



W.P.(MD)No.12167 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.08.2022**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.12167 of 2012

and

M.P.(MD)No.1 of 2012

P.Kunnakkonar

... Petitioner

Vs.

The Assistant Executive Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Board,
Thuvarankurichy,
Trichy District.

... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the respondent in his proceedings in Letter No.AEE/O&M/TVKY/F.Doc.Apts/PrNo 183-3/1213, dated 25-08-2012 and quash the same as illegal.

For Petitioner : Mr.H.Mohamed Imran
for M/s.Ajmal Associates

For Respondent : Mr.S.Deenadhayalan,
Standing Counsel



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ORDER

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The present Writ Petition has been filed challenging the final assessment order passed by the Electricity Board arising out of theft energy as contemplated under Section 135 of the Electricity Act, 2003.

2. According to the writ petitioner, he has got proper service connection for agricultural purposes. He is using the same for the said purpose only.

3. However, when an inspection conducted by the Electricity Board on 06.06.2012, they found that the agricultural service connection was used to draw water from the well for the purpose of brick production. Hence, a provisional order of assessment was issued along with a working sheet.

4. The writ petitioner has also paid the compounding fee on the same date to avoid criminal prosecution under Section 152 of the Electricity Act. Thereafter, the writ petitioner has submitted an



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explanation to the order of provisional assessment and as per the said explanation, the writ petitioner has contended that he was using only an oil engine to extract water from the well for brick production. After considering the said explanation, the present impugned final assessment order has been passed by the Electricity Board. As per the impugned order, the Board has rejected the explanation on the ground that the writ petitioner has accepted the usage of free agricultural service connection by way of an acceptance letter dated 06.06.2012 and no such oil engine was found during the observation mahazar. The said order is under challenge in the present writ petition.

5. According to the learned counsel for the writ petitioner, the writ petitioner was using the free agricultural service connection only for the purpose of agriculture and for the other purposes, namely, brick kiln, he was using an oil engine to draw water from the well. The authorities have erroneously considered the said drawing of water and have passed the final assessment order.



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6. The learned counsel for the writ petitioner has further contended that the assessment has not been properly made as contemplated under the Regulation of 23(AA) of Tamil Nadu Electricity Supply Code, 2004.

7. The learned counsel for the writ petitioner has further contended that the writ petitioner has not committed any theft of energy and he is only running the brick kiln and no permission is necessary from the Electricity Board. Hence, he prayed for allowing the writ petition.

8. Per contra, the learned counsel appearing for the Electricity Board has contended that the only defence put forth by the consumer is that he was using an oil engine for drawing water from the well for the purpose of brick kiln.

9. However, during inspection, no such oil engine was found by the authorities. The writ petitioner has accepted the said mistake and he has also paid compounding fee of Rs.12,000/- to avoid criminal prosecution. In the acceptance letter, it is specifically mentioned that the writ petitioner has drawn water only using the



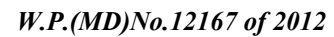
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agricultural service connection. For the first time, in the explanation to the provisional assessment order, defence of using of oil engine has been taken. Hence, he prayed to dismiss the writ petition.

10. I have carefully considered the submissions made on either side.

11. There is no dispute that the writ petitioner has been provided with a free agricultural service connection falling under Tariff IV. The respondent authorities have conducted an inspection on 06.06.2012. At the time of inspection, they found that the service connection is being utilized for brick kiln and the same is recorded in the observation mahazar. The said fact is admitted by the writ petitioner and compounding fee of a sum of Rs.12,000/- has been paid on 06.06.2012

12. Thereafter, the writ petitioner was given an opportunity to submit his explanation for the provisional order of assessment, but for the first time, the writ petitioner has taken a defence that he has used oil



13. The said oil engine was not found in the observation mahazar and no such defence was taken in the acceptance letter dated 06.06.2012.

10.08.2022

Index : Yes / No
Internet : Yes / No
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R.VIJAYAKUMAR ,J.

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