



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.A. (MD) No.527 of 2011

and

M.P (MD) No.1 of 2011

and

W.P (MD) No.670 of 2011

U.Shanmugam

... Appellant/Petitioner

Vs.

The Tamil Nadu Electricity Generation and
Distribution Corporation Ltd.,
TANGEDCO,
represented by its
Executive Engineer (Distribution),
Thirumayam,
Pudukkottai District.

... Respondents/Respondents

PRAYER: Appeal filed under Clause 15 of the Letters Patent, against
the order passed in W.P(MD)No.670 of 2011, dated 07.04.2011.

Prayer in WP(MD). 670/ 2011 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court To issue a WRIT OF
CERTIORARI, calling for the records relating to the impugned order
bearing க.எண்.செ.வா/ப/திரு/கோ.கூட் 6/அ.எண்/013/2011, dated 10-01-2011
issued by the Respondent and quash the same.

For Appellant : Mr.T.Antony Arul Raj
For Respondents : Mrs.Rajeswari
for Mr.S.M.S.Johnny Basha

JUDGMENT

(Judgment of the Court was delivered by M.SATHYANARAYANAN,J.)

The writ petitioner is the appellant and he made a challenge to
the impugned order dated 10.01.2011 issued by the respondent and to
quash the same.

2. A Single Bench of this Court, vide order dated 07.04.2011,
has dismissed the writ petition and challenging the legality of the
same, the appellant/writ petitioner came forward to file this writ
appeal.

3. Facts leading to the filing of the writ petition have been
narrated in detail in the impugned order which is the subject matter

of challenge in this writ appeal and to avoid repetition, relevant facts alone are stated hereunder for the disposal of this writ appeal:

3.1. The appellant/writ petitioner claims to be a small farmer having in possession of 1 1/2 acres of land and the electricity is supplied free of cost for agricultural operations and he was using 3 HP motor pump-set. The appellant/writ petitioner after obtaining loan also dug a bore well during the year 2002 and for that purpose also, he mortgaged his land for obtaining the loan.

3.2. The inspection team of the respondent took erroneous view that the free agricultural service connection has been unauthorisedly extended to the said bore well and threatened to launch criminal prosecution and hence, the appellant/writ petitioner has compounded the same by pay a sum of Rs.36,870/- (Rupees Thirty Six Thousand Eight Hundred and Seventy only).

3.3. The appellant/writ petitioner would further state that to his shock and surprise, after more than three years from the date of alleged demand, he was called upon to pay a sum of Rs.1,17,411/- (Rupees One Lakh Seventeen Thousand Four Hundred and Eleven only) and it was put to challenge in W.P(MD)No.8137 of 2006 and it was entertained and interim orders were granted and the said writ petition was disposed of on 03.09.2010 by holding that principles of natural justice have not been adhered to and remanded the matter to the respondent for fresh consideration and adjudication.

3.4. The respondent, after remand, sent a notice dated 25.11.2010 for which, the appellant/writ petitioner submitted a detailed response on 04.12.2010 and once again, the impugned order came to be passed reiterating the earlier demand of Rs.1,17,411/- (Rupees One Lakh Seventeen Thousand Four Hundred and Eleven only) and making a challenge as to the legality of the said order of demand, the appellant/writ petitioner has filed the writ petition.

3.5. The writ petition was entertained and notice was ordered and the respondent has filed the counter affidavit and pointed out that as per Rule 8.01 of Clause 37 vide Permanent B.P.No.57, dated 24.05.2002, the unauthorised extension/shifting from an agricultural service connection to any premises other than that for which supply is given etc., are treated as theft instead of mere violation and accordingly, the demand was raised and it would further add that the appellant/writ petitioner has also compounded the offence and hence, it is not open to him to make a challenge to the said demand.

