

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.6043, 6045 & 6046 of 2019

K.Lakshmikant .. Petitioner in all the writ petitions

-vs-

1. Assistant Executive Engineer
(Operation and Maintenance)
Tamil Nadu Generation and
Distribution Corporation Limited
(TANGEDCO)
Ambattur Industrial Estate West
Chennai Division
Chennai 600 058
2. Tamil Nadu Generation and Distribution
Corporation Ltd.,
No.144, Anna Salai
Chennai 600 002
represented by its Chairman
.. Respondents in all the writ petitions

W.P.No.6043 of 2019 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, forbearing the respondents from insisting payment of any charges, pursuant to provisional assessment order dated 27.02.2019 in Ref.U.S.Po/I&E/Ambattur Industrial Estate, issued in respect of M/s Murugan Idly Shop in Service Connection No.429.001.827/III B & Connection No.429.001.828/III B.

W.P.No.6045 of 2019 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents to restore supply Service Connection No.429.001.828/III B, Ambattur Industrial Estate in the name of M/s Murugan Idly Shop.

W.P.No.6046 of 2019 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondents to restore supply Service

Connection No.429.001.827/III B, Ambattur Industrial Estate in the name of M/s Murugan Idly Shop.

For Petitioner:: Mr.Niranjan Rajagopalan

For Respondents:: Mr.P.R.Dhilipkumar
Standing Counsel

ORDER

With the consent of the learned counsel for the parties, the writ petitions are taken up for final disposal.

2. Learned counsel for the petitioner submitted that the petitioner, being in the business of running the Murugan Idly Shop, a chain of restaurants for the past four decades, after registering the restaurant as MSME with the Department of Industries and Commerce with Entrepreneur Memorandum No.3300112-04439-E, had applied for electricity service connection with the respondents in the year 2014 for the premises at Ambattur Industrial Estate and they have been allotted industrial service connection in the name of M/s Murugan Idly Shop with service nos.429.001.827/III B and 429.001.828/III B and have been paying the electricity consumption charges computed by the respondents regularly. While so, a team from the respondent-Department headed by the first respondent officer inspected the premises at Ambattur Industrial Estate and alleged that they have been doing commercial activity with the industrial service connection and thereupon the petitioner has been served with a provisional assessment order under Regulation 23(AA)(8) of the Tamil Nadu Electricity Supply Code, 2004 for the unauthorised usage of industrial connection for non-industrial purpose amounting to theft, and accordingly, they have levied charges and penalty of Rs.38,92,489/- and Rs.6,21,892/- with a further threat of immediate disconnection and this apart, they have also obtained the signature of the Manager, Mr.Krishnan for payment of the compounding charges of Rs.4,04,000/- under Regulation 24 of the Supply Code before 3.00 PM on 28.2.2019. However, they have also disconnected the electricity supply by 11.00 AM today.

3. Under this background, it is claimed that the petitioner is entitled to a reasonable opportunity of seven days to submit their objections against the provisional assessment order, as per Section 135 read with Regulations 19 and 23(AA) of the Code. These provisions have not been complied with. When the petitioner has not committed theft of electricity, the petitioner should be given an opportunity of being heard to explain their side of the case. Before giving any opportunity

whatsoever, the provisional assessment order ought not to have been passed.

4. Continuing his arguments, it is submitted that the provisional assessment order failed to explain as to how the activity of the petitioner is not industrial and also failed to clarify how the petitioner's case has been brought under non-industrial tariff. If an opportunity is given, the petitioner will be able to explain why the provisional assessment order passed is wrong. Therefore, till a final order is passed, the respondents should be enjoined from insisting the payment of any charges pursuant to the provisional assessment order. The learned counsel for the petitioner also stated that the petitioner is prepared to pay the compounding charges without prejudice to their rights, to enable the respondents to restore the electricity service connections.

5. In reply, the learned standing counsel for the respondents submitted that as per Section 135(1-A) of the Electricity Act, 2003, upon detection of any theft of electricity, without prejudice to the provisions of the Act, the licensee or supplier, as the case may be, may immediately disconnect the supply of electricity. Therefore, the team sent by the respondent-Department headed by the first respondent officer, after satisfying themselves that the petitioner has committed theft of electricity at Ambattur Industrial Estate, has served the provisional assessment order under Regulation 23 (AA)(8) of the Tamil Nadu Electricity Supply Code indicating that the petitioner has unauthorisedly used the industrial connection for non-industrial purpose amounting to theft and therefore, levied charges and penalty of Rs.38,92,489/- and Rs.6,21,892/-.

6. This Court, considering the prayer made by the petitioner and keeping in mind that till date the respondents also have not passed any final order, hereby directs the respondents to provide reasonable opportunity of seven days to the petitioner to submit their objection/reply and also provide personal hearing. If the petitioner submits the reply and avails personal hearing, after complying with the principles of natural justice, the respondents can pass appropriate orders, within a period of two weeks from the date of providing personal hearing. In the meanwhile, without prejudice to the contentions and rights of the parties, the petitioner is given liberty to deposit 50% of the charges and penalty demanded, in addition to paying the compounding charges of Rs.4,04,000/-. Immediately on receipt of 50% deposit, the respondents will restore the electricity service connections in question. Needless to mention that if the

petitioner makes the deposit within two days, the respondents can at once restore the electricity service connections to the premises of the petitioner. With this observation, the writ petitions are disposed of. Consequently, W.M.P.Nos.6871 & 6873 of 2019 are closed. No costs.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

ss

To

1. The Assistant Executive Engineer
(Operation and Maintenance)
Tamil Nadu Generation and
Distribution Corporation Limited
(TANGEDCO)
Ambattur Industrial Estate West
Chennai Division
Chennai 600 058

2. The Chairman
Tamil Nadu Generation and Distribution
Corporation Ltd.,
No.144, Anna Salai
Chennai 600 002

+3 Ccs to Mr.G.R. Associates sr 19109, 19110, 19111.

+1 CC to Mr.P.R.Dhilipkumar, Advocate sr 19284.

W.P.Nos.6043, 6045 & 6046 of 2019

NRL (CO)

SP (27/03/2019)

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