



W.P.(MD).Nos.1549 and 1550 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 22.07.2022

ORDER PRONOUNCED ON : 23.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).Nos.1549 and 1550 of 2012

and

MP(MD).Nos. 1 & 1 of 2012 and 1 and 1 of 2013

K.Ramalingam

.....Petitioner

Vs

1.The Assistant Executive Engineer

Operation & Maintenance

Tamil Nadu Electricity Board

Uppiliapuram

Thuraiyur Taluk

Trichy District

2.The Assistant Executive Engineer

Enforcement

Tamil Nadu Electricity Board

Trichy -20

Trichy District

.....Respondents



W.P(MD).Nos.1549 and 1550 of 2012

Prayer in W.P(MD).No.1549 of 2012: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the first respondent's proceedings made in Letter No.AEE/O&M/UPM/CNO184/2011-12, dated 21.01.2012 (pertaining to service connection bearing SC.No.599/TR IV) quash the same, and further direct the first respondent to provide sufficient opportunity to the petitioner to present his side case before pass final orders with regard to Electricity service connection bearing SC.No.599/TR IV.

Prayer in W.P(MD).No.1550 of 2012: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the first respondent's proceedings made in Letter No.AEE/O&M/UPM/CNO184/2011-12, dated 21.01.2012 (pertaining to service connection bearing SC.No.958/TR IV) quash the same, and further direct the first respondent to provide sufficient opportunity to the petitioner to present his side case before pass final orders with regard to Electricity service connection bearing SC.No.958/TR IV.

(In both petitions)

For Petitioner : Mr.R.Sundar

For Respondents : Mr.S.Deenadhayalan
Standing Counsel for TNEB

COMMON ORDER

The said writ petitions have been filed challenging the final assessment orders of the respondent electricity board arising under Section 135 of Electricity Act.



W.P(MD).Nos.1549 and 1550 of 2012

2. According to the petitioner, he had two agricultural service connections namely SC.Nos.599 and 958 and he was cultivating crops like Paddy, Banana, Coconut, Vegetables, Mango etc., The authorities of the respondent board had conducted an inspection on 11.01.2012 and issued a provisional assessment order on 12.01.2012. The petitioner has also paid compounding charges to avoid criminal prosecution. Thereafter, the petitioner has submitted a representation on 18.01.2012 offering his explanation to the provisional assessment order. Thereafter, the final assessment order has been passed on 21.01.2012 rejecting the contention on the side of the writ petitioner. This order is under challenge in the present writ petition.

3. The learned counsel for the petitioner had contended that the petitioner was not provided with sufficient opportunity before final assessment order was passed and he was not permitted to explain that horticulture is also one among the agricultural activities. The learned counsel had further contended that as per the certificate issued by the National Horticulture board clarified that crops like Mangoes, Sapota, Amla, Guava Coconut, Hibiscus and Papaya are horticulture crops part of agricultural under border category. Hence, he contended that there was no unauthorised use of electricity and the assessment order issued by the authorities are not legally sustainable.



W.P(MD).Nos.1549 and 1550 of 2012

4.Per contra, the learned counsel for the respondents/Electricity Board had contended that the petitioner was charged with theft of electricity under Section 135 of the Electricity Act. The petitioner has admitted the said offence and had paid compounding fee to avoid the criminal prosecution. Hence, the petitioner cannot turn around and contend that he has not committed the theft of energy. The learned counsel had further contended that the petitioner has submitted his explanation for provisional assessment order only questioning the mode of calculation of penalty and not with regard to the legality of the provisional assessment order. According to the Standing Counsel, being a theft of energy, the respondents board is invoking Regulation No.23 to arrive at a quantum of penalty and final assessment order has been issued in Form VIII. Therefore, the writ petitioner cannot have any grievance whatsoever as against the final assessment order. Hence, he prayed for dismissal of the writ petition.

5.I have considered the submissions made on either side and perused the materials available on record.

6.There is no dispute that the petitioner is having two agricultural service connections and an inspection was conducted by the authorities on 11.01.2012 in which they found that the service connection has been utilised



W.P(MD).Nos.1549 and 1550 of 2012

for horticulture purpose. The petitioner has accepted the said inspection Mahazer and has paid compounding fee to avoid criminal prosecution.

7. When the case falls under Section 135 of the Electricity Act, the calculation of penalty has to be made only as contemplated under Regulation No.23 of the Tamil Nadu Electricity Supply Code. The petitioner in his explanation dated 18.01.2012 has only questioned the quantum of penalty proposed in the provisional assessment order and has not questioned the legality of the provisional assessment order. In the explanation, the petitioner has contended that the quantum of penalty in both service connections would be only Rs.1,41,120/- for the whole year. But as per the provisional assessment order, the respondent board has demanded Rs.1,44,635/- for each service connection.

8. A perusal of the final assessment order dated 21.01.2012 indicates that it is a printed format in which the assessment authority has filled up date of inspection, time, Service Connection Number and it is used for horticulture purpose and thereafter, a demand of Rs.1,44,635/- has been made. Regulation No.23(AA) (15) stipulates that the final assessment order should be a speaking order containing a brief of inspection report, the submissions made by the accused person in his written reply as well as during



W.P(MD).Nos.1549 and 1550 of 2012

his personal hearing and the reasons for acceptance or rejection of the same and the assessment authorities as per Sub Regulation No.12. However, in the present case, none of the above said procedure has been followed and the impugned order has been passed in statutory Form No.10 without considering the explanation / reply submitted by the writ petitioner. Even as per the Form No.10 in Paragraph No.4, a reasoned /detailed order has to be passed by the officer. However, this has not been done in the present case.

9.As per Regulation No.23(AA)(7) of the Tamil Nadu Electricity Supply penalty, the authorised officer has got power to reduce the period of such penalty, if it is established by the facts or document submitted in the representation of the accused person or any such other evidence observed by the authorised officer. Hence, it is not mandatory on the part of the assessment officer to simply rely upon Statutory Form No.8 to arrive the assessment of penalty. Considering the reply filed by the accused person, the authorised officer has got powers to reduce the quantum of penalty. However, in the present case, the impugned order does not reflect any consideration of the reply submitted by the petitioner and it has been issued in a printed format. The impugned order suffers from non application of mind and hence, it is liable to be set aside.



W.P(MD).Nos.1549 and 1550 of 2012

10. Accordingly, the impugned orders are set aside and the matter is remitted to the file of the first respondent herein for considering the explanation / reply submitted by the petitioner on 18.01.2012 and pass a reasoned order after giving due opportunity of personal hearing to the writ petitioner. The said exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order. The writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

23.08.2022

Internet : Yes/No
Index : Y
Yes/No
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W.P(MD).Nos.1549 and 1550 of 2012

R.VIJAYAKUMAR, J.

msa

Pre-delivery order made in

W.P.(MD).Nos.1549 and 1550 of 2012
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23.08.2022