



W.P.(MD)Nos.12435 of 2010 and 15470 of 2021

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Reserved on : 02.07.2024

Pronounced on : 29.07.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)Nos.12435 of 2010 and 15470 of 2021

and

W.M.P.(MD)Nos.12361 and 12365 of 2021

N.Palaniyappan

... Petitioner
in both the
petitions

Vs.

The Assistant Executive Engineer,
Operation and Maintenance (South),
Tamilnadu Electricity Board,
Thuraiyur,
Trichy District.

... Respondent
in both the
petitions

Prayer in W.P.(MD)No.12435 of 2010 : This Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling the records pertaining to the impugned order of the respondent in his proceedings க.எண்:உ.செபொ/இகா/தெ/துறை/கோ.கட்டு/எண்124-1/10-11 dated 18.08.2010 and quash the same and



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consequently direct the respondent to immediately restore the power supply to the petitioner agricultural land under Tariff IV in S.C.No.1127.

Prayer in W.P.(MD)No.15470 of 2021 : This Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue a Writ of Certiorari, calling the records pertaining to the impugned suspension proceedings issued by the respondent in his proceedings க.எண்:உ.செபொ /இகா/தெ/து/கோ.வழக்கு/அ.எண்:139/21-22 dated 05.07.2021.

(in both the petitions)

For Petitioner : Mr.R.Bala Krishnan
for Mr.N.Shankar Ganesh

For Respondent : Mr.S.Deenadayalan
Standing Counsel

COMMON ORDER

The Writ Petition in W.P.(MD)No.12435 of 2010 is directed against the order dated 18.08.2010 passed by the respondent and for direction to the respondent to immediately restore the power supply to the writ petitioner's agricultural land under Tariff IV in S.C.No.1127.

2. The Writ Petition in W.P.(MD)No.15470 of 2021 is directed against the suspension proceedings dated 05.07.2021 informing the



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disconnection of the agricultural electricity connection No.277-001-1127-TF-IV, Pulivalam Distribution.

3. The factual aspects not in dispute are:-

(a) The writ petitioner is having agricultural lands at Pulivalam Village, Trichy District, with an electricity connection under agricultural Tariff IV in S.C.No.1127. On 27.07.2010, Tamil Nadu Electricity Board's Enforcement Wing (APTS) made an inspection regarding the writ petitioner's Service Connection No.1127 / TF IV, Pulivalam Distribution in the presence of the writ petitioner and found that the writ petitioner was drawing water in 3 HP motor and utilizing the water for his poultry farm. After compounding proceedings, the respondent has issued the impugned proceedings dated 18.08.2010 directing the writ petitioner to pay a sum of Rs.95,851/- as compensation by alleging that the writ petitioner has used agricultural service connection in Tariff IV for poultry farming and thereby committed theft of energy. Aggrieved by the said proceedings dated 18.08.2010, the writ petitioner has filed a writ petition in W.P. (MD)No.12435 of 2010 and a learned Judge of this Court, while granting ad-interim stay, has directed the writ petitioner to pay 50% of the amount demanded by the respondent within a period of four weeks from that day



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(07.10.2010) and on such payment being made by the writ petitioner, the respondent was directed to restore the electricity service connection to the writ petitioner Service Connection No.1127, Pulivalam Village, Mannachannallur Taluk, Trichy District within a period of seven days thereafter. In pursuance of the said direction, the writ petitioner has paid the amount and service connection was restored to him. But subsequently, the writ petition in W.P.(MD)No.12435 of 2010, as there was no representation for two hearings, was ordered to be dismissed for non-prosecution vide order dated 07.12.2020.

(b) After the dismissal of the said writ petition, the respondent has passed an order dated 17.02.2021 directing the writ petitioner to pay the balance 50% of the compensation amount claimed in their earlier order dated 18.08.2010. Challenging the said order dated 17.02.2021, the writ petitioner has filed another writ petition in W.P.(MD)No.5281 of 2021 and a learned Judge of this Court, by observing that the writ petitioner was at fault and only for his non-appearance the writ petition came to be dismissed and that the respondent has rightly initiated action by issuing the impugned order, dismissed the writ petition vide order dated 11.03.2021.



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(c) Since the writ petitioner has not paid the amount claimed in the earlier order dated 17.02.2021 and also taking note of the dismissal of both the writ petitions, the respondent has passed the impugned order dated 05.07.2021 disconnecting the agricultural Service Connection No. 1127 of Pulivalam Village. Aggrieved by the said order, the third writ petition in W.P.(MD)No.15470 of 2021 came to be filed.

