



WEB COPY

W.A.(MD) No.385 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.08.2020

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.A.(MD)No.385 of 2018

and

C.M.P.(MD)No.2394 of 2018

- 1.The Tamil Nadu Electricity Board,
Chennai, represented by its Chairman.
- 2.The Superintending Engineer,
Tamil Nadu Electricity Board,
Trichy-620 020.
- 3.The Executive Engineer,
Operation and Maintenance (East),
Tamil Nadu Electricity Board,
Trichy-620 020.
- 4.The Assistant Executive Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Board,
Rural / Trichy-620 020.
- 5.The Assistant Executive Engineer, (Enforcement),
Tamil Nadu Electricity Board,
Rura, Trichy- 620 020. ... Appellants/Respondents

-Vs-

B.Sivaramakrishnan ...Respondent/Writ Petitioner

Prayer: Writ Appeal - filed under Section 15 of the Letters Patent Act, to set aside the order dated 22.02.2017 passed in W.P.(MD) No.13005 of 2010.

Prayer in WP(MD). 13005/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Assessment Order issued by the 4th respondent Assistant Executive Engineer in Letter No. AEE/O&M/R/Trichy dated 15/10/2010 demanding a sum of Rs. 12,000/- towards Compounding of offence and Rs.119304/- towards Compensation, Quash the Same and further Direct

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the respondents herein to repay Rs.12,000/- paid to them by the petitioner towards the compounding of offence.

For Appellant : Mrs.S.Srimathy
for Mr.S.M.S.Johny Basha
For Respondents : Mr.C.M.Arumugam

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ORDER

[Order of the Court was made by **M. SATHYANARAYANAN, J.,**]

The official respondents in W.P.(MD)No.13005 of 2010 are the appellants herein.

2. The respondent / writ petitioner made a challenge over the impugned assessment of the fourth appellant, dated 15.10.2010, in and by which, a sum of Rs.12,000/- towards compounding of the offence and Rs.1,19,304/- towards compensation had been demanded. The writ petition was admitted and after contest, it came to be allowed in the light of paragraph No.20 of the order impugned herein and challenging the said order dated 22.02.2017, the present writ appeal is filed.

3. The respondent / writ petitioner in the affidavit filed in support of the writ petition would aver among other things that he is owning an agricultural farm at Sannasipatti Village in Trichy District in S.F.No.67/5A of Mathur Revenue Village, Trichy District. He is raising agricultural crops such as Mango, Sappotta, Guava, Coconut, Gooseberry, Hibiscus and Bamboo and that apart unique medicinal herbs are also cultivated to educate the students and medicinal plant farmers of the rural surroundings. The National Horticulture Board under the Ministry of Agriculture, Government of India has also clarified that the crops namely Mango, Sappotta, Amla, Guava, Coconut, Hibiscus and Papaya are horticulture crops and forms part of the agricultural category.

4. The respondent / writ petitioner submitted an application, dated 11.02.2008 to the appellant Board to give an agricultural service connection in Self Finance Scheme and accordingly, the said connection was given in S.C.No.533/1V for running 5HP Motor Pump and the appellant Board while granting such connection has disconnected the previous III-Phase connection given in S.C.No.447/V. Accordingly, the respondent / writ petitioner started paying the electricity consumption charges.

5. It is further averred by the respondent / writ petitioner that his farm was also subjected to regular inspection and one such inspection was on 26.04.2010. The fourth and the fifth appellants herein conducted a surprise inspection and prepared a report and



without asking anything, under the threat of criminal prosecution, compelled the writ petitioner to sign in the report and copy of the said report had also not been furnished to him. The fourth appellant passed an order on 26.04.2010, wherein it has been stated among other things that during inspection, theft of energy has been noticed by using electricity for Nursery and Mooligaithottam, Nelli, Koyya, Sappotta, Coconut Tree for a Load of 1.1 K.W + 1.5 K.W.+200 W (LL) and by committing the said offence, the writ petitioner was illegally, dishonestly abstracted, consumed and used energy with an intention to defraud the licensee. It is the case of the appellants that the crops that are raised by the writ petitioner are for commercial exploitation and since it has been misused, the said action has been taken.

6. The fourth appellant has done a calculation and arrived at a compensation of Rs.1,19,304/- as well as compounding fee of Rs.12,000/-. The respondent has paid the compounding fee under compulsion. Thereafter, the respondent / writ petitioner was served with the provisional assessment order, dated 20.10.2010 fixing a sum of Rs.1,19,304/- towards compensation and challenging the legality of the proceedings in and by which, the compounding charges and compensation has been levied, the respondent/ writ petitioner has filed a Writ Petition and it was entertained.

