



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.01.2022

PRONOUNCED ON : 25.01.2022

CORAM

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THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

W.P. (MD)No.23205 of 2021

and

W.M.P. (MD)Nos.19632 and 19633 of 2021

Arun Pandian

... Petitioner

vs

1.The Superintending Engineer,
TANGEDCO, Madurai Region, Madurai.

2.The Assistant Executive Engineer,
Distribution, TANGEDCO,
Usilampatti, Madurai.

3.The Assistant Engineer,
TANGEDCO, West Usilampatti, Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to quash the impugned provision assessment order passed by the second respondent in Lr.No.AEE/D/Usilai Town/CI/F-Doc/D.No.144/21, dated 04.10.2021 and consequential final assessment order in Lr.No.AEE/D/Usilai Town/CI/F-DOC/D.No.161/21, dated 10.11.2021 and consequently to direct the respondents to refund the compounding fees Rs.12,000/- within a time frame.

For Petitioner :Ms.M.Rajeswari

For Respondents :Mr.S.Dheenadhayalan

O R D E R

This Writ Petition has been filed in the nature of a Certiorarified Mandamus to quash the provisional assessment order passed by the second respondent, dated 04.10.2021 and the consequential final assessment order, dated 10.11.2021 and to direct the respondents to refund the compound fees of Rs.12,000/-.

2.The Writ Petitioner is actually, Krishna College of Agriculture Technology at Usilampatti Taluk, Madurai District. The said College had three electricity service connections. The first connection was S.C.No.180-004-733 under Tariff-VI for construction purpose. This was obtained at the time when the construction was put up in the College campus. The second connection was free



agricultural service connection under Tariff-IV in S.C.No.180-004-757. The petitioner had also another service connection under Tariff-VI in S.C.No.180-004-208.

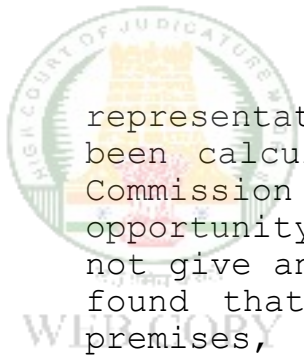
3.It had been stated in the affidavit that the Enforcement Squad of the respondents visited the petitioner's premises on 27.09.2021 at 04.30 pm and found theft of electricity. This fact is however denied by the petitioner. A criminal complaint was given and it was compounded by payment of Rs.12,000/- under protest. The second respondent/Assistant Executive Engineer, (Distribution) TANGEDCO, Usilampati, had estimated the loss at Rs.2,60,858/-. This was assessed by stating that the daily use is 12 hours per day for 180 days or six months.

4.The petitioner claims that there was low voltage every day and the assumption that usage for 12 hours is not correct. It is also stated that even the period of 180 days or six months is not correct, since there was a complete lockdown in May and June 2021. It is stated that there was no necessity to commit theft. There was separate service connection for construction purpose and charges have been paid. There were also three generators. It is also stated that no notice was served during inspection and no opportunity was given to the petitioner. It is under these circumstances, the Writ Petition came to be filed.

5.An additional affidavit was filed on behalf of the petitioner stating that the respondents had taken recovery proceedings under Regulation 17(8) of the Tamil Nadu Electricity Supply Code to attach other service connections in the premises. It is stated that they are prepared to pay 50% (Rs.1,30,000/-) under protest and sought restoration of service connection in S.C.No.180-004-733.

6.A counter affidavit had been filed by the second respondent in which it had been stated that on 27.09.2021, an inspection was conducted by the enforcement wing of Madurai in the presence of the petitioner. It was found that there were three service connections for the petitioner. There was theft of energy by direct hook method by drawing connection from the free agricultural service connection to the construction service connection. It was stated that this illegal abstraction is punishable under Section 135(1a) of Electricity Act 2003. The petitioner paid Rs.12,000/- as compound charges under Section 152(1) of the Electricity Act 2003.

7.It was stated that the service connection for the construction purpose is S.C.No.180-004-733 under Tariff-VI. A provisional assessment order had been issued on 04.10.2021 for a sum of Rs.2,60,858/-. The same was acknowledged by the petitioner. But objections were not given and representation was also not made. Therefore, a final assessment order was issued on 10.01.2021 for an amount of Rs.2,60,858/-. The petitioner had not given any objection



representation. It is stated that the provisional assessment had been calculated on the basis of Tamil Nadu Electricity Regulatory Commission (TNERC) Distribution Code 23AA Form-8. Necessary opportunity had been granted to the petitioner. But they simply did not give any explanation nor did they appear in person. It was also found that there was no physical separation between the college premises, agricultural activity premises and the building construction area which are within one single compound.