(d) Meanwhile, the writ petitioner has also filed a petition in W.M.P. (MD)No.3990 of 2021 to restore the writ petition in W.P.(MD)No.12435 of 2010, which was dismissed for non-prosecution and the said petition was allowed and the writ petition was ordered to be restored vide order dated 03.09.2021.

4. The main contention of the writ petitioner is that the respondent Department itself has issued a specific order and issued notification by classifying supplying water to the poultry and usage of agricultural Tariff is permissible as per the notification issued by the respondent Department as earlier as on 02.05.1995, that letter of clarification was also issued by the member (Distribution of Tamil Nadu Electricity Board) dated 02.03.1987, that the respondent Department relying upon the said



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notifications has withdrawn the action taken against the consumers as per letter dated 19.03.1991 and that the respondent, without considering the above, has mechanically issued the proceedings demanding the compensation amount by alleging that the writ petitioner has committed theft of energy.

5. The respondent has filed a counter affidavit stating that the Enforcement Wing has found that the writ petitioner is running a poultry farm and drawing water in 3 HP motor for the poultry farm with the help of the service connection in S.C.No.1127 under Tariff IV, that the writ petitioner, after receiving the inspection report and Form 11, admitted the same and paid the compounding charges of Rs.12,000/-, that the respondent has thereafter issued Form 9 and 10 along with working sheet and the writ petitioner having received the same executed a consent letter and agreed to pay compensation of Rs.95,851/- to the respondent Department, that the writ petitioner thereafter for the reasons best known to him has filed the writ petition and that the respondent as per the Tamil Nadu Electricity Board Rules and Regulations has rightly issued the proceedings.



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6. It is pertinent to note that the writ petitioner has specifically admitted that he has been drawing water with the help of the agricultural Service Connection No.1127 and using the same to feed the chicken and according to him, he has not been using the said connection, for the lights used in the poultry farm.

7. The writ petitioner has produced the copy of a memo issued by the Chief Engineer / Distribution to the Superintending Engineer / Mettur Electricity System dated12.77, wherein, the Superintending Engineer / Mettur was informed that the agricultural Tariff i.e., L.F. Tariff VI may be extended for feeding the water to the birds from agricultural well stored in small tanks subject to the condition that the power is not used for the poultry farms. The writ petitioner has also produced the copy of a letter sent by the Member (Distribution of Tamil Nadu Electricity Board) to the Managing Director, M/s.Tamil Nadu Poultry Development Corporation Limited, Chennai dated 06.06.1987, wherein, it has been stated that necessary instructions have been issued that the water pumped from the well of the agricultural service is stored in small tanks for the drinking purpose of the birds in the poultry farm need not be treated as malpractice.



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The writ petitioner has also produced a copy of the letter sent by the Member (Distribution of Tamil Nadu Electricity Board) and a copy of the letter sent by the Assistant Executive Engineer, Operation and Maintenance, Tamil Nadu Electricity Board, Thottiyam, to a consumer Thirumathi.Rangammal, whereunder, it is evident that the action taken against the said Rangammal directing her to pay compensation of Rs.5,000/- for storing water utilizing the agricultural service connection and using the same for poultry farm was ordered to be withdrawn and informed her that she can very well use the water stored utilizing agricultural connection for the purpose of poultry farm.

8. The learned counsel appearing for the writ petitioner has also relied on the circular issued by the Chairman of Tamil Nadu Electricity Board dated 02.05.1995, whereunder, Superintending Engineers of Electricity Distribution Circles were instructed to apply L.T. Tariff IV in respect of services given to coffee grinding, ice factory, body building unit, saw mill, rice mill, flour mill, prawn farming, poultry farming, battery charging unit with effect from 01.02.1995 as per G.O. even if they undertake job work only.



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9. Considering the above, as rightly contended by the learned counsel appearing for the writ petitioner, the respondent Department itself has permitted to use the water taken or stored using the agricultural service connection for poultry farming. Even according to the respondent, the writ petitioner has taken water using the agricultural service connection for feeding the birds and it is not their specific case that the writ petitioner was using the said service connection for lights in the poultry farm or any other purposes in the poultry farm.

10. The learned counsel appearing for the writ petitioner would also rely on the judgment of the Hon'ble Division Bench of this Court in the case of ***Tamil Nadu Electricity Board Vs. T.Vellaichamy Nadar*** reported in ***(2018) 3 MLJ 282*** and the relevant passages are extracted hereunder:-

“48.In regard to the Clarificatory Order No.1-4 of 2012 dated 24.12.2012 under the caption 'In the matter of: Issue of clarification in the Tariff Order 1 of 2012 on Determination of Tariff for Generation and Distribution', it is mentioned as under:

“1.The Commission clarifies the meaning of the term “group of activities” which shall be classified as allied activities of agriculture for the purpose of



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LT Tariff IV in the Tariff Schedule to the said Tariff Order No.1 of 2012 dated 30.03.2012.

