



W.P.(MD).No.6126 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 17.11.2022

ORDER PRONOUNCED ON : 21.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.6126 of 2014

and

M.P(MD).No.1 of 2014

Sri Ramasubbu Ginning Factory
Represented by its Proprietor
A.Subbaram

.....Petitioner

Vs

1.The Superintending Engineer
Tamil Nadu Electricity Board
Virudhunagar Electricity Distribution Circle
Virudhunagar

2.The Assistant Executive Engineer
Distribution
Tamil Nadu Electricity Board
Rajapalayam

.....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent in his Final Assessment Notice in Ka.No.AEE/Substation/RJM/Ko.Kattu/Aa.No.480, dated 01.04.2014 and quash the same as illegal, arbitrary, without the authority of law and against the provisions of the Electricity Act, 2003 and Electricity Supply Code and



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consequently direct the second respondent to give refund/adjust of Rs.1,50,000/- already collected from the petitioner towards provisions assessment.

For Petitioner : Mr.S.P.Parthasarathy

For Respondents : Mr.S.Deenadhayalan
Standing Counsel

ORDER

The present writ petition has been filed challenging an order of the second respondent in issuing a final assessment order arising under Section 135 of the Electricity Act, 2003.

2.According to the petitioner, they are having a LT service connection in Survey No.171 and they are running a ginning factory. On 12.01.2010, the electricity meter got burnt and immediately, on the same day, the petitioner has informed the same to the second respondent herein. The second respondent had conducted an inspection on 17.01.2010. After inspection, the second respondent had suspected theft of energy and they initiated proceedings under the Electricity Act. An Observation Mahazer was issued to the writ petitioner on 17.01.2010. As per the said Observation Mahazer, the seal in the meter terminal cover was intact. The company seal and seal by the MRT wing on the outer cover of the meter was also intact. However, the seal covering over the box in which the meter was kept had been damaged and the bottom portion had burnt. The said burning could not have happened



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either due to leakage of electricity or due to short circuit. The Observation Mahazer further pointed out that the said burning of the meter would have happened only by some external interference and hence, there is theft of energy.

3. Based upon the above said Observation Mahazer, a provisional assessment order was issued to the writ petitioner demanding a sum of Rs.12,17,688/-. The petitioner had challenged the said provisional assessment order in W.P(MD).No.840 of 2010. The said writ petition was allowed on 02.01.2014 directing the respondents to pass orders after affording due opportunity to the writ petitioner. Thereafter, the petitioner has submitted his explanation on 06.03.2014. In the said explanation, the petitioner has contended that the meter should be sent for inspection to a lab in order to find out the reason for burning of the said meter. The petitioner has also undertaken to bear the expenses for the same. In the said explanation, the petitioner has agreed to accept the said inspection report and proceed further.

4. According to the petitioner, the second respondent herein has passed the present impugned order on 01.04.2014. In the impugned order, the second respondent herein in Paragraph No.8 has relied upon the inspection report as well the opinion expressed by the Enforcement Department. The second respondent has arrived at a finding that only in order to screen the theft of energy, the petitioner has created such burning of meter and hence, there is



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theft of energy. Based upon the said finding, the impugned final assessment order has been passed for a sum of Rs.10,17,688/-. This order is under challenge in the present writ petition.

5.The learned counsel for the petitioner had contended that burning of the meter was immediately reported by the petitioner mill on 10.12.2010 and they have requested for a fresh meter to be installed so that they could restart the factory. The petitioner mill has also paid the charges for the new meter. Thereafter, the respondents have issued a notice for conducting an inspection on 17.01.2010. When the respondents had issued the Observation Mahazer on 17.01.2010, immediately the petitioner has objected to the said Observation Mahazer and has also recorded the same in the Observation Mahazer. Thereafter, on the same day namely 17.01.2010, the petitioner has addressed a letter to the respondents that the meter is in intact and nothing was found to be tampered till date, and there is no possibility for tampering the seal.

6.The learned counsel for the petitioner had further submitted that the petitioner had addressed another communication on 18.01.2010 to the authorities contending that this incident had happened only due to the burning of the meter by itself and not due to any external interference. Thereafter, by way of explanation dated 06.03.2014, the petitioner has made a request for sending the meter for testing to find out the reason for burning of



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the meter. However, without considering the said plea, the respondent authorities have proceeded to pass the present impugned order.

7.The learned counsel for the petitioner had relied upon Regulation No. 23(AA) (3) of the Tamil Nadu Electricity Supply Code to contend that in case of suspected theft by tampering of meter or metering equipment meter connection security seal or by replacing original seal by bogus seal, the meter shall be removed and condition of the meter at the time of sealing, signature of the accused person and other witnesses should be obtained and this report should form part of the inspection report.

