

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.07.2019

Coram:

THE HON'BLE DR. JUSTICE G. JAYACHANDRAN

Writ Petition No.21341 of 2019

and

W.M.P.Nos.20560 and 20561 of 2019

Dr.C.Pravda,
Nathan Dental Clinic,
Vazhga Valamudam Apartment,
Lake View Road, Kotturpuram,
Chennai 600 085.

.. Petitioner

/versus/

The Assistant Executive Engineer,
TANGEDCO,
O&M/Taramani,
CEDC/South II, IIT Campus,
Chennai 600 036.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records culminated in the respondent's Provisional Assessment Order in Form No.9, in Lr.No.AEE/O&M/TMNI/F./C.No.139/19 dtd 10.07.2019 and the consequent Final Assessment Order in Form No.10 in Lr.No.AEE/O&M/TMNI/F139/C.No.139 dated 10.07.2019 and quash the same and consequently, direct the respondent to reclassify the service connection in ref.220-009-1616 as Domestic Tariff 1-A instead of Commercial Tariff V.

For Petitioner :Mr.A.Jeeva

For Respondent :Mr.S.K.Rameshwar, st.c.

ORDER

On 19.07.2019, this Court dismissed the writ petition since the document furnished in the typed set of papers was incomplete, but after perusing the other records filed by the petitioner herein, this Court found that the second page of the Form-9 issued by the respondent has not been photocopied in the typed set of papers, which has caused confusion and therefore, listed the matter today i.e. 22.07.2019 under the caption "For Clarification".

2. Heard learned counsel appearing for the petitioner and learned Standing counsel appearing for the respondent.

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3.It is a case of theft of electricity alleged against the petitioner, who has established a Dental Clinic, by name "Nathan Dental Clinic" in her residence, utilising domestic service for the commercial purpose, whereas, the contention of the petitioner is that a small portion of the house is used for the Dental Clinic and

her consumption of electricity will not fall within the category of commercial tariff.

4. On perusal of the affidavit and the impugned order, this Court finds that the officials of the respondent have inspected the premises of the petitioner on 14.05.2019 and found that the Clinic is established in the name of "Nathan Dental Clinic" and commercial activity has been carried on. Therefore, a Provisional Assessment Order has been issued on 16.05.2019 and thereafter, action for theft of electricity under Section 135 of the Tamil Nadu Electricity Act, 2003 contemplates.

5. Under such circumstances, the petitioner has approached this Court by filing writ petition Nos. 19105 and 19747 of 2019. Those writ petitions are pending. Pending these writ petitions, the respondent has issued notice dated 10.07.2019 wherein the Provisional Assessment Order under Form-9 and Final Assessment Order under Form-10 have been issued.

6. A reading of the Provisional Assessment Order in Form-9 indicates that illegal abstraction, consumption and use of energy by the petitioner is punishable under Section 135(1)(e) of

the Tami Nadu Electricity Act, 2003 and the petitioner had caused loss of Rs.73,511/- approximately by dishonest abstraction of electricity and in the Final Assessment Order, the respondent has passed revised order, based on the documents produced by the petitioner and imposed a charge of Rs.56,050/-, which includes the penal charge and compound charge.

7. According to the worksheet annexed with the Final Assessment Order, the petitioner is called upon to pay a sum of Rs.40,050/-, within a period of seven working days from the date of receipt of that order.

8. The learned counsel appearing for the petitioner would submit that Section 56 of the Tamil Nadu Electricity Act, 2003, provides for an opportunity to the consumer fifteen clear days' notice before disconnection for non-payment of charges. While so, in this case, the respondent has disconnected the service connection of the petitioner without affording fifteen days time. Further, it is contended by the learned counsel appearing for the petitioner that Article 21 of the Constitution of India envisages right to life which includes basic amenities. Therefore, disconnecting the service connection is illegal and ultra vires.

9. It is unfortunate that certain Fundamental Principles have been improperly understood by the petitioner. Though providing electricity to the needy is the responsibility of the State, at the same time, the public have no right to misuse the service and take umbrage under constitution and fundamental right.

