
(2011) 01 MAD CK 0308

In the Madras High Court

Case No : Writ Petition No. 25133 of 2005 and WPMP No. 27527 of 2005

I. Shanmugadurai

APPELLANT

Vs

The Superintending Engineer, TNEB, C.E.D.C. and The
Executive Engineer/O and M

RESPONDENT

Date of Decision : 22-01-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 01 MAD CK 0308

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : C. Prakasam, for the Appellant; A. Selvendran, for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—The Petitioner herein seeks for issuance of a writ of certiorari to call for the entire records pertaining to the impugned order passed by the 2nd Respondent in proceedings Lr. No. EE/O & M/VPD/DM/F. Agl.D1151/05, dated 16.04.2005, and to quash the same.

2. The Petitioner is the owner of an agricultural land to an extent of 5 acres near Seethapathi Nagar, Madhavaram, and in the said land, he has been cultivating flower plants, mango, coconut, fruit and green trees. He applied for Electricity Service Connection from the Tamil Nadu Electricity Board (TNEB) in the year 2001 for irrigating the land with the Bore-well available in the land and he was given service connection vide Consumer No. 66.16-236 with consumption units chargeable under Tariff No. V. Subsequently, the Petitioner applied for change of "Tariff Head" from Tariff No. V to Tariff No. IV as applicable to Agricultural Land, by enclosing necessary documents as required by the TNEB to prove that the land in question cultivated by the Petitioner is an agricultural land. According to the Petitioner, the Board, without properly appreciating his plea, confused with the tariff for Horticulture land since the Tamil Nadu Electricity Regulatory Commission (in short "Regulatory Commission") had not defined "Horticulture"

so as to bring it under any one of the four Heads of Terrifies ,Tariff I to IV, rejected the Application by the impugned letter, dated 16.04.2005, on the ground that Horticulture is classified neither as Agriculture nor as any other category from I-A to III-B; therefore, the tariff rate applicable to Commercial Establishments under Tariff-V would apply to the Horticulture land of the Petitioner. Aggrieved by the said rejection order passed by the 2nd Respondent, the Petitioner has come up with the present writ petition.

3. Learned Counsel appearing for the Petitioner submits that, as the Petitioner's land is being cultivated as an agricultural land by raising mango, coconut and fruit trees as well as flower plants, the TNEB cannot charge under Tariff-V applicable to commercial establishments. According to him, in other lands, covered by Tariff-IV, sugar-cane, paddy and cotton crops are raised and that being so, classification of the Petitioner's land excluding it from the pur view of the agricultural land so as to levy electricity charges under Tariff-V is arbitrary, illegal and violation of Article 14 of the Constitution of India. In that regard, he referred to Section 2(a) of the Tamil Nadu Patta Pass-Book Act, 1983, which defines that " agriculture includes horticulture".

4. Per contra, learned Standing Counsel appearing for the Respondents/TNEB submits that the writ petition is liable to be dismissed at the threshold as the Regulatory Commission, which fixed the Tariff Rates, has not been made a party to the present litigation. Further, the Petitioner, being an agreement holder, is bound by the terms and conditions of supply of Electricity and TN Electricity Supply and Distribution Codes and as such, estopped from disputing the demand. It is stressed that the Petitioner's Application, dated 31.01.2005, for change of tariff could not be considered positively because power supply was utilised to irrigate cash crops and more over, after rejection of the request, on 07.05.2005, the Petitioner applied for a fresh connection under the tariff rate applicable to agriculture land and, by the impugned proceedings, dated 16.04.2005, it was made clear that in respect of horticulture land wherein mango, flower and coconut trees are raised, electricity consumption would be charged under Tariff-V and therefore, the change in tariff as sought for cannot be given effect to. According to the learned Standing Counsel, the plea of the Petitioner does not merit consideration at all and the Writ Petition is liable to be dismissed.

5. Considered the rival submissions advanced by the learned Counsels appearing for both sides. Initially, in the year 2001, the Petitioner applied for electricity connection to operate the Pumpset installed at the Borewell for irrigating the land to raise coconut, fruit and mango trees and flower plants. Even at the time of providing connection vide consumer No. 66.16-236, it was made clear that Tariff-V as in the case of Commercial Establishments would apply to the land of the Petitioner. The emphatic case of the Respondents is that the usage by the Petitioner does not come under Tariff-1 to IV as defined by the Regulatory Commission and hence, service to the Petitioner land was given under LT Tariff-V

as per the terms and conditions of supply of electricity. The Petitioner also, without any clamour or murmur, was paying the charges at the said Tariff Rate from the inception. While so, about four years later ie., on 31.01.2005, the Petitioner had applied for change of Tariff from Tariff-V to Tariff-IV as applicable to agriculture lands and the plea came to be rejected stating that, as per the tariff order issued by the Regulatory Commission, the Horticulture land cannot be charged otherwise except under Tariff-V. Thereafter, the Petitioner applied for a fresh connection under Tariff-I in respect of the very same land and, by the impugned proceedings, the request was rejected. At this juncture, it would be of much relevance to point out that the classification orders, dated 11.08.2004 vide Memo No. CFC/GC/SE/Tf. Cell/AEE/F. Hort/D.257/2005, came to be issued after holding that Horticulture do not come under the classification of categories of LT Tariff rates-I to IV as per the tariff orders issued by the Regulatory Commission and the rates under Tariff-V was made applicable to all commercial establishments and consumers not covered under any other category from I to IV.

6. Thus, when Horticulture is brought under Tariff-V and the Petitioner continued to pay the charges at the said tariff rate without any objection from the inception for about four years; by citing the definition available u/s 2(1) of the TN Patta Passbook Act to highlight that agriculture land also include horticulture land, the faint argument advanced by the counsel for the Petitioner that there is arbitrariness on the part of the Respondents in fixing Tariff-V for the land of the Petitioner would fall to ground for the simple reason that the Petitioner neither challenged the very order of classification passed by the Regulatory Commission by impleading the said Authority as a party to the present litigation nor initiated separate proceedings and further, the scope of definition for Horticulture enveloping it within the folds of Agriculture as available in the TN Patta Pass Book Act can not be dragged to support the case of the Petitioner in an altogether distinct litigation revolving in a different ambit for fixation of tariff towards the electricity charges. Seemingly, the scheme and framework in TN Patta Pass-Book Act was meant for better revenue administration and to give legal status to the patta pass-book holders so that they could avail loan from credit agencies and for making entries in the registered documents regarding sale, mortgage etc. Therefore, by relying on a definition outlined in the said Act, the Petitioner cannot be allowed to unsettle an issue which was already settled by the Tariff Orders, which remain unchallenged. The order of classification passed by the Regulatory Commission while exercising powers under the Electricity Act being unchallenged and thereby, the land of the Petitioner is still covered by Tariff-V for the purpose of calculating the electricity consumption; this Court hardly finds any ground much less valid ground to interfere with the impugned order of the 2nd Respondent.

7. In the result, the writ petition fails and it is dismissed as devoid of any merit. No costs. The order of stay as made absolute, by order dated 17.03.2008, is vacated by closing the Miscellaneous Petition.