

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.09.2019

Coram::

The Honourable Dr.Justice G.Jayachandran

W.P.No.9671 of 2019
& W.M.P.No.10283 of 2019

G.Suresh,
S/o.Govindaraj,
Pulianddapatti Village,
Oddappatti Post,
Pochampalli Taluk,
Krishnagiri District.

... Petitioner

/versus/

The Assistant Executive Engineer,
TANGEDCO,
Pochampalli - 635 206,
Krishnagiri District.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari Mandamus, calling for the records in relation to the impugned notice in Se.Po/E.Pa/Po.Pa/Co. Complaint Letter/A.No.004-1/18, dated 21.12.2018 issued by the respondent and quash the same, consequently direct the respondent to restore the service connection bearing 181-016-16 Tariff IV of Pulianddapatti Village and pass appropriate orders as deem fit.

For Petitioner : Mr.G.Vasudevan

For Respondent : Mr.Varun Kumar, Standing Counsel

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the respondent/TANGEDCO.

2. The short point involved in this Writ Petition is that, the electricity service connection given to the petitioner for the Agricultural land. During the surprise inspection, was found to be misused by the petitioner and diverted for Horticulture purpose. Therefore, the respondent, after issuing provisional assessment demand for Rs.1,96,048/-, has passed final assessment on 21.12.2018 to disconnect the electricity service and to collect penalty fees of Rs.1,96,048/- inclusion

of compounding fees of Rs.8,000/-. The petitioner has paid the compounding fees of Rs.8,000/- on 05.10.2018 and has challenged the order dated 21.12.2018 on the ground that before passing the impugned order, no personal hearing was given to him to explain his defence.

3. The respondent has filed counter, wherein, it is contended that during the inspection, it was found that the petitioner has been misusing the electricity service illegally for another service. The illegal transmission of electricity diverting free service connection for non-agricultural purpose amounts to theft of electricity as per Section 135 of the Electricity Act, 2003. When this was found during inspection, it was intimated to the petitioner. The petitioner agreed to pay the compounding fees of Rs.8,000/- on the day of inspection itself. Thereafter, the petitioner was served with assessment notice, calling upon him to pay the penalty fees of Rs.1,96,048/- towards loss caused to the board due to unauthorised/theft of energy. The petitioner has filed his submission on 10.10.2018 but the contention in the objections were not relevant. Hence, final assessment order was passed on 21.12.2018.

4. According to the respondent, the contention of the petitioner that having share in the well, he is entitled to use the electricity service connection connected to the well is improper, incorrect and illegal. Since the service connection is provided to the well only for irrigation purpose at free of cost. Therefore, misuse of electricity for other than Agricultural purpose is illegal and liable to be charged with penalty and compounding fees.

5. Chapter 4 of the Tamil Nadu Electricity Supply Code, 2004, deals with:- Tampering, Distress or Damage to Electrical Plant, Meters etc., in which Clause 23 Sub-Clause (11) & (12) reads as below:-

(11) In case the accused person does not respond to the provisional order within seven working days, the licensee or supplier concerned, as the case may be, may proceed to initiate the recovery against the provisional assessment order.

(12) Within seven working days from the date of submission of such accused person's reply, if made within the seven working days from the date of receipt of provisional assessment order, the authorized officer shall arrange a personal hearing with such accused person. For this purpose the authorized officer

shall serve a three days notice to such accused person to allow him for a personal hearing and shall also allow any additional submission of new facts or documents if any, during the course of hearing by such accused person. If such accused person does not respond to the notice in the matter, the authorized officer shall proceed to issue the final assessment order, as per the procedure specified herein after.

6. In this case, after inspection on 05.10.2018, based on the provisional assessment, the petitioner has paid the compounding charge and submitted explanation on 10.10.2018. After receiving the explanation, as per Sub-Clause (12) of Clause 23 the above said code, the Authorised Officer should have arrange for personal hearing, which from the record, this Court finds that, not been afforded to the petitioner. Therefore, the impugned order is liable to be set-aside, with liberty to the respondent to proceed with the petitioner herein, based on the inspection report and pass appropriate order, after affording personal hearing to the petitioner herein. The money deposited by the petitioner herein pursuant to the interim order passed by this Court shall be subject to the outcome of the order passed by the respondent.

7. Accordingly, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

bsm

To,
The Assistant Executive Engineer,
TANGEDCO, Pochampalli - 635 206,
Krishnagiri District.

+1cc to Mr.G.Vasudevan, Advocate SR.77067.

W.P.No.9671 of 2019

LN(CO)
CB(22/10/2019)