



W.P(MD)No.8500 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.09.2022**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.8500 of 2013

and

M.P(MD)No.1 of 2013

WP.John Jebaraj

... Petitioner

Vs.

1.The Executive Engineer (Distribution),
TANGEDCO, Tamil Nadu Electricity Board,
Tiruchendur, Tuticorin District.

2.The Assistant Executive Engineer (Distribution),
TANGEDCO, Tamil Nadu Electricity Board,
Tiruchendur, 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, calling for the records of the second respondent in Lr.No. AEE/D/TCR/F.DOC/D.No.270/13, dated 13.05.2013, in respect of Low Tension Service Connection No.A 129 at No.1/411, Kurunginagar, Virapandipattinam, Tiruchendur, Tuticorin District and quash the same and consequently direct the respondents herein to restore the electricity supply to the petitioner herein in respect of Low Tension Service



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Connection No.A 129 at No.1/411, Kurunginagar, Virapandipattinam, Tiruchendur, Tuticorin District with the additional load to run both the plant (i.e.,) 37 KW and 20.5 KW.

For Petitioner : Mr.T.Pon Ramkumar

For R-1 & R-2 : Mr.S.Deenadhayalan
Standing Counsel

ORDER

The present Writ Petition has been filed challenging the final assessment order arising out of Section 135 of the Electricity Act, 2013.

2. The learned Counsel for the petitioner has mainly challenged the quantum imposed in the final assessment order. The learned Counsel for the petitioner has submitted that on 19.06.2010, an inspection was conducted in the premises and they found that the meter was slightly lagging and there was some variation between the main meter and the check meter. Therefore, Anti Power Theft Squad (APTS) / Tirunelveli was called upon to inspect the premises and they had inspected the premises on 03.07.2010, along with the representative of the writ



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petitioner and found that there was no error in the main meter.

Thereafter, by way of an abundant caution, the main meter and the check meter were interchanged on 16.07.2010. Thereafter, the respondent authorities have conducted a surprise inspection on 27.08.2010 and they have found tampering of the meter and the petitioner was alleged to have committed theft of energy. It was followed by a provisional assessment order and a final assessment order. In the final assessment order, the period of 365 days have been taken into account on the basis of regulation 23(AA)(7) of the Tamil Nadu Electricity Supply Code.

3. According to the learned Counsel for the petitioner, when the correct meter was installed on 16.07.2010, and the inspection has been conducted on 27.08.2010, thereafter, the authorities cannot impose penalty taking into consideration that the theft of energy has happened for the past 365 days. Hence, he contended that the final assessment order shall be quashed to the extent as stated above.



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4. Per contra, the learned Standing Counsel appearing for the respondent Board had contended that continuously this meter was lagging and showing variance between the main meter and the check meter. It is not the first occasion that such variance was pointed out. Hence, he contended that the provisional assessment order and the final assessment order imposing the penalty, calculating the period of 365 days is strictly in consonance with regulation 23(AA)(7) of the Tamil Nadu Electricity Supply Code.

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

6. The petitioner on an earlier occasion had filed W.P(MD)No. 11645 of 2010, challenging the provisional order of assessment. In the said writ petition, the respondent authorities have filed a counter, contending that on 19.06.2010, a variance between the main meter and the check meter was found out. Thereafter, the meter was changed on 16.07.2010. Hence, it is the admitted case of both the parties that meter was changed on 16.07.2010 and no error was found on the said date.



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7. As per regulation 23(AA)(7) of the Tamil Nadu Electricity Supply Code, it is not mandatory on the part of the respondent authorities to impose penalty for a period of 365 days. The authorised officer is entitle to reduce the period for such billing, if it is established by the facts or documents submitted in the representation of accused persons or any such other evidence observed by the authorised officer. Admittedly, in the present case, the authorised officer is very well aware of the fact that the meter was changed on 16.07.2010 and tampering of meter was discovered by way of an inspection on 27.08.2010. Hence, the order impugned in the writ petition, imposing the penalty taking into consideration 365 days prior to 27.08.2010 is not legally sustainable.

8. 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 respondent herein. The second respondent is directed to pass fresh orders on merits and in accordance with law, taking into consider the period of penalty between 16.07.2010 and 27.08.2010 and pass order, after giving due opportunity to the writ petitioner. The writ petition stands allowed. There shall be no order as to costs. Consequently, connected



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Miscellaneous Petition stands closed.

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Index : Yes / No
Internet : Yes / No
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To

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R.VIJAYAKUMAR, J.



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Order made in
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