IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

WP.No.15007 of 2017
WM.P.No. 16243 of 2017

Chinnammal ... Petitioner

.. Vs ..

The Assistant Executive Engineer (O&M)
Tamilnadu Generation and Distribution Corporation,
(TANGEDCO), Ariyalur -621 704 Ariyalur District. ... Respondent

Prayer:- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue Writ of Certiorari to call for the records of the respondent passed in Letter No.AEE/O&M/AYR/CI/Enforcement/D.No.159/2017 dated. 27.05.2017 and quash the same.

For Petitioner : Mr.S.Kamadevan

For Respondent : Mr.Abul Kalam

ORDER

This Writ Petition has been filed to quash the provisional assessment made by the respondent directing the petitioner to pay a sum of Rs.5,78,550/- vide reference No.AEE/O&M/AYR/CI/Enforcement/D.No. 159/2017 dated. 27.05.2017

2. The case of the petitioner is that the petitioner is having service connection in S.C.No.288. On 18.11.2010, there was an inspection by the respondent alleging that the water drawn from hisagricultural connection was utilised to fill the newly constructed water tank. The same was termed as theft of energy under section 135 of the Indian Electricity Act, 2003. Accordingly, provisional assessment Order was passed for a sum of Rs.5,78,550/-and the electricity connection also was disconnected. Thereafter, on 09.05.2014 final Order has been passed for the same amount. The same was challenged before this Court in a Writ Petition in W.P.No.18649 of 2014 to decide whether the alleged act will amount to theft or not. The above Writ Petition was disposed by remanding the matter for passing fresh Orders in the light of the judgments of the Apex

Court and this Court and also in the light of Board's circular dated 16.05.2005. Again the respondent stuck on to their original stand and passed a cryptic Order. The same was again challenged in W.P.No.30257 of 2014 and the same was disposed by holding that the case of the writ petitioner cannot be brought under section 135 of the Indian Electricity Act as there is no theft of energy and also the respondent is directed to adjust the amount already deposited by the petitioner by treating the same under section 126 of the India Electricity Act and return the balance amount. The matter has been remitted back and thereafter, again the impugned Order has been passed for a sum of Rs.5,78,550/- holding that there is energy theft and what has been provisionally assessed in the earlier order has been reflected in the impugned Order. The same was sought to be quashed in this Writ Petition.

3. The learned counsel appearing for the respondent would submit that the respondent ought to have assessed as per Section 126 of the Indian Electricity Act and requested that the matter may be remitted to authorities to strictly follow the provisions as directed by this Court.

4. I have perused the entire records. Originally, the case of the respondent is that there was theft of energy. Earlier occasion the writ petitioner filed a Writ Petition in W.P.No.18649 of 2014 and the matter has been remitted to decide whether the act of the writ petition falls within the ambit of S.126 of the Indian Electricity Act. Pursuant to the above direction, the respondent again issued provisional assessment on ground that there was theft of energy. Once again the same was challenged in W.P.No.30257 of 2014 before this Court. This Court by an Order dated 01.02.2017 while allowing the writ petition has held as follows :

> "11. Therefore, this Court is of the view that the case of the petitioner cannot be brought under Section 135 of the Act as there is no theft of energy. Hence, the respondent is directed to adjust the amount already deposited by the petitioner by treating the same as under Section 126 of the Act and return the balance amount. Accordingly, the letter impugned in W.P.No.30257 of 2014 is set aside and consequently, the respondent is directed to assess the proceedings under Section 126 of the Indian Electricity Act and after adjusting the amount towards the said proceeding,

refund the balance amount to the petitioner. In view of the above order, W.P. No.42291 of 2016 is disposed of with a direction to the respondent to consider S.C. No.288 of Muniankurichi Distribution Circle, Ariyalur Taluk, Ariyalur."

5. The above Order has not been challenged and the above Order has become final. Pursuant to the above direction, the respondent has passed the impugned Order once again claiming that there was energy theft and issued assessment Order for a sum of Rs.5,78,550/-, which was originally assessed. The impugned Order is nothing but reflection of the earlier order. The respondent has not even followed the procedure as directed by this Court. This Court has categorically held that the case of the writ petitioner cannot be brought under section 135 of the Indian Electricity Act and held that there is no theft of energy and assessment can be made for unauthorised use under section 126 of Indian Electricity Act. In such view of the matter, when the matter has already reached its finality, the respondent cannot once again contend that there was theft of energy.

6. Accordingly, the Order impugned Order dated 27.05.2017 is set aside and the respondent is directed to make assessment afresh by following the provisions of Section 126 of the Indian Electricity Act within a period of three months from the date of receipt of a copy of this Order. After such assessment, if any excess amount is payable to the petitioner, the same shall be refunded.

7. With the above directions, this Writ Petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

29.09.2022

vrc

To,

The Assistant Executive Engineer (O&M)
Tamilnadu Generation and Distribution Corporation,
(TANGEDCO), Ariyalur -621 704 Ariyalur District.

N.SATHISH KUMAR, J.

vrc

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