

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2019

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.32464 of 2013

V.Rajagopalan, I.R.S.

.. Petitioner

Vs

1.The Assistant Executive Engineer (Construction),
CEDC/CENTRAL/CHENNAI,
Tamil Nadu Electricity Board,
33/11, Raghava Reddy Colony,
West Street, Ashok Nagar,
Chennai – 600 083.

2.The Assistant Executive Engineer
(Construction/T.Nagar),
Chennai Central, TANGEDCO,
Chennai – 600 017.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records of the second respondent pursuant to his proceedings dated 15.02.2013 in Form-9 in respect of the petitioner's service connection No.216:022:42:1a and quash the same as invalid and illegal.

For petitioner

: Mr.M.Mohan

For Respondents

: Mr.P.R.Dhilipkumar, Standing Counsel

ORDER

The present writ petition is directed against the impugned proceedings dated 15.02.2013 passed by the second respondent / the Assistant Executive Engineer (Construction/T.Nagar), TANGEDCO, Chennai, imposing penalty against the petitioner to the tune of Rs.1,37,713/- towards the alleged consumption of electricity by tampering the meter and a further sum of Rs.12,000/- on account of compounding the offence.

2. Learned counsel appearing for the petitioner submitted that the petitioner, having worked as Deputy Commissioner, Central Excise, Government of India, Chennai, retired from the services on 30.11.2012, and from the year 1986 onwards, he has been living with his wife, son and daughter in his home. It is further submitted that as per meter reading, he has been paying electricity charges without any default every bi-monthly. Whiles, in the year 2008, he got two additional meters in respect of first floor occupied by the tenants. However, like any other customer, he has been facing voltage fluctuations and interruption of power supply and therefore, he wrote a letter dated 07.01.2013 to the respondent department requesting to set right the voltage fluctuation

experienced by them. Thereafter, officials from the respondent department conducted inspection of cable lines and all the three meters and rectified the fault and finally stabilized the high voltage fluctuation.

2. It is further submitted that when his daughter came to his residence during the month of November, 2012, immediately after her 2nd delivery to take normal rest, officials of first respondent visited his residence on 15.02.2013 and inspected all 3 electricity meters bearing Nos.216:022:42:la, 216:022:133:la, 216:022:132:la, and thereafter, they have made provisional working sheet alleging that there was a "security seal tamper" in respect of connection No. 216:022:42:la and finally, they have imposed a sum of Rs.1,37,713/- towards penalty for the alleged theft of energy. While arriving at the consumption of power in units, they have calculated the consumption on 24 hours basis of all the electrical equipments installed at his residence and thus, the said provisional assessment is vitiated on the sole ground of adopting unique formula not contemplated under the Act.

3. Continuing further, learned counsel for the petitioner argued that when inspection was conducted on 15.02.2013, the petitioner sent a registered letter dated 17.02.2013 to the first respondent disputing the findings as well as levy of a sum of Rs.1,37,713/- towards alleged consumption charges and a sum of Rs.12,000/- on account of compounding the offence. The respondents, without taking note of the condition of the meter, simply alleged that the seal of the meter was tampered without corroborating evidence for consumption of power and they should have arranged for testing of meter as requested by the petitioner on several occasions so as to prove the veracity of the allegation of tampering the meter resulting theft of energy. Adding further, it is submitted that the respondents have not prepared any diagram illustrating the arrangements found to have been made for the alleged theft of electricity under Regulation 23(2A) of the Tamil Nadu Electricity Supply Code, 2004. Besides, the respondents, till date, have failed to pass any final order in Form-10 as contemplated under Regulation 23(AA)(15) and Section 135 of the Electricity Act, 2003, hence, the impugned proceeding dated 15.02.2013 passed in Form-9 is time barred and therefore, the same is liable to be set aside.

4. Referring to paragraph No.4 of the counter affidavit, learned counsel for the petitioner submitted that the respondents themselves have admitted that they have sent meter for testing and after testing the same, the Chief Electrical Inspector to Government, Guindy, Chennai, submitted a report dated 22.07.2013 stating that due to technical reasons in the energy calibrator, the challenge test could not be done. That shows that the allegation made by the respondents that there was a tampering of meter is wholly unacceptable. It is further argued that although the respondents stated that the petitioner had tampered the meter, till date, the respondents have not mentioned in the counter affidavit stating that due to such act, the petitioner stood benefited. When there was no such allegation even as per the counter affidavit, the false allegation made against the petitioner that there was a tampering of meter, is wholly unjustified and unacceptable. On this score, learned counsel prayed for quashing the impugned proceeding dated 15.02.2013 passed by the second respondent.

