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W.P.No.18277 of 2015 &
M.P.Nos.1 & 2 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2022

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.18277 of 2015 &
M.P.Nos.1 & 2 of 2015

P.Mani

... Petitioner

Versus

1. The Tamilnadu Electricity Ombudsman,
No.19A, Rukmani Lakshmipathy Salai,
Marshal Road, Egmore,
Chennai – 600 008
2. The Superintending Engineer (O&M),
TANGEDCO,
Mettur Electricity Distribution Circle,
Mettur Dam.
3. The Appellate Authority /
The Executive Engineer (Operation)
230/110 K.V.Sub Station,
Pallakapalayam, Tiruchengode Taluk,
Namakkal District – 637 303
4. The Assistant Executive Engineer (O&M),
Assessment Officer,
TANGEDCO, Sankagiri East,
Salem District

... Respondents



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Prayer: Writ Petition filed under Article 226 Constitution of India for issuance of a Writ of Certiorari to quash the impugned order of the 3rd respondent dated 11.12.2014 in Lr.No.EE/O/PKPLM/F.Appeal / D.No.367/14 .

For Petitioner : Mr.S.Kolandasamy

For Respondents : R1 – No appearance
Mr.Abul Kalam for R2 to R4

ORDER

The present Writ Petition has been filed challenging the impugned order of the 3rd respondent dated 11.12.2014 in Lr.No.EE/O/PKPLM/F.Appeal / D.No.367/14.

2. The case of the petitioner is that the petitioner has given a service connection in Tariff II for drawing water to private school and college comprising to an extent of 10 acres campus, based on that, the petitioner was drawing water without making any violation. Thereafter, the petitioner has also obtained another service connection 164-014-546 in the year 2012 for the purpose of construction activities and also dug the bore well. The Writ Petitioner was drawing the water from the existing bore well and utilised for school and college purpose and to



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store the remaining water in tanks by using Tariff II B2 current and used the Tariff VI for construction activities. However, the respondents / authorities made provisional assessment on the ground that there is unauthorised usage of electricity by connecting 3 HP motor to the existing bore well. Thereafter, final assessment has been passed for a sum of Rs.77,469/-. According to the Writ Petitioner, levying of such an amount is not according to the provision of Section 126 (1) of the Electricity Act and his further contention is that there is no evidence to show that 3HP submersible pump was installed in the bore well, hence this petition has been preferred challenging the levy.

3. A counter has been filed by the respondents admitting the low tension Tariff II B2 for the usage of private educational institution. On 23.08.2014, unauthorised electricity usage was deducted by the Assistant Executive Engineer from SC 164-014-247 for the building construction purpose. The electricity service construction No.164-014-546 has been effected for the purpose of building construction in the educational institution premises under low tension Tariff VI, whereas the petitioner was found drawing water from the bore well, which was given



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in the Tariff II B2 instead of temporary supply given for the building construction purposes. Hence according to them, drawing of water in service connection in SC 164-014-247 is nothing but unauthorised use of electricity, accordingly, assessment has been made.

4. The learned counsel for the petitioner mainly submitted that there is no evidence to show that there was 3HP motor installed in the borewell and inspection report also does not indicate the nature of the motor installed in the submersible. According to him, in the existing well, he has already installed submersible pump, therefore, there is no possibility of connecting 3 HP motor to draw water, which is not taken note of by the appellate authority, therefore, submitted that provisional and final assessment is bad in law. Further, the contention of the learned counsel is that the inspecting authorities have not seized any motor with 3 HP connected to the borewell. Hence seeks to quash the impugned order.

5. Whereas, the learned counsel appearing for the respondents submitted that the petitioner himself admitted that the connection



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obtained only for the educational purposes has been misused for construction activities and electricity has been misused from the service connection provided to the school. When the petitioner himself admitted the above fact in his written submissions and also paid the amount, there is no merits in the present Writ Petition.

6. Heard the learned counsel on either side and perused the documents placed on record.

7. The provisional assessment order was issued on the date of inspection, viz., 23.08.2014. The contention of the petitioner that they have not used 3 HP motor for drawing the water from the bore well cannot be countenanced for the simple reason that the petitioner himself admitted in the written submissions filed before the appellate authority, wherein he has admitted that '3 HP motor was installed at inception of the school and the water is pumped to school purpose regularly. At the time of inspection, it is shown that major portion of water is used for school purpose and the remaining quantity of water was stored in storage tanks for the construction of college building'.



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8. When the petitioner himself has temporary connection for construction activities instead of using that connection, using 3 HP motor for pumping the water from the bore well for the construction activities is nothing but unauthorised usage of electricity. **Explanation to Section 126 (iv) of Electricity Act** makes it very clear that 'unauthorised use of electricity' means the usage of electricity – for the purpose other than for which the usage of electricity was authorised.

9. Therefore, when the petitioner himself admitted that major portion of water from the borewell was used for school purpose and the remaining quantity of water was stored in storage tanks for the construction of college building, his contention that without seizing the materials, levy cannot be made, cannot be accepted and further, the petitioner has also paid the amount without any protest and the same cannot be ignored. In such view of the matter, this Court does not find any merit in the Writ Petition and the same is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

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Index: Yes/No
Internet: Yes/No
ssd



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N.SATHISH KUMAR, J.

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