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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2022

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.33743 of 2019

and

W.M.P.Nos.35986 and 34229 of 2019

S.A.Gaffar

...Petitioner

Vs

1. The Superintending Engineer,
Tamil Nadu Generation and
Distribution Corporation Ltd.,
Vellore District.
2. The Assistant Executive Engineer,
(Operation and Maintenance),
Tamil Nadu Generation and
Distribution Corporation Ltd.,
Arcot Rural, Vellore District.
3. The Junior Engineer,
(Operation and Maintenance),
Tamil Nadu Generation and
Distribution Corporation Ltd.,
Melvisharam, Walaja Taluk,
Vellore District.

...Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, call for the records relevant to the order in Ka.No.E.Ni.Po.O and M/V.M./Ko.Kattu/No.285/ 2019 dated 25.11.2019 passed by the 3rd respondent and quash the same as illegal, improper, arbitrary and against the natural justice and thereby direct the respondents to restore the EB Service Connection No.253-012-299 and refund the amount of Rs.14,000/- collected from the petitioner as a compound charges.

For Petitioner : Mr.B.Gopalakrishnan

For Respondents : Ms.Keerthana Shenoi

For Mr.L.Jai Venkatesh

Standing Counsel



O R D E R

Heard Mr.B.Gopalakrishnan, learned counsel for the petitioner and Ms.Keerthana Shenoi for Mr.L.Jai Venkatesh, learned Standing Counsel for the respondents.

2.The petitioner challenges order dated 25.11.2019, which calls upon him to remit compound charges of a sum of Rs.14,000/- and extra levy, assessed at a sum of Rs.1,62,624/- forthwith, upon threat of immediate dis-connection of service connection bearing No.253-012-912.

3.The petitioner contends that the above order is against the principles of natural justice, since, according to him there has been no notice issued to the petitioner prior to issuance of the impugned order.

4.Per contra, Ms.Shenoi who has filed a counter, circulates copies of a provisional assessment order and an inspection report, to the effect that on 10.11.2019, the petitioner was found to be engaging in the offense of theft of energy by by-passing direct supply.

5.The petitioner strenuously objects to the provisional assessment order on the ground that it has not been served upon him. That apart, he would also state that he was not available when the inspection was carried out and his daughter-in-law was present, who has endorsed receipt of the Inspection Report. Had he been there, he would submit, he would have explained the matter to the officials, so as to exonerate himself in full.

6.Theft of energy, being a question of fact, it is for the petitioner to produce sufficient materials before the authorities, to establish that the connection was being properly used and the authorities to consider the same and decide whether there was, indeed, such theft or otherwise.

7.This Court has, on 19.12.2019 directed resumption of service connection upon the petitioner furnishing bank guarantee for the entirety of the disputed demand i.e., a sum of Rs.1,62,624/-. The petitioner would submit that he had deposited the entire amount in the Indian Bank, Melvisharam, Ranipet District on 20.01.2022 and submitted the original FD receipt and bank guarantee to the authorities.

8.Though the service has been restored, Ms.Shenoi states that the bank guarantee is yet to be extended by the petitioner. The petitioner has made a request before the bank seeking extension of bank guarantee and will ensure that renewed bank



guarantee is submitted before the authorities within 48 hours from today upon the receipt of which the respondents will fix a personal hearing to hear the petitioner and conclude the assessment proceedings.

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9.It is made clear that if the bank guarantee is not produced within 48 hours from today, then the authorities are permitted to proceed with the assessment in due course and in accordance with law and all applicable Rules and Regulations.

10.The Writ Petition stands disposed as above. No costs. Connected Writ Miscellaneous Petitions are closed.

Jeni/Svn

28.03.2022

This petition having been posted on this day under the caption "For Being Mentioned" in pursuance to the order of this court dated 28.03.2022 and upon hearing the arguments of Mr.B.Gopalakrishnan, Advocate for the Petitioner and of Ms.Keethana Shenoi for Mr.L.Jaivenkatesh, Standing Counsel for the Respondents, this court made the following order:

This matter is listed today under the caption 'for being mentioned' at the instance of Mr.B.Gopalakrishnan, learned counsel appearing for the petitioner. Learned counsel for the petitioner seeks an extension of time as per order dated 28.03.2022.

2. Paragraphs 8 and 9, extracted below, will now be effective from today i.e. 04.04.2022:

'8.Though the service has been restored, Ms.Shenoi states that the bank guarantee is yet to be extended by the petitioner. The petitioner has made a request before the bank seeking extension of bank guarantee and will ensure that renewed bank guarantee is submitted before the authorities within 48 hours from today upon the receipt of which the respondents will fix a personal hearing to hear the petitioner and conclude the assessment proceedings.

9.It is made clear that if the bank guarantee is not produced within 48 hours from today, then the authorities are permitted to proceed with the assessment in due course and in accordance with law and all applicable Rules and Regulations.'



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3. Barring the aforesaid, order dated 28.03.2022 remains unaltered in all other respects.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

ska/vs

To

1. The Superintending Engineer,
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2. The Assistant Executive Engineer,
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Arcot Rural, Vellore District.
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(Operation and Maintenance),
Tamil Nadu Generation and
Distribution Corporation Ltd.,
Melvisharam, Walaja Taluk,
Vellore District.

+2cc to Mr.B.Gopalakrishnan, Advocate, S.R.No.22582, 20882

+1cc to Mr.L.Jaivenkatesh, Standing Counsel, S.R.No.21416

W.P.No.33743 of 2019

and

WMP.Nos.34229 & 35986 of 2019

GMR(CO)

RGA(04/04/2022)