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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P.No.16035 of 2009

1. Ferdouz Farroq
2. K.Farroq Ahmed

... Petitioners

Vs

1. The Superintending Engineer,
TNEB, CEDC/ South, 110, K.V.K.K.Nagar,
SS Complex, K.K.Nagar,
Chennai - 600 078.
2. The Executive Engineer,
TNEB, O & M Indira Nagar,
C.E.D.C/South, 110 KV Tidel Park,
SS Complex, Taramani Road,
Chennai 600 113.
3. The Assistant Executive Enginner,
TNEB, O& M Indira Nagar,
C.E.D.C./South, 110 KV Tidel Park,
SS Complex, Taramani Road,
Chennai 600 113.

... Respondents

PRAYER :

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the entire records pertaining to order dated 20.07.2009 with reference No.SE/CEDS/S/AEE/GI/SDM/F TOE/D 1630/2009 passed by the first respondent and quash the same.

For Petitioners : Mr.C.Ajith Kumar

For Respondents : Mr.S.K.Rameshwar

O R D E R

The relief sought for in the present writ petition is to quash the order of the first respondent in reference No.



SE/CEDS/S/AEE/GI/SDM/F TOE/D 1630/2009, dated 20.07.2009.

2. The case of the petitioner is that on 24.05.2009, the third respondent along with other officials from the Tamil Nadu Electricity Board came to his house situated at the above address and inspected the electricity service connection and found that there was a theft of electricity. Accordingly, a criminal case was registered against the petitioner by imposing penalty. Further, in order to supply electricity, the impugned demand notice was passed.

3. The learned counsel for the petitioner would submit that the calculation adopted by the second respondent is incorrect as per Code 19 of the Tamil Nadu Electricity Regulatory Commission. According to Regulation 19 of TNERC, if the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, it shall be presumed that such unauthorized use of electricity was continuing for a period of three months immediately preceding the date of inspection in case of domestic and agricultural services and for a period of six months immediately preceding the date of inspection for all other categories of services, unless the onus is rebutted by the person, occupier or possessor of such premises or place. Moreover, as per Code 19 of TNERC, the assessment should have been made at a rate equal to one and half times the tariff applicable for the relevant category of services and not two times as done by the respondents.

4. At this juncture, the learned counsel would submit that while passing of the impugned order, the first respondent had given a reasoning that the second and third respondents have erroneously mentioned Electricity Act, 2003 instead of Section 23 (1) of TNERC Supply Code which come under Section 135 (1) of Electricity Act, 2003 as communicated in Board B.P.No.Per B.P. (FB) No.147 (Technical Branch) dated 04.07.2005.

5. The learned counsel for the petitioner would further submit that the said impugned order was passed without considering the fact that only the the Tamil Nadu Electricity Supply Code published in Gazette on September 1, 2004 vide Notification No.TNERC/SC/7/a dated 21.07.2004 and the Electricity Act, 2003 were in force on 24.05.2007 i.e the date of alleged detection of theft. Hence, it is made clear that the respondents have applied a formula, which is not applicable to their case for arriving at the Assessed amount. Hence the learned counsel praying to allow this writ petition.

6. The learned counsel for the respondents would submit that if the matter is remanded back to the authorities concerned, fresh order will be issued in accordance with law.



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7. In view of the same, I am inclined to remit the matter back to the authorities concerned for fresh consideration and pass appropriate orders after affording opportunity to the petitioner within a period of six weeks from the date of receipt of a copy of this order.

With the above direction, this writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vum

To

1. The Superintending Engineer,
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C.E.D.C./South, 110 KV Tidel Park,
SS Complex, Taramani Road,
Chennai 600 113.

+1cc to Mr.C.Ajith Kumar, Advocate, S.R.No.56382
+1cc to Mr.S.K.Rameshwar, Advocate, S.R.No.55935
+1cc to Government Pleader, in sr.no.56554

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VSNI I(CO)
CS/06/09/2019