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WP No.1692 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON 24-03-2023

ORDERS PRONOUNCED ON 30-03-2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP No.1692 of 2017

And

WPMP Nos.1660 and 1661 of 2017

R.Umamaheswari

... Petitioner

Vs.

1.The Chairman cum Managing Director,
TANGEDCO, NPKRR Maaligai,
No.144, Anna Salai,
Chennai-600 002.

2.Superintending Engineer,
TANGEDCO,
Erode District.

3.The Executive Engineer,
Operation and Maintenance,
TANGEDCO/Gobi EDC,
Bavanisagar,
Erode District.

4.The Assistant Executive Engineer,
Operation and Maintenance,



TANGEDCO/Gobi EDC,
Bavanisagar,
Erode District.

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5. The Assistant Executive Engineer,
Water Resources Department,
Public Works Department,
Bavanisagar Sub Division,
Bavanisagar,
Erode District-638 451.

[R-5 impleaded vide order of Court dated
12.12.2022 made in WPMP No.32858 of
2022 in WP No.1692 of 2017]

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the fourth respondent herein pertaining to his proceedings Lr.No.AEE/O&M/BSR/F Dkt/D182/16-17 dated 28.11.2016 and quash the same.

For Petitioner : Mr.K.Duraisamy,
Senior Counsel for
Mr.Kandhan Duraisamy.

For Respondents-1 to 4 : Mr.I.Syed Sibghatulla,
Standing Counsel for TANGEDCO.

For Respondent-5 : Mr.T.Arunkumar,
Additional Government Pleader.

ORDER

The writ petition has been instituted to quash the final order of



assessment for unauthorised use of Electricity Service Connection as per Section 126 of the Electricity Act, 2003 issued by the fourth respondent in proceedings dated 28.11.2016.

2. The petitioner states that she is the absolute owner of the agricultural land to an extent of 4.31.5 Hectares for SF Nos.480/2, 481 and 484 at Pudhupeerkadavu Village. The petitioner has irrigated the abovesaid lands from extracting water from the Well situate in SF No.310/2 at Tathapuli village. The Well situates at the distance of about 400 meters from the Bhavani River. The petitioner after obtaining necessary permission from the Competent Authorities and by paying the charges, has laid an underground pipe line and is irrigating her agricultural lands. The petitioner has been provided with an Electricity Service Connection bearing Service No.362-007-1317 for the said Well.

3. In the year 2015, the Assistant Executive Engineer Public Works Department had issued a letter with an allegation that the petitioner has misused the Electricity Service Connection for illegal tapping of water from Bhavani River. Certain false allegations are raised against the



petitioner by the Authorities.

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4. The petitioner states that she is using water taken from the Well only for her land and is not supplying water to M/s.Akshera Paper Mills (P). Ltd., as alleged by the Authorities. The petitioner further states that she has not committed any such offence or illegality and thus the actions of the respondents are to be set aside.

5. The learned Senior Counsel appearing on behalf of the writ petitioner mainly contended that the writ petitioner earlier filed WP No.20326 of 2015 challenging the order passed by the Junior Electrical Engineer in proceedings dated 01.07.2015.

6. This Court passed an interim order on 08.07.2015 considering the fact that the writ petitioner is using the Electricity Service Connection to take water from her Well for irrigation purposes. The Well existing 100 meters away from the Bhavani River. She is using the water tapping from the Well only for agricultural purposes and not supplying water to M/s.Akshera Paper Mills (P) Ltd situate near by the area. The



impugned order in the said writ petition was passed without any notice to the writ petitioner and accordingly, this Court passed an interim order of status quo.

7. The said writ petition filed by the petitioner in WP No.20326 of 2015 was finally dismissed by this Court on 04.01.2022 and a direction was issued by this Court to the respondents to conduct an inspection in coordination with the Authorities of the Water Resources Organisation, so as to find out the illegality of water tapping from Bhavani River. Six weeks time was granted to the respondents to complete the inspection and accordingly, that writ petition was disposed of.

8. The learned Senior Counsel appearing on behalf of the petitioner drew the attention of this Court with reference to the Government Order issued in G.O.Ms.No.245, Public Works Department, dated 14.12.2015, wherein M/s. Akshera Paper Mills (P) Ltd., Pasavapalayam, Sathyamangalam Taluk, Erode District was permitted to draw water from Bhavani River for commercial purposes for a period of five years. Permission was granted based on terms and conditions.