8.The learned counsel for the petitioner further relied upon Regulation No.23(AA)(9) of the Tamil Nadu Electricity Supply Code to contend that the tampered meter shall be taken out and sealed at the time of inspection shall be sent to the third party accredited meter testing laboratory as arranged by the licensee of the Chief Electrical Inspector of the State Government. The accused should be given a notice of 7 working days for witnessing the test of such meter. The accused person shall sign the test report after witnessing it. If the test is conducted in the absence of accused person, a copy of the result should be sent to the accused person within 3 days of the date of test. Relying upon such regulation, the learned counsel for the petitioner had contended that no separate report was prepared and no signature was obtained from the accused person at the time of inspection. The report as contemplated under



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Regulation No.23(AA) (3) of the Tamil Nadu Electricity Supply Code was not annexed to the Inspection report. Though the petitioner has specifically requested for testing of the meter, no such attempt was made on the part of the respondents as contemplated under Regulation No.23(AA)(9) of the Tamil Nadu Electricity Supply Code. The learned counsel for the petitioner had further contended that the respondent authorities have to first establish the reason for the burning of the meter and only if they arrived at a finding that the meter was burnt due to external interference, they can arrive at a finding that in order to erase the theft of energy, such burning had taken place. When the initial pre-requisite testing was not conducted by the board, the petitioner cannot be imposed with charges of theft of energy and the assessment order could not be passed based on presumption. Hence, he prayed for allowing the writ petition.

9.Per contra, the learned Standing Counsel appearing for the respondents board had contended that in the Observation Mahazer, it has been specifically pointed out that the burning has not taken place either due to electricity leakage or short circuit. It has been specifically pointed out that the seal in the external box has been broken and the meter has been burnt through external interference and thereafter, a bogus seal has been placed for the outer box. Hence, there is no doubt whatsoever that the theft of energy has taken place. The respondent authority has also obtained opinion from the



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Enforcement Wing to the effect that the meter was burnt through external interference and not by any latent defect. Hence, the request of the petitioner for sending meter for testing as contemplated in the regulation is not applicable to the present facts of the case.

10.The learned Standing Counsel had further contended that only to erase the evidence relating to theft of energy, this burning of the meter has been done by the petitioner. Hence, the entire burden is upon the petitioner to establish how the meter has got burnt. Unless this is established, the question of invoking Regulation No.23(AA)(3) or (9) of the Tamil Nadu Electricity Supply Code, would not arise. When the petitioner has miserably failed to establish the prima facie cause of the burning of meter, the board is not expected to send it for testing as contemplated under Regulation Act. Hence, he prayed for dismissal of the writ petition.

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

12.The petitioner has complained about the burning of meter on 12.01.2010 and requested for installation of a fresh meter on payment of charge. After issuing notice, the respondent authorities have inspected the premises on 17.01.2010. During inspection, the authorities have arrived at a finding that the seal of the outer box in which the meter is located has been tampered with and thereafter, due to some external interference the meter has



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been burnt. After burning the meter, the seal has been replaced with bogus seal. The petitioner while receiving the Observation Mahazer had objected to the said finding by making an endorsement in the said report.

13.The condition of the meter in the Observation Mahazer will clearly indicate that the board alleges tampering of seal of the outer box in which the meter is placed. It could also be seen that there is an allegation of replacing the original seal with a bogus seal after burning the meter. Hence, it is clear that the respondents have arrived at a finding that the petitioner has attempted to erase the evidence by burning the meter in order to screen the theft of energy.

14.The petitioner in his explanation submitted on 03.06.2014 has specifically requested for sending the meter for testing at their own expense so as to find out the real reason for burning of the meter. The petitioner alleged that burning has taken place due to some internal factor and the respondents alleged that due to external interference, the meter was burnt. Therefore, it is clear that there is a dispute between the petitioner and the board with regard to the reason for burning of the meter. In such a situation, the opinion of the expert is required to establish the cause of burning of the meter.

15.A perusal of Regulation No.23(AA)(3) and (9) of the Tamil Nadu Supply Code indicates that where an original seal is replaced by a bogus seal,



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a separate report has to be prepared and it should be annexed to the inspection report. The respondent board has to send the meter for testing to an accredited meter test laboratory and the said meter should be tested in the presence of the accused person after giving notice to him. In case, the accused person did not appear despite notice, the report has to be served upon the accused person through a registered post. As narrated above, there is a serious allegation of tampering with the seal and replacing the original seal with a bogus seal in the inspection report. The petitioner has also demanded for testing of the meter by a competent authority. However, the authorities have brushed aside the said request and proceeded to issue the final assessment order which is under challenge in the present writ petition.

16. Even assuming that the meter was burnt by the external interference on the side of the petitioner, that will not lead to the logical conclusion of theft of energy. Hence, theft of energy has been presumed by the authorities on the basis that only for the purpose of screening theft of energy, the petitioner had burnt the meter. Only based upon this presumption, the final assessment order has been passed. Unless the real cause of burning of the meter is established, as contemplated under the mandatory provision of Regulation 23(AA)(3) and (9) of the Tamil Nadu Electricity Supply Code, the allegation of theft of energy will continue to remain as a presumption. In case, if the competent authority arrives at a decision that burning of meter has



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taken place due to external interference, certainly the authorities are at liberty to arrive at a finding that this has taken place for screening the theft of energy.

17.In view of the above said facts, this Court passes the following orders:

(i). The order impugned in the writ petition is set aside and the matter is remitted back to the file of the second respondent herein.

(ii). The second respondent is directed to follow Regulation No. 23(AA)(3) and (9) of the Tamil Nadu Electricity Supply Code.

(iii). After furnishing the test report to the writ petitioner, further explanation may be called for from the writ petitioner and thereafter, a final assessment order may be passed, if required.

18.With the above observations, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

21.11.2022

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

msa

Pre-delivery order made in

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