



W.P.Nos.25629 & 25630 of 2017 &
WMP.Nos.27020 to 27023 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.02.2023

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.25629 & 25630 of 2017 &
WMP.Nos.27020 to 27023 of 2017

1. A.M.Subramaniam (Deceased)

2. S.Sakthivel

(P2 impleaded vide order dated 22.12.2022
made in WMP.No.34183 of 2022 in
W.P.No.25629 of 2017 by ASMJ)

... Petitioners in both W.Ps

Vs.

1. The Chairman,
Tamil Nadu Generation of Energy and
Distribution Corporation (TANGEDCO)
Anna Salai, Chennai – 600 002.

2. The Asst. Executive Engineer,
(O&M), TANGEDCO,
Ammappettai, Erode District.

.... Respondents in both W.Ps

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in the proceedings in Lr.No.AEE/O&MA.PET/C1/F 54 /D.Nos.110



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& 111/17, both dated 31.08.2017, to quash the same and to direct the 2nd respondent herein to restore the power supply to the petitioner's agricultural electricity service connections in S.C.No.333-002-444/IV & S.C.No.333-002-57/IV, at Ammapettai Sub Division, Bhavani Division, Gobi Distribution Circle.

(In both W.P.s)

For Petitioner : Mr.D.Selvaraju

For Respondents : Mr. I.Syed Sibghatulla
Standing Counsel

COMMON ORDER

Heard Mr.Selvaraju, learned counsel for the petitioner and Mr.Syed Sibghatulla, learned counsel for the respondents.

2. Detailed submissions have been made on the merits or otherwise of impugned order dated 31.08.2017. However, one aspect that goes to the root of the matter has been captured in order dated 13.02.2023 that reads as follows:

Prima facie, a perusal of impugned order dated 31.08.2017 would establish the petitioner's case that the procedures followed by the authority smacks of violation of the principles of natural justice and irregularity in the procedure adopted.

2. The counter affidavit filed by the respondent is detailed, and reveals the number of hearings that have transpired before the enquiry officer. That enquiry report is dated 30.08.2017 wherein the officer has categorically confirmed that there was no open well or borewell or any other water source for the industrial premises and thus it is only the



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water from agricultural service connections that were being used for industrial purpose for manufacturing fly ash bricks.

3. The theft of electricity is thus perhaps erroneously established by way of counter. However, in the impugned order the authority has stated, that the petitioner has neither filed any objection nor appeared for enquiry. It is an impossibility for the petitioner to have filed objection as the order was passed on the very next day after date of the enquiry report.

4. That apart, no opportunity has been afforded by the officer prior to passing of final assessment order, admittedly.

5. For all the aforesaid grounds, this court is of the prima facie view that the petitioner must succeed.

6. Faced with the above position, learned counsel for the respondent seeks some time, and this matter stands adjourned at his request to 21.02.2023 as first on board.

3. Today, learned respondents counsel fairly accede to the position that the impugned order which is assailed has been passed without affording an opportunity of hearing. With this, impugned order dated 31.08.2017 is liable to be set aside and I do so.

4. However, the fact remains that proceedings are at an advanced stage before the authorities and the counter filed by R2 proceeds on the basis that there has been diversion of power from the agricultural service connection for industrial service connection. At paragraphs 8 and 16, R2 states as follows:

8. I respectfully submit that, during the inspection on 02.11.2016, the petitioners representative had signed the intimation letter, observation mahazar for the inspection carried out without any compulsion and accepted that they



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had committed an offence as per the provisions under section 135 of Electricity Act 2003. Further to avoid criminal proceedings for theft of electricity, the petitioner opted for compounding of offence under section 152 of Electricity Act 2003 and paid the compounding fees of Rs.20,000/- for each of the two Service Connections on 02.11.2016 itself.

16. I respectfully submit that finally the enquiry was conducted in full in presence of the petitioner, his counsel Thiru.E.S.Appusamy and Er. R.Seshadri Assistant Executive Engineer/Enforcement/Coimbatore on 28.07.2017. After hearing both sides in detail, the enquiry officer submitted his findings on 30.07.2017 in which he concluded that since there is no bore well or open well or any other water source in the industrial premise, it is confirmed that the water from both the Agriculture Service Connections were used for industrial purpose for the manufacture of fly ash bricks. Hence as per Section 135(1)(e) of Indian Electricity Act, the above indulgence of the petitioner is an offence of theft of energy.'

5. No rejoinder has been filed to the counter and hence prima facie the aforesaid averments in the counter would stand.

6. Learned counsel for the petitioner would impugn the pre-decisional enquiry that was conducted on the ground that the enquiry officer, i.e., the then R2 had been transferred from the post of Assistant Executive Engineer, Ammapettai, as early as in March, 2017, but had proceeded to carry on enquiries even thereafter, which according to him, is incorrect.



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7. This grievance does not survive any longer in view of the impugned order itself having been set aside. The set aside is accompanied by a specific direction to R2 to afford full opportunity of hearing to the petitioner, consider all/any materials, if any, filed by the petitioner in support of his submissions and thereafter take a decision. For the aforesaid purposes and bearing in mind that one of the grievances expressed by the petitioner is that he has not been heard and secondly that he was not afforded an opportunity to file written submissions, both stand remedied/rectified under this order.

8. The petitioner is granted liberty to file a further explanation, as explanation has already been filed on 08.08.2017, along with supporting evidences, if any, within a period of three (3) weeks from date of receipt of a copy of this order.

9. Upon receipt thereof by R2, the petitioner shall be heard and a speaking order of assessment passed within a period of three (3) weeks from date of personal hearing.

10. Learned counsel for the petitioner states that some amounts have been remitted under conditional orders of this Court. Those amounts shall be



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retained by the respondents and any refund/adjustment shall be subject to the final order to be passed by R2 as directed above.

11. These Writ Petitions are disposed in the aforesaid terms. No costs.
Connected Miscellaneous Petitions are closed.

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21.02.2023

Index : Yes / No
Speaking Order
Neutral Citation : Yes

To

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