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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-11-2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP No.21970 of 2015

And

MP No.1 of 2015

V.C.Muthusamy

..Petitioner

vs.

1. Secretary to Government,
Energy Department,
Fort St. George,
Chennai,Tamil Nadu.

2. Chairman,
The Tamil Nadu Generation and Distribution
Corporation,
TANGEDCO,Anna Salai,Chennai-2.

3. Assistant Executive Engineer,
O&M, The Tamil Nadu Generation and Distribution
Corporation, TANGEDCO/SOUTH,
Vellakovil,Tirupur District.

..Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records pertaining to the Final Assessment Order in Letter No.AEE/O&M/S/VKL/F. 11/D.No.232/15-16 dated 24.06.2015 passed by the third respondent and quash the same as ex-facie illegal, arbitrary, ultra vires and error apparent on the face of record.

For Petitioner : Mr.V.Balamurugane

For Respondent-1 : Mr.C.Selvaraj,
Additional Government Pleader.

For Respondents-2and3: Mr.L.Jai Venkatesh,
Standing counsel for TANGEDCO.



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O R D E R

The Final Assessment Order for unauthorised use of electricity under Section 126 of the Electricity Act, 2003, is under challenge in the present writ petition.

2. The learned counsel appearing on behalf of the petitioner mainly contended that there is non-application of mind on the part of the Authorities even in referring the appellate remedy provided under the Electricity Act and Tamil Nadu Electricity Supply Code.

3. The impugned order states that the petitioner may prefer an appeal before the Appellate Authority-Executive Engineer/Distribution/ Kangeyam, within 30 days from the date of receipt of the order on deposit of half of the assessed amount with the Board as per Section 127(2) of the Electricity Act, 2003 along with an appeal fee of Rs.100/- by Demand Draft.

4. In this regard, the learned counsel for the petitioner drew the attention of this Court through the Notification issued by the Government of India, Ministry of Power dated 07.02.2006, wherein the Government of India in exercise of powers conferred by clause (u) of sub-section (2) of Section 176 of the Electricity Act, 2003, issued the Rules prescribing the Appellate Authority for preferring an appeal.

5.As per the abovesaid Notification for the purpose of appeal under Section 127, the Statement Government may, by Notification in the Official Gazette, constitute an Appellate Authority consisting of one or more persons such that one of the persons shall have knowledge of matters related to assessment of electricity charges and none of them shall be directly related to the affairs of the territorial jurisdiction of the Licensee or Supplier of the electricity.

6.The abovesaid Notification is issued to ensure the compliance of principles of natural justice, as the Authority, who decided the case, do not sit as an Appellate Authority to review his own order, which is against the Rule of Law.

7.This Court is of the considered opinion that the point raised is undoubtedly acceptable, as the principles of natural justice requires transparency and the Original Authority cannot



be an Appellate Authority, who issued the orders or decided the disputes. Even the Tamil Nadu Electricity Supply Code is concerned, the same may be relevant as far as the case of the petitioner is concerned.

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8. In view of the fact that the impugned Final Assessment Order was issued under Section 126 of the Electricity Act, 2003, Regulations for Consumer Grievance Redressal Forum and Electricity Ombudsman, is the Regulation applicable in the present case.

9. Regulation 5 deals with kind of grievances that can be taken up by the Forum and the same reads as under:-

"5. Kind of grievances that can be taken up by the Forum.--The Forum shall take up any kind of grievances/complaints as defined in Clause 2(f) of these Regulations. However, the consumer's grievances concerned with-

(i) unauthorised use of electricity as detailed under Section 126; and

(ii) offences and penalties as detailed under Sections 135 to 141 of the Electricity Act, 2003 (36 of 2003) are excluded from the purview of this Forum."

10. Regulation 3 speaks about the constitution of Forum for redressal of consumer grievances. Regulation 4 speaks about the jurisdiction of the Forum. Filing procedures, handling procedures are also contemplated under the Regulations. Thus, the petitioner has to approach the Consumer Grievance Redressal Forum constituted under Regulations for Consumer Grievance Redressal Forum and Electricity Ombudsman.

11. This Court is of an opinion that the Authority, who decided the issues, determine the consumption charges or otherwise or the Authority passed orders cannot sit as an Appellate Authority or he cannot participate as a Member in the Forum constituted to redress the grievance of the consumers. All such appeals are to be decided by the Forum, which should not contain the Authority who has decided the issue in respect of the aggrieved person.