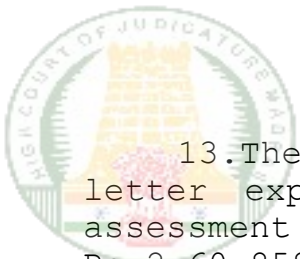
8.It was stated that there was misuse of agricultural service and it was utilised for educational purpose inside the college premises. It was stated that the theft of energy in the premises of Rukmani Ammal Educational Charitable Trust was for the purpose of Krishna College for Agriculture Technology, and is punishable. It was stated that the statement of the petitioner in the additional affidavit seeking restoration of the agricultural service connection by payment of 50% of compensation charges, is not permissible. It is claimed that the Writ Petition should be dismissed.

9.Heard arguments advanced by Ms.M.Rajeswari, learned Counsel for the petitioner and Mr.S.Dheenadhayalan, learned Standing Counsel for the respondents.

10.The Writ Petitioner is actually the Krishna College of Agriculture Technology. There appears to be another college, namely, Rukmaniammal Educational Charitable Trust. The petitioner during course of construction of the building had applied for a temporary connection and that was granted in S.C.No.180-004-733 under Tariff-VI. The petitioner has also free agricultural service connection under Tariff-IV bearing S.C.No.180-004-757.

11.An inspection was made on 27.09.2021 by the enforcement squad of the respondents. They found that by using a hook, the electricity from the agricultural connection was transferred or transmitted to the temporary connection for construction purpose. The respondents had concluded that the petitioner had committed theft. They issued necessary notice and the petitioner had paid Rs.12,000/- to compound the offence under Section 152 of the Electricity Act, 2003.

12.Thereafter, the respondents issued a provisional assessment order under Form-9 in accordance with Regulation 23(AA)(8) under Section 135 of the Electricity Act, 2003 on 04.10.2021. They had assessed approximate loss due to dishonest theft at Rs.2,60,858/-. They also afforded an opportunity to the petitioner to file objections and also to appear in person for enquiry. A working sheet was also enclosed. The petitioner neither offered an explanation appeared in person to give explanation. Therefore, the respondents were forced to issue the final assessment order under Form 10 under Regulation 23(AA)(15) under Section 135 of the Electricity Act, 2003, on 10.11.2021.



13.They again stated that the petitioner had not produced any letter explaining or raising objections against the provisional assessment order. They again stated that the loss caused was Rs.2,60,858/- and they directed the petitioner to pay the sum within seven working days. The petitioner had not paid the amount, but they rather filed the Writ Petition.

14.The entire issue had arisen owing to the petitioner's irresponsibility in not answering the provisional assessment notice. They cannot complain that opportunity was not given. It had been very clearly stated in the provisional assessment, which is also incidentally challenged, that the petitioner can give a representation in writing or even appear in person and given explanation. If the petitioner is of the opinion that they are at such a high pedestal that they will not come down to give a representation to the respondents or even appear in person before the respondent, then they will naturally have to face the consequence. The consequence was the issuance of final assessment order.

15.The Writ Court cannot interfere in these matters. The petitioner had chosen not to appear or give any representation to the respondents. They had chosen to ignore the provisional assessment order. This was their choice. This naturally meant that they had accepted the allegation in the provisional assessment order. It can be presumed that they therefore, eagerly awaited the final assessment order. They received the final assessment order. When this is the factual situation, approaching this Court claiming innocence and ignorance and seeking the indulgence cannot be countenanced by this Court.

16.The entire issue is a matter entirely between the petitioner and the respondents. It flows from the contractual relationship of electricity provider and customer. A customer is not expected to unauthorisedly transmit electricity by fixing a hook from the free agricultural connection to the service connection, for which consumption, they have to pay. This is violation of a basic, fundamental rule of providing electricity service connection. It is an offence. The petitioner cannot complain that opportunity was not given. They cannot complain that the procedure established by law was not followed. They cannot complain that due process was not followed. The respondents actually gave them sufficient opportunity. As a matter of fact, the petitioner also paid the compound charges of Rs.12,000/- under Section 152 of the Act. This in effect, meant that they had admitted their offence. They have committed offence putting a hook line and drawing the electricity from a free agricultural service connection to an other service connection. Being an educational institution, the petitioner should have upheld morals and ethics. They cannot act in a manner inviting
services provided by the
theft of electricity.



17. In view of the discussions above, the Writ Petition stands dismissed. No order as to costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Cmr

TO

1. The Superintending Engineer,
TANGEDCO, Madurai Region, Madurai.

2. The Assistant Executive Engineer,
Distribution, TANGEDCO,
Usilampatti, Madurai.

3. The Assistant Engineer,
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+1 CC to M/s.S.DEENADHAYALAN, Advocate (SR-2538[F] dated 27/01/2022)

W.P. (MD) No.23205 of 2021
25.01.2022

SK(CO)

KB(09.02.2022) 5P 5C