

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 29218 of 2011

and

M.P. No. 1 of 2011

Kandasamy,

S/o.Ponne gounder

... Petitioner

Vs

1. The Assistant Executive Engineer,
Tamilnadu Generation & Distribution
Corporation Ltd., T.A.N.G.E.D.C.O.
Perur, Coimbatore.

2. The Divisional Executive Engineer,
Tamilnadu Generation & Distribution
Corporation Ltd., T.A.N.G.E.D.C.O.
Seera Naickenpalayam, Coimbatore.

.... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the Provisional Assessment order of the First Respondent in Lr.No.AEE/O&M/Perur/C1/F.Theft of Energy/D.No.460 of 2011 dated 17.11.2011 which had been confirmed by the proceedings dated 03.12.2011 of the First Respondent herein, in Lr.No.AEE/O&M/Perur/Va.Aa/Kho.Minthiruttu/A.No.446/2011, in the appeal petition filed by the writ petitioner along with proceedings of provisional assessment and quash the same and direct the First Respondent to restore the Agricultural Electricity Connection No.103-004-306 given for the lands bearing S.F.No.65, Arumuga Goundanur, Perur, Coimbatore.

For Petitioner : Mr.C.R.Prasanan

For Respondents : Mr.N.Damodharan
Standing Counsel

ORDER

The petitioner has challenged the impugned order of the 1st respondent/Assistant Executive Engineer who as an appellate authority concluded that the petitioner had committed theft of electricity connection by using free electricity given by the

petitioner vide Electricity Connection No.306/TF IV for his dairy.

2. An inspection was conducted in the agricultural farm of the petitioner by the 1st respondent/Assistant Executive Engineer on 15.11.2011. It was found that the petitioner was pumping water to his milk dairy through the machine to cool the hot milk and that water had been used for feeding of 12 cattles. The 1st respondent/Assistant Executive Engineer therefore concluded that there was theft of energy and therefore the petitioner was liable to pay a sum of Rs.1,09,404/-.

3. The petitioner was also called upon to pay a sum of Rs.20,000/- for compounding offence for the alleged theft. The petitioner also paid the aforesaid sum of Rs.20,000/- under protest. The petitioner thereafter filed an appeal before the Divisional Engineer on 16.11.2011, which came to be disposed by the 1st respondent/Assistant Executive Engineer also as an Appellate Authority purportedly in terms of G.O.Ms.No.118, Energy (B2) Department, dated 27.11.2006. The demand affirmed by the 1st respondent/Assistant Executive Engineer as the Appellate Authority is challenged on the ground that the 1st respondent/Assistant Executive Engineer has not only acted as an Original Authority but also as an Appellate Authority, which is contrary to the elementary Principles of Natural Justice. It is submitted as the 1st respondent/Assistant Executive Engineer acted as an Original Authority, he cannot act as an Appellate Authority. It is further submitted that the 1st respondent/Assistant Executive Engineer also being a witness who caused the inspection on 15.11.2011 can neither act as an Original Authority nor as an Appellate Authority. It is therefore submitted that the impugned order has to go.

4. On merits, the learned counsel for the petitioner submits that the District Collector has also informed the 1st respondent/Assistant Executive Engineer vide a letter dated 18.11.2011 that the activity carried out by the petitioner was an Agricultural activity and he was running a small dairy and it would not change the character of the activity undertaken by the petitioner and therefore the case of the petitioner should be considered sympathetically.

5. Defending the impugned order, the learned counsel for the respondents states that the proceedings were initiated based on the inspection carried on 15.11.2011 by the 1st respondent/Assistant Executive Engineer and the 1st respondent/Assistant Executive Engineer is authorized to be the Assessing Officer for assessment of charges for unauthorized use of electricity from low tension, high tension and Extra High Tension Serives in terms of G.O.Ms.No.118, Energy (B2)

Department, dated 27.11.2006. It is further submitted that as per Notification dated 12.09.2007 issued in the Government Gazette the Government authorized officers not below the rank of Assistant Executive Engineer of the Tamil Nadu Electricity Board to act as an Appellate Authority for any of the acts specified under Section 135 of the Electricity Act, 2003 and that in this connection, the same officers of the Licensee can carry out all or any of the acts specified in Regulation 23(AA) of the Tamil Nadu Electricity Supply Code and Section 135 of the Electricity Act, 2003.

