



W.P.(MD)No.12641 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.12641 of 2012

and

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

Kannabiran

... Petitioner

Vs.

1.The Superintending Engineer,
Tamil Nadu Electricity Board,
Sivagangai.

2.The Assistant Executive Engineer (Distribution),
Tamil Nadu Electricity Board,
Thirupuvanam,
Sivagangai District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling the records made in the impugned order in Letter No.AEE/D/TPVM/D.A.No.390/12 dated 18.08.2012 passed by the second respondent and quash the same.

For Petitioner : Mr.S.Vellaichamy

For Respondents : Mr.S.Deenadhayalan,
Standing Counsel



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ORDER

The present Writ Petition has been filed challenging the final assessment order for theft of energy passed by the second respondent under Section 135 of the Electricity Act, 2003.

2. Admittedly, the writ petitioner is having an agricultural Service Connection in S.C.No.162 and commercial Service Connection in S.C.No.202.

3. According to the writ petitioner, the motor pump sets connected with the commercial Service Connection got repaired on 20.05.2012 and he had handed over the same to the workshop on 21.05.2012 and he received back the motor in good condition only on 06.06.2012. With no other alternative source, he used the agricultural Service Connection in S.C.No.162 only for the period covering from 21.05.2012 to 06.06.2012. Hence, the authorities ought not to have levied penalty for the entire one year period.



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4. The learned counsel for the writ petitioner submitted that they have filed an objection to the provisional assessment order on 06.06.2012, in which, they have specifically contended that the motor of the commercial Service Connection got repaired and they have handed over the same to the workshop and the said defence has not been considered while passing the impugned final assessment order.

5. Per contra, the learned counsel for the respondents contended that in the reply itself, the writ petitioner has admitted the theft of energy from the agricultural Service Connection and they have also paid the compounding fee. In such circumstances, they have calculated the quantum of penalty only as per Regulation 23 (AA) (7) of Tamil Nadu Electricity Supply Code.

6. According to the respondents, they did not have any discretion whatever to arrive at the different amount than as per Form 8.



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

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8. The writ petitioner has taken a specific defence that he had unauthorizedly drawn electricity from the agricultural Service Connection only from 21.05.2012. This defence has been projected in the reply to the provisional assessment order. However, the said defence has not at all been considered by the respondent Board.

9. A perusal of Regulation 23 (AA) (7) of Tamil Nadu Electricity Supply Code indicates that the Authorized Officer has got discretion to reduce the period of such billing, if it is established by the facts or documents submitted in the representation of the accused person or any such other evidence observed by the Authorized Officer. Hence, the contention of the learned Standing Counsel for the respondent Board that the respondent authorities have no discretion whatever in the matter of imposing penalty, is not legally correct.

10. Since the specific defence raised by the writ petitioner has not been considered by the respondent authorities, the impugned order



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passed by the second respondent under Section 135 of the Electricity Act, 2003, is set aside. The matter is remitted back to the file of the second respondent herein. The second respondent shall pass orders after giving due opportunity to the writ petitioner. The said exercise shall be completed within a period of twelve weeks (12) from the date of receipt of a copy of this order.

11. With the above said observations, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

10.08.2022

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

csn

To

- 1.The Superintending Engineer,
Tamil Nadu Electricity Board,
Sivagangai.
- 2.The Assistant Executive Engineer (Distribution),
Tamil Nadu Electricity Board,
Thirupuvanam,
Sivagangai District.

Order made in
W.P.(MD)No.12641 of 2012

10.08.2022