

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.03.2021

PRONOUNCED ON : 22.03.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.9980 of 2011
and M.P.No.1 of 2011

N.Sumathi

.. Petitioner

vs

1.The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai 600 002.

2.The Executive Engineer-Operations,
230 KVSS Tharamani,
Chennai.

3.The Assistant Executive Engineer (O & M)
Tamil nadu Electricity Board,
Chennai (South)

4.The Assistant Engineer,
Tamil Nadu Electricity Board,
Velachery, Chennai 600 042.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 06.01.2011 passed by the 2nd respondent and quash the same and direct the respondents to refund the illegal penalty collected by the third respondent, the Assistant Executive Engineer (O & M) Tamil Nadu Electricity Board, Chennai (South) and consequently charge domestic tariff for the electricity in the premises of the petitioner.

For Petitioner : M/s.R.Maheswari

For Respondents : Mr.P.Gunaraj

O R D E R

The petitioner is aggrieved by the impugned order dated 06.01.2011 passed by the 2nd respondent Executive Engineer , 230, KVSS Tharamani, Chennai.

2. By the impugned order, the 2nd respondent has come to a conclusion that a sum of Rs.1,93,880/- paid by the petitioner on 10.12.2009 for three domestic connections bearing Nos.210-031-1601, 210-031-1810 and 210-031-1644 respectively cannot be refunded.

3. The petitioner had earlier filed W.P.No.16213 of 2010 for issuance of a writ of Mandamus to direct the respondents to refund with interest the penalty amount of Rs.1,93,880/- collected by the 3rd respondent without any basis and for no fault of the petitioner by disposing the petitioner's appeal dated 30.12.2009. The said writ petition was disposed by an order dated 03.08.2010 by directing the 2nd respondent (5th respondent therein) to dispose the appeal in the manner known to law within a period of four weeks.

4. Pursuant to the aforesaid order of this Court in W.P.No.16213 of 2010, the impugned order has been passed by the 2nd respondent herein. By the impugned order, the 2nd respondent has rejected the request of the petitioner for refund of the penalty charges paid on 10.12.2009 pursuant to an inspection of the property on 09.12.2009.

5. The brief facts of the case for the final disposal of the writ petition is as follows:

On 09.12.2009 an inspection was carried out in the premises of the petitioner and N.Rajeswari. It was pursuant to a request dated 05.10.2009 for converting two domestic connections in S.C.Nos.210-031-1810 & 210-031-1644 into a commercial service. By a letter dated 05.10.2009, the petitioner also requested the third respondent to change the defective meter for service connection in S.C.No.210-031-1644. The defective meter was also replaced on 06.10.2009. Thereafter, on 09.12.2009, during inspection conducted by the Office of the 4th respondent, it was concluded that the petitioner along with the said N.Rajeswari was running Mens Hostel at Door No.11, 1st Main Road, called as "M/s.Kumaran Illam," Venkateswara Nagar, Velacheri, Chennai 42 and had wrongly utilised the domestic service connection for commercial purpose for running mens hostel and therefore the petitioner and the said Rajeswari were called upon to pay a sum of Rs.10,000/- for compounding the offence and to penalty of Rs.1,93,880/-. The amount was also paid by the petitioner on 10.12.2009 for the following service connections as detailed below:-

S.No.	Service Connection	Amount paid by the petitioner towards compounding charges	Amount paid by the petitioner towards penalty charges
1	210-031-1610	Rs.30,676.20	Rs.2,000
2	210-031-1810	Rs.83,943.40	Rs.4,000
3	210-031-1644	Rs.79,268.74	Rs.4,000
		Rs. 1,93,880	Rs. 10,000

6. The case of the petitioner is that merely because the petitioner was renting the rooms to young men/ bachelors on shared accommodation basis did not mean that she was utilising the domestic connection for commercial purpose to attract Section 135 of the Electricity Act, 2003. It is submitted that though renting of the premises was on shared basis, it was not a commercial activity and therefore submitted that the amount paid by the petitioner along with the said Rajeswari, on 10.12.2009 towards penalty for a sum of Rs.1,93,880/- was to be refunded back to the petitioner.

7. In this connection, the learned counsel for the petitioner placed reliance on the following decisions:

(i) R.Raju Vs The Government of Tamil Nadu and Others, CDJ 1998 MHC 514.

(ii) R.Muthulakshmi Vs The Authorised Officer-cum-Assistant Executive Engineer, Namakkal and others, 2012 SCC Online Mad 3670,

8. The learned counsel for the respondents defend the impugned order and submits that the writ petition is liable to be dismissed . He further submits that there is no irregularity while passing the impugned order.

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

10. The petitioner has herself opted for compounding the offence by paying the compound fee at Rs.10,000/- (Rs.4,000/- , Rs.2,000 and Rs.4,000/-) for the alleged violation of domestic service connection viz., 210-031-1601, 210-031-1810 and 210-031-

1644 respectively. Therefore, the petitioner has accepted that she was running a commercial establishment using the three service connections. Further, the petitioner herself has given a letter dated 05.10.2009 for converting the domestic service connections in S.C.No.210-031-1810 and S.C.No.210-031-1644 to commercial. Therefore, the usage of the property for commercial purpose by the petitioner herself stands concluded.

11. In the typed set filed by the respondents which enclosed the provisional order dated 09.12.2009 of the 2nd respondent also indicates that the three connections were in the name of Rajeswari and the property was inspected in the presence of the petitioner indicating that the petitioner was not the owner but had rented out the premises of the said Rajeswari and was indeed running the commercial establishment. In her letter dated 09.12.2009 which is of the same date as that of the provisional order was issued, the petitioner has indicated that she sent a representation to the third respondent in her capacity as the persons who are utilising the premises. If the petitioner was not the owner of the property, the petitioner has no locus-standi to file the present writ petition or even asking for refund of the amount paid .

12. The petitioner had utilized the service connection for renting of the commercial service albeit for renting of the rooms on shared accommodation for bachelor/young men by putting up the board " M/s.Kumaran Illam" cannot be dislodged by the petitioner either before the 2nd respondent or before this Court. Therefore, I am inclined to uphold the impugned order insofar as penalty for misusing of Service connection in S.C.Nos.210-031-1810 and 210-031-1644. Whether service connection in S.C.No.210-031-1601 was used for domestic purpose or for renting of the rooms on shared accommodation basis is to be decided based on the facts.

13. Consequently, I am inclined to remit the case back to the 2nd respondent to pass a fresh order on merits, insofar as in S.C.No.210-031-1601 is also used for renting of the rooms on shared accommodation basis for mens/ bachelor, the amount collected from the petitioner and the said Rajeswari shall stand confirmed. On the other hand, if the service connection in S.C.No.210-031-1601 was used for rental purpose of the owner accommodation or for individual family, the amount shall be refunded by the 2nd respondent to the petitioner. The said exercise shall be carried out within a period of four weeks.

14. The writ petition stands disposed with the above observation. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kkd

To

- 1.The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai 600 002.
- 2.The Executive Engineer-Operations,
230 KVSS Tharamani,
Chennai.
- 3.The Assistant Executive Engineer (O & M)
Tamil nadu Electricity Board,
Chennai (South)
- 4.The Assistant Engineer,
Tamil Nadu Electricity Board,
Velachery, Chennai 600 042.

+1 CC to M/S.R.Maheswari,Advocate SR.No.18274

+1 CC to M/S.P.Gunaraj,Advocate SR.No.18341

Pre-delivery Order in
W.P.No.9980 of 2011
and M.P.No.1 of 2011

DCH (CO)
RG.19/04/2021

WEB COPY