

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.317 of 2020

Sri Vidhya Academy
International Residential School,
A Unit of Vidhya Educational Trust,
School at Chokanallur,
Pattabiram Road, Kolappanchery,
Chennai - 600 072 and
represented by its Chairman
Nanjil R Kennedy. ... Appellant

vs.

The Assistant Executive Engineer,
O & M / CEDC / South,
Avadi Road,
TANGEDCP, Ponnamallee,
Chennai - 600 056. .. Respondent

Appeal filed under Clause 15 of the Letters Patent against the order dated 16.8.2019 passed by the learned Single Judge in W.P.No.15638 of 2011.

WP.No.15638 of 2011:Writ Petition praying to writ of Certiorari to call for the records in respect of the impugned order of the respondent in his proceedings in Lr.No. AEE/O&M/PML/ F-APTS1033/2011-2012 dt. 23.06.2011 and quash the same.

For Appellant

: Mr.A.Shamsudeen Raja

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

This appeal questions the correctness of the impugned judgment dated 16.8.2019, whereby the writ petition filed by the appellant challenging the proceedings of theft of electricity has been disposed of with a further direction that the appellant/petitioner shall deposit the entire dues without BPSC and penal interest after adjusting the amount already paid by the appellant within six weeks from the date of receipt of a copy of the order.

2. Learned counsel for the appellant urges that this was not a case of theft of electricity and even the order passed by the concerned Engineer dated 23.6.2011 does not spell out the reasons as to how and in what manner was the appellant involved in the activity of the consumption of electricity that may amount to theft. The submission is that even otherwise to conclude that there was a commercial activity being carried out by the appellant was without any basis and therefore, the learned Single Judge committed an error by not interfering with the same.

3. We have gone through the affidavit filed in support of the appeal as also findings arrived at by the learned Single Judge. The impugned judgment records that the appellant/petitioner, after passing of the provisional assessment order, had paid substantial amount towards the compounding fee. In this background, it appears that the appellant had attempted compounding even though learned counsel for the appellant orally contended that the appellant had not applied for compounding. If the appellant had proceeded for compounding, then in that event it will not be open to the appellant to test or challenge the allegations about the theft of electricity under Section 135 of the Electricity Act, 2003.

4. However, if the appellant intends to question the correctness or otherwise of the assessment made, it was always open to the appellant to have questioned by filing an appropriate appeal in terms of Section 127 of the Electricity Act, 2003. In this view of the matter, a writ petition, in our opinion, would not be an appropriate remedy to ascertain the

question of fact whether the appellant had committed theft or not and had otherwise applied for compounding or had been carrying out any commercial activity. These are all matters of assessment and adjudication in terms of the Electricity Act itself.

5. Accordingly, we are not inclined to entertain the appeal without prejudice to the rights of the appellant to seek its remedy that may be available in law, particularly, under the Electricity Act, 2003 and, in any event, any such final assessment or otherwise any order is made by the competent authority, then any amount paid shall be adjustable.

The appeal is disposed of with the said observation. Consequently, C.M.P.No.5380 of 2020 is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To

The Assistant Executive Engineer,
O & M / CEDC / South,
Avadi Road,
TANGEDCP, Ponnammallee,
Chennai - 600 056.

+1 cc to Mr.Shamsudeen raja Advocate sr18793

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W.A.No.317 of 2020

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