



W.P(MD)No.2106 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.2106 of 2015
and
M.P.(MD)Nos.1 & 2 of 2015

C.Senthilkumar

... Petitioner

Vs.

The Assistant Executive Engineer,
Town/TANGEDCO,
Oddanchathram,
Dindigul District.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Order of the respondent in Ka.No. Ou.Say.Po/Na/Osm/Va.Ou/Ko.Thani/A. No. 027/13 dated 11.02.2015 and quash the same as illegal and further direct the respondent to follow the procedures U/s. 126 of the Electricity Act before passing the final order in the Petitioner's case.

For Petitioner : Mr.D.Venkatesh

For Respondent : Mr.S.Deenadhaylan



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ORDER

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Heard the learned counsel on either side.

2. The writ petitioner is a consumer of electricity. He is enjoying two service connections. According to the respondents, the petitioner committed energy theft. The assignment order was passed. The petitioner filed W.P. (MD)Nos.19171 & 19172 of 2013. The writ petitions were disposed of on 24.09.2014 in the following terms:-

“In both these writ petitions, the petitioner has challenged the orders of provisional assessment wherein there is an allegation of theft of energy by the petitioner. It is submitted that the method by which the amount has been calculated is erroneous, since the authorities have calculated at the rate of 12 hours a day for 365 days, when no service connection could be operated for 12 hours a day for all the 365 days.

2.The learned standing counsel appearing for the respondent, by referring to Form-8 issued under Regulation 23(AA)(7) of the Tamil Nadu Electricity Supply Code 2004, submitted that the calculation has been made as per the statutory table and there is no discretion with the Authorised Officer, it is only based on the documents to be produced by the accused person proving that the service connection was not utilised for all the 365 days. It is submitted that so far as the period of 12 months, there cannot be any revision since the statutory form stipulates the same as the basis for arriving at the quantum of energy in case of theft of energy. In any event, the impugned proceedings is only a provisional assessment and therefore, the petitioner should place all the materials before the authorities.



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3. Accordingly, without setting aside the impugned proceedings, the matter is remanded to the respondent for fresh consideration and the petitioner is at liberty to submit his objections to the provisional assessments by placing records to show that the connection was not operated for all the 365 days. However, since there is a statutory requirement to compute the amount for a period of 12 hours a day, there cannot be any concession on that aspect. If the petitioner produces proof to show that the service connection was not unauthorisedly operated for all the 12 months, the same shall be considered by the respondent and appropriate orders could be passed. The entire exercise shall be completed within a period of four weeks subject to the petitioner producing the required documentary proof.

4. The writ petitions are disposed of accordingly. Consequently, the connected miscellaneous petitions are closed. No costs.”

3. The grievance of the petitioner is that without holding any enquiry thereafter and without giving any opportunity to the petitioner to place any material, the impugned order dated 11.02.2015 was passed. In the counter affidavit filed by the respondent, the stand taken is that the petitioner failed to produce any documentary evidence. I cannot appreciate the stand taken by the respondent. When the writ petitions filed by the petitioner were disposed of, the respondent ought to issue notice to the petitioner and hold an enquiry thereby providing an opportunity. If the petitioner failed to avail the same, then the respondent could have proceeded in the matter further. Without giving any such opportunity, the impugned order came to be straight away passed. It is for this reason, I set aside the same. It is stated that when the writ petition was



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admitted, a sum of Rs.2,00,000/- was ordered to be paid and that the petitioner has complied with the said stipulation. The said amount can very well remain with the respondent. Since I am remanding the matter, the adjustment of the amount would depend on the final order to be passed by the respondent. The respondent will issue notice to the petitioner and hold an enquiry and only thereafter, pass an order. Considering the facts and circumstances obtaining in this case, the respondent can also consider resolving the issue through lok adalat.

4. The Writ Petition is allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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