6. In the Counter Affidavit, the respondents have contended as follows:-

"12. As regards to the contention of the Petitioner that the officer who inspected the service connection has also conducted the enquiry on his appeal petition, it is submitted that as per Notification dated 12.09.2006 issued in the Government Gazette the Government authorized the officer not below the rank of Assistant Executive Engineer of the Tamilnadu Electricity Board to do all or any of the acts specified in Section 135 in respect of LT services. In continuation to the above, the Commission authorized the same officers of the Licensee to carry out all or any of the acts specified in Regulation 23(AA) of Section 135 of the Act. Therefore the Assistant Executive Engineer, Perur has been authorized as appellate authority, hence the Executive Engineer/Distribution, Tamilnadu Generation and Distribution Corporation Limited, Seeraikanpalayam send the letter to the appellate authority which was received from the petitioner on 16.11.2011 to conduct the enquiry on the appeal petition. As such the enquiry proceedings conducted by the Assistant Executive Engineer, Perur is in order."

7. The learned counsel for the respondents further submits that the electricity supply to the petitioner was given for agricultural purpose in Service Connection No.306. It is submitted that the petitioner was also having a separate low tension electricity supply for use in his dairy farm with Service Connection No.828. It is submitted that the supply of electricity for agricultural purpose was free and the Government was paying subsidy on the energy consumed for agricultural services and that the use of electricity connection given for an agricultural purpose was misused by the petitioner. It was found by the Assistant Executive Engineer/Flying Squad that the petitioner was utilizing the power for drawing water for use in

the dairy farm for heating, cooling and processing of milk and for this purpose, the petitioner has used 1.5" PVC pipe from the well using the free connection and was transferring the water drawn from the agriculture well to his dairy farm.

8. I have considered the arguments advanced by the learned counsel for the petitioner and the learned standing counsel for the respondents.

9. The expression, agriculture is wide purport. The agrarian activity of an agriculturist includes raising of cattles and therefore it cannot be said that the use of power for purpose of heating and cooling of the milk in a small dairy in the agricultural farm cannot be construed to be an non-agricultural activity for the purpose of concluding theft under Section 135(e) of the Electricity Act, 2003. The petitioner has drawn water from the well in his agricultural land to which the petitioner was given free electricity connection and had used it for cooling milk in dairy farm. After cooling of the milk, the petitioner has apparently let out the water back to his land for agricultural purpose. Whether the petitioner has indeed let out the water from agricultural purpose or not is a question of fact. It cannot be decided in a writ proceeding.

10. In my view, the activity undertaken by the petitioner where the cattles are reared in a small numbers, activity would come within the purview of agriculture as well. Though not cited similar view was taken by the Division Bench of this Court in The Tamil Nadu Electricity Board Vs T.Vellaichamy Nadar, it has held that

Tariff Order 1 of 2012-Determination of Tariff for Generation and Distribution

Para 10.20.1 under LT Tariff IV of the Tariff Orders reads as follows:-

This tariff is applicable to all agricultural and allied activities such as cultivation of food crops, vegetables, seeds, trees and other plants. Sericulture, floriculture, horticulture, mushroom cultivation, cattle farming, poultry and other bird farming, fish/prawn culture carried out as allied activities of agriculture shall be construed as agricultural activities.

Para 10.17.7 under LT III A(1) of the said Tariff Order reads as follows:-

Accordingly, it is clarified that the activities such as sericulture, floriculture, horticulture, mushroom cultivation, cattle farming, poultry and bird farming, dairy units and fish/prawn culture which are carried out as allied activities of agriculture in the LT Tariff IV service connections shall be construed as agricultural activities.

The said Tariff Order, show that in the aforesaid Tariff schedules, the activities in issue are sericulture, floriculture, horticulture, mushroom cultivation, cattle farming, poultry and bird farming, dairy units and fish/prawn culture.

