IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.03.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.1449 of 2019 &
WMP.No.1606 of 2019

Harrisons Malayalam Ltd.
Mayfield Estate,
Nilakotta Post, Gudalur Taluk,
Nilgiris, rep. by Sumith Babu, Senior Manager - Legal
...Petitioner/Petitioner

Vs

1.Tamil Nadu Electricity Board,
Rep. by its Chairman and Managing Director,
Mount Road, Chennai - 600 002.

2.The Superintending Engineer,
Tamil Nadu Electricity Board,
Nilgiris Electricity Board,
Udhagamandalam, Nilgiris District.

3.The Executive Engineer/O&M,
Authorized Officer, Tamil Nadu Electricity Board,
Udhagamandalam, The Nilgiris.

4.The Executive Engineer/Distribution (In charge)
Tamil Nadu Electricity Board,
Nilgiris Electricity Distribution Circle,
Udhagamandalam. ...Respondents/Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the Final Assessment Order Lr.No.EE/O&M/O/F. Theft of Energy/D.44/2019 dated 09.01.2019 issued by the 3rd respondent, and to quash the same.

For Petitioner : Mr.ARL.Sundaresan,
Senior Counsel
for Mr.J.Ravi Kumar

For Respondent : Mr.Dhalapathy Vignesh Kumar,
for Mr.Abul Kalam,
Standing Counsel

O R D E R

The petitioner challenges final assessment order dated 09.01.2019 passed by the Executive Engineer/O&M, Tamil Nadu Electricity Board (TNEB)/R3 alleging theft of electricity under Section 135 of the Electricity Act, 2003 (in short 'Act').

2. This matter has a checkered history. There was an inspection conducted on 10.09.2009 in the premises of the petitioner at Mayfield Estate, Nellakottai. According to the respondents, theft of energy bytampering of seals was detected by committing which, the petitioner had dishonestly obstructed the consumption and use of energy, with the intention of defrauding the licencees.

3. Though a provisional assessment was made and the petitioner called upon to file objections and appear for the hearing, since there was no response from the petitioner, an order of final assessment came to be passed which was the subject matter of challenge before a learned single Judge of this Court in W.P.No.623 of 2010.

4. The petitioner had objected to the final assessment on various grounds, but what appealed to the Court was the apparent violation of the principles of natural justice, seeing as the respondents, in counter, conceded to the position that the impugned order had been passed without reference to principles of natural justice. Hence, at paragraph 7, the learned single Judge, set aside the aforesaid impugned order, remanding the entirety of the assessment to the respondent Board for fresh consideration.

5. Inter alia, he notes that once a demand under the assessment order were set aside, no liability can subsist as against the assessee. As such, the Board could not retain the deposit amount of the petitioner pursuant to an order of this Court indefinitely. Thus, the Learned Judge fixed a timeline for completion of the assessment directing the respondents to pass orders afresh on merits and in accordance with law, after affording a personal hearing to the petitioner, within a period of four weeks from date of receipt of a copy of that order.

6. Pursuant to the aforesaid order, there appear to be two communications dated 17.12.2018 and 27.12.2018 issued by the respondents to the petitioner. The petitioner tendered a detailed explanation on 31.12.2018 reiterating the submissions

made earlier, specifically that that the procedure set out under Regulation 23(AA) of the Tamil Nadu Electricity Supply Code, 2003 (in short 'Code') had not been followed.

7. When the present Writ Petition had come up for hearing, my predecessor had noted by his order dated 29.01.2019, that, in general, there are several instances where the detailed procedure set out under Regulation 23(AA) of the Code was not followed by TNEB. Various clarifications had been sought for by him in regard to the specifics of the procedure and the respondents were directed to file a report.Pursuant to various discussions, two affidavits dated 14.02.2019 and 27.02.2019 have been filed, wherein, the respondents made detailed reference to Regulation 23(AA) of the Code and the procedure set out therein for passing of an order of final assessment.

8. The specific allegation levelled as against the petitioner relates to tampering of meters, and thus, those sub-regulations dealing with tampering of meters alone would have a bearing in this matter. I now briefly discuss the various sub-Regulations in order to understand and outline the scheme of the Regulation. The Regulation describes the procedure for assessment of electricity charges, disconnection, supply and removal of meter as well as other measures to be taken upon the detection of theft of electricity.

9. Regulation 23(AA) states that upon detection of theft of electricity, the officer shall prepare a report after collecting all materials/relevant facts, such as connected load, condition of seals, working of meter, any damage or destruction to the metering equipment and others, take photos or prepare a diagram illustrating the arrangements found to have been made for theft of electricity that have culminated in the theft.

