

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2020

Date of Reserving the Order	Date of Pronouncing the Order
20.01.2020	29.01.2020

Coram

The Hon'ble Mr.Justice T.S. SIVAGNANAM

W.P.No.29928 of 2013
and M.P.Nos.1 and 2 of 2013

D.Balasundaram

.. Petitioner

vs

1.The Chairman,
Tamil Nadu Electricity Board,
144, Anna Salai, Chennai - 600 002.

2.The Assistant Executive Engineer,
Distribution, TANGEDCO,
Kovilpalayam - 641 107, Coimbatore District. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records of the second respondent in Lr.No.AEE/D/KVP/F.DKT/D.No./14 dated 19.07.2013 and quash the same and direct the respondents to afford an opportunity of being heard to the petitioner before passing order.

For Petitioner : Mr.N.L.Rajah
Senior Counsel
for Mr.R.Kumar

For Respondents: Mr.N.Damodharan
Standing Counsel (TANGEDCO)

ORDER

This writ petition has been filed challenging a provisional assessment order passed by the second respondent under Section 135/138 of the Electricity Act, 2003 (for brevity "the Act") for alleged theft of electrical energy giving liberty to the petitioner to file his objections. The approximate loss caused by the petitioner due to dishonest abstraction of

electricity has been provisionally assessed at Rs.1,02,861/-. Along with the provisional assessment order, a working sheet has been enclosed showing as to how the provisional loss has been assessed.

2.The petitioner's case is that he owns 11 acres of agricultural lands in Kunnathur, Annur Taluk, Coimbatore District, out of which, an extent of 3.60 acres has been set apart for Matriculation School in the name and style of Sree Matriculation School. The respondent Board has granted an agricultural service connection bearing No.478 having capacity of 7.5KW which has been granted under Tariff IV. It is stated that the Matriculation School has been established and administered by a Trust in which the petitioner's wife is one of the trustee and the School has got 190 students with 17 staff members. The school has been granted two separate electricity connections both being low tension connections and they are live. It is stated that on 19.07.2013, the second respondent inspected the agricultural service connection No.478 and observed that there was unauthorized use of electricity as a bore well was operated using the said service connection for supplying water to the Matriculation School. The petitioner would state that the water was pumped out by using the said electricity service connection for supply of water to the School as an emergency measure as there was lack of water supply through the regular channel. Pursuant to the said inspection, a notice was issued to the petitioner alleging that there is unauthorized use of electricity. The petitioner's case is that if the allegation is of unauthorized use of electricity, the same would fall under Section 126 of the Act for which the petitioner has been issued a communication and a sum of Rs.4,000/- was collected from the petitioner. Subsequently, the impugned provisional assessment order was issued to the petitioner under Section 135 of the Act alleging theft of electricity calling upon the petitioner to pay a sum of Rs.1,02,861/-. The petitioner is stated to have explained to the second respondent that no electrical network of the School was connected with the agricultural service connection No.478, no equipment or motor of the School was connected to SC 478 as it was physically impossible to do so as the distance is more than 165 meters away from the School. Further, it is stated that the second respondent did not find any electrical installation of the School connected to SC 478 and therefore, there can be no theft falling under Section 135 of the Act. The petitioner would further state that since there was a threat meted out with dire consequences, he had paid a sum of Rs.1,02,861/- on 19.07.2013 itself under protest. Further the petitioner would state that the physical condition of the agricultural farm will clearly prove that there has been no deliberate attempt to supply water from the agricultural service