5. Per contra, learned Standing Counsel appearing for the respondents, by filing a counter affidavit, contended that the writ petition is not maintainable in law nor on facts inasmuch as the impugned order was issued in

terms of the provisions contained in sections 135, 135-A and 152 of the Electricity Act, 2003. Moreover, the petitioner, being a consumer, is bound by the provisions of the Electricity Act, 2003, and Tamil Nadu Electricity Supply and Distribution Codes. It is further submitted that the petitioner has three service connections in his house, in which, theft of energy was found place in one of the service connections i.e. in S.No.216:022:42 IA, by tampering the meter seal. This was noticed by the inspecting team of the respondents on 15.02.2013 at about 1.15p.m. It is also further found that there was a theft of energy in service connection No.216:022:42 by tampering the security meter seal on both sides and that the petitioner connected the electricity load to the tune of 5763 KW and thus, such an act of the petitioner amounts to theft of energy as per Section 135(1) (b) and (d). Moreover, on the date of inspection, the petitioner, admitting his act of tampering the meter and the consequential liability, paid the compounding charges of Rs.12,000/- and the penal charges of Rs.1,37,713/- vide receipt dated 15.02.2013. Thereafter, the petitioner made a representation to the respondents requesting to send the meter for testing and subsequently, the Chief Electrical Inspector to Government, Guindy, Chennai, submitted his report dated 22.07.2013 stating that due to technical reason in the energy calibrator, the

challenge test could not be done. Therefore, it is not open to the petitioner to say that in view of the report dated 22.07.2013, there was no any theft of electricity occurred in the meter.

6. But, this Court is unable to find any merit on the above said submission. Firstly, although the officials from the respondents have conducted inspection on 15.02.2013 in three connections installed in the petitioner's house bearing Nos.216:022:42, 16:022:133 and 216:022:132 which are under Tariff IA for domestic purpose, neither in the counter affidavit nor in the impugned order challenged in the writ petition, the respondents have indicated what was the benefit the petitioner had gained by tampering the security meter seal. Secondly, when the petitioner has been asking the respondents to send the meter for testing, the respondents also have sent the meter for testing and thereby they have received a report dated 22.07.2013 from Chief Electrical Inspector to Government, Guindy, Chennai, stating that due to technical reason in the energy calibrator, the challenge test could not be done. But, the said report has not been enclosed by the respondents along with the counter affidavit.

7. Be that as it may, when the test report dated 22.07.2013 received from the Chief Electrical Inspector to Government, Guindy, Chennai, clearly says that the challenge test could not be done due to technical reasons in the energy calibrator, it goes without saying that they should have accepted the said report and closed the matter, for, even the said test report dated 22.07.2013 also could not prove the case of theft of energy. Therefore, taking note of the stand taken by the respondents in paragraph No.4 of the counter affidavit stating that challenge test could not be done due to technical reason, in my considered view, the respondents cannot impose any penalty for an unproved allegation of theft of energy against the petitioner.

8. In such view of the matter, the impugned order is set aside and the writ petition is allowed with a direction to the respondents to refund a sum of Rs.1,37,713/- collected towards penal charges and Rs.12,000/- collected towards compounding charges, to the petitioner, within a period of one week from the date of receipt of a copy of this order. No Costs.

