



W.P(MD)No.12527 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.09.2022**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.12527 of 2012
and
M.P(MD)Nos.1 and 2 of 2012
and
W.M.P(MD)No.5376 of 2017

M/s.Agsar Paints (P) Ltd.,
Represented by its Managing Director,
No.507, George Road,
Thoothukudi Town & District.

... Petitioner

Vs.

- 1.Tamil Nadu Electricity Board,
Represented by its Chairman,
144, Annasalai,
Chennai-600 002.
- 2.The Chief Engineer (Commercial),
T.N.E.B., 144, Annasalai,
Chennai-600 002.
- 3.Tamil Nadu Generation and Distribution
Corporation Limited,
Represented by its Superintending Engineer,
Tuticorin Electricity Distribution Circle,
Thoothukudi.



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4.The Executive Engineer, Distn/Urban,
Tamil Nadu Generation and Distribution
Corporation Limited,
Thoothukudi.

5.The Assistant Executive Engineer,
Distribution/Urban Sourth,
Tamil Nadu Generation and Distribution
Corporation Limited,
Thoothukudi.

... 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 relating to the impugned orders of fifth respondent in Letter No.AEE/D/TTN/F.Doc/D.No.Camp dated 18.08.2012 and Lr.No.AEE/D/U/S/TTN/C1/F.Doc/D.No.171/12 dated 03.09.2012 and quash the same and direct the respondent to refund the petitioner's compounding fee for a sum of Rs.7,15,000/-.

For Petitioner : Mr.Vinod Paul David Tyagaraj
for Mr.David Thyagaraj

For Respondents : Mr.S.Deenadhayalan
Standing Counsel

ORDER

The present writ petition has been filed challenging the final assessment order issued by the respondent authorities arising out of Section 135 of the Electricity Act.



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2. According to the learned counsel for the petitioner, they are running a paint manufacturing unit and they were having LT service connection falling under tariff III B. An inspection was conducted on 18.08.2012 by the respondent authorities and they have found that there was tampering of meter and a provisional assessment order was issued to the petitioner/Company on 18.08.2012. For the said provisional assessment notice, the petitioner/Company has submitted their first explanation on 23.08.2012 and their second explanation on 27.08.2012. After considering the said explanations submitted by the petitioner/Company, the present impugned order has been passed by the respondent authorities. The said order is under challenge in the present writ petition.

3. The main ground on which the final assessment order is under attack is that in the working sheet annexed to the provisional assessment order, the time for which electricity is being utilized by the petitioner/Company is shown as 16 hours as if the company is running for a double shift. In the second explanation submitted by the petitioner herein, in Paragraph Nos.12 and 13, they have specifically contended



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that they never had two shifts in the history of their industry. Further, they have also disputed the working sheet prepared by them for double shift. During personal hearing, the petitioner/Company has submitted Form-11 records of the year 2011-12. They have also produced records establishing declared holidays and total hours of general shift. At the time of passing the impugned order, the respondent authorities have accepted the exclusion of national holidays, but they have refused to accept the shift hours. They have proceeded to impose the final assessment calculating as if the industry was running for two shifts, that is 16 hours per day. Hence, the learned counsel for the petitioner prayed for allowing the writ petition.

4. Per contra, the learned standing counsel for the respondents had contended that Form 11 that was produced at the time of personal hearing was relatable only to the date, which is subsequent to the date of inspection. He further contended that the Form-11 produced now, by way of a typed set of papers were not produced before the respondent authorities. He further contended that the attendance registers produced as Form-25 before this Court were also not produced before the authorities. The authorities cannot be found fault with for calculating the



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final assessment on the basis of a double shift. Hence, he prayed for dismissal of the writ petition.

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

6. A perusal of the Form-11 documents from the year 2010-13 indicate that the company was running only a single shift for 8 hours. The attendance register produced in Form-25 also disclosed that the industry was running only a single shift for 8 hours.

7. However, the learned standing counsel for the respondents has contended that these documents have not been produced and the genuineness and validity of the documents are also in dispute.

8. Considering the above said facts, this Court allows the writ petition and remits the matter back to the file of the fifth respondent herein for passing of fresh final assessment order, after taking into consideration the Form-11 and Form-25 to be produced by the petitioner/Company, after giving personal hearing to the writ petitioner.



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9. With the above said observations, this Writ Petition is allowed.

No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes / No
Internet : Yes / No

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To

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R.VIJAYAKUMAR ,J.

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