



W.P.(MD).No.7562 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 24.06.2022

ORDER PRONOUNDED ON : 04.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.7562 of 2012

and

MP(MD).No. 2 of 2012

U.Viswanathan

...Petitioner

Vs

1.The Executive Engineer
Operation & Maintenance
Tamil Nadu Electricity Board
Thanjavur

2.The Assistant Executive Engineer
Operation & Maintenance/Rural
Tamil Nadu Electricity Board
Thanjavur 613 007

3.The Junior Engineer
Operation & Maintenance
Tamil Nadu Electricity Board
Melatur, Thanjavur

4.Er.E.Karthikeyan
Assistant Executive Engineer
Operation & Maintenance/Rural
Tamil Nadu Electricity Board
Thanjavur 613 007

.....Respondents



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Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the orders in Lr.No.AEE/O&M/R/TJR/F.APTS/D.No.70/2012 dated 28.05.2012 and Lr.No.AEE/O&M/R/TJR/F.APTS/D.No.71/2012 dated 28.05.2012 and the Lr.No.AEE/O&M/R/TJR/F.DOC/D.No.72/2012 dated 28.05.2012 passed by the second respondent and quash the same and further direct the respondents to restore the petitioner's electricity service connection in SC 55 and SC 216 located at Neithalur Distribution and further direct the fourth respondent to pay to the petitioner Rs.1,78,000/- as damages towards disconnections unlawfully made.

For Petitioner : Mr.D.Gnanasekaran
For R1 to R3 : Mr.S.Deenadhayalan
For R4 : No Appearance

ORDER

The writ petition has been filed to quash the three orders dated 28.05.2012 passed by the second respondent herein and direct the respondents to restore the electricity service connection to two service numbers and for further direction to the fourth respondent to pay a sum of Rs.1,78,000/- as damages towards unlawful disconnection of the service connection.



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2.The learned counsel for the petitioner had contended that the petitioner was provided with electricity service connection for agricultural purposes in SC.No.216 and SC.No.55. Thereafter, he had dug a fish pond for fish farming in August 2009 and obtained a separate commercial connection in SC.No.516. The respondent Board had conducted an inspection on 08.03.2010 and arrived at an alleged finding that he has committed theft of energy by utilising free service connection meant for agricultural purposes for fish farming activities. The learned counsel for the petitioner had further contended that in order to avoid criminal prosecution, his client was forced to pay a sum of Rs.40,000/- to compound the offence to avoid the disconnection of the service connection.

3.The learned counsel for the petitioner had further contended that on 12.03.2010 a Provisional Assessment Order was passed demanding certain amount from the writ petitioner. This assessment order was followed by a final assessment order dated 29.03.2010. Since the writ petitioner did not have any knowledge about the final assessment, the writ petitioner had filed W.P(MD).No.4427 of 2010 challenging the Provisional Assessment Order. The said writ petitioner was dismissed as infructuous.

4.The petitioner filed WP(MD).Nos.4843 and 4844 of 2010 challenging the final assessment order dated 29.03.2010. In the said writ



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petition, interim order was granted on condition that the petitioner should pay 50% of the amount demanded. The said interim order was complied with by the writ petitioner on 28.04.2010. On 23.12.2011, the final orders were passed in both the above said writ petitions and they were remanded back to the Assessing Officer to pass a fresh assessment order after considering the petitioner's objection.

5.The learned counsel for the petitioner further contended that pursuant to the orders of this Court, he submitted a written explanation on 09.04.2012 explaining the fact that the service connection No.516 (commercial connection) was provided only in October 2019 for fish farming and there was no necessity to commit theft of energy in SC.Nos.216 and 55 on 08.03.2010.

6.The learned counsel had further contended that two orders were passed by the respondent Board on 21.04.2012 requesting the petitioner to deposit the balance 50% of the demand amount. Hence, he was constrained to file W.P(MD).No.6666 of 2012. This writ petition was allowed on 09.05.2012 and the matter was again remanded back to the file of the second respondent to pass a fresh order after considering the explanation of the writ petitioner dated 09.04.2012. The learned counsel had further contended that despite the



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orders passed, the respondent Board had proceeded to disconnect the service connection. Hence, he was forced to issue a contempt notice on 28.05.2012.

On the same day, the petitioner has also given a representation to the second respondent herein.

7.The learned counsel for the petitioner had further contended that the second respondent had passed an impugned order on 28.05.2012 rejecting his objection, demanding the balance amount of 50% in SC.No.216 and SC.No.55. This impugned order is under challenge in the present writ petition.

