

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2019

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P. No.30088 of 2012

and

M.P. No.1 of 2012

V.Anantharaman

... Petitioner

Vs.

1.The Superintending Engineer,
Tamil Nadu Electricity Generation
and Distribution Corporation Ltd.,
Villupuram.

2.The Assistant Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Generation
and Distribution Corporation Ltd.,
Villupuram.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of declaration, declaring that the proceedings dated 20.10.2012 of the 2nd respondent purportedly initiated for the alleged theft of energy and consequent forcible collection of Rs.20,000/- (Rupees twenty thousand only) as compounding fee and Rs.71,106/- (Rupees Seventy one thousand one hundred and six only) as extra levy from the petitioner for the premises at Door No.33, Thiagarajar Street, Villupuram, as illegal and void ab initio and thereby direct the 1st respondent to repay the sum of Rs.20,000/- and Rs.71,106/- with interest to the petitioner.

For Petitioner : Mr.N.Suresh

For Respondents : Mr.Varunkumar

O R D E R

The writ petition has been filed for issuance of a writ of declaration, declaring the proceedings of the 2nd respondent dated 20.10.2012, initiated for the alleged theft of energy, and the consequent forcible collection of Rs.20,000/- (Rupees twenty thousand only) as compounding fee and Rs.71,106/- (Rupees Seventy one thousand one hundred and six only) as extra levy from the petitioner for the premises at Door No.33, Thiagarajar Street, Villupuram, as illegal and

void ab initio and thereby, directing the 1st respondent to repay the sum of Rs.20,000/- and Rs.71,106/- with interest to the petitioner.

2.The case of the petitioner is that the petitioner is a Chartered Accountant. He is practising in the profession in the premises at Old No.14, New No.33, Thiyagarajar Street, Villupuram. He is having an electricity connection in S.C.No.401-010-117 at Villupuram and is regularly paying the electricity charges without any default. In the year 1998, the 2nd respondent herein issued a memo dated 03.03.1998, stating that there is violation of electricity rules, as the electricity provided for domestic purpose is allegedly being used for "Commercial purpose". Challenging the said memo, the petitioner filed a suit in O.S.No.266 of 1998 on the file of District Munsif's Court, Villupuram and the same is still pending. While so, on 20.10.2012, when the petitioner was not available in the aforesaid premises, the 2nd respondent entered the premises along with their staff and threatened the petitioner's staff that, since, electricity is allegedly used for commercial purpose, the petitioner will be booked under "theft of energy" and the electricity connection will also be disconnected from his premises and issued a working sheet purportedly "Energy Theft Cases" to the staff of the petitioner and an amount of Rs.71,106/- was sought to be paid as compensation charges and an amount of Rs.20,000/- was asked to be paid as compounding fee. In view of compulsion and fearing disconnection, the petitioner's staff paid the aforesaid amounts to the respondents. Aggrieved over the same, the petitioner has come forward to file this writ petition.

3.Learned counsel for the petitioner contended that the petitioner is doing the profession of Chartered Accountant that cannot amount to business or a commercial purpose and as such, the tariff should be levied only under the domestic purpose. When a suit is pending before the competent civil Court challenging the levy of current consumption charges on commercial basis in respect of the petitioner's premises, as a Chartered Accountant, the respondents are not entitled to proceed with coercing payment from the petitioner as if there was theft of energy, purportedly under Section 135 of the Electricity Act, 2003, which is illegal.

4.Per contra, learned counsel appearing for the respondents refuted the contentions and submitted that there is no residence at all in the petitioner's premises and the whole of the premises, admeasuring an extent of 1242 sq.ft. was fully utilized only for official purpose, whereas, consulting room of size 200 sq.ft. of any professional attached to the residence of such professional is alone applicable as per Section 10.10.1(6) of TNREC tariff order 1/2012 dated 30.03.2012. Therefore, for the misuse of electricity, the petitioner was demanded to pay aforesaid

amounts, which is not in violation of the Electricity Act, 2003.