12. Frequently, such complaints are brought to the notice of this Court that the Authority, who passed the order is entertaining an appeal under the Regulation or under the Tamil Nadu Electricity Supply Code. Such a practice or procedure is



strictly in violation of the Rule of Law and on that ground alone, such orders passed by the Forum are to be quashed.

13. To avoid these basic controversies and to comply with the principles of natural justice, the second respondent-Chairman, Tamil Nadu Generation and Distribution Corporation (TANGEDCO) has to issue necessary circulars to all the Competent Authorities to ensure that the Authority, who issued the orders or decided the disputes, cannot sit as a Chairman or Member of the Grievance Redressal Forum, if any appeal is filed by the aggrieved person.

14. In the present case, the apprehension raised by the petitioner is reasonable and therefore, the respondents must ensure that the Authority, in the present case, namely, the Executive Engineer, who decided the issue, cannot sit as a Chairman or Member of the Redressal Forum for the purpose of considering the appeal, if any, is filed by the petitioner.

15. As far as the grounds raised on merits are concerned, the petitioner has to approach the Redressal Forum for adjudication with reference to documents and evidences available. Such an elaborate adjudication cannot be done in the writ proceedings under Article 226 of the Constitution of India by this Court, as it involves scrutinisation of documents.

16. The learned counsel for the petitioner made a submission that at the time of admission of the present writ petition, the petitioner has deposited a sum of Rs.7 lakhs with the third respondent herein. The said amount is to be adjusted at the time of hearing of the appeal.

17. The second respondent-Chairman, Tamil Nadu Generation and Distribution Corporation (TANGEDCO) is directed to issue appropriate circulars to all the Authorities, so as to ensure that the Authorities, who decided the issues and passed orders, shall not sit as a Chairman or Member of the Consumer Redressal Grievance Forum constituted under the Tamil Nadu Electricity Supply Code or under the Regulations for Consumer Grievance Redressal Forum and Electricity Ombudsman to comply with the principles of natural justice.

18. The principles required the Authorities, who dealt with the issues and passed order in original may not be allowed to



sit as a Member of the Consumer Grievance Redressal Forum and it is important to note that even the officials working in the very same office cannot be appointed as a Member of the Grievance Forum in order to comply with the principles of natural justice. Thus, it is preferable to appoint the officials from the other District or from the other Wing of the Electricity Board or any other Officer, who has not dealt with the issues against which an application is filed under the Tamil Nadu Electricity Supply Code, for the purpose of adjudication of the application filed under Regulation 18 of the Tamil Nadu Electricity Supply Code.

"19. Under these circumstances, the petitioner is at liberty to approach the appellate authority u/s.127 of the Act and in the event of filing any such appeal, the period during which this writ petition was pending before the High Court is to be taken into consideration for the purpose of condoning the delay and the issues are to be decided on merits and in accordance with law as expeditiously as possible and by affording an opportunity to all the parties."

20. With abovesaid liberty, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IX)
(07/12/2021)

***Para 19 to be corrected and addressed to the copy incorporated as per order of this Court dated 23.06.2022 made in WP.No.21970/2015.**

Sd/-

Assistant Registrar(CS-IX)
(28/06/2022)

//True Copy//

Sub Assistant Registrar

Svn



To

1. The Secretary to Government,
Energy Department,
Fort St. George,
Chennai, Tamil Nadu.
2. The Chairman,
The Tamil Nadu Generation
and Distribution Corporation,
TANGEDCO, Anna Salai, Chennai-2.
3. The Assistant Executive Engineer,
O&M, The Tamil Nadu Generation
and Distribution Corporation,
TANGEDCO/SOUTH,
Vellakovil, Tirupur District.
- *4. The Executive Engineer,
Operation/230/110 KV,
Substation/TANTRANSCO,
Kurukathi, Veppampalayam,
Vellakovil - 638 111,
Kangeyam Taluk.**

***To be substituted to the
order already despatched
on 23.12.2021**

***1cc to Mr.L.JaiVenkatesh, Advocate, S.R.No.38759**
+1cc to Mr.V.Balamurugan, Advocate, S.R.No.61882

WP 21970 of 2015

CA(CO)
RGA(08/12/2021)
PM/28/06/2022