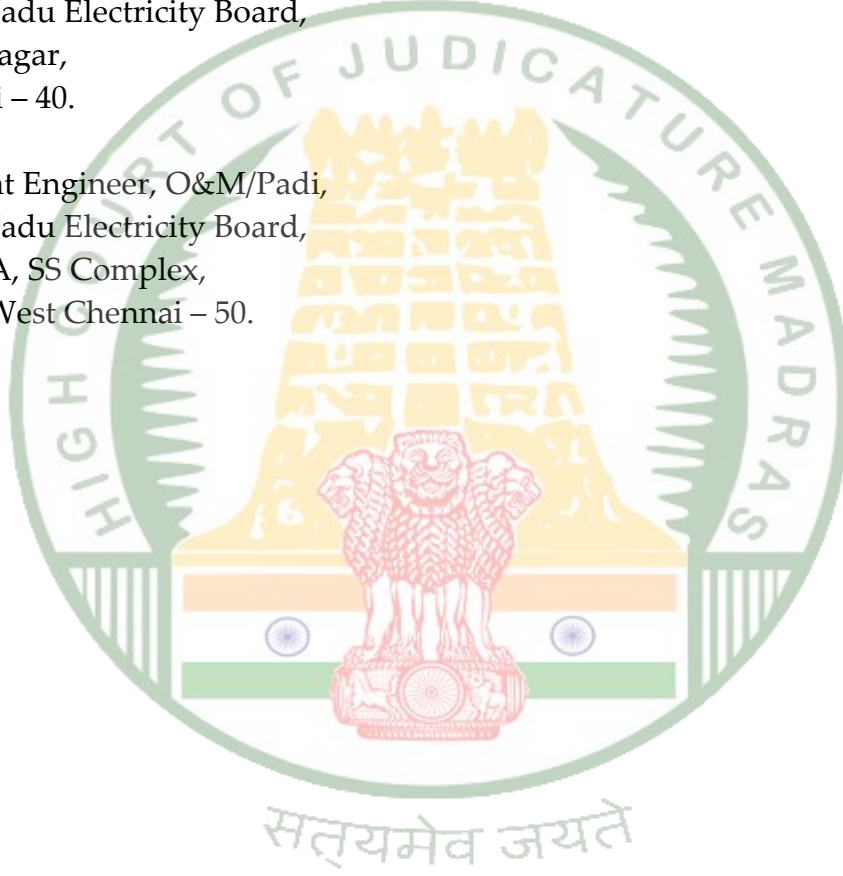
31.10.2019

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To

1.The Divisional Engineer,
Tamil Nadu Electricity Board,
Anna Nagar,
Chennai – 40.

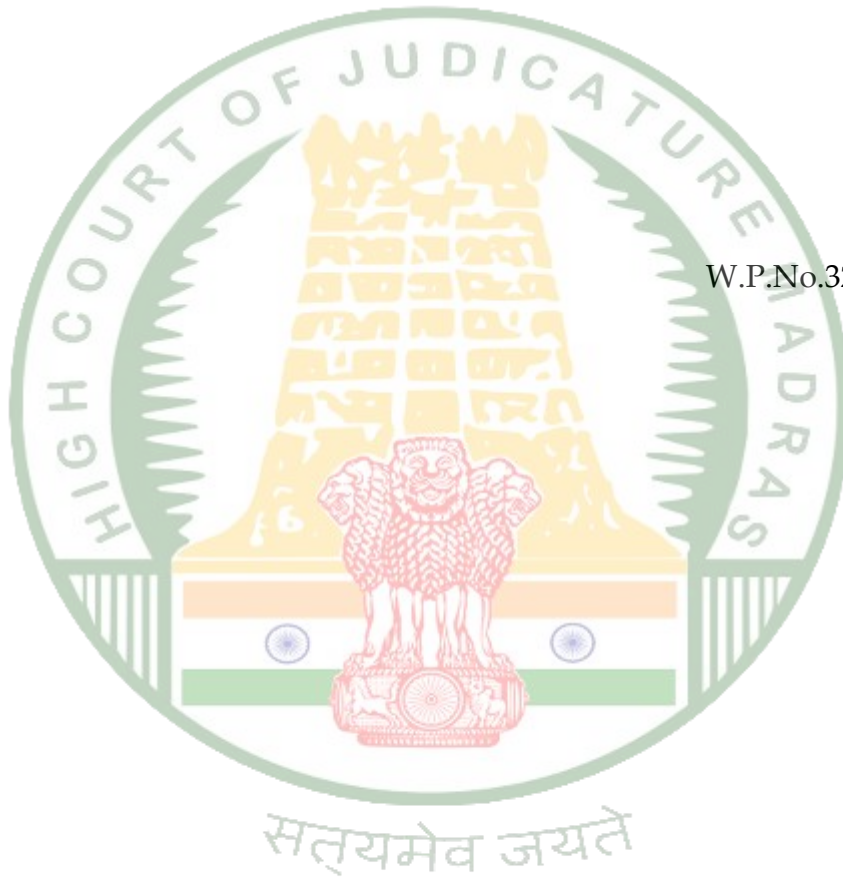
2.Assistant Engineer, O&M/Padi,
Tamil Nadu Electricity Board,
230 KVA, SS Complex,
CEDC/West Chennai – 50.



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T.RAJA, J.

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