field and as such, the accusation and penal assessment that the bore well water from the agricultural service connection was used for fish ponds is baseless.

37. A mere glance of the counter of the 4th Appellant/Assistant Engineer (Operation & Maintenance), TNEB, Thanjavur District indicates that the Respondent/Writ Petitioner was granted a service connection SC.No.432-002-136 for agricultural purpose under Tariff IV and that the theft was detected on 21.12.2009 when the Respondent/ Writ Petitioner was using for fish pond. However, the service connection SC.No.136 under Tariff IV was granted for agricultural purpose. Also that, the plea of the Appellants is that if the Respondent/ Writ Petitioner wants to percolate the water, he may do so under Tariff No.V and not under Tariff No.IV, inasmuch the Board is incurring loss by such deviations and by paying the minimum charges, the Respondent/Petitioner was using the service connection, thereby leaving the Board to incur loss. As a matter of fact, the Respondent /Writ Petitioner had paid the compounding charges of Rs.24,000/- and has avoided the criminal liability and that the compounding fee of Rs.24,000/- was calculated, since agricultural service connection was used for

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38. Indeed, the Vigilance Squad had detected the theft of



energy. The final assessment was made after taking into account of the evidence, if any produced by the consumer. The agricultural service connection was allowed to use for fish breeding from 01.04.2012 and prior to that the Tariff Order specifically mentioned that agriculture service connection if it was used other than the agriculture purpose, then, Tariff V will be applicable.

39. It is to be borne in mind that 'An Assessment for Theft of Electricity' is always under Section 135 of the Electricity Act, 2003 and not under Section 126 of the Act. To put it succinctly, the ingredients of Sections 126 and 135 of the Electricity Act, 2003 operate in different fields. It is to be remembered that Section 126 of the Electricity Act, 2003 is for an unauthorised use of electricity which is different from 'Theft of Electricity'.

40. It cannot be ignored that Section 126 of the Electricity Act, 2003 relates to an Assessment, but that assessment is only with respect to an unauthorised use of electricity. An assessment has to be made in accordance with Section 126 of the Electricity Act, 2003 and it must be made only by an individual who conducted the inspection and had seen the extant of an unauthorised use.

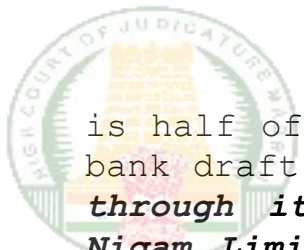
41. In so far as the aspect of 'Theft of Energy', there is no provision for opportunity or prior hearing and it is open to a person to file his objection to provisional assessment order. In this connection, it may not be out of place for this Court to make a significant mention that a final order of assessment is to be passed only after making an order of provisional assessment.

42. It is to be pertinently pointed out by this Court that in respect of a final assessment order, the sufficiency of evidence cannot be made a ground by Writ Court to interfere with an order, as per decision in **Vijay Kumar Sharma V. Calcutta Electricity Supply Corporation Limited and others, AIR 2009 (NOC) 2088 (Calcutta)**.

43. In reality, Regulations pertaining to conditions of supply of electricity supply framed under Section 79(j) of the Electricity Supply Act (1948) would apply in so far as it is not inconsistent with the provisions of Electricity Act (2003) viz., S.126.

44. It cannot be forgotten that a person can seek remedy of appeal instead of filing writ petition against the final order, as per decision in **Binod Kumar Barthwal V. Jharkhand State Electricity Board and others, 2009 AIHC 822**.

45. In this connection, this Court aptly points out that Section 127 of the Electricity Act, 2003 provides that no appeal against an order of assessment can be entertained unless an amount



is half of the assessed amount, is deposited in cash or by way of bank draft. Also that, in the decision **M/s.Mohit Paper Mills Ltd., through its Director and another V. Paschimanchan Vidut Vitran Nigam Limited 2008 (1) All LJ at paga 544 (545)**, it is observed and held that **'Final assessment of electricity charges can be challenged by preferring appeal. However, if notice of assessment is not backed by proper reason writ jurisdiction can be invoked irrespective of having alternative remedy. In other cases, appeal is appropriate forum for adjudication of the matter.'**

46.In fact, an amendment introducing Section 135(1A) of the Electricity Act, 2003 is only to fill up the need to check the energy theft cases due to which revenue is siphoned off and no exception can be taken as per decision in **Hi-Tech Mineral Industries Covai (P) Ltd., V. Tamil Nadu Electricity Regulatory Commission, Chennai and others, 2010(3) MLJ 697 (715)**.