9. The Annexure to the Government Order imposed 51 conditions and one of the condition is that “The Company shall tap only the running water and tapping of spring water is strictly prohibited”. Therefore, the said M/s. Akshera Paper Mills (P) Ltd., the Government got permission for drawal of water from Bhavani River on certain terms and conditions. Thus the allegation against the petitioner is untenable.

10. The impugned order has been passed in the year 2016 stating that the assessment was made in respect of the alleged irregularities relating to the usage of Electricity Service Connection for tapping water from Bhavani River. The petitioner has not committed any such irregularity, since she has got two Electricity Service Connection i.e., one for agricultural purposes for taking water from her Well and another Electricity Service Connection for commercial purposes.

11. The learned Senior Counsel appearing on behalf of the petitioner reiterated that the entire allegations are based on misconceptions on the part of the Authorities. The respondents have not verified nor



considered the separate Electricity Service Connections stand in the name of the petitioner for agricultural purposes and commercial purposes. The Authorities have formed an incorrect opinion and penalised the petitioner without any valid reason.

12. The learned Additional Government Pleader appearing on behalf of the fifth respondent objected the contentions raised on behalf of the petitioner by stating that the petitioner was illegally tapping Bhavani water to M/s.Akshera Paper Mills (P) Ltd, Kothamangalam through Electricity Service Connection 367-007-1317, which is to be utilised for taking water from the open Well situated in SF No310/2 at Thathapalli Village as per the records.

13. The EB Service Connection No.367-007-1317 of the Well situated in SF No.310/2 of Thathapalli Village is meant for agricultural purposes. Thus the petitioner cannot utilise the said Electricity Service Connection for tapping water from Bhavani River through the pipeline installed under the ground. But the petitioner illegally uses the aforesaid EB Service Connection for tapping Bhavani River water and supplied the water



to M/s. Akshera Paper Mills (P) Ltd., for commercial use, the particulars of which were available on record.

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14. The petitioner illegally tapping Bhavani River water to the nearest Well through EB Service Connection No.362-007-1317 and from that Well, they lift the water to M/s. Akshera Paper Mills (P) Ltd., for commercial use is proved by the test results of both river water nearby the illegal river water collection Well and M/s. Akshera Paper Mills (P) Ltd's water collection sump, since both the results are one and the same. Based on the results, necessary letter was issued to the Assistant Executive Engineer, TNEB, Velliampalayam to disconnect the Service Connection, since the petitioner is illegally tapping Bhavani River water through the EB Service Connection No.367-007-1317 to M/s. Akshera Paper Mills (P) Ltd for their commercial use as per records.

15. The permission from the District Revenue Officer, Periyar District (presently Erode District) vide proceedings dated 10.04.1991 only to draw water from the Well situated at SF No.310/2 of Thathapalli Village through EB Service Connection No.362-007-1317 for tapping the



agricultural land SF Nos.480/2, 481 and 484 of Pudhpeerkadavu Village in Sathyamangalam Taluk. But the petitioner illegally uses the aforesaid EB Service Connection for tapping Bhavani River water illegally to M/s. Akshera Paper Mills (P) Ltd., for commercial use as per the records available.

16. The learned Additional Government Pleader appearing on behalf of the fifth respondent, reiterated that the allegations are raised even before issuing the Government Order granting permission to extract water from Bhavani River. At present M/s. Akshera Paper Mills (P) Ltd., got permission from the Government for drawal of water from Bhavani River vide G.O.Ms.No.245 dated 14.12.2015. Therefore, actions were initiated in respect of the illegalities and irregularities committed by the petitioner prior to the issuance of the Government Order granting permission to extract water from Bhavani River.

17. Pertinently a criminal case was registered against the petitioner in FIR No.256 dated 21.10.2016. The criminal complaint also reveals that M/s. Akshera Paper Mills (P). Ltd., has illegally utilised the



Electricity Service Connection and extracting water from Bhavani River by using the Electric Motor. The FIR reveals that the Electric Motor was confiscated from the middle of the Bhavani River and it was during night hours, the Authorities were not in a position to seize the motors during night hours. However, the electric cables were confiscated and thereafter, a criminal case was registered.

18. The learned Standing Counsel appearing on behalf of the Tamil Nadu Electricity Board contended that the petitioner was provided with the Electricity Service Connection for drawing water from opened Well owned by her and pumping water for commercial purposes. The Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO), Junior Engineer warned the petitioner not to use the Electricity Service Connection provided for the illegal tapping of water from Bhavani River.

19. The petitioner filed WP No.20326 of 2015 and as per the directions of this Court, the Junior Electrical Engineer, Rajan Nagar, Erode District conducted a Surprise Inspection on 08.08.2015 at 17.00 hours and at that point of time, no drawal of water was made by the petitioner.



