



WEB COPY



W.P.(MD)No.17929 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.17929 of 2023

S.Rasalam

... Petitioner

versus

The Assistant Executive Engineer,
Distribution
Kulasekaram,
Kanyakumari District.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records in க.எண்.உ.செ.பொ/வி.குல/கோ.கட்டு/அ.எண்.185/2023 dated 01.06.2023 and quash the same and consequently, direct the respondent to repay Rs.5,000/- with accrued interest from the date of deposit which was deposited as per order of this Court in the year of 2014 in W.P.(MD)No.6050/2014 and order to pay Rs.50,000/- in order to cause damage, mental agony.

For Petitioner : Mr.J.Gunaseelanmuthiah

For Respondent : Mr.S.Deenadhayalan,
Standing Counsel

ORDER

This writ petition is filed as against the order of the third



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respondent dated 01.06.2023. The order impugned in this writ petition is a reply to the representation of the petitioner dated 13.05.2023.

2. The background of the case is that the respondent has initiated an action against the petitioner, under Sections 135 and 138 of the Electricity Act 2003, in the year 2013, by imposing a penalty of Rs.12,720/- that he has used his domestic service connection for commercial purpose. Challenging the same, the petitioner has filed a writ petition before this Court in W.P.(MD)No.6050 of 2014 and this Court, vide order dated 09.04.2014, has granted an interim order with a direction to the petitioner to pay a sum of Rs.5,000/-. On that payment, the service connection was also restored. The writ petition in W.P. (MD)No.6050 of 2014 was disposed of by order dated 16.03.2023, directing the respondents to issue a copy of the Provisional Assessment Order dated 05.04.2014 to the petitioner and also granted liberty to the petitioner to offer his reply to the Provisional Assessment Order, if any, within a period of three weeks from the date of a copy of that order.



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This Court has also permitted the respondents to proceed with the enquiry under Sections 135 and 138 of the Electricity Act 2003 and to take a decision within a period of six months from the date of receipt a copy of the order.

3. It appears that the respondent has issued a provisional assessment order, for which, the petitioner has also submitted his reply. This impugned communication has been made as a reply to the submission made by the petitioner to the provisional assessment order.

4. The grievance of the petitioner is that the impugned communication refers that they would proceed under Sections 135 and 138 of the Act and even according to the Board, it is not a theft of energy, which can be decided under Sections 135 and 138 of the Electricity Act.

5. The learned Standing Counsel appearing for the respondent



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fairly submits that this reply ought to have been issued by the respondent to the reply submitted by the petitioner for the provisional assessment order. In fact, as per the direction of this Court, they have furnished a copy of the assessment order dated 05.04.2014 to the petitioner on 11.04.2023 and this petitioner has submitted his reply on 13.05.2023. The impugned proceedings has been issued on 01.06.2023 by pointing out the defects in the petitioner's representation with regard to the service connection and the compounding charges amount. This reply was made as a clarification to the petitioner's submission dated 13.05.2023. He further submits that whether the petitioner would come under the category of Section 126 of the Electricity Act or under Section 135 and 138 of the Electricity Act, can be decided only during the final assessment.

6. Considering the submission of the learned Standing Counsel that the proceedings impugned in this writ petition is not a final order and it is only a letter calling upon the petitioner to correct the service



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connection number, by referring the correct amount of the compounding charges which he has to be paid, this Court is of the view that the impugned proceedings is not a final assessment order.

7. Since the learned Standing Counsel has taken a stand that it is not a final assessment order and it is only by way of clarification on the reply submitted by the petitioner, this writ petition is disposed of with a direction to the respondent to proceed with the reply of the petitioner and decide whether he would come under Section 126 or Sections 135 and 138 of the Act, within a period as directed by this Court in the earlier order and pass final assessment order in accordance with law. No costs.

26.07.2023

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NCC : Yes / No.
Index : Yes / No.
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B.PUGALENDHI, J.

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