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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.6230 of 2012
and
M.P.(MD) Nos.1 & 2 of 2012 & 1 of 2013

Abi &Abi Arts and Science College,
Represented by its Chairman T.Elangovan ... Petitioner

Vs.

1.The Tamil Nadu Electricity Regulatory Commission,
No.17, 3rd Main Road,
Seethammal Colony,
Alwarpet, Chennai – 600 028.
Represented by its Secretary.

2.The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai.

3.The Assistant Executive Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Board,
Papanasam ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records relating to the letter No.AEE/O&M/PPM/D.No.047/11-12 dated 09.03.2012 issued by the third

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respondent herein and quash the same as illegal and consequently direct the third respondent herein to restore the Agriculture power supply to the Electricity service connection No.322-IV-Vayalur in rural.

For petitioner : Mr.T.Manoharan

For respondents : Mr.S.P.Maharajan
Special Government Pleader for R1
Mr.S.Deenadhayalan
Standing Counsel for R2 and R3

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ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

2. The petitioner was issued with a demand notice dated 09.03.2012. By the aforesaid demand notice, the petitioner was called upon to pay the balance amount of Rs.75,765/- within two weeks as there was a theft of energy and that the amount, that was earlier confirmed on 23.03.2011, was re-affirmed.

3. It is noticed that the petitioner along with others had filed a batch of Writ Petitions before this Court in W.P.(MD)No.2749 of 2010 etc., and batch, wherein the petitioner herein had filed a Writ Petition in W.P.(MD)No.8356 of 2011,

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which came to be disposed on 23.12.2011. Relevant portion reads as under:

> *"127. However, the final assessment order dated 11.5.2011 does not reflect the consideration of any of the objections filed by the petitioner or the documents filed by him. The impugned order shows total non application of mind. Normally, a temporary service connection is granted for three months, for construction activities. It is renewed from time to time and even as per the counter, the construction was not completed for five years from 2006. Therefore, I do not know how far the allegation of theft of energy could be made out against the petitioner. This case, at the discretion of the respondents, could have fallen under Section 126 rather than under Section 135, in view of the fact that the use of electricity was made only for construction activities. The construction has prolonged for five years and it may be true that over a period of time, there was a change of mind on the part of the petitioner. Section 135 cannot be used to harass persons like the petitioner. All these aspects have not been considered by the respondents, while passing the final assessment order. Therefore, the writ petition is disposed of with the following directions :*
>
> *(a) the final assessment order dated 11.5.2011, impugned in the writ petition, is set aside;*
>
> *(b) the respondents shall issue a notice fixing a date for personal hearing within two weeks of a receipt of a copy of this order;*
>
> *(c) on the date fixed for personal hearing, the petitioner shall appear and file additional objections, if any, along with the documents on which he relies upon;*
>
> *(d) within two weeks of the date of hearing, the Assessing Officer shall pass a fresh final assessment order; and*
>
> *(e) If the petitioner makes payment of 50% of the amount demanded under the final assessment order, the respondents shall restore the service connection."*

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4. Pursuant to the above order in W.P.(MD)No.8356 of 2011 filed by the petitioner, the impugned order has been passed confirming the electricity theft by the petitioner for college use and resulting in provisional assessment for a sum of Rs.1,51,530/-. Operative portion of the impugned order reads as under:

> *"This means that there is continuous consumption and there is no break or low consumption. Hence the argument that the college was totally closed cannot be accepted.*
>
> *Hence the final assessment for 365 days already made is here by confirmed for a sum of Rs.1,51,530/- (Rupees One Lakh Fifty One Thousand Five Hundred and Thirty Only). Hence you are required to pay the balance amount of Rs.75,765/- (Rupees Seventy Five Thousand Seven Hundred and Sixty Five Only) with in 2 weeks from the date of receipt this letter failing which your service will be disconnected."*

5. Pursuant to the interim order of this Court dated 07.04.2012, the petitioner was directed to pay another 25%, over and above 50%, which has already been paid by the petitioner.

6. The learned Additional Government Pleader for the first respondent confirms that the petitioner has complied with the same but has not paid the balance amount.

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7. It is informed by the learned Standing Counsel for the respondents 2 and 3 that a sum of Rs.56,824/- is still remains to be unpaid. He would further submit that the petitioner has an alternative remedy under Tamil Nadu Electricity Supply Code. A reference is made to the regulation 23AA(7) of the Tamil Nadu Electricity Supply Code, as per which, the petitioner is entitled to file an appeal.

8. Since there is a disputed question of fact regarding the actual consumption made by the petitioner on behalf of the alleged theft, this Court is of the view that it is best left to be decided by the appellate mechanism prescribed under the Tamil Nadu Electricity Supply Code.

9. Therefore, this Court is inclined to give liberty to the petitioner to file statutory appeal before the Authority under the Tamil Nadu Electricity Code within 30 days from the date of receipt of a copy of this order.

10. Since the petitioner has already paid the substantial amount of disputed charges on account of the alleged theft of electricity, the respondents are directed to restore the connection subject to the petitioner paying regular charges.

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This Writ Petition is disposed of, with above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes / No
apd

19.06.2024

To

The Tamil Nadu Electricity Regulatory Commission,
No.17, 3rd Main Road,
Seethammal Colony,
Alwarpet, Chennai – 600 028.
Represented by its Secretary.

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C.SARAVANAN, J.

apd

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