



W.P.(MD)No.12256 of 2012

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.08.2022

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.12256 of 2012

and

M.P.(MD)No.1 & 2 of 2012 and 1 of 2013

Thanvanthiri

... Petitioner

Vs.

1.The Assistant Executive Engineer (Distribution),
Tamil Nadu Electricity Board,
Ilayangudi,
Sivagangai District.

2.The Assistant Executive Engineer (Rural),
Tamil Nadu Electricity Board,
Ilayangudi,
Sivagangai District.

3.K.Velchamy

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent in Letter No. AEE/D/ILY/F.Theft of energy/12.D.No.93/12 dated 25.06.2012, the



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consequential proceedings of the first respondent in KA.EN.U.SE.PO./PAKIR/ ILY/KO/MINTHIRUTU/A.EN.116/12 dated 21.07.2012, KA.EN.U.SE.PO./PAKIR/ILY/KO/MINTHIRUTU/A.EN.143/12 dated 27.08.2012, quash the same and consequently direct the first respondent to restore the service connection No.441-002-160 forthwith.

For Petitioner : Mr.S.Venkatesh
for Mr.A.Sivaji

For Respondents : Mr.S.Deenadhayalan,
Standing Counsel for R1 & R2

No appearance for R3

ORDER

The present Writ Petition has been filed challenging the final assessment order passed by the respondent Board and the consequent order of the respondent Board to include the penalty amount in the CC bill.

2. Admittedly, the writ petitioner has been provided with free agricultural service connection falling under Tariff IV.



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3. An inspection is said to have been conducted by the respondent Board at 12.40 hours on 23.06.2012.

4. According to the authorities of the respondent Board, they have found that free electricity service connection was allegedly utilized by the writ petitioner for a Charcoal manufacturing unit.

5. Based on the above, a provisional order of assessment was passed and the writ petitioner has also paid compounding fee of a sum of Rs.12,000/- (Rupees Twelve Thousand only) to avoid criminal prosecution. Thereafter, the writ petitioner was called upon to submit his explanation to the provisional order of assessment.

6. The writ petitioner through his counsel has submitted an objection by way of reply notice stating that on the date of inspection on 23.06.2012, there was a power cut in the locality and hence, the observation made by the respondent Board is factually incorrect.



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7. However, without considering the said objection raised by the writ petitioner, the impugned order of final assessment was passed by the respondent Board on 27.08.2012. In the impugned order, the respondent authorities have contended that no reply was received from the writ petitioner for the provisional order of assessment. Thereafter, the first respondent has proceeded to pass the order on 27.08.2012 including the penalty amount in the CC bill of the writ petitioner. These two orders are under challenge in the present writ petition.

8. The learned counsel for the writ petitioner drew the attention of this Court to a paper publication, in which, it was advertised by the respondent Board, that due to maintenance activities, there will be a power shutdown on 23.06.2012 between 09.00 a.m, to 05.00 p.m.

9. The observation mahazar points out that the inspection was conducted at 12.40 p.m., when the power shutdown was in force.

10. The counter filed by the respondent authorities is silent about the defence raised by the writ petitioner.



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11. The writ petitioner has taken such a specific defence by way of an Advocate notice to the provisional order of assessment. Hence, it is clear that the final assessment order has been passed without considering the said reply.

12. In view of the above said facts, the impugned orders passed by the first respondent are set aside. The matter is remitted back to the file of the first respondent herein. The writ petitioner is at liberty to file an explanation within a period of four (4) weeks from the date of receipt of a copy of this order. Thereafter, the first respondent is directed to pass orders after giving due opportunity to the writ petitioner within a period twelve (12) weeks from the date of receipt of explanation from the writ petitioner.

13. With the above said observations, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

10.08.2022

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

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To

- 1.The Assistant Executive Engineer (Distribution),
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Ilayangudi,
Sivagangai District.
- 2.The Assistant Executive Engineer (Rural),
Tamil Nadu Electricity Board,
Ilayangudi,
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Order made in
W.P.(MD)No.12256 of 2012

10.08.2022