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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.NOS.32263 & 32267 OF 2019

AND

WMP.NO.32555 OF 2019

K.Lakshmikant
Chief Financial Officer,
Murugan Idly Shop,
43/13, North Usman Road,
T.Nagar, Chennai - 600 017

...Petitioner in both WPs

Vs

Assistant Executive Engineer (Operation and Maintenance),
Tamil Nadu Generation and Distribution Corporation Limited
(TANGEDCO),
Ambattur Industrial Estate West, Chennai Division,
Chennai - 600 040.

... Respondent in both WPs

Prayer in WP.No.32263 of 2019:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of certiorari, calling for the records relating to proceedings of the respondent in the case of the petitioner M/s.Murugan Idly Shop dated 28.09.2019, quash the same.

Prayer in WP.No.32267 of 2019:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of certiorari, calling for the records relating to the order passed by the respondent dated 26.03.2019 in letter No.AEE/O&M/IE/ABT/F.Doc/D.No.247/2019, quash the same.



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(In both WPs)
For Petitioner : Mr.Niranjan Rajagopalan
For Respondent : Ms.Keerthana Shenoi
for Mr.L.Jai Venkatesh

COMMON ORDER

Heard Mr.Niranjan, learned counsel for the petitioner and Ms.Keerthana Shenoi, learned counsel for the respondent.

2.The petitioner in WP.No.32267 of 2019 has challenged an order passed on 26.03.2019 passed by the sole respondent. The petitioner claims to be the central kitchen of the Murugan Idly Shops, a chain of restaurants, and is situated at Ambattur Industrial Estate (in short 'premises').

3. It has approached this Court assailing the impugned order alleging theft of energy by it, on the ground that an 'industrial' service connection has been misused as a 'commercial' service connection.

4. The premises in question is stated to constitute the central kitchen of the restaurants, utilised solely to prepare items for supply and distribution to various branches of the petitioner unit. No commercial transactions take place therein.

5. Thus, while the restaurants have applied for and obtained commercial LT-V connections, the central kitchen has sought for and obtained an LT-IIIA connection, the petitioner making a specific distinction between the kitchen where the food is prepared prior to the transfer to the restaurants, and the restaurants themselves that engage in commercial sale of the food products.

6.The argument does hold merit as the food prepared in the central kitchen is not 'sold' but only 'supplied' to the restaurants for sale by them. In the present case, there is no commercial activity stated to be undertaken by the petitioner as it is a kitchen engaging in preparation and supply to the restaurants and hence obtained an industrial service connection.

7. The sales take place in the restaurants in different locations wherein the service connections stated to have been obtained is in the category 'commercial'. It is thus appropriate and sufficient for the former to hold an 'industrial' service connection and the latter to hold a 'commercial' connection. This is my prima facie view on the basis of the submissions of the parties before the Court.



8. In any event, prior to approaching this Court, the petitioner had, and rightly so, challenged the impugned proceedings before the Superintending Engineer, CEDC West by way of an appeal filed under Section 127(1) of the Electricity Act, 2003 (in short 'Act').

9. The appeal was filed on 25.10.2019, but has come to be returned by the authority on the erroneous premise that there is no provision for an appeal in respect of an order passed under Section 135 of the Act by the authority. The entirety of the counter filed by the respondent reiterates the defence put forth in regard to the demand made under the impugned order.

10. As regards the return of appeal, the respondents rely upon the conclusion in the impugned order wherein the officer cites the provisions of Section 135(1)(e) of Act. In fact, Section 135, coming under part XIV is entitled 'offences and penalties', for the theft of electricity. It is not a machinery provision that provides for the framing of an assessment.

11. The authority has, in my view, erred in returning the appeal on the ground that the same was non-maintainable. That apart, the petitioner in this case has admittedly, compounded the offence in terms of Section 152 of the Act. Thus, the conclusion in the impugned order to the effect that the order has been framed under Section 135(1)(e) of the Act, is clearly erroneous.

12. Since the issues that arise for determination would involve appreciation of questions of fact in regard to whether there has been theft of electricity / diversion / misuse of industrial connection for any other purpose, it would be appropriate that the appellate authority hears and decides the matter.

13. Appeals dated 25.10.2019 and 'nil', stand restored to the file of the authority and shall be disposed within a period of twelve (12) weeks from today, after hearing the petitioner. These writ petitions are disposed as above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs



To

Assistant Executive Engineer (Operation and Maintenance),
Tamil Nadu Generation and Distribution Corporation Limited
(TANGEDCO),
Ambattur Industrial Estate West, Chennai Division,
Chennai - 600 040.

+1cc to Mr.G.R.Associates, Advocate, S.R.No.15109
+1cc to Mr.L.Jai Venkatesh, Advocate, S.R.No.15092

W.P.Nos.32263 & 32267 of 2019 and
WMP.No.32555 of 2019

GPL(CO)
PM/21/04/2022