10. 23(AA)(2) provides for immediate disconnection upon the finding of theft. 23(AA)(3) provides that in case of suspected theft by tampering of meter, a report has to be prepared outlining the condition of the meter removed and sealed. At the time of sealing, signatures of the accused person and the officers concerned shall be obtained in the report.

11. In this case, no such report appears to have been prepared as the assessee was not supplied any prior to passing of the impugned order. 23(AA) (4) to (6) are not relevant for the purposes of this case. 23(AA) (7) provides for passing of provisional assessment and the method by which the demand raised under such provisional order shall be enforced, by adjustment against subsequent charges.

12. 23(AA)(8) provides for service of the provisional assessment upon the assessee within 5 days of inspection and provides for a period of 7 days thereafter for the assessee/accused to tender his explanations. 25(AA)(9) has some bearing in the matter as it mandates that in case of suspected theft of tampering of meter, reference has to be made to a third party accredited meter testing laboratory or to the Chief Electrical Inspector to the State Government for testing and such testing should be undertaken after giving 7 days' notice to the assessee.

13. On the stipulated date, test must be carried out irrespective of the presence of the assessee and the copy of the test report shall be sent to the assessee through registered post within three days. Admittedly, in this case, such testing has not been carried out at all.

14. In all, several of theprocedures mandated by the Regulation have not been followed. Notesting has been carried out despite a second innings having been granted by this Court under the earlier order passed on 03.08.2018.

15. Regulations 23(AA) (10 to (12) provide for a procedure for passing of final assessment order which includes grant of personal hearing and affording opportunity to the accused/assessee to provide additional information in the course of hearing. Regulation 23(AA)(13) provides the authorized officer to apprise himself of the case based on records and the consumption patternwhatever available, before the personal hearing.

16. In this case, the original order of assessment has been set aside by this Court specifically directing that the procedure set out under the Act be followed and an opportunity of hearing be afforded in line with the stated procedure.

17. The impugned order however does not indicate that there was any attempt whatsoever by the respondents to comply with the specific directions of this Court. Regulation 23(AA) is categoric to the effect that a stipulated procedure must be followed in the case of allegation of tampering of meters. However, such testing, as specifically provided for, has not been referred to. Despite the request of the petitioner to this effect at paragraph 9 of its explanation dated 31.12.2018, there is no reference to this request of the petitioner at all in the course of the impugned order.

18. The receipt of objection dated 31.12.2018 is not in dispute since the impugned order in conclusion at paragraph 3 thereof, refers to the objections/representations received by

the respondent office on 02.01.2019 Having received the detailed explanation, wherein a request has been made for adherence with the procedure under Regulation 23(AA), it was incumbent upon the authority to have followed the same.

19. Even assuming for the moment, that the assessee had not brought the same to the notice of the respondents, it is for the respondents to be conscious of and apply the Regulation, faithfully, specifically when directed by this Court. As noticed above, when the Regulation by itself, requires the authority to look into all materials filed by the assessee prior to passing of the final assessment order, the manner in which the impugned order of assessment has been passed leaves me no doubt that the same has been passed mechanically and without any reference to either written submissions filed or the Regulation itself.

20. To give an instance to illustrate the abject non-application of mind by the respondent to the submissions of the petiitoner, a specific objection has been raised by the petitioner on the allegation of tampering of meters as against seal Nos.6 and 7¸ stating that if at all this were to be true, there should have been something adverse/untoward noticed with regard to seals 1 to 5 as well. The impugned proceedings make no reference to this aspect of the matter at all.

21. While it was open for the respondents to consider and reject the above objection by assigning reasons for the same, they have not even bothered to advert to the submissions made. In all, I am of the considered view that the impugned order suffers from non-application of mind and complete disregard to the procedure set out under Regulation 23(AA) as noticed above, and the same is set aside. All consequences to follow.

22. This Writ Petition is allowed. No costs. Connected Miscellaneous is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Chairman and Managing Director,
Tamil Nadu Electricity Board,
Mount Road, Chennai - 600 002.

2.The Superintending Engineer,
Tamil Nadu Electricity Board,
Nilgiris Electricity Board,
Udhagamandalam, Nilgiris District.

3.The Executive Engineer/O&M,
Authorized Officer, Tamil Nadu Electricity Board,
Udhagamandalam, The Nilgiris.

4.The Executive Engineer/Distribution (In charge)
Tamil Nadu Electricity Board,
Nilgiris Electricity Distribution Circle,
Udhagamandalam.

+1 CC to Mr.J.Ravikumar, Advocate sr 21866
+1 CC to Mr.M.Abdulkalam, Advocate sr 22318.

W.P.No.1449 of 2019 &
WMP.No.1606 of 2019

BS(CO)
SP(11/05/2022)