



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. (MD)No.17200 of 2020

and W.M.P. (MD) Nos.14387 & 14389 of 2020

(Through Video Conference)

Smt.Nirmala Devi Agarwal

... Petitioner

Vs

1) The Superintending Engineer,
Ramnad Electricity Distribution Circle,
Ramanathapuram Town & District.

2) The Executive Engineer,
Distribution/ TANGEDCO,
Paramakudi,
Ramanathapuram District.

3) The Assistant Executive Engineer,
Distribution/ TANGEDCO,
Mudukulthur 623 704,
Ramanathapuram District.

... Respondents

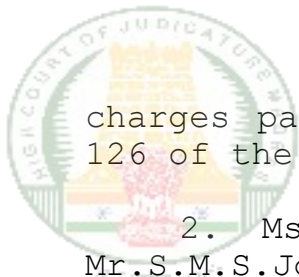
PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the impugned provisional and final assessment orders of the third respondent issued under his respective LR.No.AEE/D/MDKR/CI/F.DOC/DNo.362/2020 dated 13.10.2020 and Lr.No.AEE/D/MDKR/CI/F.DOC/DNo.385/2020 dated 07.11.2020 respectively in the name of the petitioner - Nirmala Devi Agarwal and quash the said demand.

For Petitioner : Mr.N.Dilip Kumar

For Respondents : Ms.M.Rajeswari,
For Mr.S.M.S.Johnny Basha,
Standing counsel

O R D E R

This writ petition has been filed challenging the final assessment order dated 13.10.2020 passed by the third respondent, whereby, the third respondent has passed a revised assessment calling upon the petitioner to pay Rs.9,60,090/- as compensation



charges payable by them under sub-sections (5) & (6) of Section 126 of the Electricity Act, 2003.

2. Ms.M.Rajeswari, learned counsel appearing on behalf of Mr.S.M.S.Johnny Basha, learned standing counsel appearing for the respondents accepts notice for the respondents. By consent of both sides, this writ petition is taken up for final disposal at the stage of admission itself.

3. It is the contention of the respondents that the petitioner has unauthorizedly used the electricity from their Low Tension(LT) service Nos.355-008-1157 through cable wire for their another service connection LT CT Service No.355-008-622 where, they are running a Wet Mill motor and other machines. According to the third respondent, the petitioner has violated Section 126 of the Electricity Act, 2003.

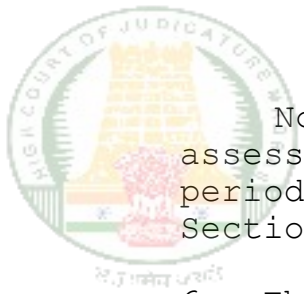
4. It is the case of the petitioner that by total non-application of mind to the explanation submitted by them on 15.10.2020 as well as the subsequent communications, the third respondent has passed the impugned non-speaking order. According to the petitioner, they earlier filed writ petition in W.P.(MD) No.6205 of 2020 challenging the final assessment order passed by the third respondent dated 28.06.2020 on the ground of violation of principles of natural justice. It is their case that by order dated 08.09.2020 passed in W.P.(MD) No.6205 of 2020, the earlier assessment order dated 26.02.2020 was quashed by this Court and the matter was remanded back to the third respondent for fresh consideration in accordance with law.

5. It is the contention of the petitioner that the third respondent, without considering the explanation submitted by them, has passed the impugned non-speaking order. In such circumstances, this writ petition has been filed. Learned counsel for the petitioner also drew the attention of this Court to the impugned order and in particular referred to paragraph no.3 of the said order which reads as follows:-

"3.0. On a detailed examination and on consideration of your explanation offered in your letter cited in reference (2) and with regard to the facts and records furnished by you during the personal hearing conducted on 23.10.2020, it is found that the unauthorized use of electricity has been committed as described in Para(1).

After careful consideration of your representation in the personal hearing on 23.10.2020, it is confirmed that yours concern has not avail the supply for the period from 04.12.2020 to 13.01.2020. So the above fact is a reasonable one and hence considered by Assessment Officer for taking in to the account of period of

<https://hcservices.ecm.gov.in/hcservices> use of electricity.



Now the Assessment officer has revised the assessment amount after deduction non supply availing period i.e. 40 days from one year of period as per Section 126 of the Electricity Act, 2003."