8.The learned counsel for the petitioner had further contended that after the orders were passed in WP(MD).Nos. 4843 and 4844 of 2010, the petitioner had sent an explanation on 09.04.2012. In the said explanation, he has specifically contended that he has not indulged in any theft of energy. He had further contended that he has utilised the commercial connection in SC.No.516 for fish farming and he had paid the electricity charges to a tune of about Rs.7,320/- on 21.12.2009 and another sum of Rs.14,293/- on 17.02.2010. In case, if the petitioner had utilised the agricultural service connection for filling up the fish tank, the electricity charges for commercial service connection would have come down. Since that has not happened, the contention of the respondent Board that the petitioner has utilized the



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agricultural service connection for filling up the fish tank is not factually correct. According to the learned counsel for the petitioner, the objection given by the writ petitioner was not properly considered at the time of passing the impugned order on 28.05.2012. Hence, he prayed for allowing the writ petition.

9.Per contra, the learned counsel for the respondents Board had contended that the petitioner's claim had been considered in detail in the impugned order. According to the learned counsel for the respondents, any payment made towards compounding the criminal offence cannot absolve the writ petitioner from his liability to pay the charges and the penalty towards theft of energy. He had further contended that once the petitioner had paid an amount to compound the criminal offence, thereafter he cannot turn around and contend that he has not committed any offence at all. Once the petitioner had admitted the offence and compounded the same, the petitioner has no defence in the assessment proceedings except with regard to the procedure for calculating the same.

10.The learned counsel for the respondents Board had further contended that mere fact that the consumption charges for commercial service connection got enhanced will not lead to an inference that only that the said connection was used for fish farming. When the inspection was done on 08.03.2010, the authorities have found that the service connection from



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agricultural service was utilised to fill up the fish tank. Hence, according to the learned counsel for the respondents, all the objections raised by the writ petitioner in his explanation dated 09.04.2012 has been properly considered and answered in the impugned orders. Hence, he prayed for dismissal of the writ petition.

11.I have considered the submissions made on either side.

12.The petitioner is having two service connections namely SC.Nos. 216 and 55 for agricultural purposes. The petitioner has also obtained a commercial service connection in SC.No.516 in the month of October 2009 for the purpose of carrying out fish farming. A perusal of the inspection report dated 08.03.2010 reveals that the service connection No.216 (agricultural purpose) was utilised to draw water from the Well to fish tank through a hose pipe. The authorities have also found that using SC.No.55 (agricultural service connection) directly water is being drawn to another fish tank. On the same day, the petitioner had paid a sum of Rs.40,000/- to compound the criminal offence and avoided disconnection of the electricity service connection.

13.This Court by its order dated 09.05.2012 in WP(MD).No.6666 of 2012 has quashed the orders of the final assessment for the second time and



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directed the authorities to reconsider the matter in the light of the explanation submitted by the writ petitioner on 09.04.2012. On 09.04.2012, the petitioner has submitted two explanations to the authorities namely the second respondent and the first respondent. The impugned order has been passed by the second respondent herein. In the said explanations, the petitioner had contended that the fish tank was dug only in August 2009 and immediately in October 2009 he has obtained separate commercial service connection for the same and hence, he has not utilized the free service connection for fish farming. The petitioner has further contended that the increase in the electricity consumption charges of the commercial service connection will indicate that only the said connection have used for fish farming.

14.A perusal of the inspection report will clearly disclose that both the agricultural service connections were used for drawing water from the Well for fish farming on the date of inspection namely 08.03.2010. It is not the case of the petitioner that falsely the authorities have recorded such an event in their inspection report. In fact on the date of inspection report itself, the petitioner has paid a sum of Rs.40,000/- towards compounding of the offence in order to avoid the criminal proceedings. There is no allegation as against the respondent officials that they have recorded some false statement in the inspection report. Hence, we have to arrive at a conclusion that the inspection



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report is true and the explanation offered by the writ petitioner is only an after thought.

15.The explanation offered by the writ petitioner has been considered para wise in the impugned order passed by the second respondent herein. Only after considering all the explanations and rejecting the same with proper reasons, the present impugned order has been passed. Hence, the contention of the learned counsel for the petitioner is that again and again, the authorities are passing orders without properly appreciating the explanation offered by the writ petitioner is not legally sustainable.

16.In view of the above said discussions, I find that the writ petition is devoid of any merits and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

04.07.2022

Internet : Yes/No
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R.VIJAYAKUMAR, J.

msa

Pre-delivery order made in

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