Suffice it for this Court to point out that the Clarificatory Order No.1-4 of 2012 dated 24.12.2012, in fact, comes to the aid of the Respondent/Writ Petitioner and not the Appellants/Board. Therefore, the Appellants/Board cannot levelled charges of "Theft of Energy" or 'Different User' against the Respondent/Writ Petitioner, in regard to the impugned demand dated 25.10.2012."

11. The above Tariff as extracted supra makes it clear that cattle farming shall be construed as agricultural activity. I am therefore of the view, the proceedings initiated by the respondents for the alleged theft of electricity was unwarranted. Under these circumstances, the proceedings initiated by the respondents both as the authority authorized under G.O.Ms.No.118, Energy (B2) Department, dated 27.11.2006 and as an Appellate Authority are liable to be interfered and quashed. In any event, the 1st respondent/Assistant Executive Engineer also could not have acted as an Appellate Authority having initiated the proceedings. On this count also the impugned order has to go. Under these circumstances, the impugned orders are quashed. The amount paid by the petitioner shall be refunded back together with the consequential relief.

12. This Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

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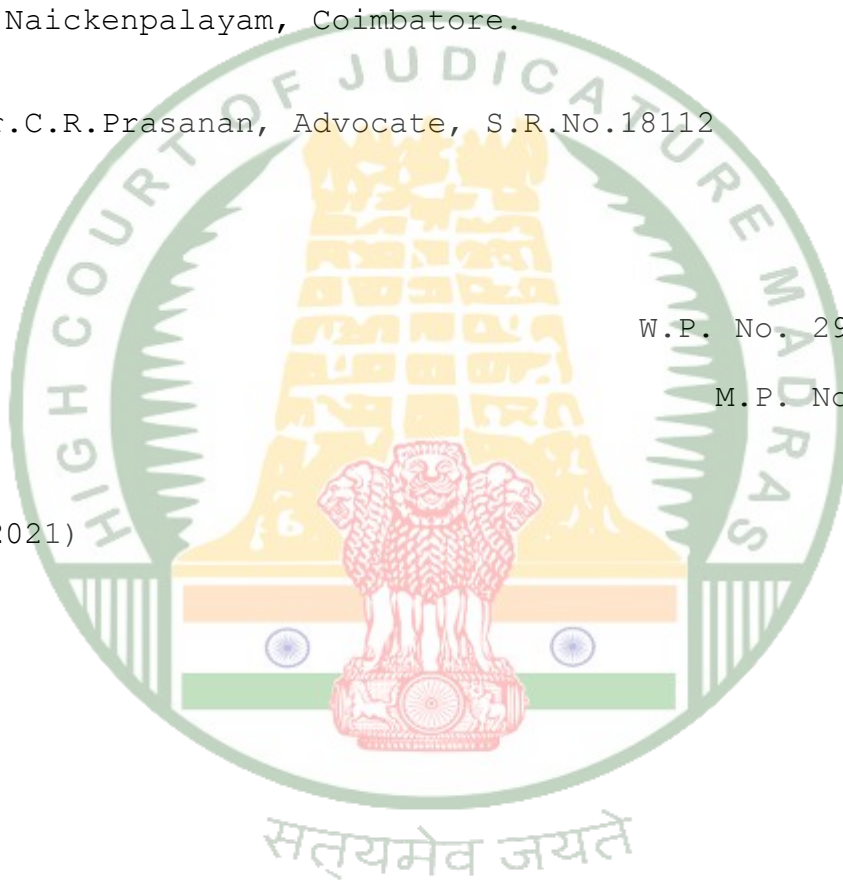
To

1. The Assistant Executive Engineer,
Tamilnadu Generation & Distribution
Corporation Ltd., T.A.N.G.E.D.C.O.
Perur, Coimbatore.
2. The Divisional Executive Engineer,
Tamilnadu Generation & Distribution
Corporation Ltd., T.A.N.G.E.D.C.O.
Seera Naickenpalayam, Coimbatore.

+1cc to Mr.C.R.Prasanan, Advocate, S.R.No.18112

W.P. No. 29218 of 2011
and
M.P. No. 1 of 2011

PCH (CO)
KM (27/04/2021)



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