

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. Nos.23837 and 23838 of 2013 and
M.P.No.2 of 2013 in W.P.No.23838/2013

A.Subramania Mudaliyar

.. Petitioner in both W.Ps.

-VS-

1.The Chairman,
TANGEDCO,
10th Floor,
Tamil Nadu Electricity Board Building,
144, Anna Salai, Chennai-600 002.

2.The Assistant Executive Engineer,
TANGEDCO,
Tharamangalam, Omalur Taluk,
Salem District.

.. Respondents in both W.Ps.

Prayer:Petition in W.P.No.23837/2013 filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the 2nd respondent's Proceedings in Letter No. Voo.ml.po/E.para/Tho.patti/Va.Aa/Ko.Tha.mi.enaippu/Aa.No.039/2013-14 dated 7.5.2013 and consequential proceedings of the 2nd respondent in Lr.No.Voo.ml.po/E.para/Tho.patti/Va.Aa/Ko.Tharkaliga Min enaippu/Aa No.155/2013 dated 29.7.2013 and quash the same and thereby directing the respondents to adjust the amount of Rs.39,055/- towards future consumption electricity service consumption charges.

Prayer: Petition in W.P.No.23838/2013 filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the 2nd respondent's Proceedings in Lr.No.AEE/O&M/TRM/C1-1/F.Theft/D.234/2012 dated 20.6.2012 and quash the same and thereby directing the respondents to refund the amount of Rs.74,825/- remitted by the petitioner.

For Petitioner in both W.Ps. : Ms.R.Gouri

For Respondents in both W.Ps. : Mr.S.K.Raameshuwar,
Standing Counsel

COMMON ORDER

Challenging the impugned order of the 2nd respondent dated 7.5.2013 and the consequential proceedings issued by the 2nd respondent dated 29.7.2013 and to quash the same with a further direction, directing the respondents to adjust the amount of Rs.39,055/- towards future consumption electricity service consumption charges, the W.P.No.23837/2013 has been filed.

2. Likewise, W.P.No.23838/2013 has been filed by the same petitioner challenging the order dated 20.6.2012 of the 2nd respondent and to quash the same with a consequential direction, directing the respondents to refund the amount of Rs.74,825/- remitted by the petitioner.

3. Learned Counsel appearing for the petitioner contended in W.P.No.23837/2013 that the petitioner started M/s.Sivakamiammal Subramaniam Nursery and Primary School at Tholasampatti Village in the year 1999 and for the purpose of commencing construction activities of the school building, applied for electricity service connection during the year 2008. While so, the respondent Electricity Board, after field verification on 18.12.2008, granted electricity service connection for construction of school building and the petitioner was prompt in remitting the electricity consumption charges as per the meter reading regularly. It is also accepted by the respondent Electricity Board without any protest and demur. However, after a lapse of 4 years, on 05.06.2012 at 2.30 p.m., the respondent department undertook a surprise visit to the petitioner's school premises and they said to have found that the petitioner school was unauthorisedly using the power for construction of building from commercial connection. Therefore, a Provisional Assessment Order dated 20.6.2012 thereby imposing a penalty of Rs.75,825/- invoking Section 135 (1) of the Electricity Act for theft of energy was issued. Only in order to conduct the classes smoothly and taking into account the welfare of the children's interest, the petitioner paid the alleged penalty on the spot under protest. Thereafter, the petitioner submitted a detailed representation dated 22.6.2012 to the Executive Engineer, Tamil Nadu Electricity Board, Omalur, Salem District stating that the construction of Block 3 completed on 6.1.2009 and no construction work was carried out during the period from 6.1.2009 to 6.1.2012. Further on 7.1.2012 onwards, construction work was started and is being completed in a phased manner. Moreover in the application form itself, it was specifically mentioned about the construction of building in Door No.6/490. Therefore, the respondent Department also provided the Electricity Service Connection only to the construction activities in the petitioner's premises. Therefore, it is not open to say that the petitioner after getting electricity service connection for commercial purpose

under Tariff V, they have used the electricity service connection for construction purpose which is falling under temporary Tariff, namely, Tariff VI.

4. It is at this stage, the learned Standing Counsel for the respondents objecting the said statement referring to page 10 of the typed set of papers filed by the petitioner demonstrated that the petitioner clearly admitted in the letter addressed to the Executive Engineer, TANGEDCO, Omalur, Salem District that the construction work was carried out between 07.01.2012 and 06.07.2012. Therefore, the statement made by the learned Counsel for the petitioner that no construction work was carried out during 06.01.2009 to 06.01.2012 is self-contradictory. Moreover, when the petitioner themselves have admitted the fact that there was a construction activity going on inside the petitioner's premises between 07.01.2012 and 06.07.2012 and for the reason that they have not obtained temporary electricity service connection for meeting out the construction activities it goes without saying that the petitioner after obtaining electricity service connection for commercial purpose which falls under Tariff V, they have used it wrongly without prior permission from the respondent department for construction activities which falls under Tariff V itself.

5. The petitioner also filed another W.P.No.23838/2013 challenging the order dated 20.6.2012 of the 2nd respondent on the ground that the impugned proceedings dated 07.05.2013 and 29.07.2013 passed by the 2nd respondent are against the principles of natural justice for the reason that the impugned orders have been passed without even considering the petitioner's representation dated 15.3.2013 followed by another representation dated 12.06.2013.

