

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.24055 & 24731 of 2012
and
M.P.No.1 of 2012

Dr.S.Senthil Kumar,
Rep.by his Power of Attorney
Mr.V.Shanmugam,
477, First Floor, 9th South Cross,
Kapaleeswarar Nagar, Neelangarai,
Thiruvannamiyur, Chennai.

... Petitioner in both

WPs.

Vs.

1. The Superintending Engineer,
TANGEDCO/Tiruppur Electricity Distribution Circle,
Tiruppur 641 603.
2. The Assistant Executive Engineer,
TANGEDCO/Tiruppur Electricity District Circle,
Rural, Palladam Post and Taluk,
Tiruppur District - 641 664.

... Respondents in both WPs.

Prayer in W.P.No.24055 of 2012: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned orders passed by the 2nd respondent in Letter No. AEE/RL/Palladam/F.Theft/V.Kallipalayam/ D.Nos.207/2011-2012 dated 24.12.2011 and AEE/RL/Palladam / F.Theft / V.Kallipalayam / D.No.20/2011-2012 dated 04.02.2012, relating to SC No.234 005 478 owned by the petitioner and quash the same as illegal and direct the 2nd respondent to refund the extra levy of Rs.1,78,630/- and compounding charges of Rs.20,000/- to the petitioner.

Prayer in W.P.No.24731 of 2012: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of

Certiorarified Mandamus, calling for the records pertaining to the impugned orders passed by the 2nd respondent in Letter No.AEE/RL/Palladam/F.Theft/V.Kallipalayam /D.Nos.206/2011-2012 dated 24.12.2011 and AEE/RL/Palldam/F.Theft/V.Kallipalayam/D.No.21/2012 dated 04.02.2012, relating to SC.No.234 005 766 owned by the petitioner and quash the same as illegal and direct the 2nd respondent to refund the extra levy of Rs.2,68,175/- and compounding charges of Rs.30,000/- to the petitioner.

For Petitioner : Mr.A.E.Ravichandran
For Respondents : M/s.N.Damodharan
Standing Counsel
..in both WPs.

COMMON ORDER

The petitioner in these two writ petitions is aggrieved by the order of final assessment, passed by the second respondent holding that the petitioner has committed theft of electrical energy from several electricity connections, which were granted for agricultural purposes i.e., free electricity service connections. The petitioner's contention is that the allegation against the petitioner cannot be permitted as theft of electrical energy and the proceedings initiated by the second respondent under Section 135 of the Indian Electricity Act, 2003 is without jurisdiction.

2. It cannot be necessary for this Court to examine the correctness of the said contentions in these writ petitions, for the simple reason that the petitioner's Appeal Petition filed before the first respondent to take a decision on the ground that the second respondent is the territorial Assistant Executive Engineer and he is the Appellate Authority. In this regard, there is a referring to an order in G.O.Ms.No.118 dated 27.11.2006, which has been referred in the communication of the first respondent to the petitioner dated 21.05.2012 assuming such powers had been conferred on the second respondent. Such powers cannot be exercised by him because, he is the Authority and passed the final assessment order dated 04.02.2012 holding that the petitioner is liable to pay the amount assessed under Section 135 of the Act.

3. Therefore, the second respondent cannot be a judge of his own cause and if the appeal is to be decided by the second respondent, it will be in violation of the fundamental legal principle. Therefore, the stand taken by the first respondent in the communication dated 21.05.2012 cannot be countenanced. Since the factual aspects are involved in the matter, the petitioner should be given an opportunity of personal hearing by the Superintending Engineering, functioning as Appellate Authority.

4. Considering these aspects, the communication sent by Superintending Engineer dated 21.05.2012, stating that the appeal should be decided by the second respondent is set aside and the petitioner is directed to file an appeal petition before the first respondent within a period of 30 days. If such Appeal Petition is filed, the first respondent shall entertain an Appeal Petition and decide the matter on merits and in accordance with law and after affording opportunity of personal hearing to the petitioner or Authorized Representatives, final orders will be passed within a period of eight weeks from the date of receipt of a copy of this order.

5. Accordingly, these writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Pns

To

1. The Superintending Engineer,
TANGEDCO/Tiruppur Electricity Distribution Circle,
Tiruppur 641 603.
2. The Assistant Executive Engineer,
TANGEDCO/Tiruppur Electricity Distribution Circle,
Rural, Palladam Post and Taluk,
Tiruppur District - 641 664.

+2ccs to Mr.A.E.Ravichandran, Advocate, S.R.No.24280,24281

W.P.Nos.24055 & 24731 of 2012

SVI (CO)
KKV/17/06/2020