connection. The petitioner questions the estimation done by the second respondent to be not in accordance with Section 126 of the Act read with Rule 19 of the Supply Code. Further the calculation made shows that 150 litres of water would have been consumed per person in the school which is too high for 7 hours sanitation requirement as on an average a maximum of 5 litres per person alone would be required and hence, the calculation of quantum of power for the water used in the school is highly erroneous and even if at all power is calculated, the power should have been calculated for a maximum of 1000 litres. Further the petitioner would state that the second respondent has estimated that 7168 units of power was diverted from SC 478 which is baseless since the TANGEDCO in their letter dated 08.02.2013 to the TNERC has claimed only Rs.2500 per H.P. per annum from the Government of Tamil Nadu as subsidy payable for free power supply for agricultural pumpsets and the TNERC by its order dated 24.07.2013 has allowed only this amount and further has estimated the cost of supply for LT services at Rs.5.45 per unit. Therefore, it is stated that even if the alleged use of 2 KW for the purpose of school is accepted for argument sake, the total power consumption for water diverted would amount to only 1231 units for 2 KW and not 7168 units as estimated by the second respondent and therefore the charges can be levied only for 1231 units. Further adopting the same calculation even with the penalty of 100%, the levy of additional charge can only be Rs.13,404/- per year as against Rs.1,02,861/- claimed by the second respondent. Further the second respondent has assumed that the school functions for 365 days in a day and 12 hours per day which is totally wrong as the school functions only for about 220 days in a year and that too for 7 hours per day as per the directions of the Government of Tamil Nadu. Hence, the calculation is arbitrary and illegal.

3.The learned senior counsel appearing for the petitioner after setting out the above contentions raised by the petitioner in the writ petition submitted that the second respondent failed to appreciate the fact that the act of the petitioner would fall under Clause (b) of sub-section (iv) and of explanation clause of Section 126 of the Act and at best could only be a case of use for the purpose other than for which usage of electricity was authorized or it could be a case of use of connection for the premises or areas other than those for which the supply of electricity was authorized and definitely not a case of theft of energy under Section 135 of the Act, hence the impugned proceedings are wholly without jurisdiction.

4.At the outset, it was pointed out by this Court that the impugned proceedings is not a final order but a provisional assessment wherein the second respondent has provisionally assessed the approximate loss and furnished a calculation sheet

along with the provisional assessment order giving opportunity to the petitioner to file his objections, if he so desires and also appear in person or through an authorized representative with relevant documents for an enquiry before the second respondent and the writ petition is not maintainable as against a provisional assessment and therefore, the petitioner should submit his objections to the impugned provisional assessment order and put forth all his contentions both factual and illegal. In response to this query, the learned senior counsel emphatically submitted that the petitioner challenges the impugned proceedings on the ground of non-application of mind and being vitiated on account of total lack of jurisdiction and therefore, the writ petition has been filed.

5. Since the learned senior counsel has prefaced his submission in such a manner, this Court proceeded to hear the writ petition to be decided on its merits.

6. The learned senior counsel contended that the second respondent failed to note the distinction between Section 126 and Section 135 of the Act and misinterpreted the provisions of Section 135 of the Act. It is submitted that there are several decisions of the Hon'ble Supreme Court and this Court which have clearly distinguished cases which will fall under Section 126 and Section 135 of the Act and held that mensrea is an essential element to charge a person under Section 135 of the Act and in all other cases, the power under Section 126 has to be resorted to. It is further submitted that in the impugned proceedings there is no mention about mensrea on the part of the petitioner to allege theft of electricity. By referring upon the decision in the case of N.Mohammed Farook vs. Union of India and another [W.P.(MD).No.1715 of 2011 dated 20.02.2012], it is submitted that the second respondent must produce clear evidence of dishonest intention to invoke Section 135 of the Act. Reliance was also placed on the decision in the case of V.Swaminathan vs. The Superintending Engineer, Thanjavur Electricity Distribution Circle and another [W.P.(MD).No.113 of 2012 dated 09.02.2018].

7. The learned senior counsel further submitted that the impugned proceedings is not a show cause notice as the second respondent has already concluded that the petitioner has committed theft of energy and therefore, it cannot be treated as a provisional order. In support of such contention, the learned senior counsel referred to the decision in the case of Oryx Fisheries Pvt. Ltd. vs. Union of India and others [(2010) 13 SCC 427]. On the above ground, the learned senior counsel praying for quashing the impugned proceedings.

