

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.11149 of 2020
and
W.M.P.Nos.13595 and 13597 of 2020

M/s. Elite Exxtractz

Represented by its Proprietrix
S.Santhi, W/o.P.Saravanan,
Natteri Road, Sirukadambur,
Gingee - 604 202,
Villupuram District.

....Petitioner

-Vs-

1. The Junior Engineer/
The Executive Engineer,
TANGEDCO,
Gingee Town,
Gingee - 604 202.

2. The Assistant Audit Officer,
AP.1/Audit Branch,
TANGEDCO,
Villupuram Region.

....Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for entire records relating to the proceedings/ impugned order issued by the 1st respondent in க.எண் இமிபொ.இப.ந.செ.வ ஆ.கோ.கட்டு .அ.எண் 3342020 நாள். 17.03.2020 along with 2nd respondent's proceedings in audit Slip No.127 dated 30.10.2019 and quash the same.

For Petitioner : Mr.T.Karunakaran

For Respondents : Mr.M.Varun Kumar, Standing Counsel

O R D E R

On consent given by either side, the main writ petition itself has been taken up for final hearing.

2. This Writ Petition has been filed challenging the impugned demand raised by the first respondent wherein the

petitioner has been directed to pay a sum of Rs.1,68,772/- on the ground that there is a revision in Tariff with effect from 11.08.2020.

3. The case of the petitioner is that they are running a packaged drinking water unit and the electricity connection has been given to the petitioner is dealt with under Tariff III-B. It is clear from the latest bill that has been raised on the petitioner that it continues to be under Tariff III-B.

4. The petitioner received the impugned demand from the first respondent directing the petitioner to pay a sum of Rs.1,68,772/- on the ground that the Tariff has been revised to Tariff-V with effect from 11.08.2017. This demand was made based on an audit slip issued by the audit party. Aggrieved by the same, the present writ petition has been filed before this Court.

5. Mr.Karunakaran, learned counsel for the petitioner submitted that the petitioner was never put on notice with regard to the revision in Tariff and straight away a demand has been raised only on the basis of the audit slip. Learned counsel submitted that the demand that has been raised by the first respondent has a civil consequence and therefore, the respondents ought to have given an opportunity to the petitioner before raising the demand. Therefore, the learned counsel submitted that the impugned demand made by the first respondent suffers from violation of principles of natural justice. The learned counsel further submitted that if the first respondent wanted to revise the Tariff based on the audit objection, a notice could have been issued to the petitioner and the petitioner would have given their explanation and thereafter an order could have been passed in accordance with law. Without resorting to this procedure, the impugned demand raised by the first respondent is unsustainable in law.

6. Per contra, Mr.Varun Kumar learned counsel appearing on behalf of the respondents submitted that it is well within the power and authority of the first respondent to raise a demand based on the audit objection. Learned counsel submitted that the Tariff was revised with effect from 11.08.2017 and the petitioner was placed under Tariff-V. Therefore, there are absolutely no grounds to interfere with the impugned demand raised by the first respondent and the petitioner must be directed to pay the amount to TANGEDCO.

7. It is an admitted case that the electricity connection that was given to the petitioner was assessed under Tariff III-B. Even the latest bill that was issued to the petitioner clearly reflects the fact that the petitioner falls under Tariff

III-B. It seems that there was an audit objection raised and an audit slip was issued to the effect that the petitioner must be assessed under Tariff V with effect from 11.08.2017. Based on this audit slip, the first respondent has straight away issued the impugned demand and has directed the petitioner to pay a sum of Rs.1,68,772/-.

8. This Court has time and again held that recovery of any amount cannot be straight away done on the basis of an audit objection or an audit report, without giving an opportunity to the concerned person. This principle has been clearly enunciated by the Honourable Supreme Court in the case of "Syed Abdul Qadir and Others -Vs- State of Bihar and Others" reported in 2009 (3) S.C.C.475. Even though this judgment was rendered in a service case, the principle can be employed in all cases involving recovery based on an audit objection.

9. Even though the first respondent may have the power to raise a demand based on the audit slip, the first respondent ought to have put the petitioner on notice and sought for his explanation and only thereafter such a demand could have been raised. This is the minimum procedure that ought to have been followed, failing which the impugned demand raised by the first respondent will suffer from violation of principles of natural justice.

10. In view of the above discussion, this Court has no hesitation to interfere with the impugned demand of the first respondent dated 17.03.2020 and accordingly the same is hereby quashed. The first respondent is directed to issue notice to the petitioner calling for his explanation with regard to the revision in Tariff and the consequent short levy of current consumption charges and the petitioner, on receipt of the notice, can give their explanation and thereafter the first respondent can proceed further strictly in accordance with law. Any revision in Tariff should be carried only after affording opportunity to the petitioner.

11. In result, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

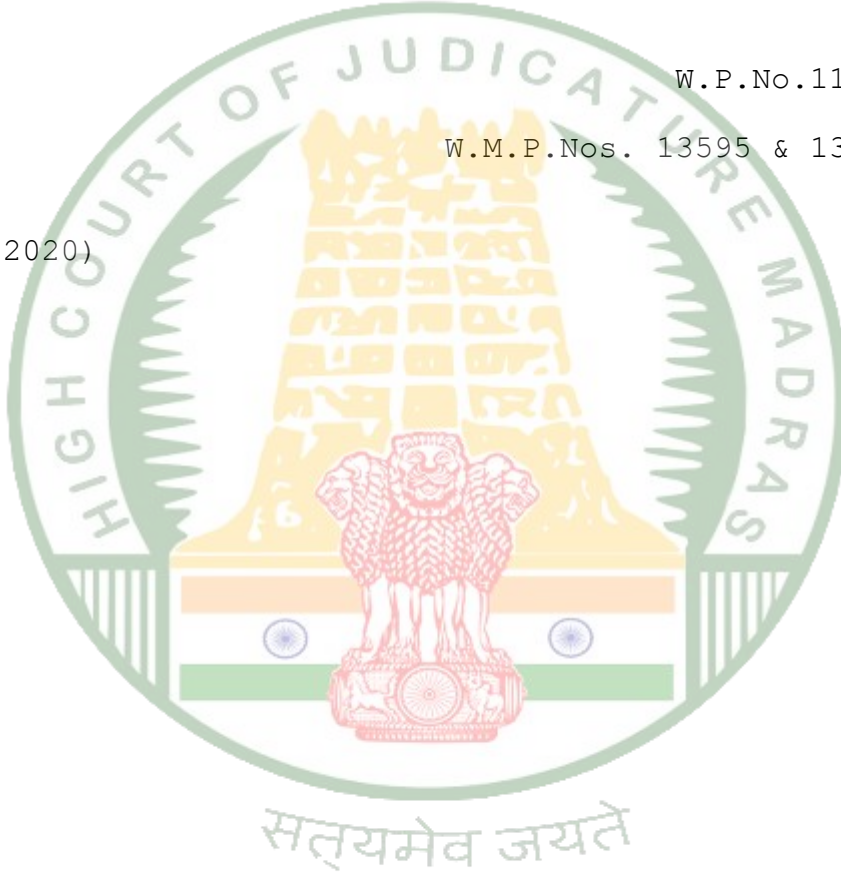
To

1. The Junior Engineer/The Executive Engineer,
TANGEDCO, Gingee Town,
Gingee - 604 202.
2. The Assistant Audit Officer,
AP.1/Audit Branch, TANGEDCO,
Villupuram Region.

+lcc to Mr.M.Varunkumar, Advocate in SR.27736

W.P.No.11149 of 2020
and
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RJI (CO)
RV (14/09/2020)



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