47.It is to be noted that under Section 135 of the Electricity Act, 2003, an officer authorised in this behalf by State Government may enter, inspect, break open and search any place or premise in which he has reason to believe that electricity has been or is being used an authorisedly and to search seize and remove all such devices, instruments which has been or is being used for unauthorised use of electricity as per Full Bench decision in **Kovvuri Trinadha Reddy V. Eastern Power Distribution Corporation of A.P. Ltd., Rajahmundry E.G. District and another, 2007 (4) Andh LT 580 (595) : 2007(4) Andh LD 564 (FB)**.

48.In regard to the Clarificatory Order No.1-4 of 2012 dated 24.12.2012 under the caption 'In the matter of: Issue of clarification in the Tariff Order 1 of 2012 on Determination of Tariff for Generation and Distribution', it is mentioned as under:

"1.The Commission clarifies the meaning of the term "group of activities" which shall be classified as allied activities of agriculture for the purpose of LT Tariff IV in the Tariff Schedule to the said Tariff Order No.1 of 2012 dated 30.03.2012.

(i) Para 10.20.1 under LT Tariff IV of the said Tariff Order reads as follows:

This tariff is applicable to all agricultural and allied activities such as cultivation of food crops, vegetables, seeds, trees and other plants. Sericulture, floriculture, horticulture, mushroom cultivation, cattle farming, poultry and other bird farming, fish/prawn culture carried out as allied activities of agriculture shall be construed as agricultural activities.



ii) Para 10.17.7 under LT III A(1) of the said Tariff Order reads as follows:

This tariff is also applicable for sericulture, floriculture, horticulture, mushroom cultivation, cattle farming, poultry and bird farming, dairy units and fish/prawn culture who have not been covered under LT Tariff IV and which are run on commercial lines.

In both of the above tariff schedules, the activities in question are sericulture, floriculture, horticulture, mushroom cultivation, cattle farming, poultry and bird farming, dairy units and fish/prawn culture. In LT tariff IV, the emphasis is on the phrase "carried out as allied activities of agriculture shall be construed as agricultural activities." However, in LT Tariff III-A(1), the emphasis is on the phrase "who have not been covered under LT Tariff IV."

Accordingly, it is clarified that the activities such as sericulture, floriculture, horticulture, mushroom cultivation, cattle farming, poultry and bird farming, dairy units and fish/prawn culture which are carried out as allied activities of agriculture in the LT Tariff IV service connections shall be construed as agricultural activities. The activities such as sericulture, floriculture, horticulture, mushroom cultivation, cattle farming, poultry and bird farming, dairy units and fish/prawn culture which are not covered under LT Tariff IV, shall be charged under LT Tariff III A(1)."

49. In regard to the plea taken on behalf of the Appellants to the effect that applicability of the Clarificatory Order in a retrospective or retroactive manner so as to apply for earlier tariffs, this Court relevantly points out that it is a fundamental rule of English Law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication, as per decision in **West V. Gwynne [1911] 2 Ch. 1**. This statement of law is quoted with approval and it enjoys almost judicial authority, as per decision in **Carson V. Carson and stoyek, [1964] 1 W.L.R. 511**.

<https://hcservices.5001ts.gov.in/hcservices/> be pointed out that before the presumption against retroactivity or retrospectivity is pressed into service, a Court of Law must be satisfied that the statute is in fact



retrospective. Further, if an enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as 'prospective' only. The well settled Principle in Law is that the retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without causing any volatile harm or violence to the words employed in an enactment.