8.The learned Standing Counsel appearing for the respondents submitted that the petitioner has been given a low tension electricity service connection No.478 for exclusive agricultural purpose for the lands situated in Annur Taluk and in addition, the petitioner has been given two low tension service connections for the school in the same premises with service connection Nos.515 and 1175 both under commercial tariff. The electricity service connection No.478 is for agricultural purpose and totally free and this was extended by the State as a socio-economic measure though the respondent incurs huge expenditure on supply of free electricity. It is submitted that on 19.07.2013 at about 13.15 hours, the premises of the above service connection was inspected by the Anti Power Theft Squad in the presence of the Secretary of the petitioner's School by following the procedure under the Supply Code. In the course of inspection, it was found that the free electricity given for agricultural purpose in SC 478 was being used for drawing water from the well and supply for use in the school and for this purpose, a 2 KW electric motor was in use. It is submitted that by using free electricity meant for agricultural purpose for the commercial purpose of the school would attract Section 135(1)(e) of the Act as the petitioner has used electricity for the purpose other than for which usage of electricity was authorized and is liable to be punished with imprisonment for a term which may extend up to three years or with fine or with both. It is submitted that the petitioner has admitted that the free agricultural service connection No.478 was used for supply of water to the school children, from which it is clear that the respondents are entitled to proceed against the petitioner under Section 135 of the Act.

9.It is further submitted that the Secretary of the School accepted the use of free electricity supply for other purpose and expressed his willingness to compound the offence to avoid criminal prosecution and paid the compounding fees and extra levy on theft of electricity on the same day. It is further submitted that the fact that the electricity was unauthorizedly used having been established, provisional assessment was made taking into account the load connected [2KW], at the time of inspection and the extra levy was worked out as per the formula 8-A under Section 23(AA)(7) of the Supply Code and the working sheet has been annexed to the provisional assessment notice dated 19.07.2013. It is further submitted that though the petitioner was given opportunity to submit their objections, the petitioner failed to avail the same within the time specified under Clauses 23(AA)(7) and 23(AAA)(8) of the Supply Code. Thus, it is submitted that when it has been accepted that the free electricity for agricultural purposes was used for the purpose other than for which it has been authorized and the

petitioner having failed to avail the opportunity to file objections, the petitioner is bound to comply with the demand made in the provisional assessment order. With regard to the manner in which the assessment was made, the learned counsel submitted that as per the Clause 23(AA)(7) of the Supply Code, in case of theft of energy the quantum of energy consumption for the past 12 months as per the assessment formula given in Form 8 in Appendix to the code has to be assessed and on such consumption, the assessment has to be worked out at two times of the tariff applicable, i.e., the applicable tariff for the purpose for which the pilfered energy was used. Further though the total load was 7.5 KW at the time of inspection since the connected load was only 2 KW, the same was taken for assessment and therefore, there is nothing arbitrary in the calculation of the extra levy.

10. With regard to the argument that Section 126 of the Act alone would be attracted, it is submitted that in cases where electricity consumption is being charged not at the appropriate tariff rates but at lower/inappropriate rates, Section 126 of the Act would be attracted. In other words, it is submitted that if the supply availed for domestic purpose is used for commercial purpose, then it would attract Section 126 of the Act, whereas in the petitioner's case, free electricity given for agricultural purpose has been used for drawing water to be used in the school which had been granted two separate electricity service connections under the commercial tariff. Further, because the agricultural service connection is free, the quantum of electricity abstracted is not recorded. Further, by referring to the statement given at the time of inspection and the admission in the writ petition will all go to prove beyond doubt that theft of electricity had been committed. Further, by referring to the Mahazar, it is submitted that it has been clearly recorded that 2 KW motor was connected to agricultural service connection No.478 and water was drawn for supply to the school and this makes it clear that theft has been committed. Thus, it is reiterated that the provisional assessment has been made in terms of Clauses 23(AA)(7) and 23(AA)(8) of the Supply Code and there is nothing illegal about the same and prayed for dismissal of the writ petition. The learned standing counsel further submitted that since the petitioner did not respond to the provisional assessment notice and did not file any objections, the second respondent proceeded to decide the matter on merits and a final assessment order has been issued on 29.07.2013 determining the loss caused at Rs.1,02,861/-. In support of his contentions, the learned Standing Counsel referred to the judgment of the Hon'ble Division Bench in the case of M/s.Emkay Alloys (P) Ltd. vs. The Executive Engineer, Tamil Nadu Electricity Board and others [W.A.Nos.1808 of 2009 and etc. batch dated 08.04.2019].

