

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE T. RAJA

Writ Petition No.25363 of 2011 and
M.P.No.2 of 2011

A.Kailasam

... Petitioner

Vs

1. The Superintending Engineer,
Erode Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Erode.
2. The Executive Engineer (Operation),
Tamil Nadu Electricity Board,
Sub-Station, Engur, Erode District.
3. The Assistant Executive Engineer,
Operation and Maintenance,
Erode Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Elumathur-638 104,
Erode District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records pertaining to the order dated 26.07.2011 made in Lr.EE/maintenance/Engur/Limit/file.Sep/No.160/11 on the file of the 2nd respondent confirming the order dated 08.11.2010 made in Lr.No.AEE/D/ELR/CI/F.DKT/D.No.338/2010 passed by the 3rd respondent, quash the same.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.S.K.Raameshuwar,
Standing Counsel

ORDER

Questioning the correctness of the impugned order dated 26.07.2011 wherein the Executive Engineer (Operation), the 2nd respondent herein has confirmed the order passed by the Assistant Executive Engineer, Operation and Maintenance, the 3rd respondent herein, dated 08.11.2010, directing the petitioner to pay a sum of Rs.23,823/- giving a clear and categorical

reasons that the petitioner having obtained the Electricity Service Connection No.423, Tariff IV for the purpose of agriculture during the year 1985, he has used the said service connection unauthorisedly for other purpose by installing a motor of 3HP and the said violation was also noticed by the Inspecting Team on 28.10.2010 and a Mahazar was also issued to the petitioner's wife who was present at the time of inspection. Challenging the same, the present Writ Petition has been filed.

2. Learned Counsel appearing for the petitioner would submit that when the petitioner's land is being irrigated by the ground level well water with the help of a Service Connection in S.C.No.432, the said service connection has been used exclusively for the agricultural purpose so as to cultivate guinea grass. Besides this, he is also having a separate Electricity Service Connection in S.C.No.200 for domestic purpose. While so, when the petitioner was on duty on 28.10.2010 at about 1.00 p.m. as a Tradesman in the Tamil Nadu State Transport Corporation, the 3rd respondent alleged to have prepared anti dated notice of inspection and observation Mahazar and instructed the petitioner's wife to inform her husband that he should appear before him on 29.10.2010. Accordingly, when the petitioner appeared before the 3rd respondent on 29.10.2010 and collected the notice of inspection, Observation Mahazar which was prepared as if the petitioner was present at the time of inspection, when the petitioner was in office.

3. The learned Counsel for the petitioner would further submit that the 3rd respondent has provisionally quantified the loss as 2.238 K.W. under Section 126 of the Indian Electricity Act, 2003. Subsequently, the 3rd respondent has also issued a Provisional Assessment dated 30.10.2010 in Annexure I under Section 126(1) of the Act, calling upon the petitioner to submit his explanation within 7 days. Accordingly, the petitioner has also submitted his explanation on 01.11.2010 inter alia disputing the manner of inspection, mode of preparation and service of inspection notice as well as the Observation Mahazar and mistake in fixing the amount under the Provisional Assessment. When the petitioner sought for an opportunity of hearing, without adhering to the same, the 3rd respondent has passed a final order of Assessment dated 08.11.2010 by simply reproducing the contents of the Notice dated 30.10.2010. As against that, the petitioner has prepared an appeal before the Appellate Authority, who also dismissed the claim of the petitioner. Therefore, according to the petitioner, the impugned order is liable to go.

4. The learned Counsel for the petitioner would also submit that the 2nd respondent cannot simply reject the appeal by passing a cryptic order without seeing the merits and demerits of the order passed by the 3rd respondent respondent.