5. Heard the learned counsel on either side.

6. In the present case, the petitioner is a Chartered Accountant. The Electricity Board has made an allegation that the petitioner was using more than 200 sq.ft. of area as his office, attached to his residence and hence, they have claimed a compounding fee of Rs.20,000/- and compensation charges of Rs.71,106/- from the petitioner, challenging which, the present writ petition has been filed. However, in the present case, the officials of the Electricity Board, without obtaining a third party inspection report, have unilaterally arrived at a conclusion that the petitioner is utilising the entire premises as his office, for which, they have imposed the demand at commercial rates.

7. Considering the facts and circumstance of the case, this Court deems it fit that a third party inspection is necessary in respect of the petitioner's premises to verify as to whether an area of 200 sq.ft. or more than that is being utilized as office. Without conducting such a third party inspection, unilaterally demanding an onerous amount from the petitioner is unsustainable.

8. Accordingly, I am inclined to set aside the demand notice dated 20.10.2012, issued by the 2nd respondent to the extent as indicated above and to remand the matter back to the authorities concerned for fresh consideration and to make appropriate arrangements for a third party inspection and to pass orders, within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that, in the presence of petitioner or his Advocate, the inspection has to be conducted. If the inspection reveals that the petitioner is utilising an area of more than 200 sq.ft. as his office, it is open to the respondents to collect the appropriate amount as commercial tariff, in accordance with law. If the petitioner is running his office within an area of 200 sq.ft., the excess amount collected from the petitioner may be adjusted in the future electricity bills in respect of the petitioner's premises.

9. With the above direction, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

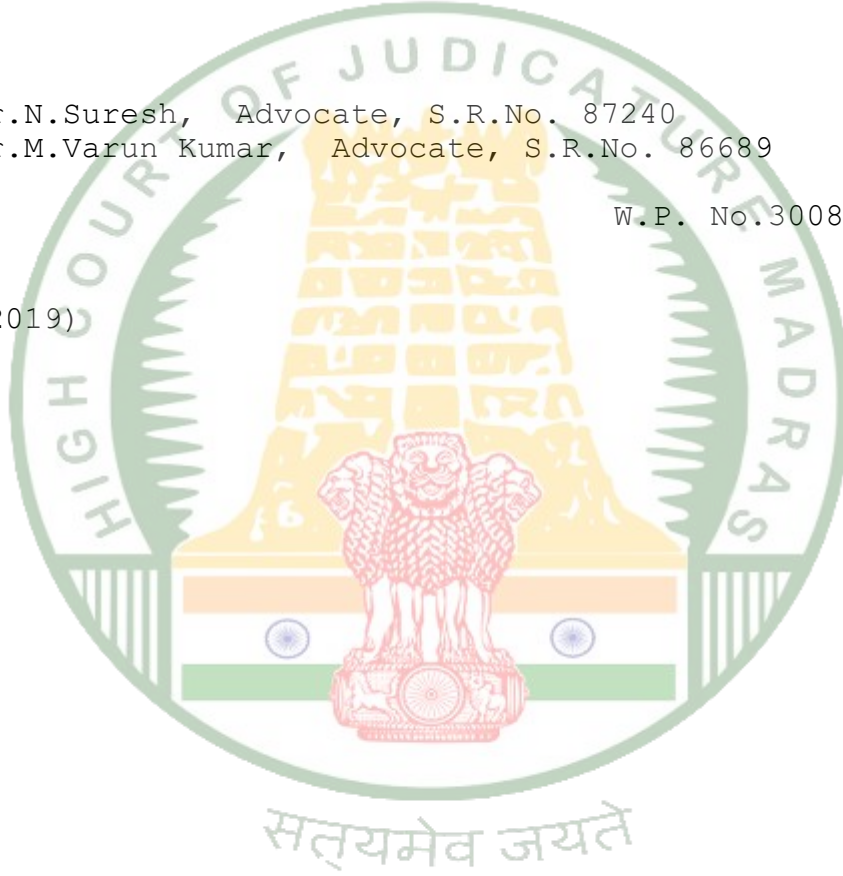
To

- 1.The Superintending Engineer,
Tamil Nadu Electricity Generation
and Distribution Corporation Ltd.,
Villupuram.
- 2.The Assistant Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Generation
and Distribution Corporation Ltd.,
Villupuram.

+1cc to Mr.N.Suresh, Advocate, S.R.No. 87240
+1cc to Mr.M.Varun Kumar, Advocate, S.R.No. 86689

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KK (CO)
GN(02/12/2019)



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