11.Heard Mr.N.L.Raja, learned senior counsel for Mr.R.Kumar, learned counsel appearing for the petitioner and Mr.N.Damodharan, learned Standing Counsel appearing for the respondents.

12.From the averments set out in the affidavit filed in support of the writ petition and the arguments of the learned senior counsel for the petitioner, the following facts are not disputed. The petitioner is the owner of the agricultural land as well as the land in which a school has been established. The petitioner enjoys an agricultural free electricity service connection in SC 478 having capacity of 7.5 KW. This connection is intended to be used exclusively for agricultural purpose. This is so because the Government of Tamil Nadu took a policy decision to grant free electricity supply for agricultural purpose regardless of whether the agriculturist is a small farmer or a person cultivating vast extent of lands or farms or other organizations engaged in large scale agricultural activities. Thus the petitioner has been granted a concession which is in the nature of an exemption in respect of SC 478. Since it is a free supply, the quantum of electricity abstracted from the service connection is not recorded. If such is the concession extended to an agriculturist it goes without saying that the beneficiary is strictly bound by the terms and conditions of the supply. There is no room for interpretation of conditions of exemption. The conditions stipulated have to be scrupulously followed and strictly interpreted and there can be no leniency in the said aspect. The petitioner also enjoys two low tension service connections under commercial tariff which is being used by the school, one of which is a single phase and the other is a three phase connection. On 19.07.2013, an inspection was conducted, in which it was found that an electric motor of 2 KW capacity was connected to the agricultural free service connection No.478 and water was drawn from the well and pumped to the school which is adjoining the agricultural lands. The petitioner does not and cannot deny these facts which have been clearly recorded in the mahazar. That apart, there is candid admission in the affidavit filed in support of the writ petition in more than one place to the said effect. The explanation now sought to be offered is that water was being drawn to be supplied to the school as an emergency measure since there was no water in the regular supply channel. We are not concerned about whether there was an emergency situation or whether there was no water in the regular supply channel as we are concerned only about whether there has been any violation committed by the petitioner in respect of free agricultural electricity service connection. The petitioner's authorized representative has admitted during the inspection as well as the petitioner in this writ petition that the free

agricultural service connection was used to draw water to be supplied to the school. Therefore it needs to be concluded that there has been unauthorized use of the free agricultural service connection. The fact that a 2KW motor was installed for which purpose would further fortify the stand of the respondent.

13.It is the submission of the learned senior counsel for the petitioner that the petitioner had already remitted a sum of Rs.4,000/- and having collected the said amount in terms of Section 126 of the Act, the second respondent cannot alter the same and proceed against the petitioner under Section 135 of the Act and therefore, the impugned proceedings are without jurisdiction. The further submission is that to attract Section 135 of the Act, the respondents should establish dishonest intention on the part of the petitioner and there is no whisper of any such dishonest intention in the provisional assessment order and therefore, Section 135 of the Act cannot be invoked.

