

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE T. RAJA

Writ Petition Nos.24848 and 25072 of 2012
and
M.P.Nos.2 and 2 of 2012

V.K.Devaraj ... Petitioner in W.P.No.24848/2012
K.Kuppusamy ... Petitioner in W.P.No.25072/2012

Vs

1. The Superintending Engineer,
Tamil Nadu Electricity Board,
Tiruvannamalai.
2. Assistant Executive Engineer (O&M) /
Enquiry Officer, TANGEDCO,
O&M/Town/Cheyar,
Cheyar-604 407.
3. The Junior Engineer,
O&M/R/North/Thiruvathipuram,
Cheyar-604 407. ... Respondents in both W.Ps.

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in passing the impugned orders of Final Assessment dated 04.09.2012 served on 05.09.2012 vide Letter No.AEE/O&M/TOWN/CYR/F.Theft/D.No.232 and Letter No.AEE/O&M/TOWN/CYR/F.Theft/D.No.231 respectively and quash the same on the ground of they being in violation of Rule 19AA (2), 19AA(3), 23AA(7), 23AA(13) and 23AA(14) of the Tamil Nadu Electricity Supply Code, 2004, Section 135 of the Electricity Act, 2003, arbitrary and capricious exercise of power, violative of Article 21 of the Constitution and to consequently, direct the 2nd respondent to refund Rs.16,000/- obtained by coercion and intimidation in the garb of compounding of the offence, when no theft has been committed and established as per Tamil Nadu Electricity Supply Code Rule 23AA(2) (a) and award costs.

For Petitioner : Mr.S.P.Srinivasan
in both W.Ps.
For Respondents : Mr.M.Varunkumar,
in both W.Ps. Standing Counsel

C O M M O N O R D E R

The present Writ Petitions have been filed challenging the impugned orders of Final Assessment dated 04.09.2012 served on 05.09.2012 vide Letter No.AEE/O&M/TOWN/CYR/F.Theft/D.No.232 and Letter No.AEE/O&M/TOWN/CYR/F.Theft/D.No.231 respectively and quash the same on the ground that they were issued in violation of Regulation 19AA (2), 19AA(3), 23AA(7), 23AA(13) and 23AA(14) of the Tamil Nadu Electricity Supply Code, 2004, Section 135 of the Electricity Act, 2003 and Article 21 of the Constitution of India and for consequential direction, directing the 2nd respondent to refund Rs.16,000/- obtained by coercion and intimidation in the garb of compounding of the offence, when no theft has been committed and established as per Tamil Nadu Electricity Supply Code Regulation 23AA(2)(a).

2. Learned Counsel appearing for the petitioners submitted that Regulation 23AA(13), 23AA(14) and 23AA(15) of the Tamil Nadu Electricity Supply Code, 2004 clearly specify the conditions to be followed by the Assessing Officer while passing an order which has not been complied with before issuing the orders impugned herein. The learned Counsel further submitted that Regulation 23AA(13) says that before the personal hearing, the authorized officer before whom personal hearing shall be conducted, shall analyze the case after carefully considering all the documents, submissions by the accused person, facts on record and the consumption pattern whatever available. Likewise, Regulation 23AA(14) indicates that the authorized officer shall also compute the quantum of energy consumption for the past twelve months and the Assessment Officer may study the energy consumption pattern of the Service Connection concerned for the past one year or more. If necessary, it may also be compared with the load/production pattern or output of the service connection and in case of suspected theft, if consumption pattern is commensurate with the assessed consumption or in case of the decision that the case of suspected theft is not established, no further proceedings shall be taken and the decision shall be communicated to the accused person under proper receipt within three working days and the supply to the premises shall be restored forthwith.

3. The learned Counsel appearing for the petitioners further submitted that the case of the petitioners does not fall under Regulation 23AA(15) which specifically indicates that within seven days from the date of enquiry, a final assessment order in Form 10 in Appendix to the Code shall be issued by the authorized Officer and if the accused person does not respond to the personal hearing, the authorized officer shall issue a final assessment order within fifteen days from the issuance of provisional assessment order and this speaking order shall

contain a brief of inspection report, submissions made by accused person in his written reply as well as during his personal hearing and reasons for acceptance or rejection of the same and the assessment charges as per sub-regulation (12). Therefore, the impugned order is liable to go.

4. A detailed counter affidavit has been filed by the respondents in both the cases.

5. Learned Standing Counsel appearing for the respondents submitted that it is unacceptable on the part of the petitioners that there was no inspection on the particular day. A Special Squad has been established to find out the theft or misuse of electricity and on inspection to the petitioners premises, it has identified the misuse of the electricity power to brick manufacturing process of the petitioners and their representatives have also accepted the facts and paid the compounding charges viz. Rs.16,000/-. Therefore, when the Special Squad inspected the petitioners service connections, they found that the electrical power was utilised for commercial purpose. Hence, since the petitioners were found misusing the electric power for commercial purpose instead of agricultural purpose, namely, for brick manufacturing purpose, the final assessment orders have been passed. Therefore, there is no error or infirmity in the impugned orders.

6. Heard the learned Counsel on either side and I have also perused the materials available on record carefully.

7. A perusal of the representations of the petitioners dated 16.08.2012 to the 2nd respondent denying the allegation of theft of energy reveals that there was a power cut on the date of inspection i.e. on 07.08.2012 and the same has been substantiated by an announcement of the TNEB in Dhina Malar Daily stating that there would be a power cut to Cheyyar Taluk from 09.00 a.m. to 06.00 p.m. on 07.08.2012 wherein the petitioners brick kilns are situated. This fact has not been dealt with by the respondents in the impugned orders. Secondly, when Regulation 23AA(15) provides that speaking order shall contain a brief of inspection report, submissions made by accused person in his written reply as well as during his personal hearing and reasons for acceptance or rejection of the same and the assessment charges as per sub-regulation (12), nothing has been mentioned in the impugned orders. Therefore, the impugned orders were passed without application of mind. Hence, they are liable to be set aside.

8. Accordingly, the impugned orders of final assessment dated 04.09.2012 in both the writ petitions are set aside and both the matters are remanded to the respondents to reconsider the case of the petitioners on merits and also in the light of

the Regulation 23AA(13) and 23AA(15) of the Tamil Nadu Electricity Supply Code, 2004 along with the reply given by them within four weeks from the date of receipt of a copy of this Order. It is needless to mention that the deposit of 50% of the final assessment amount by the petitioners shall be either refunded or adjusted subject to the result of the final assessment orders passed by the respondents.

9. With the above observation and direction, the Writ Petitions stand allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Superintending Engineer,
Tamil Nadu Electricity Board,
Tiruvannamalai.
2. Assistant Executive Engineer (O&M) /
Enquiry Officer, TANGEDCO,
O&M/Town/Cheyar,
Cheyyar-604 407.
3. The Junior Engineer,
O&M/R/North/Thiruvathipuram,
Cheyyar-604 407.

+2cc to Mr. M.Varunkumar, Advocate, S.R.No. 80987 & 80986
+2cc to Mr. S.P.Srinivasan, Advocate, S.R.No. 80602, 80601

VBA (CO)
GN(08/11/2019)

W.P.Nos.24848 & 25072/2012

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