



W.P(MD)No.13670 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.10.2022

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.13670 of 2012

and

M.P(MD)No.1 of 2012

Shree Bhaduga Seva Trust
Represented by its Founder Trustee
A.Logambal (Died).

J.Ilayarajan

... Petitioner

*(Petitioner is substituted vide Court order, dated 22.09.2022 in
W.M.P(MD)No.16521 of 2022)*

Vs.

1.The Executive Engineer,
Operation and Maintenance,
The Tamil Nadu Electricity Board,
Trichy.

2.The Assistant Executive Engineer,
Operations and Maintenance,
The Tamil Nadu Electricity Board,
TANGEDCO,
Samayapuram,
Trichy.

... Respondents



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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 on the file of the second respondent in connection with order passed by him in his proceedings in Lr.No. AEE/O&M/SMPM/CI/F.ADTS/D.No.44/4, 2012-13 / dated 10.09.2012 and quash the same and consequently directing the respondents to refund the compounding fee of Rs. 8,000/- and another amount of Rs. 75,000/- paid as interim payment for restoration of electricity supply within the time that may be stipulated by this court and pass any other writ, order or direction in the nature of writ.

For Petitioner : M/s.V.Sujatha Siddharthan

For Respondents : Mr.S.Deenadhayalan
Standing Counsel

ORDER

The present writ petition has been filed challenging a final assessment order passed by the respondent authorities under Section 135 of the Electricity Act, 2003.

2. According to the learned counsel for the petitioner, they are having LT service connection in S.C.No.1401 in the name of Nursing College, which is located in Samayapuram section, Konalai village,



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Siruganur, Trichy District. The respondent authorities conducted an inspection on 21.06.2012, on which date they have found that the LT service connection which was given to the educational institution was being unauthorizedly used for the purpose of constructing additional buildings for the college. A provisional assessment order was issued on 21.06.2012.

3. In reply to the said provisional assessment order, the petitioner/Trust has submitted a reply on 26.06.2012. In the reply, they have specifically pointed out that on 21.06.2012, there was no power supply due to maintenance. They have further contended that they have not used electricity service connection for the purpose of constructing the building. The petitioner has also pointed out that they are having a separate temporary service connection for the purpose of construction of the building. However, rejecting the said contentions, the present impugned order has been passed. As per the impugned order, the respondent authorities have found that the defence taken by the petitioner college is not acceptable and whatever calculation that was annexed to the provisional assessment order is correct. This final assessment order is under challenge in the present writ petition.



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4. The learned counsel for the petitioner has submitted that on 21.06.2012, there was no power supply due to maintenance and it was published in the newspaper. A copy of the said paper publication has been annexed to the typedset of papers. The petitioner has also taken specific stand that there was no power supply on the date of inspection. Hence, the learned counsel for the petitioner has contended that without considering the objections raised by the writ petitioner, the present impugned order has been passed in violation of the provisions of Tamil Nadu Supply Code.

5. Per contra, the learned standing counsel for the respondents has contended that the water extracted using LT service connection and it was stored in the overhead tank of ladies hostel. The said water was used for the purpose of constructing additional buildings of the college. Hence, the petitioner has committed theft of energy as contemplated under Section 135 of the Electricity Act. The petitioner institution has already compounded the said charges and they have paid the compounding fee also. Thereafter, they cannot turn around and contend that they have not committed any offence. Hence, he prayed for dismissal of the writ petition.



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6. I have carefully considered the submissions on either side.

7. Admittedly, the petitioner institution is having a LT service connection in S.C.No.1401. The respondent authorities have conducted an inspection on 21.06.2012 at about 1.30 p.m. According to the learned counsel for the petitioner, there was no power supply on the said date due to maintenance work and he has also produced copy of the paper publication issued by the Executive Engineer of the respondent authorities that there will not be any power supply from 9.00 a.m to 5.30 p.m on 21.06.2012. The said paper publication has been made on 20.06.2012. The petitioner in his reply, dated 26.06.2012 has also pointed out that there was no power supply on the said date. Hence, it is clear that there was no power supply on 21.06.2012. Hence, the contention of the respondent authorities that when they conducted an inspection on 21.06.2012, they found out unauthorized use of electricity is not factually correct.

8. The Regulation 23(AA) (15) of Tamil Nadu Supply Code directs the authorities to consider objections raised by the accused



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persons in their objection and pass a reasoned order after affording personal hearing. In the present case, the objections raised by the petitioner/institution have not been considered by the respondent authorities. The petitioner has specifically pointed out that there was no power supply and it is reflected in the paper publication issued by the respondent authorities. Hence, it is clear that the order impugned in the writ petition is not in consonance with the Regulation 23(AA) (15) of Tamil Nadu Supply Code. When there was no supply of electricity on the date of inspection, the respondent authorities could not have found out any unauthorized usage of the electricity amounting to theft of electricity as contemplated under Section 135 of the Electricity Act. The impugned order has been passed due to non-application of mind. Hence, the order impugned in the writ petition is set aside.

9. Accordingly, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

13.10.2022

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

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Order made in
W.P(MD)No.13670 of 2012

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