

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2020

CORAM:

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.27568 of 2013

M.Thangavel

.. Petitioner

Vs

1.The Superintending Engineer (O&M),
Erode West, Erode Electricity Distribution Circle,
Tamil Nadu Generation and Distribution Corporation Ltd.,
Erode.

2.The Assistant Executive Engineer (O&M),
Erode West, Erode Electricity Distribution Circle,
Tamil Nadu Generation and Distribution Corporation Ltd.,
Erode.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records pertaining to the impugned order passed by the second respondent by his letter No.AEE/West/E/G.Per/483/13, dated 16.09.2013 and to quash the same.

For petitioner : Mr.S.Dhanasekaran

For Respondents: Mr.N.Damodaran, Sr.S.C.

ORDER

It is brought to the notice of the Court that the learned counsel Mr.S.Dhanasekaran has handed over the case bundle to the petitioner almost a year back and he has also shifted practice from Chennai and therefore, it is reported that the said counsel does not have any instruction in this matter.

2. Heard Mr.N.Damodaran, learned Senior Standing Counsel appearing for the respondents.

3. The petitioner has challenged the demand issued by the second respondent alleging that there has been theft of electricity committed by the petitioner and the order has been passed under Section 135(1)(b)(c) of the Electricity Act, 2003. Earlier, the petitioner had come to the Court challenging the provisional assessment order by filing a Writ Petition No.6077 of 2013. The said writ petition was disposed of by order dated 18.03.2013 directing the petitioner to offer his explanation to the provisional assessment order and after receipt of the explanation, the second respondent was directed to pass final assessment order, and further direction was also issued to restore the power supply on the petitioner paying 20% of the demanded amount. It appears that the petitioner had submitted his objections to the provisional assessment order and the impugned order has been passed confirming the provisional assessment demanding additional levy.

4. The petitioner has questioned the impugned order on the ground that the second respondent, without even considering the report of the authorized testing laboratory which had certified that the meter is not functioning, cannot come to the conclusion that the petitioner had committed theft of energy and there has been justification for imposition of penalty. Further, it is submitted that there is a gross error committed by the second respondent in the procedure followed and the procedure required to be followed under Rule 23AA of the Supply Code has not been adhered to. That apart, no mens-rea has been established.

5. The second respondent has filed a counter affidavit justifying the impugned order and stating as to how the inspection reveal the damage caused to the meter and as to illegal abstraction of electrical energy. Further, with regard to the report of the testing laboratory, it is stated that the laboratory has reported that the meter could not be calibrating because it is not functioning. Further, the second respondent would state that the Plastic Experts in Central Institute of Plastic Engineering Technology, Chennai, have stated that the meter front cover made of Poly Carbonate material will not crack due to ageing.

6. Record of the proceedings shows that when the writ petition was entertained, interim order was granted by this Court on 04.10.2013 by directing the petitioner to pay 50% of the amount of Rs.4,76,799/- and this figure was arrived at by reckoning that the petitioner has already paid a sum of Rs.1,19,200/- out of the total assessment amount of Rs.5,95,999/- as per the final assessment order. The said

interim order has been subsequently made absolute.

7. Considering the aforesaid facts of the case which infer adjudication of the disputed question, this Court is of the view that the petitioner should exhaust the appellate remedy available under the Electricity Act as well as the Supply Code and it is before the appellate authority the petitioner can canvass all the points including the contentions which have been raised in this writ petition and the said authority can adjudicate the correctness of the stand and arrive at a decision. Furthermore, from the counter affidavit, it is seen that the service connection has already been restored, because, the conditional order has been complied with by the petitioner.

8. In the light of the above, the writ petition is disposed of granting liberty to the petitioner to avail appeal/revisional remedy available under the Electricity Act read with Supply Code. As and when such appeal/revision is filed before the said authority, the same shall be decided after affording an opportunity of personal hearing to the petitioner and orders be passed on merits and in accordance with law. Till such time, electricity service connection shall not be disconnected. No Costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Superintending Engineer (O&M),
Erode West, Erode Electricity Distribution Circle,
Tamil Nadu Generation and Distribution Corporation Ltd.,
Erode.

2. The Assistant Executive Engineer (O&M),
Erode West, Erode Electricity Distribution Circle,
Tamil Nadu Generation and Distribution Corporation Ltd.,
Erode.

+1cc to Mr.V.Regunathan, Advocate SR.4916

W.P.No.27568 of 2013

PP (CO)
CB(21/02/2020)