10. Here is the case, where the inspection team of the respondent has found that the electricity service given to the petitioner has been misused for purpose other than for which usage of electricity was authorised. Section 135(1)(e) of the Tamil Nadu Electricity Act, 2003, defines such act as a theft of electricity. If at all the petitioner has any explanation or defence to her act, it is always open to her to make her submission regarding the inspection report. In fact, from the records, this Court finds that on 16.05.2019, the Provisional Assessment Order was served on the petitioner and the Final Assessment Order also indicates that after considering the documents, they have revised the assessment from Rs.73,511/- to Rs.56,050/-. Section 56 of the Tamil Nadu Electricity Act, 2003 is in case there is any default in payment 15 clear days notice before disconnection is

envisaged. This Section has no application when disconnection is resorted in case of theft of energy and even assuming that the disconnection for default of payment should not be done before 15 clear days' notice, in this case, the notice of Provisional Assessment has been issued to the petitioner as early as 16.05.2019 and even the final assessment order does not contemplate any immediate disconnection. Seven days time given to the petitioner to pay the money.

11. Further, under Section 56 of the Tamil Nadu Electricity Act, 2003 besides fifteen clear days' notice to the consumer, if the consumer deposits the demanded money under protest and appeal to higher authority, there shall not be any disconnection of service. The petitioner herein has not opted for that. It is an attempt of the petitioner herein to define her act as mere consumption of electricity and not deviation of the service for other purpose than what it was provided. The petitioner without submits herself for the enquiry and submit her explanation called for by the Department within the time prescribed, by short circuiting the procedure established under law had approached the High Court under Article 226 of the Constitution of India. When the statute gives right to the

consumer to place explanation on receipt of the provisional assessment order and challenge it, the petitioner has not chosen to undergo the said process. This has invited the Final Assessment Order and disconnection of electricity.

12. Hence, this Court finds no reason to interfere with the action of the respondent. If the petitioner wants to agitate the assessment, liberty is given to the petitioner to submit the explanation along with the records and if such explanation is given, the authorities shall consider the same and pass appropriate order in accordance with law. Meanwhile, if the petitioner is ready to deposit the amount demanded under protest, on receipt of the amount, the Electricity Department can be restore the service connection on condition subject to the outcome of the said enquiry.

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13. In the light of the above, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

22.07.2019

Index:yes/no
Internet:yes/no
Speaking order/non speaking order
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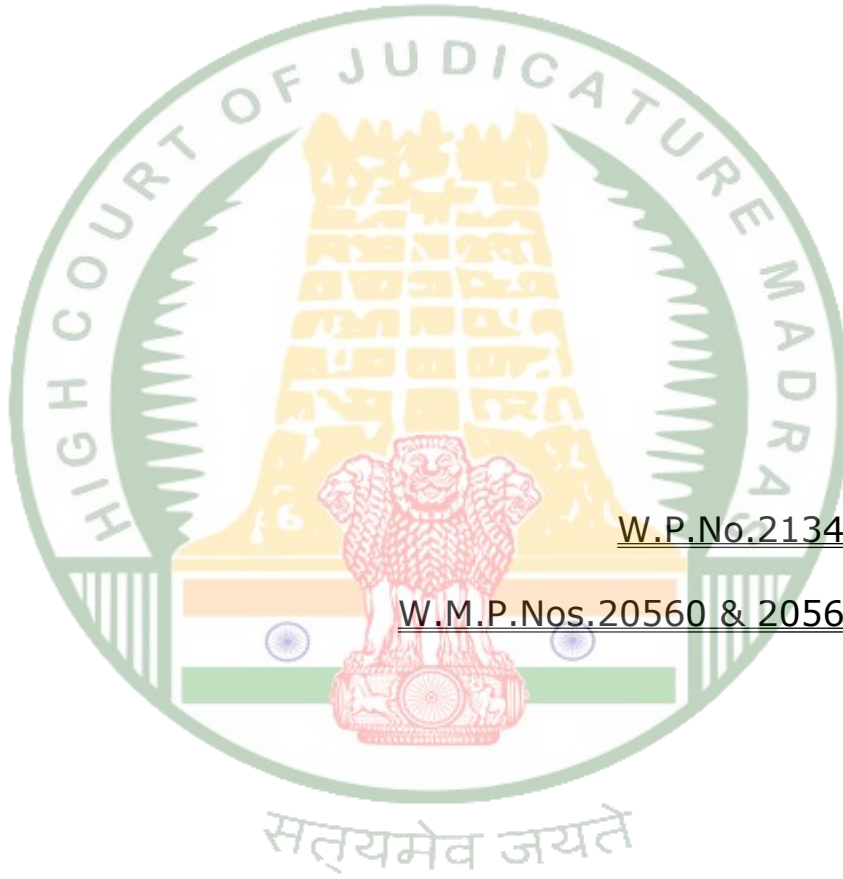
The Assistant Executive Engineer,
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