



W.P.(MD).No.6197 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.07.2022

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.6197 of 2012

and

M.P.(MD)No.2 of 2012

Pitchiah

... Petitioner

Vs.

1. The Tamil Nadu Electricity Board
represented by the Executive Engineer (Distribution/Rural)
Tuticorin, Tuticorin District.

2. The Assistant Executive Engineer (Distribution/Rural)
Tamil Nadu Electricity Board,
Tuticorin, Tuticorin District.

... 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 of the second respondent in Letter No.உ.செ.பொ/வி/ஊ/தூடி/இந்உ/கோ.கட்டு/அ.எண். 91/12 dated 20.04.2012 in respect of Low Tension Service respondents herein to restore the electricity supply to the petitioner herein in respect of Low Tension Service Connection No. B 658 in No.2-200/84 Theri Road, Bhavani Nagar, Pudukottai, Kumragiri Panchayat, Tuticorin District.



W.P.(MD).No.6197 of 2012

For Petitioner : Mr.T.Pon Ramkumar

For R1 & R2 : Mr.Deenadhayalan
Standing Counsel

ORDER

The present writ petitioner has been filed challenging the final assessment order passed by the respondent Board arising out of energy theft.

2. It is the case of the petitioner that the check meter installed in the petitioner's Ice factory got damaged on 27.10.2009, due to lightning. On 04.11.2009, the petitioner has paid the requisite fee for installation of new check meter. The authorities of the respondent Board had inspected the premises on 21.11.2009. An inspection was conducted and a new check meter was installed. The learned counsel for the petitioner had submitted that on 24.03.2010, the authorities have conducted an inspection of the premises and found that there was tampering of the main meter. Thereafter, a provisional assessment order was issued on



W.P.(MD).No.6197 of 2012

29.03.2010. In the meantime, the petitioner had also paid a sum of Rs.9,500/-(Rupees Nine Thousand and Five Hundred only) towards compounding of the offence as contemplated under Section 152 of the Electricity Act. Thereafter, a final assessment order came to be passed on 04.05.2010.

3. The said final assessment order was challenged by the petitioner by way of filing W.P.(MD)No.7179 of 2010. The said writ petition was allowed on 23.12.2011, remitting the matter back to the respondent authorities to grant personal hearing to the writ petitioner and thereafter, pass orders. After the orders passed in the writ petition, the writ petitioner had submitted his written objections on 03.04.2012 and attended the personal hearing on the said date. Based upon the written objections and the personal hearing, the impugned final assessment order has been passed on 20.04.2012. The said order is under challenge in the present writ petition.

4. The limited contention of the learned counsel for the petitioner



W.P.(MD).No.6197 of 2012

is that the authorities of the respondent Board had inspected the premises on 21.11.2009 and found that only the check meter had got damaged, but the main meter was functioning normally. When it is the case of the respondent Board, while passing final assessment orders the Board cannot impose penalty upon the writ petitioner for a period of previous one year. The learned counsel for the petitioner had contended that the presumption of theft of energy for the previous one year period can be drawn only when the exact date of tampering of the meter was not known to the respondent Board. But, in the present case, the officials of the respondent Board themselves have inspected on 21.11.2009 and found that the main meter has functioning normally. In such an event, the respondent Board was not legally correct in drawing presumption of theft of energy for the previous one year period. They ought to have imposed penalty only for the period between 28.10.2009 and 24.03.2010, the date on which, the inspection was conducted. Hence, he prayed for allowing the writ petition to the said extent.

5. Per contra, the learned Standing Counsel appearing for the



W.P.(MD).No.6197 of 2012

respondent Board relied upon Regulation 23 (AA) (7) of Tamil Nadu Electricity Supply Code to contend that where it is established that there is a case of theft of energy, the authorized officer shall assess the quantum of energy consumption for the past twelve months as per the assessment formula given in Form No.8. Hence, he contended that there is no liberty on the part of the respondent Board to reduce the penalty based upon the representation given by the petitioner. He further contended that the calculation has to be made only as per Form No.8 in the Appendix to the Code. Hence, he contended that the impugned assessment order has been passed completely in tune with the said provisions as stated supra. Hence, he prayed for the dismissal of the writ petition.

6. I have considered the submissions made on either side

7. Admittedly, the authorities of the respondent Board have conducted an inspection on 21.11.2009, for installing a new check meter which had got damaged due to lightning. At the time of inspection, they



W.P.(MD).No.6197 of 2012

have also checked the main meter. Hence, there cannot be any doubt that the main meter was functioning normally up to 21.11.2009. Thereafter, an inspection has been conducted on 24.03.2010, on which date, tampering of main meter has been discovered by the respondent Board.

8. The respondent Board has invoked Regulation 23 (AA) (7) of Tamil Nadu Electricity Supply Code to arrive at a final assessment for the preceding period of twelve months. However, the same Regulation also empowers the authorized officer 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 authorized officer has no option or liberty to reduce the billing, is not legally sustainable.

9. In the present case, admittedly, the main meter was functioning normally till 21.11.2009 and tampering of meter has been discovered on 24.03.2010. The principle of presumption can be invoked only in those



W.P.(MD).No.6197 of 2012

cases where the authorities of the respondent Board are not sure about the date from which, theft of energy is taken place. But, in a case, where the theft of energy could be related to a particular date or the date from which the theft of energy has taken place could be fixed, the question of arriving at a presumptive value for the past twelve months could not arise. The authorized officer has been empowered to reduce the billing based upon the document submitted by the accused person. In the present case, the respondent authorities themselves are having records to the effect that the main meter was functioning normally till 21.11.2009. The same has been reiterated by the writ petitioner in his written objection, dated 03.04.2012. Hence, in the present case, the authorities of the respondent Board were not legally correct in fixing the penalty for the previous twelve months period.

10. In view of the above said discussion, the impugned order is set aside to the extent that it fixes the assessment for the previous twelve months period. The penalty imposed upon the writ petitioner shall be only for the period between 22.11.2009 to 24.03.2010. The respondent



W.P.(MD).No.6197 of 2012

authorities are at liberty to issue a fresh assessment order based upon the orders passed in the present writ petition. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. Any amount that has already been deposited by the writ petitioner shall be adjusted to the amount demanded in the fresh assessment order.

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

07.07.2022

Index : Yes / No
Internet : Yes / No

jbr

To

1. The Tamil Nadu Electricity Board
represented by the Executive Engineer (Distribution/Rural)
Tuticorin, Tuticorin District.
2. The Assistant Executive Engineer (Distribution/Rural)
Tamil Nadu Electricity Board,

8/9



WEB COPY

Tuticorin, Tuticorin District.



W.P.(MD).No.6197 of 2012

R.VIJAYAKUMAR ,J.

jbr

Order made in
W.P.(MD).No.6197 of 2012

07.07.2022