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W.P.(MD).No.16031 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 17.08.2022

ORDER PRONOUNCED ON: 24.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).No.16031 of 2012
and MP(MD).No.1 and 2012**

J.Kumaresan

...Petitioner

-Vs-

1.The Superintending Engineer
Tamil Nadu Electricity Department Corporation
(TEDC)/Metro
Trichy

2.The Executive Engineer
Operations and Maintenance
TANGEDCO, Sirengam
Trichy

3.The Assistant Executive Engineer
Operations and Maintenance
TANGEDCO
Samayapuram

4.The Assistant Executive Engineer
Enforcement Wing
TANGEDCO
Trichy

...Respondents



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Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the third respondent in its proceedings in Lr.No.AEE/o&m/Smpm/CI/F.APTS/D-No.64/2011-12 dated 20.02.2012 and quash the same.

For Petitioner : Mrs.J.Mariaroseline

For Respondents : Mr.S.Deenadhayalan
Standing Counsel

ORDER

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

2.According to the petitioner, he is the owner of the agricultural lands measuring 7 acres 46 cents in Survey No.598/1, Avaravalli Village, Siruganur, Trichy. The petitioner had availed electricity service connection for agricultural purpose in S.C.Nos.111 and 139 falling under free agricultural service connection of Tariff IV. According to the petitioner, without prior intimation, the authorities from the respondent board had inspected the land on 16.11.2011 and charged the petitioner with an offence of theft of electricity. The petitioner was served with an inspection report dated 16.11.2011 alleging water drawn by using agricultural service connection was



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stored in a tank and thereafter, used for construction purposes of the College and the water was also drawn to the College Hostel overhead tank. Hence, the respondent authorities have contended that the petitioner had committed theft of energy and served a provisional order of assessment on 17.11.2011 for both service connections.

3.The petitioner had further contended that though the College is located adjacent to the agricultural lands, the said buildings are having separate service connection and the water drawn using the agricultural service connection was used only for agricultural purpose. At no point of time, the water drawn from agricultural service was used for construction or for the hostel purpose. He had further contended that the respondents 3 and 4 had coerced the petitioner to pay compounding fee without considering his objection and in violation of principles of natural justice. The petitioner was constrained to file W.P.Nos.13896 and 13897 of 2011 challenging the provisional order of assessment. The said writ petitions were disposed of on 13.12.2011 permitting the petitioner to submit his objection to the third respondent with liberty of personal hearing. Thereafter, the third respondent may pass final order in accordance with the provisions of the Act after verifying the ownership of the adjoining College and involvement of the family members of the petitioner in the management of those colleges.



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Thereafter, the petitioner had submitted his explanation on 19.12.2011 disputing the allegation of energy theft and also disputing the quantum of assessment made in the provisional order of assessment. The third respondent herein had passed a common order for both service connection by way of impugned order dated 20.02.2012. Hence, the present writ petition.

4.The learned counsel for the writ petitioner had contended that the proceedings have been initiated under Section 135 of the Electricity Act, 2003. However, the petitioner has paid the compounding fee and criminal prosecution has been avoided. In such an event, the respondent authorities have to resort only to Section 126 of the Electricity Act relating to an un-authorised use of electrical energy. According to the learned counsel, the corresponding regulation under Tamil Nadu Electricity Supply Code is Regulation No.19. Without invoking Regulation No.19 of the said Supply Code, the respondent authorities have invoked Regulation Nos.23(AA). He had further contended that as per Section 50 of the Electricity Act, 2003, the State Commission is empowered to draft electricity Supply Code only for the reasons enumerated under the said Section. Hence, Regulation No.23(AA) is clearly in transgression of powers conferred upon the said Commission under Section 50 of the Electricity Act, 2003. Hence, according to the petitioner, the respondent authorities ought to have calculated the penalty only under



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Regulation No.19 and not under Regulation No.23(AA). He had further contended that Section 154(5) of the Electricity Act, 2003 specifically empowers the Special Court to determine the civil liability as against the consumer in terms of money for theft of energy. Hence, the power to calculate and recover penalty in case of theft of energy, has to be calculated only under Regulation No.19 by the authorities. As far as the civil liability arising out of theft of energy is concerned, only the Special Court has got power as contemplated under Section 154(5) of the Electricity Act. In all cases where criminal prosecution has been launched, the authorities have no jurisdiction to invoke Regulation No.23 of the Tamil Nadu Supply Code.

5.The learned counsel had further contended that as per Explanation (b)(iv) of Section 126 of Electricity Act, the usage of electrical energy for the purpose other than for which the electricity was authorised would also fall within the definition of un-authorised usage of electricity. The authorities ought to invoke only Regulation No.19 of the Tamil Nadu Supply Code which is corresponding to Section 126 of the Electricity Act, 2003. The learned counsel had further contended that the supply of electricity was available only for 6 hours a day and hence, the quantum arrived at by the authorities under the provisional assessment order that supply was made for 12 hours per day was factually incorrect. Hence, she prayed for allowing the writ petition.



