



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 16.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.P.SAHI, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A. [MD]No.922 of 2012
and
M.P. Nos.1 and 2 of 2012

P.Koneri : Appellant
Vs.

1.The Assistant Executive Engineer,
Operation and Maintenance (West)
Tamil Nadu Electricity Board,
TANGEDCO, Thuraiyur, Trichy District.

2.The Superintending Engineer,
Tamil Nadu Electricity Board,
Mannarpuram, Trichy. : Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 01.10.2012 passed in W.P(MD)No.12790 of 2012.

Prayer in WP(MD). 12790/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARIFIED MANDAMUS, calling for the records of the 1st Respondent in his proceedings AEE/W/TYR/P.Theft/DKT/D.No.385/12 dated 21-09-2012 and quash the same and forbearing the Respondents from collecting the amounts specified in the said notice.

For Appellant : Mr.V.Singan

For Respondents : Mrs.S.Srimathy

JUDGMENT

[Judgment of the Court was delivered by
The Hon'ble Chief Justice]

Heard learned counsel for the appellant. The appellant's petition has been dismissed by the learned Single Judge, hence, this appeal.



2. Learned counsel contends that the water Well was being operated by an Oil Engine and not by an electrical pump and therefore, the allegation of theft of electricity and imposition of penalty under Section 135 of the Electricity Act is unjustifiable.

3. Learned counsel for the State contends that it is only after it was compounded, the writ petition was filed and the appellant had already deposited the compounding fee.

4. Having considered the submissions raised by both sides, we find that the learned single Judge has dismissed the writ petition on the ground of availability of alternative remedy.

5. Learned counsel for the appellant cited the judgment of a learned single Judge in the case of **Rani Meyyammal Achi of Chettinad Charitable Trust, rep. By Authorised Signatory v. Tamil Nadu Generation & Distribution Corporation Limited and others** reported in **2017 (2) CWC 19** to contend that alternative remedy is not an absolute bar for entertaining a writ petition and therefore, the matter should be remitted back to the authority to carry out fresh proceedings and thereafter upon an assessment of the claim of the appellant, an order should be passed. For this, the learned counsel for the appellant has relied on the representation filed, where the aforesaid fact of utilising the Water Well through an Oil Engine has been stated.

6. We have considered the submissions raised and we find that disputed questions of fact are clearly involved as to whether the Water Well has been operated by an Oil Engine or by an electrical pump raising a presumption of electricity theft and imposition of penalty in terms of Section 135 of the Tamil Nadu Electricity Act.

7. Learned counsel for the appellant however did not dispute the availability of an alternative remedy under the Acts and Rules as indicated therein. Accordingly, in the event, the appellant files an appeal and prays to consider the same on merits, the same shall be entertained and dealt with in accordance with law within a reasonable period, as expeditiously as possible.

7. With the aforesaid observations, the writ appeal is consigned to records. However, there is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

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/ /2020

Sub Assistant Registrar (CS)



To

1.The Assistant Executive Engineer,
Operation and Maintenance (West)
Tamil Nadu Electricity Board,
TANGEDCO, Thuraiyur, Trichy District.

2.The Superintending Engineer,
Tamil Nadu Electricity Board,
Mannarpuram, Trichy.

+1 CC to M/s.M/S.S.M.S.JOHNNY BASHA, Advocate (SR-105509 18/12/2019)

JUDGMENT MADE IN
W.A.[MD]No.922 of 2012
and M.P.Nos.1 and 2 of 2012
16.12.2019

RR/rsb

SDS(09.01.2020) 3P-4C