(i) Para 10.20.1 under LT Tariff IV of the said Tariff Order reads as follows:

This tariff is applicable to all agricultural and allied activities such as cultivation of food crops, vegetables, seeds, trees and other plants. Sericulture, floriculture, horticulture, mushroom cultivation, cattle farming, poultry and other bird farming, fish/prawn culture carried out as allied activities of agriculture shall be construed as agricultural activities.

ii) Para 10.17.7 under LT III A(1) of the said Tariff Order reads as follows:

This tariff is also applicable for sericulture, floriculture, horticulture, mushroom cultivation, cattle farming, poultry and bird farming, dairy units and fish/prawn culture who have not been covered under LT Tariff IV and which are run on commercial lines.

In both of the above tariff schedules, the activities in question are sericulture, floriculture, horticulture, mushroom cultivation, cattle farming, poultry and bird farming, dairy units and fish/prawn culture. In LT tariff IV, the emphasis is



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on the phrase “carried out as allied activities of agriculture shall be construed as agricultural activities.” However, in LT Tariff III-A(1), the emphasis is on the phrase “who have not been covered under LT Tariff IV.”

Accordingly, it is clarified that the activities such as sericulture, floriculture, horticulture, mushroom cultivation, cattle farming, poultry and bird farming, dairy units and fish/prawn culture which are carried out as allied activities of agriculture in the LT Tariff IV service connections shall be construed as agricultural activities. The activities such as sericulture, floriculture, horticulture, mushroom cultivation, cattle farming, poultry and bird farming, dairy units and fish/prawn culture which are not covered under LT Tariff IV, shall be charged under LT Tariff III A(1).”

.....

51.In the instant cases on hand, a reading of the contents of the Clarificatory Order No.1-4 of 2012 dated 24.12.2012 [In regard to the Issue of clarification in the Tariff Order 1 of 2012 on Determination of Tariff for Generation and Distribution] especially with reference to



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para 10.20.1 under LT Tariff IV and para 10.17.7 under LT III A (1) of the said Tariff Order, show that in the aforesaid Tariff schedules, the activities in issue are sericulture, floriculture, horticulture, mushroom cultivation, cattle farming, poultry and bird farming, dairy units and fish/prawn culture. In fact, in LT tariff IV, the emphasis is on the phrase, “carried out as allied activities of agriculture shall be construed as agricultural activities”. But, in LT Tariff III-A(1), the emphasis is on the phrase “who have not been covered under LT Tariff IV. In short, this Court points out that the contents of Clarificatory Order No.1-4 of 2012 dated 24.12.2012 do not in any way unerringly points out that it is prospective in nature. Per contra, it points out that it is retrospective in nature. Suffice it for this Court to point out that the Clarificatory Order No.1-4 of 2012 dated 24.12.2012, in fact, comes to the aid of the Respondent/Writ Petitioner and not the Appellants/Board. Therefore, the Appellants/Board cannot levelled charges of 'Theft of Energy' or 'Different User' against the Respondent/Writ Petitioner, in regard to the impugned demand dated 25.10.2012.”

11. Considering the facts and circumstances and also the stand of the respondent Department referred above, this Court has no hesitation to



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hold that the impugned order dated 18.08.2010 cannot be sustained. Since the order dated 05.07.2021 came to be passed consequently for non-compliance of the order dated 18.08.2010, the same also cannot be sustained.

12. As already pointed out, the writ petitioner has already paid 50% of the compensation amount in pursuance of the interim direction of this Court. In view of the quashment of the impugned orders, the respondent has to be directed either to refund the amount that was paid by the writ petitioner or to retain the same to the credit of the writ petitioner so as to adjust towards any amount that may due in the future for the service connection owned by the writ petitioner.

13. In the result, these Writ Petitions are allowed. The impugned orders dated 18.08.2010 and 05.07.2021 passed by the respondent are quashed. The respondent is directed either to refund the amount that was paid by the writ petitioner in pursuance of the interim direction of this Court or to retain the same to the credit of the writ petitioner so as to adjust towards any amount that may due in the future for the service



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connection owned by the writ petitioner. Consequently, connected
Miscellaneous Petitions are closed. No costs.

29.07.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1.The Assistant Executive Engineer,
Operation and Maintenance (South),
Tamilnadu Electricity Board,
Thuraiyur,
Trichy District



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K.MURALI SHANKAR,J.

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Pre-Delivery Common Order made in
W.P.(MD)Nos.12435 of 2010 and 15470 of 2021
and
W.M.P.(MD)Nos.12361 and 12365 of 2021

Dated : 29.07.2024