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6.Per contra, the learned Standing Counsel appearing for the respondent board had contended that the petitioner was found to have committed theft of energy by using the agricultural service connection for the purpose of construction activities and for the purpose of usage in hostel. The inspection report dated 16.11.2011 reveals the said fact. On 17.11.2011 itself a provisional order of assessment was passed and served upon the writ petitioner. The petitioner has chosen to accept the criminal liability and compounded the said offence arising out of Section 135 of the Electricity Act. The compounding of the said offence result in deemed acquittal as contemplated under Section 152(2) of the Electricity Act. Once the petitioner is deemed to have been acquitted, thereafter the petitioner cannot rely upon Section 154(5) of the Electricity Act to contend that only a Special Court would have power to impose the civil liability upon the petitioner. The question of invoking Section 154 of the Electricity Act would arise only in cases where the petitioner does not compound the offence and he agrees for facing the criminal trial. Only when the matter is taken up by the Special Court, the Special Court would fix the civil liability also upon the writ petitioner. In all cases where compounding charges have been paid and it had resulted in deemed acquittal, the question of invoking Section 154 of the Electricity Act would not arise.



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7.The learned counsel had further contended that there is a vast difference between invoking Section 126 and Section 135 of the Electricity Act. Though both Sections deal with unauthorised use of electricity, the un-authorised use with dishonest intention alone will attract Section 135 of the Electricity Act. In all other cases where the usage is without any dishonest intention, Section 126 of the Electricity Act alone is attracted. In the present case having admitted the offence, paid the compounding fee, the petitioner cannot now turn around and contended that his action is without any dishonest intention and therefore, attracts Section 126 of the Act. The learned counsel had further contended that Regulation No.23(AA) has been framed only drawing power under Section 50 of the Electricity Act. Hence, the contention of the writ petitioner that Section 50 of the Electricity Act, 2003, does not empower to frame Section 23(AA) of the Tamil Nadu Electricity Supply Code is not legally sustainable. Hence, he prayed for dismissal of the writ petition.

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

9.The primary contention of the writ petitioner is that the respondent authorities ought not to have invoked Regulation No.23 of the Tamil Nadu



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Supply Code in view of the fact that it is in violation of Section 50 of the Electricity Act, 2003. The writ petitioner had challenged the provisional order of assessment for both service connections in W.P.(MD).Nos.13896 and 13897 of 2011. In the said writ petitions, the petitioner has raised the same ground. The learned Single Judge of this Court by his order dated 13.12.2011 has rejected the said contention and directed the petitioner to submit his explanation for the provisional assessment order and thereafter, directed the authorities to pass final assessment order. Paragraph Nos. 18 and 19 of the said judgement are extracted as follows:

“18.The contention of the learned counsel for the petitioner is that the power to make an assessment under the third proviso to sub-Section (1-A) of Section 135, has to be in accordance with the provisions of the Act. The only provision in the Act providing for assessment is under Section 126. Therefore, it is the contention of the learned counsel that if the respondents want to invoke section 135(1-A) for making an assessment, they have to fall back only upon Section 126 and not upon Regulation 23-AA. It is further contention of the learned counsel for the petitioner that the very charging of twice the amount indicates that invocation of Section 126(6).

19.But the above contentions are legally misplaced. The power to impose twice the charges can also be traced to Regulation 23-AA(7). Therefore, what can be done in matters of un-authorised use, can also be done in the case of theft of energy. Under such



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circumstances, the objection to the provisional notice on the ground that the assessment does not follow the procedure prescribed by law, cannot stand. Therefore, the writ petition is bound to fail and the only remedy open to the petitioner is to file objections to the provisional assessment and participate in an enquiry “

10.The contention having been raised unsuccessfully at the provisional assessment order stage, the petitioner is not entitled to raise it again at the final assessment order stage. That apart, a careful perusal of the provisional order of assessment indicates that the said assessment order has been issued under Statutory Form No.9 corresponding to Regulation No.23(AA). The learned Single Judge of this Hon'ble Court has upheld that the said provisional order of assessment under the said regulation and directed the petitioner to submit his explanation. In such view of the matter, the learned counsel for the petitioner would not be entitled to raise plea that the authorities are not entitled to invoke Regulation No.23 of Tamil Nadu Supply Code in relation to the present case.

11.The learned counsel for the petitioner had further contended that in his explanation dated 19.12.2011 that there was a supply of electricity only for a period of 6 hours a day and hence, the assessment calculating the supply of service for 12 hours per day is not legally sustainable. The petitioner has



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not produced any documentary evidence to the effect that the supply of electricity was restricted to 6 hours a day either before the authorities or before this Court. Apart from that, the petitioner has not raised the said plea disputing the mode of calculation or the quantum of penalty imposed by the authorities either in the writ affidavit. Hence, the said contention does not deserve any consideration by this Court.

12.In view of the above said facts, I do not find any illegality or infirmity in the final order of assessment passed by the respondent authorities. The writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

24 .08.2022

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R.VIJAYAKUMAR, J.

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Pre-delivery Order made in

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