51. In the instant cases on hand, a reading of the contents of the Clarificatory Order No.1-4 of 2012 dated 24.12.2012 [In regard to the Issue of clarification in the Tariff Order 1 of 2012 on Determination of Tariff for Generation and Distribution] especially with reference to para 10.20.1 under LT Tariff IV and para 10.17.7 under LT III A (1) of the said Tariff Order, show that in the aforestated Tariff schedules, the activities in issue are sericulture, floriculture, horticulture, mushroom cultivation, cattle farming, poultry and bird farming, dairy units and fish/prawn culture. In fact, in LT tariff IV, the emphasis is on the phrase, "carried out as allied activities of agriculture shall be construed as agricultural activities". But, in LT Tariff III-A (1), the emphasis is on the phrase "who have not been covered under LT Tariff IV. In short, this Court points out that the contents of Clarificatory Order No.1-4 of 2012 dated 24.12.2012 do not in any way unerringly points out that it is prospective in nature. Per contra, it points out that it is retrospective in nature. Suffice it for this Court to point out that the Clarificatory Order No.1-4 of 2012 dated 24.12.2012, in fact, comes to the aid of the Respondent/Writ Petitioner and not the Appellants/Board. Therefore, the Appellants/Board cannot levelled charges of 'Theft of Energy' or 'Different User' against the Respondent/Writ Petitioner, in regard to the impugned demand dated 25.10.2012.

52. Looking at from this angle and also in the light of the aforestated qualitative and quantitative discussions and also this Court, taking note of the entire facts and circumstances of the present case in a conspectus fashion, comes to a resultant conclusion that the order of the Learned Single Judge, in allowing the W.P.(MD)No.16295 of 2012, by quashing the impugned demand dated 25.10.2012 and further observing that whatever the amount paid by the Respondent/Writ Petitioner as per the impugned demand dated 25.10.2012 has to be either refunded by the Board or be retained to the credit of the Respondent/Petitioner and the same shall be adjusted towards any amount that may fall due in future for the other service connections that have been availed by the Respondent/Petitioner, do not suffer from any legal flaw. Consequently, W.A.(MD)No.891 of 2017 fails.

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53. In regard to W.A.(MD)No.892 of 2017, it comes to be known that the 2nd Appellant/Assistant Executive Engineer, Operation and



Maintenance, TANGEDCO, Thanjavur, by means of an order dated 19.01.2013, had rejected the request of the Respondent/Petitioner for new service connection as regards the Temple constructed inside the premises of the Polytechnic run by the Respondent/Petitioner. As a matter of fact, the rejection order came to be passed by the 2nd Appellant because of the fact that certain amounts remained unpaid by the Respondent/Petitioner in respect of two service connections viz., S.C.No.96/V and S.C.No.136 (Agriculture).

54. Inasmuch as this Court had dismissed the W.A.(MD)No.891 of 2017 and upheld the quashing of the impugned demand dated 25.10.2012, the reasons ascribed for rejection of new service connection to the Respondent/Petitioner do not survive and therefore, the impugned order dated 19.01.2013 of the 2nd Appellant was rightly quashed by the Learned Single Judge, which, in the considered opinion of this Court, does not require any interference sitting in Appellate Jurisdiction. Consequently, W.A.(MD)No.892 of 2017 fails.

55. As a logical corollary, the 2nd Appellant/Assistant Executive Engineer, Operation and Maintenance, TANGEDCO, Thanjavur is directed to provide new service connection to the temple constructed by the Respondent/Writ Petitioner within a period of three weeks from the date of receipt of copy of this Judgment.

56. In the result, both the Writ Appeals are dismissed, leaving the parties to bear their own costs. The Common Order passed by the Learned Single Judge, in W.P.(MD).No.16295 of 2012 and W.P.(MD).No.4831 of 2014 dated 22.03.2017, is affirmed by this Court of course, for the reasons assigned in these Appeals. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

+ 2 ccs TO Mr.C.Dhanaseelan , Advocate in SR No. 40485,40486
+ 1 cc TO Mr.S.M.S.Johnny Basha , Advocate in SR No. 40434

sgl

AE/MR/SAR4/22.01.2018/17P/4C

Judgment in
W.A. (MD) .Nos.891 and 892 of 2017
04.01.2018