



W.P(MD)No.20032 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.11.2022**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.20032 of 2013

E.Revathi

... Petitioner

Vs.

1.The Executive Engineer/Operation,
230KV Sub-Station/Pugalur,
TANTRANSCO/TNEB Limited,
Kagikathapuram,
Karur-639 136.

2.The Assistant Executive Engineer,
The Tamil Nadu Electricity Generation &
Distribution Corporation Limited,
Operation and Maintenance,
South,
Karur,
Karur District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned final assessment order in Form 10 issued by the second respondent in his proceedings Lr.No.AEE/O&M/South/Karur/F.Doc/D.No47JE/O&M/Pavithram/2011-12 dated 22.06.2011 and quash the same as illegal and arbitrary.



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For Petitioner : Mr.K.Suresh
for Mr.E.K.Kumaresan

For Respondents : Mr.S.Deena Dhayalan
Standing Counsel

ORDER

The present writ petition has been filed challenging the final assessment order passed by the second respondent herein arising out of theft of energy under Section 135 of the Electricity Act, 2003.

2. The petitioner is running a textile unit with low tension service connection in SC.No.57 assessed under tariff III B. Since the petitioner wanted to put up additional construction, she had applied for another low tension service connection in SC.No.67 under tariff VI as a temporary service connection for construction activities. The respondent authorities inspected the premises on 05.01.2011 and came to a conclusion that the service connection in SC.No.57 meant for textile unit was being utilized for construction activities and they treated the same as theft of energy. On 04.03.2011, the petitioner has submitted her explanation stating that she had obtained a building plan permission only on 13.09.2010 and only thereafter, she had started putting up construction. Hence the provisional



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assessment order calculating the compensation for 365 days is not legal.

However, without properly appreciating the explanation submitted by the writ petitioner, a final assessment order has been passed in consonance with the provisional assessment order. Hence, the final assessment order is under challenge in the present writ petition.

3. According to the learned counsel for the petitioner, the petitioner had obtained low tension service connection in September 2010 and building plan permission on 13th of September, 2010. Only thereafter, she had started construction activities. However, the respondent authorities have calculated the damages for a period of 365 days, namely from 05.01.2010. According to the learned counsel for the petitioner, the assessment if any, could be only from first of October 2010.

4. Per contra, the learned standing counsel appearing for the respondents had contended that the date of obtaining building plan permission cannot be considered to be a cut off date for the alleged theft of energy. There are many cases, where the construction activities are



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started even before the building plan permission is granted by the competent authorities. Hence, he contended that the respondent authorities were right in taking into consideration prior 365 days for calculating the compensation for theft of energy arising out of different use of electricity in low tension service connection in SC.No.57.

5. On instructions, the learned standing counsel for the respondents had further submitted that low tension service connection in SC.No.67, which is a temporary service connection for construction activities was provided to the writ petitioner on 10.08.2010. However, the learned standing counsel for the respondents points out that there is no correct date, from which it could be found out, the date of initiation of construction activities and hence, he prayed for sustaining the order impugned in the writ petition.

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

7. The petitioner, a textile unit, was admittedly having an low tension service connection in SC.No.57 falling under tariff III B. In order to put up additional construction, she had obtained low tension service



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connection in SC.No.67 under tariff VI as a temporary connection for carrying out construction activities. Admittedly, the said temporary connection has been provided to the writ petitioner on 10.08.2010. For providing this temporary service connection, the officials from the respondent board would have certainly inspected the premises on 10.08.2010. If the authorities have found that already construction activities are going on, without obtaining temporary service connection, they would have immediately charged the petitioner with theft of energy for unauthorized use of low tension service connection in SC.No.57, which was meant for the textile unit. However, no such action was initiated by the authorities. Hence, it is clear that on the date, when temporary service connection for construction activities was provided by the respondent authorities to the petitioner, there was no construction activity at all.

8. In view of the above said facts, theft of energy, if any, could only be attributed from 11.08.2010. However, the provisional assessment order and the final assessment order proceeded on the basis of imposing penalty for a period of 365 days from 05.01.2010, that is one year prior



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to the date of inspection. Under regulation 23 (AA) (7) of the Tamil Nadu Electricity Code, the authority is not expected to mechanically fix the penalty taking into consideration a period of 365 days. He is expected to consider the explanation submitted by the consumer and other records, which are placed before him to arrive at a conclusion as regards the date, from which the theft might have been committed. In the present case, admittedly records are before the respondent authorities that they have provided temporary service connection for construction activities on 10.08.2010. Hence, it is clear that the authorities have effected this temporary service connection only after inspecting the property in dispute. Hence, it is clear that there was no theft of energy before 10.08.2010. However, the authorities have proceeded to pass the provisional as well as the final assessment order taking into consideration 365 days prior to 05.01.2011. Hence, the order impugned in the writ petition is not in accordance with regulation 23 (AA) (7) of Tamil Nadu Electricity Supply Code.

9. In view of the above said facts, the order impugned in the writ petition is set aside. The matter is remitted back to the file of the second



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respondent herein for passing fresh orders taking 11.08.2010 as the starting point of theft of energy. No further enquiry is called for. After passing the final assessment order, if the second respondent finds that excess amount has been deposited by the writ petitioner, the same shall be adjusted in the future bills.

10. With the above said observations, this Writ Petition stands partly allowed. No costs.

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

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