5. Heard the learned Standing Counsel appearing for the respondents.

6. This Court is unable to find any merit in the submissions of the learned Counsel for the petitioner because a careful reading of the impugned order of the 2nd respondent Appellate Authority cannot be complained as a cryptic order for the reason that it clearly shows that the petitioner on the date of inspection which took place on 28.10.2010 has used the agricultural electricity service connection No.42 given under Tariff IV for pumping water to his over head tank placed on the top of his house. Therefore, the 2nd respondent confirmed the order passed by the 3rd respondent. Secondly, it appears that the petitioner has already paid 50% of the demand amount, as per the direction issued by this Court while granting interim stay in M.P.No.2/2011 in the writ petition on 03.11.2011. Therefore, since the impugned order passed by the 2nd respondent Appellate Authority clearly shows that the petitioner on the date of inspection which took place on 28.10.2010 has utilized the free agricultural Electricity Service Connection No.423 for other purpose, he is liable to pay the Final Assessment of Rs.23,823/- under Section 126 of the Indian Electricity Act. Hence, this Court finds no merit in the writ petition.

7. In the result, the Writ Petition fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

To

1. The Superintending Engineer,
Erode Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Erode.

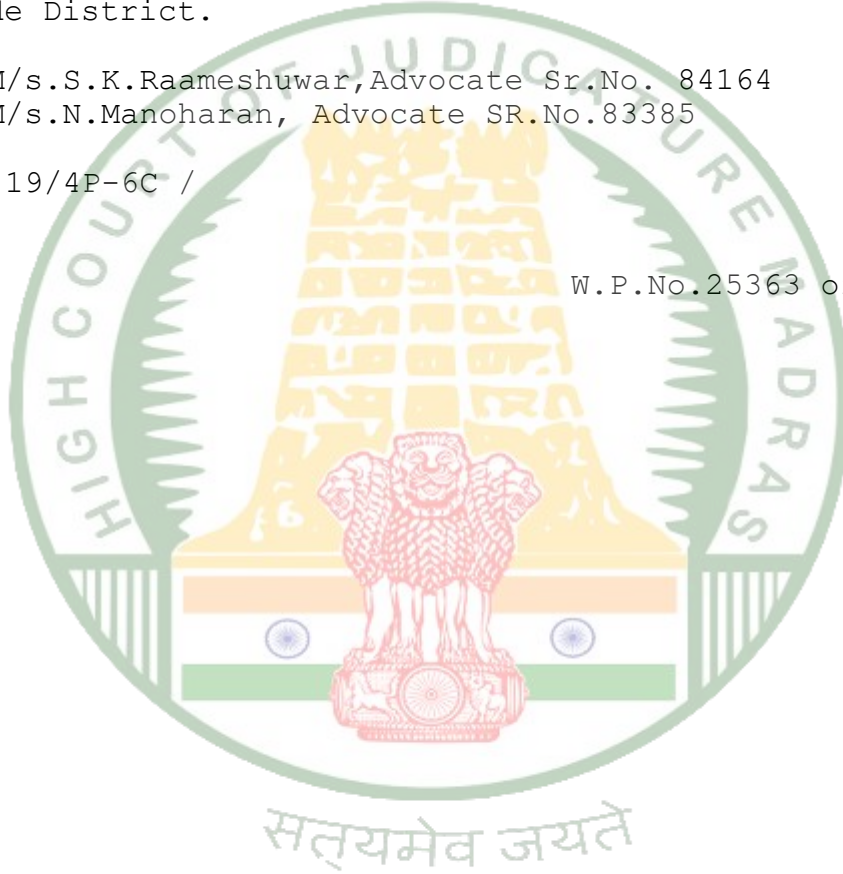
2.The Executive Engineer (Operation),
Tamil Nadu Electricity Board,
Sub-Station, Engur,
Erode District.

3. The Assistant Executive Engineer,
Operation and Maintenance,
Erode Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Elumathur-638 104,
Erode District.

+1 cc to M/s.S.K.Raameshuwar, Advocate Sr.No. 84164
+1 cc to M/s.N.Manoharan, Advocate SR.No.83385

AKM/08.11.19/4P-6C /

W.P.No.25363 of 2011



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