14.Section 126 of the Act falls in Part XII under the Chapter 'Investigation and Enforcement'. Section 126 deals with an assessment. Sub-section (1) of Section 126 states that if on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use. Sub-sections (2) and (3) of Section 126 of the Act deals with procedures to be followed after an order or provisional assessment is made. Sub-section (5) states that if the assessing officer reaches the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if the period cannot be ascertained, it shall be limited to a period of twelve months immediately preceding the inspection. Section 135 of the Act falls in Part XIV of the Act which deals with Offences and Penalties. Section 135 deals with theft of electricity. Under Sub-section (1) broadly five categories of conduct of the assessee has been set out to denote theft.

15.A careful reading of Section 126 and Section 135 of the Act would show that several of the activities which have been termed as unauthorised use of electricity under Section 126 of the Act constitute theft of electricity under Section 135 of the Act. The argument of the learned senior counsel is that the petitioner having dealt with initially under Section 126 of the Act and compounding fee of Rs.4,000/- having been collected, the same cannot be now altered to that of a case under Section 135

of the Act to term it as a theft of electricity. In the considered view of this Court, the payment of compounding fee is for the purpose of saving the person from the rigor of prosecution and it cannot be used to absolve the liability which arises under any fiscal statute. This position is vivid in taxation statutes whether an assessee on being found to have filed an improper return or understated his income is issued with a revision of assessment notice along with or a separate notice for prosecution. If the assessee wants to save himself from the rigor of prosecution, it would be well open to him to pay the compounding fee but that will not absolve the assessee of the tax liability. This very often arises in cases under the erstwhile VAT regime where goods are detained during the course of inter-state movement and the assessee or the transporter pays the compounding fine to enable the cargo to move, but however, the tax liability will have to be separately determined after notice to the assessee. Therefore, in the considered view of this Court, Section 126 and Section 135 of the Act operate on different planes though it may appear that there is overlapping between both the provisions. Therefore, whenever there is theft of electricity, the procedure to be followed shall be under Section 135 of the Act.

16. An argument was advanced contending that to attract Section 135 of the Act, the respondents should establish that the petitioner acted dishonestly. Before examining the said argument, it is to be noted that the petitioner's case would fall under Section 135(1)(e) of the act as it is an admitted factual position that there has been use of electricity for the purpose other than for which the usage of electricity was authorized. In other words, the authorized usage of free supply was exclusively for agricultural purpose. The said electricity was used for a purpose other than agriculture by connecting a motor of 2KW which is admitted by the petitioner. Therefore, Clause (e) of Section 135(1) of the Act would stand attracted. The argument of the learned senior counsel is that the respondents should establish that such usage for other purpose was with dishonest intention, in other words, mensrea should be established. We are not adjudicating the correctness of a criminal trial but examining the correctness of a provisional assessment order which during the pendency of the writ petition has culminated in a final assessment order which remains unchallenged. The second respondent cannot be expected to write a judgment as that of a Court of law. The words dishonest/dishonestly occurring in Section 135 of the Act needs to be interpreted bearing in mind the scheme of the Act and the policy decision of the Government to supply free electricity for agricultural purposes by incurring substantial costs to the State exchequer. As prefaced, free electricity supply is in fact an exemption granted in favour of agriculturist as a class.

If such is the position, then the conditions of exemption are to be strictly interpreted. There can be no room for examining the innocence of a consumer stating that due to emergent situation, he had utilized such free supply for purpose other than agriculture. This can be no explanation to escape from the rigor of Section 135(1) of the Act. The Mahazar records a motor of 2KW was connected to the free service connection, which was not denied. Thus, in the considered view of this Court, the word 'dishonestly' occurring in sub-section (1) has to be interpreted bearing in mind the policy behind the grant of free electricity for agricultural purposes only. If there has been a violation whatever may be the lofty intentions [so alleged], it would fall within the scope of dishonest intention attracting sub-section (1) of Section 135 of the Act.