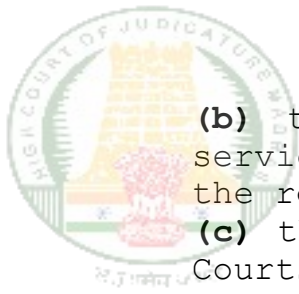
6. The learned counsel for the petitioner also drew the attention of this Court to the explanation submitted by the petitioner dated 15.10.2020 in respect of the proceedings initiated by the third respondent which resulted in the impugned assessment order. According to the petitioner, as seen from the explanation, they have not committed any unauthorized use of electricity and it is also their case that the Inspection report was not signed by their authorised person and hence, the third respondent cannot revise the assessment for the alleged violation committed by the petitioner under Section 126 of the Electricity Act, 2003. The explanation given by the petitioner on 15.10.2020 is a detailed one. Referring to the same, the learned counsel for the petitioner would submit that none of the objections raised by the petitioner has been considered under the impugned order passed by the third respondent. According to him, the impugned order has been passed by total non-application of mind and without adhering to the principles of natural justice.

7. Per contra, the learned counsel for the respondents would submit that the objections raised by the petitioner is duly considered by the third respondent under the impugned order. She would refer to paragraph nos.1 and 2 of the impugned order and would submit that the objections of the petitioner has been duly considered. She would further contend that the only remedy available to the petitioner is to file a Statutory Appeal and therefore, the writ petition is not maintainable.

8. Heard Mr.N.Dilip Kumar, learned counsel for the petitioner and Ms.M.Rajeswari, learned counsel appearing on behalf of Mr.S.M.S.Johnny Basha, learned standing counsel appearing for the respondents.

9. This Court after considering the rival submissions and also after perusing and examining the impugned order as well as the explanation dated 15.10.2020 submitted by the petitioner, is of the considered view that the impugned order passed by the third respondent is a non-speaking order, as it has not considered the objections raised by the petitioner in their explanation dated 15.10.2020. The petitioner has raised several objections in their letter dated 15.10.2020. Amongst them are:-

(a) the Inspection Report, based on which the impugned assessment has not been signed by the authorised representative of the petitioner and no sufficient opportunity was granted to them to raise objections with regard to the said inspection report,



(b) they have not unauthorizedly used the electricity service connection for some other purpose as alleged by the respondents;

(c) they have also referred to various decisions of High Courts in support of their contentions and

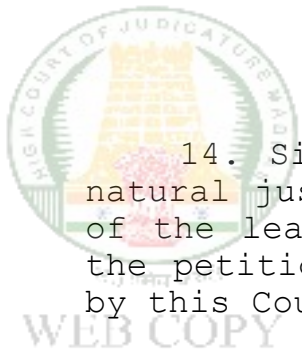
(d) The authority has failed to verify the connected load of both services, viz., the premises for which the subject electricity connection has been granted to the petitioner for the salt industry and the neighboring unit for which the respondent claims that the petitioner has unauthorizedly used the electricity connection.

10. The Inspection Report has failed to note the instant Maximum Demand recorded in the service connections, which shows utter failure of the inspection. From the Inspection Report, it can be inferred that mechanically, without non-application of mind, the said report was prepared.

11. If the connected load of service connection No.1157 was verified, the Authority might come to a conclusion that the instant Maximum Demand recorded in the service connection given, will tally with the connected load. The petitioner has sent a report on 02.03.2020 praying for the test report of the meter installed on 12.02.2020, which has not been received till date.

12. As seen from the above, a detailed explanation has been submitted by the petitioner on 15.10.2020 raising several objections with regard to the demand made by the respondents. However, as seen from the impugned order dated 07.11.2020 passed by the third respondent, the objections raised by the petitioner in his letter dated 15.10.2020 has not been considered by the third respondent while passing the final order. This being the case, it is clear that the third respondent has passed the impugned order dated 07.11.2020 without adhering to the principles of natural justice and has also passed a non-speaking order.

13. For the foregoing reasons, the impugned order dated 07.11.2020 passed by the third respondent is hereby quashed and the matter is remanded back to the third respondent for fresh consideration and the third respondent shall pass final orders after giving due consideration to the objections raised by the petitioner in his letter dated 15.10.2020 and give reasons for each and every objection raised by the petitioner, if they are going to reject the same and pass final orders on merits and in accordance with law, after affording the petitioner the right of personal hearing within a period of twelve weeks from the date of receipt of a copy of this order.



14. Since the third respondent has violated the principles of natural justice and has passed a non-speaking order, the contention of the learned standing counsel appearing for the respondents that the petitioner will have to file the Statutory Appeal, is rejected by this Court.

15. With the aforesaid directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Writs)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To:

- 1) The Superintending Engineer,
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- 2) The Executive Engineer,
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- 3) The Assistant Executive Engineer,
Distribution/ TANGEDCO,
Mudukulthur 623 704,
Ramanathapuram District.

+1 CC to M/s.N.DHILIP KUMAR, Advocate (SR-23481[F] dated 01/12/2020

Order made in
W.P. (MD)No.17200 of 2020
Dated:30.11.2020

mj (CO)
TR(29.12.2020) 5P 5C