6. It is the claim of the petitioner that at no point of time the petitioner has utilised excess load consuming beyond 0.906 KWs. The issue raised in this Writ Petition is when the petitioner was sanctioned the load of 1 HP Motor and 160 watts lighting load, fixing the electric meter with temporary supply to record the consumption of energy and the extent of the load used, subsequently, a regular inspection was conducted on 06.05.2013 on the temporary service connection by the respondents. On scrutiny of the recordings of the meter, it was found that the load utilized was 2.47 KW instead of the permitted and sanctioned load of 0.906 K.W. Thus the petitioner has utilized the excess load over and above the permitted limit. The fact of excess utilization was recorded in the electronic meter and thereafter, the excess demand/load charges have been paid at the minimum charge of Rs.100 per kilowatt of excess load for the back period of six months and notice was issued by letter dated 07.05.2013. Since the load permitted and sanctioned to the petitioner is 0.906 KW whereas the load

utilized as meter readings is 2.47 KW. Thus the excess load of 1.564 KW has been utilized by the petitioner. As per Clause 5(2) (iii), the excess demand charges have been arrived as hereunder:

1,564 K.W. Or 2 KW x Minimum charge of Rs.100 x 180 days (6 months) for Rs.36,000/-.

Aggrieved by the same, the petitioner has given a representation dated 18.06.2013 stating that they have not exceeded the utilization of electricity consumption beyond 0.906 K.W.

7. On 05.06.2012, at about 14.30 hours, the petitioner's service connection No.136-001-2686 was inspected by the second respondent along with the Anti Power Theft Squad. The said inspection was conducted in the presence of the authorised person, after giving notice. During the inspection, it was found that the supply was being drawn and utilized for building construction, therefore, it goes to show that the electricity supplied to the above service connection being Tariff 'V' that has been utilised for building construction activities, which has been classified as Tariff 'VI' for temporary supply. Therefore, he has been called upon to file his objection to the provisional assessment notice and also for personal enquiry and thereafter, the petitioner has filed his objection by letter dated 14.07.2012 and not attended the enquiry. Therefore, the appellate authority having examined the objections and explanations offered, confirmed the misuse of the petitioner and issued final orders by letter No.AEE/O&M/TRM/CH/F.Theft/D.234-1/2012 dated 09.07.2012. Immediately, thereafter to avoid criminal proceedings, the petitioner had also paid Rs.75825/- towards compounding fees and extra levy fees on 05.06.2012. Therefore, this Court finds no merit in the writ petition.

8. The meter reading clearly shows that the petitioner's consumption was 2.47 KWs. As per clause 5(2)(iii) of the Tamil Nadu Electricity Supply Code, the respondent Electricity Board has calculated a sum of Rs.36,000/- at the minimum charge of Rs.100/- and this has been paid also. In view of the breach of the sanctioned loan, the respondent has also disconnected the electricity service connection on 20.06.2012 and it appears that the petitioner also admitted the alleged offence committed by them on the date of inspection on 05.06.2012 and paid a sum of Rs.75,825/- imposed towards penalty. It also appears that in the previous Writ Petition, the petitioner has not questioned the correctness of the final order and challenged only the provisional order and the consequential order. In view of all the above, this Court is unable to find any merit in these Writ Petitions.

9.In the result, both the writ petitions stand dismissed.
No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

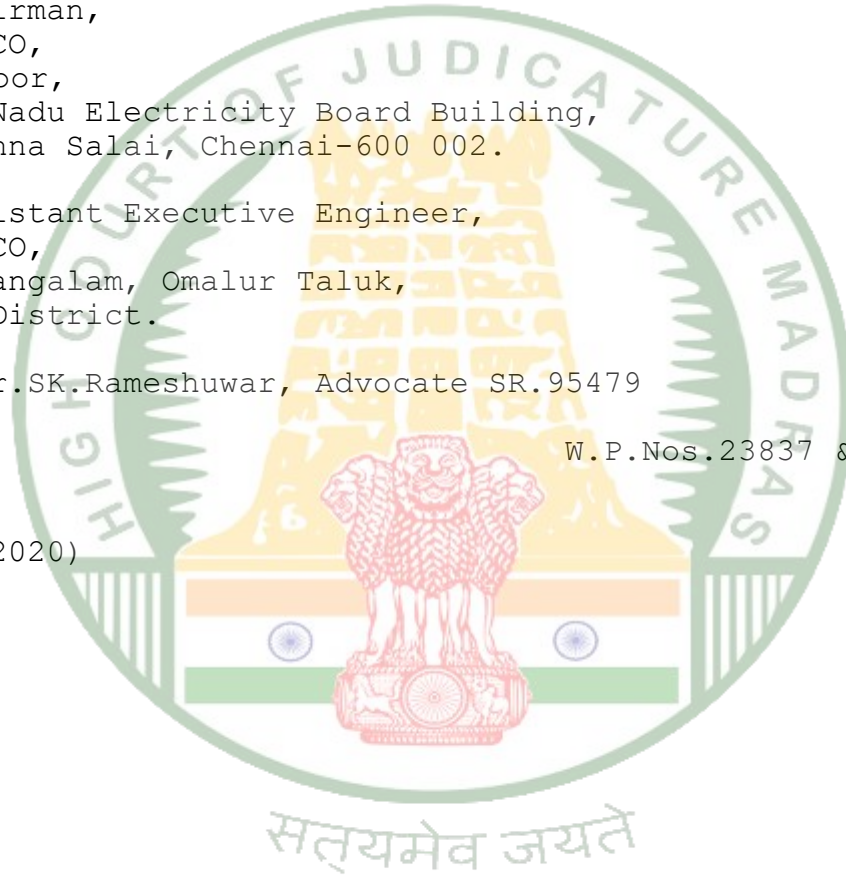
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2.The Assistant Executive Engineer,
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+1cc to Mr.SK.Rameshuwar, Advocate SR.95479

W.P.Nos.23837 & 23838/2013

LN(CO)
CB(30/01/2020)



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