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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.08.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.9794 of 2021

and

W.M.P.(MD).Nos.7528 to 7530 of 2021

M.Samuthiram

... Petitioner

vs.

The Assistant Executive Engineer -
Distribution,
O&M Surandai Sub-Division,
Tamil Nadu Electricity Distribution Circle,
Surandai-627 859,
Thenkasi District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records on the file of the respondent relating to the final assessment order in Letter No. AEE/D/SDI/F-Theft/D.No. 014/21-22 dated 29.04.2021 and to quash the same.



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For Petitioner : Mr.P.Samuel Gunasingh

For Respondent : Mr.S.Deenadhayalan,
Standing Counsel

ORDER

This Writ Petition is filed for Certiorari, to quash the final assessment Order dated 29.04.2021.

2. Admittedly, the petitioner is having LT connection under Tariff III-A(1). The petitioner is carrying the agricultural activities through the said connection. The allegation against the petitioner is that he had committed theft of energy and the mode of theft is that the petitioner has put up construction of cow shed and pump shed by using agricultural service connection. Therefore, the respondents had issued a provisional assessment order by calculating the loss of energy to the tune of Rs.6,40,421/-. On 15.09.2020, the petitioner has submitted



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detailed explanation stating that he was not committed theft of energy and had used Diesel for construction purpose. The petitioner further submitted that cow shed and pump shed were constructed by the contractor and water was procured from outside. Rejecting the said explanation, the respondent has passed the final assessment order on 19.10.2020 and the same was challenged in W.P.(MD).No. 2492 of 2021 and this Court vide order, dated 11.02.2021, has granted interim stay.

3. Pending the aforesaid writ petition, again the respondent had passed provisional assessment order on 29.04.2021 and has held the petitioner has committed theft of energy to the tune of Rs.70,747/- and the final assessment order passed on 29.04.2021. The contention of the petitioner is that the respondents had passed provisional assessment and the final assessment on the same day. The petitioner was not granted any opportunity to submit explanation, inspite of the same the petitioner has submitted detailed explanation on 01.05.2021.



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4. On perusing the provisional order and the final order it is seen that both were passed on the same day. Moreover, the order is bereft of details, the mode of theft was not stated, the explanation of the petitioner was not considered.

5. The learned counsel appearing for the respondent on instructions submitted that the theft of energy was committed by using agricultural connection granted under Tariff III – A (1), but the petitioner has used the said service for putting up the construction of cow shed and pump shed, hence the respondent submitted that the petitioner had committed theft of energy.

6. After considering the rival submissions, this Court is of the considered opinion that the petitioner had put up construction of cow shed and pump shed. Cow rearing is allied activity and constructing cow shed may be considered as allied. Atleast it may be considered as unauthorized use of energy and not theft of energy. Moreover, while calculating the loss of energy the respondents had taken entire 365 days as if the energy is used for putting up construction for the 365 days. The construction work might have been carried out



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within 15 days or may be one month. At the most the respondent can take one month period and not 365 days while calculating the loss of energy.

7. Moreover, in the Tariff Order No.1 of 2017, any agricultural service connection can be used for any allied activities and in the allied activities cattle farming is also included. But the learned counsel for the respondent submitted that constructing cow shed cannot be considered as allied activity. However, this Court is of the considered opinion, the issue whether construction of cow shed or pump shed is allied is left open and the appropriate authority to consider is TNERC.

8. But the assessment order passed by the respondent is incorrect since it has taken 365 days the energy was abstracted in incorrect. Therefore, the impugned assessment order quashed. This matter is remitted back to the concerned authorities to rework the calculation by taking the loss of energy for one month only



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9. With these observations and directions, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
NCC : Yes / No
Sml/Tmg

31.08.2023



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S.SRIMATHY, J

Sml/Tmg

W.P.(MD)No.9794 of 2021

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