3.6. The learned Judge, taking note of the rival submissions and also the materials available on record, found that a fair and reasonable opportunity has been afforded to the appellant/writ petitioner in the enquiry and that the appellant/writ petitioner had also accepted the theft of energy and compounded the same by pay a sum of Rs.36,870/- (Rupees Thirty Six Thousand Eight Hundred and Seventy only) and further that, he abused the agricultural service connection and hence, he is not entitled to any indulgence and citing the said reason, has dismissed the writ petition. Hence, this



4. Mr.T.Antony Arul Raj, learned Counsel for the appellant/writ petitioner has drawn the attention of this Court to the materials placed and would submit that in terms of proviso to Section 126(4) of the Electricity Act, 2003 as well as Rule 19 of the Tamil Nadu Electricity Supply Code, the impugned demand is per se was unsustainable and the respondent has not properly appreciated the factual aspect and also misapplied the provisions of law and as such, the impugned demand is liable to be quashed.

5. Per contra, the learned Standing Counsel appearing for the respondent has invited the attention of this Court to the counter affidavit and would submit that the appellant/writ petitioner has unauthorisedly extended the free agricultural service connection to the new bore well and therefore, it could be treated as theft and the appellant/writ petitioner has also accepted and compounded the same and hence, the impugned order is perfectly legal and prays for the dismissal of this writ appeal.

6. This Court has considered the rival submissions and also perused the typed set of documents placed before it.

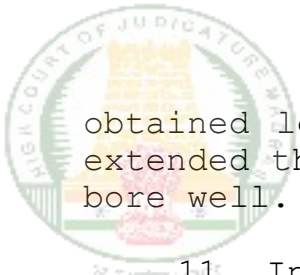
7. A perusal of the affidavit filed in support of the writ petition would disclose that the well for which the free electricity service connection was granted, has gone dry and the appellant/writ petitioner after mortgaging his land, obtained loan from ICICI Bank and deepened the well and he has availed the loan and dug up a new bore well and on trial basis as to the availability of water, the service connection given to the said well was also extended to the new bore well.

8. The respondent in paragraph 5 of the counter affidavit has invoked Rule 12(1) of the Tamil Nadu Electricity Supply Code to justify the impugned demand and it is relevant to extract hereunder Rule 12(1):

"12. Errors in billing.- (1) In the event of any clerical errors or mistakes in the amount levied, demanded or charged by the licensee, the licensee will have the right to demand an additional amount in case of undercharging and the consumer will have the right to get refund of the excess amount in the case of overcharging."

9. In the considered opinion of this Court, Rule 12(1) of the Tamil Nadu Electricity Supply Code was applicable only in respect of errors or mistakes in billing and this Court, on appraisal of the same, is of the considered view that the basis on which the impugned demand was raised, cannot be construed as an error in billing.

10. It is also the categorical stand of the appellant/writ petitioner that he is an agriculturist and has been provided with free electricity service connection for agricultural operations and since the well in which he used to draw water, has gone dry, he



obtained loan and dug a new bore well and on trial basis only, he extended the agricultural service connection given to him to the new bore well.

11. In the light of the factual aspect coupled with the error in application of the relevant provisions, this Court is of the considered view that the impugned order dismissing the writ petition as well as the original impugned demand raised by the respondent warrant interference.

12. In the result, this writ appeal is allowed and the impugned order dated 07.04.2011 passed in W.P(MD)No.670 of 2011 as well as the impugned order passed by the respondent in க.எண்.செ.வா/ப/திரு/கோ.கட.ரு/அ.எண்/013/2011, dated 10.01.2011 raising the demand of Rs.1,17,411/- (Rupees One Lakh Seventeen Thousand Four Hundred and Eleven only), are set aside. In the event, the appellant/writ petitioner has already paid the demand raised in the impugned order dated 10.01.2011, it shall be paid back to the appellant/writ petitioner within a period of four weeks from the date of receipt of a copy of this judgment. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

The Executive Engineer (Distribution),
The Tamil Nadu Electricity Generation and
Distribution Corporation Ltd.,
TANGEDCO,
Thirumayam,
Pudukkottai District.

+1cc to M/S.T.Irullappan, Advocate SR.No. 48958

+1cc to M/S.S.M.S.Johnny Basha, Advocate SR.No. 48688

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