17. In the case of V. Swaminathan, the challenge was to an assessment order passed under Section 135 of the Act. In the said decision, the Court took note of several decisions and more particularly, the decision of the Hon'ble Supreme Court in the case of Southern Electricity Supply Co., of Orissa Ltd. vs. Sri Seetaram Rice Mill [(2012) 2 SCC 108]. One of the questions which was considered by the Hon'ble Supreme Court was the distinction between Section 126 and Section 135 of the Act. It was pointed out that the marked differences in the contents of Section 126 and Section 135 are obvious, they are distinct and different provisions which operate in different fields and having no common premise in law. It was pointed out that the expression "unauthorized use of electricity" under Section 126 of the Act deals with cases of unauthorised use, even in absence of intention. These cases would certainly be different from cases where there is dishonest abstraction of electricity by any one of the methods enlisted under Section 135 of the Act. It was further pointed out that where a consumer by means and methods as specified under Sections 135(a) to 135(e) of the Act has abstracted energy with dishonest intention would fall under the category of theft of energy and where the consumer has used excessive load against the installed load, there is violation of terms and conditions of supply, it would fall under Section 126 of the Act. Ultimately the Court held that whether there was theft of energy or not cannot be adjudicated by the Court under Article 226 of the Constitution of India and remanded the matter to the authority for fresh consideration.

18. The decision in the case of N. Mohammed Farook was rendered taking note of the decision in the case of Sri Seetaram Rice Mill. It was held that in order to take action under Section 135 of the Act, the Board should have primary materials suggesting dishonest intention whereas no such requirement is necessary for taking action under Section 126 of the Act. After setting out this legal position by following the decision of the

Hon'ble Supreme Court, the matter was remanded to the Board permitting the petitioner to submit explanation.

19. In both the aforementioned decisions of this Court, the legal position has been pointed out. In the instant case, this Court has observed that the free electricity supply for agricultural purpose is an exemption granted in favour of an agriculturist and if there is a violation, there need not be an exercise to find out whether it was a deliberate violation or a violation which was committed owing to contingencies at times beyond the control of the assessee. If the explanation of the petitioner, that they used it for meeting exigencies is to be accepted, the very purpose of granting an exemption/free supply, would be lost and in no case where there has been violation of condition of exemption, the respondents would be able to take action because the assessee invariably will come forward with some "story" to state that there was bonafide in his action and there is no malafide or dishonest intention. As pointed out the respondents are not prosecuting the petitioner as that of a criminal court. Therefore, the word 'dishonest' occurring in Section 135(1) of the Act needs to be given a purposive interpretation, otherwise, the provision itself would be rendered redundant. The fact that there was a 2KW load connected to the free agricultural service connection, meant for drawing water to the school would be sufficient to conclude that there is theft.

20. In the case of M/s. Emkay Alloys (P) Ltd., the appellant argued that Section 126 and Section 135 of the Act operate on two different fields as Section 126 of the Act deals with monetary liability whereas Section 135 of the Act deals with criminal liability. The appellant relied on the decision of the Hon'ble Supreme Court in the case of Maharashtra State Electricity Distribution Company Ltd. vs. Appellate Authority and another [(2018) 3 SCC 608] and the decision in the case of Sri Seetaram Rice Mill. The Hon'ble Division Bench held that the assessment under Section 126 and Section 135 of the Act is quite different from each other and in reality the ingredients of Section 126 of the Act can be pressed into service for unauthorised use of electricity. However, in respect of Section 135 of the Act, the subtle difference is to be borne in mind by a reasonable and prudent person.