However, the Electricity Service Connection No.362-007-1317 was inspected on 20.10.2016 at 13.45 hours by the Assistant Executive Engineer, Bhavani Sagar Sub Division/TANGEDCO along with the Assistant Executive Engineer/Enforcement Wing, North/Coimbatore. The inspection was conducted in accordance with Regulation 126 of the Act read with provisions in Clause 19 of the Tamil Nadu Electricity Supply Code with prior intimation of inspection has been acknowledged and also witnessed by the Company Representative on 20.10.2016. During the inspection, the Authorities found that the unauthorised usage of the electricity by the petitioner.

20. Underground cables for the length of 300 feet were laid from the said Commercial Service Connection upto the river and connected to submersible motor immersed in Bhavani River, electricity was being drawn from the said Commercial Service Connection through these cables to draw water and the water so drawn was being roughed through PVC pipes and used for industrial purpose in M/s.Akshera Paper Mills (P) Ltd. The supply of electricity was effected to the motor pump set at the open Well in SF No.310/2 of Ikkarai Thathapalli Village only. At the time of



inspection, there was no motor pump set in the Well. Thus the electricity authorised for use in the open Well has been extended to the submersible pump set placed inside the Bhavani River and the water so drawn was being used in M/s. Akshera Paper Mills (P). Ltd. The findings of the inspection have been recorded in the Parvai Mahazar. The entire facts have been explained in detail to the Company's Representative and as per procedures, the Representative has been requested to acknowledge the same. Though the Representative has acknowledged the notice on intimation and witnessed the inspection, has refused to sign the 'Parvai Mahazar' and refused to receive the 'Provisional Assessment Notice'. Since the Representative of the Company has not signed in the Parvai Mahazar, Village Administrative Officer of Kothamangalam Village was called on the inspection spot and he had put the witness sign in Parvai Mahazar and working sheet on the inspection spot itself and on the date itself. Hence the Provisional Assessment Notice was sent to the petitioner by Registered Post with Acknowledgment, the petitioner was received the notice on 24.10.2016. Even after receipt of the notice, the petitioner has not come forward to file any objection within seven days from the date of receipt of the notice. Since no objection received from the petitioner, Final Assessment Notice has been



issued on 03.11.2016. On receipt of Final Assessment Notice, the petitioner went to High Court and filed writ petition in WP No.39336 of 2016 and WMP No.33659 and 33660 of 2016. WP No.39336 of 2016 and the connected miscellaneous petitions were disposed of by the High Court with the following directions:-

“The petitioner is directed to treat the order dated 03.11.2016 as the show cause notice and give a reply on or before 21.11.2016 and after receiving such reply, the respondents are directed to pass final orders on or before 30.11.2016”

As per the Court directions and after detailed examination of their explanations, final order has been issued on 28.11.2016. The petitioner has not paid the extra levy of Rs.9,41,038/- and they have not preferred any appeal before the Appellate Authority. An opportunity was given to the petitioner to submit explanations and the final order was passed after affording an opportunity to the petitioner.

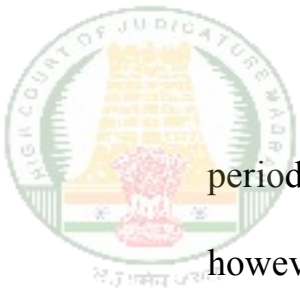
21. The respondents have stated that the inspection itself was conducted in the presence of the petitioner's employees. While Mr.K.Ganapathy, Electrical Engineer, an employee of the Company, signed



the intimation letter, the petitioner refused to receive the Parvai Mahazar and also refused to receive the Provisional Assessment Order and it was witnessed by the Village Administrative Officer, Kothamangalam. Thereafter the Provisional Assessment Notice had been sent through Registered Post.

22. As per Clause 19A(1) of the Tamil Nadu Electricity Regulatory Corporation Supply Code (TNERC), an Assessing Officer mentioned under Section 126 of the Act, may either suo motu or in receipt of reliable information regarding unauthorised use of electricity in any premises conduct inspection of such premises.

23. In the present case, the inspection was conducted in the presence of the petitioner's employee, the Electrical Engineer. Thus the petitioner cannot disown her liability. The assessment of unauthorised use of electricity has been calculated in total compliance with the provisions in Clause 19(5) of the Electricity Supply Code, wherein it has been directed that “if the Assessing Officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire



period during which such unauthorised use of electricity taken place and if however, during the period during which such unauthorised use of electricity has taken place, cannot be ascertained and such period shall be limited to a period of 12 months immediately preceding the date of inspection.