7. The appellants herein had filed counter affidavit in that writ petition and took a stand that there was no compulsion or threat on their part and since the writ petitioner utilized the electricity connection other than the agricultural purpose and in fact, exploited the same for commercial purpose, appropriate action has been taken strictly in accordance with the Regulations and prayed for dismissal of the Writ Petition.

8. The learned Judge after taking note of the materials and rival submissions, in paragraph No.14 of the order observed that "When the word 'Agriculture' alone is used and when there is no specific exclusion is given, that activities such as Horticulture etc., are to be exempted from the category of agriculture even though the III Tariff Regime, it shall be considered only for those Horticulture Services also, which shall form part of the agricultural activities".

9. The learned Judge having found that in the light of the contra stand taken by the respondent / writ petitioner and the appellant Board as to the commercial exploitation / commercial activities, thought it fit to remand the matter once again and then to levy cost towards compounding fee of Rs.12,000/-. The Official Respondents challenging the legality of the said order has filed this Writ Appeal.

10. The learned counsel for the appellants has drawn the



attention of this Court to the additional typed set of documents, which contains T.P.No.1 of 2002, dated 15.03.2003 and T.P.No.1 of 2012, dated 01.04.2012, respectively as well as the further clarificatory order 1 to 4 for Tariff Order 1 of 2012, dated 24.12.2012. It is submitted that if the activities are purely agricultural, then the case of the respondent / writ petitioner would fall under LT Tariff IV and if it is for commercial purpose, then the case would fall under LT III-A(1) and it is not even the case of the respondent / writ petitioner as given in the affidavit that he is not selling the produce for commercial purpose and in the absence of specific averments, the stand of the appellant Board that the case of the writ petitioner would fall under LT III-A(1) is perfectly sustainable and he would further aver that the compounding fee of Rs.12,000/- was paid voluntarily without any protest and that therefore, in Paragraph No.20 Clause (v) of the order also warrants interference and prays for setting aside the order in *toto* and allowing of this Writ Appeal.

11. Per contra, the learned counsel for the respondent / writ petitioner would submit that the term of agriculture also would include horticulture and though the writ petitioner in response to the provisional assessment order has given a detailed reply, dated 28.04.2010 specifically denying the fact of the Commercial exploitation of the produce, the impugned order came to be passed in a standardised format without any application of mind. Therefore, the order of remand passed by the learned Judge is perfectly in order and further he stated that the said order would not in any way prejudice the case of the appellants and prays for dismissal of this Writ Appeal with costs.

12. This Court carefully considered the rival submissions and also perused the materials on record.

13. No doubt, the writ petitioner in his reply, dated 28.04.2010 in response to the provisional Assessment order, dated 26.10.2010 took a stand that the connection obtained by him is not utilised for any other commercial purposes but, however in the affidavit filed in support of the Writ Petition, he does not specifically stated so. The fact remains that the horticulture activities are also carried out by the writ petitioner and the learned Judge having found that the said aspect have not been considered, has remanded the matter to the appellant Board. As rightly pointed out by the learned counsel appearing for the respondent / writ petitioner, in spite of response, dated 28.04.2010 submitted by him, the final order of assessment came to be passed on 15.10.2010 in a standardised format and it is obligatory on the part of the appellants to take into consideration the factual aspects but unfortunately, the appellant Board did not carry out such exercise and therefore, the learned Judge was right in remanding the matter once again to the appellant Board.



14. Insofar as Paragraph No.25 of the impugned order is concerned, the proceedings relating to the compounding charges, dated 26.04.2010 did not disclose as to the payment of the same under protest and ofcourse, the writ petitioner latter on took a stand that the same was paid under compulsion. In the light of the fact that the said defense had not been taken at the earliest point of time, this Court is of the considered view that Paragraph No.20 (v) of the order, dated 20.02.2017 alone warrants interference and it is also made clear that the payment of such compounding charge is also subject to the adjudication to be done in the light of Paragraph No.20 (i) to (iv) of the impugned order.

15. In the result, this writ appeal is partly allowed and sub para (v) of paragraph No.20 of the impugned order, dated 20.02.2017 alone is set aside and the rest of the directions given in sub paragraphs (i) to (iv) in Paragraph No.20 are confirmed. The fourth appellant is directed to carry out the exercise in terms of the directions given in sub paragraphs Nos.(i) to (iv) in Paragraph No.20 of the impugned order passed in the writ petition within a period of six weeks from the date of receipt of a copy of this order and also afford an opportunity of personal hearing to the respondent /writ petitioner before doing so. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD II)

// 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 Tamil Nadu Electricity Board,
Chennai, represented by its Chairman.

2.The Superintending Engineer,
Tamil Nadu Electricity Board,
Trichy-620 020.



3.The Executive Engineer,
Operation and Maintenance (East),
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