21. In the light of the observations made by this Court and the findings rendered, it has no hesitation to hold that use of free electricity supply meant exclusively for agricultural purpose for a purpose other than for which it was authorized would fall within the ambit of Section 135(1)(e) of the Act and the interpretation to the word 'dishonestly' to be given in the

instant case would be to the effect that when the consumer clearly knows that the very electricity supply cannot be used for any other purpose, it is to be concluded that there is dishonest intention on the part of the consumer to use the electricity for the purpose other than for which the usage was authorized, mensrea is writ large, needs no further proof. Therefore, it is held that the second respondent was justified in proceeding under Section 135 of the Act and merely because compounding fee has been paid will not denude the jurisdiction of the second respondent. In fact in the calculation sheet appended to the provisional assessment order, the amount paid towards compounding fee has been separately shown in column No.17 which clearly states that it is an amount payable to absolve the petitioner from criminal prosecution and nothing more.

22.The last aspect which requires to be considered is whether the provisional assessment order is not a provisional order/show cause notice but a final order itself. The purpose of issuing the provisional assessment is to provide the consumer an opportunity to make his objections against the proposal made. The petitioner did not choose to avail the opportunity before coming to this Court nor during the pendency of the proceedings before this Court but chose to challenge the jurisdiction of the second respondent to initiate proceedings under Section 135 of the Act. The impugned provisional assessment order states that if the petitioner is desirous of filing objections, if any, he may do so within seven days and he can also appear in person or through authorized representative along with relevant documents for an enquiry.

23.The learned senior counsel referred to certain words and phrases used in the impugned provisional assessment order to state that it is not a show cause notice but a final order. To buttress the said submission, reliance was placed on the decision in the case of Oryx Fisheries Private Limited. In the said case, the Hon'ble Supreme Court found that though the appellate order contained reasons, the original order did not contain any reasons and the same cannot be compensated in the appellate order and after quashing the entire proceedings left it open to the authorities to proceed from the stage of show cause notice afresh. Furthermore, in the said case the Court found that the authority had a closed mind at the stage of show cause notice itself. It was pointed out that a show cause notice cannot be read hyper technically and it has to be read reasonably; while reading a show cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show cause notice. Therefore, it was pointed out that while issuing show cause notice the authorities must take care to

manifestly keep an open mind as they are to act fairly in adjudicating the guilt or offence.

24.The interpretation given by the petitioner to the provisional assessment order to mean a final order is not tenable. The provisional assessment order has to be read as a whole. Paragraphs 1 to 3 of the provisional assessment order sets out the facts which are not disputed but admitted by the petitioner. Paragraph 4 states that the approximate loss is computed and furnished in the working sheet and the assessment amount has to be paid within seven working days. Paragraph 6 provides for opportunity to file objections and also an opportunity of personal hearing. Since the electricity consumption charges have to be collected, it is necessary for computation being done by the second respondent and furnish the same to the petitioner. The case on hand is not a show cause notice simplicitor but a provisional assessment order which are typical of cases arising under any taxation or penal statutes. Therefore, the tests to be applied to such provisional orders are slightly different from the tests to be applied to show cause notices in other cases. Therefore, this Court is of the view that on a reasonable reading of the impugned provisional assessment order would show that it is provisional in nature and affords opportunity to the petitioner to submit his objections and therefore, the impugned provisional order cannot be stated to be one which has been issued with a closed mind. However since the petitioner was not willing to submit himself to the jurisdiction of the respondent by responding to the show cause notice, but chose to contest the matter on merits, this issue though argued by the petitioner, is academic.

25.For all the above reasons, the petitioner has not make out any case for interference with the impugned proceedings. Accordingly, the writ petition fails and the same is dismissed. Consequently, interim order stands vacated. M.P.Nos.2 of 2013 is dismissed and M.P.No.1 of 2013 is closed. No costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

cse

To

1. The Chairman,
Tamil Nadu Electricity Board,
144, Anna Salai, Chennai - 600 002.
 2. The Assistant Executive Engineer,
Distribution, TANGEDCO,
Kovilpalayam - 641 107,
Coimbatore District.
- +1 CC to Mr.E. Jayasankar, Advocate sr 6623.

W.P.No.29928 of 2013
and M.P.Nos.1 and 2 of 2013

RR(CO)
SP(25/02/2020)