24. The respondents have stated that assessment has been made as per the provisions of the Regulation 126 of the Act, 2003 and after thoroughly scrutinising the petitioner's objections and the Final Assessment Order issued through a letter dated 28.11.2016, which is impugned in the present writ petition.

25. The power of Judicial Review under Article 226 of the Constitution of India is to be exercised to find out the processes through which a decision is taken by the Competent Authority and not the decision itself. Thus the scope of Judicial Review is to be confined with reference to the fairness of the procedures adopted and the decision taken.



26. In the present case, the allegation of unauthorised use of Electricity Service Connection was raised against the petitioner. Final Assessment was determined by invoking Section 126 of the Electricity Act, 2003. The unauthorised usage of Electricity Service Connection was identified by the Authorities by conducting inspections and a criminal case was also registered against the petitioner in respect of unauthorised usage of Electricity Service Connection. The petitioner's employee was present at the time of inspection and pertinently the said employee of the petitioner-Paper Mill Thiru K.Ganapathy, Electrical Engineer had signed the Intimation Letter and he refused to receive the Parvai Mahazar and also refused to receive the Provisional Assessment Order. However, the Village Administrative Officer Kothamangalam was present and he witnessed the procedures followed by the Competent Authorities of the Tamil Nadu Electricity Board. Thus the procedures as contemplated were followed by the Competent Authorities, while conducting an inspection and the Authorities found that the petitioner had unauthorisedly used the Electricity Service Connection for tapping of water from Bhavani River for the use of M/s.Akshera Paper Mills (P). Ltd. A criminal case was also registered, which is pending as of now. A show cause notice was issued, enabling the



petitioner to submit their explanations. The explanation submitted by the petitioner was considered by the Competent Authorities and accordingly, they have assessed the irregularity and passed the Final Assessment Order, directing the petitioner to pay a sum of Rs.9,41,038/-.

27. The contention of the petitioner that they have obtained permission from the Government for drawal of water from Bhavani River in G.O.Ms.No.245, Public Works Department, dated 14.12.2015 is of no avail, since the unauthorised usage of Electricity Service Connection is no way connected with the permission granted. The Authorities found that even in respect of the permission, the conditions stipulated and the Rules are to be followed scrupulously. Therefore, mere grant of permission by the Government for drawal of water would not be a ground to seek protection in respect of unauthorised usage of Electricity Service Connection.

28. In other words, the petitioner cannot made an attempt to cover up the misdeeds based on the Government Order issued in G.O.Ms.No.245, Public Works Department, dated 14.12.2015 for drawal of water from Bhavani River. The Authorities conducted an inspection and



found that the Electric Motor was found in the middle of the River for tapping of water from Bhavani River by using the electric cables in an illegal manner. The electric cables were confiscated and the Motor was not confiscated, since it was midnight but it was recorded. Moreover, a criminal case was also registered.

29. This being the factum, this Court do not find any infirmity in respect of Final Assessment Order passed by the respondents, which is in consonance with the procedures contemplated and by raising certain remote doubts, the petitioner cannot be allowed to escape from the clutches of law. That apart, sufficient opportunities were provided to the writ petitioner to defend her case. Even during inspection, the petitioner's employee, who is an Electrical Engineer, was present.

30. That being the factum, the petitioner has not made out any acceptable ground for the purpose of interfering with the order impugned passed by the fourth respondent in proceedings Lr.No. Lr.No.AEE/ O&M/ BSR/F Dkt/D182/16-17 dated 28.11.2016



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31. Accordingly, the present writ petition is devoid of merits and consequently, it stands dismissed. However, there shall be no order as to costs. The connected miscellaneous petitions are also dismissed.

30-03-2023

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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To

1.The Chairman cum Managing Director,
TANGEDCO, NPKRR Maaligai,
No.144, Anna Salai,
Chennai-600 002.

2.Superintending Engineer,
TANGEDCO,
Erode District.

3.The Executive Engineer,
Operation and Maintenance,
TANGEDCO/Gobi EDC,
Bavanisagar,
Erode District.



S.M.SUBRAMANIAM, J.

Svn

4.The Assistant Executive Engineer,
Operation and Maintenance,
TANGEDCO/Gobi EDC,
Bavanisagar,
Erode District.

5.The Assistant Executive Engineer,
Water Resources Department,
Public Works Department,
Bavanisagar Sub Division,
Bavanisagar,
Erode District-638 451.

Pre-Delivery Order in
WP 1692 of 2017

30-03-2023