

(2012) 02 MAD CK 0206

In the Madras High Court

Case No : Writ Petition No. 39959 of 2002

K. Swaminathamoorthy, Lessee - M/s. Balakrishna Chemicals
(P) Ltd., 421 K.K. Nagar, Madurai

APPELLANT

Vs

The Tamilnadu Electricity Board

RESPONDENT

Date of Decision : 01-02-2012

Acts Referred:

Citation : (2012) 02 MAD CK 0206

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Advocate : Avinash and Mr. V. Raghavachari, for the Appellant; G. Vasudevan, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice R. Sudhakar

1. This writ petition is filed to call for the records on the file of the first respondent in Letter No. SE/SEDC/SVGA/G1/ DM/F.HT.SC.No. 049/D 212/2002, dated 17.6.2002 and quash the same as illegal, incompetent and further direct the respondents to restore Electricity Supply to the petitioner industry in S.C. No. 49. The petitioner Industrial Unit was inspected on 18.5.2002 at 11.00 am by the Anti Power Theft Squad and found that there was a theft of energy and therefore, they issued a show cause notice on 25.5.2002 calling upon the petitioner to give his explanation.

The petitioner on receipt of the show cause notice gave a letter dated 6.6.2002, which was submitted on 10.6.2002 seeking extension of time to reply to notice citing health grounds. That letter is referred to as serial No. 2 in the reference column in the impugned proceedings. The respondents-authority without giving the petitioner further time to submit his explanation, passed the impugned proceedings on 17.6.2002 holding that there is clear case of theft of energy and demanded a sum of Rs. 53,78,066/- as extra levy. Though it has been stated in

the impugned order that an appeal can be preferred, the writ petition has been filed primarily on the plea of gross violation of principles of natural justice and that the impugned order is passed in haste defeating the rights of the petitioner.

2. A counter affidavit has been filed by the respondents, wherein the above stated issue is replied in paragraph 14, and the same is extracted hereunder:

The assessment order was passed by the assessment authorities since the petitioner has not appeared for the enquiry on 10.6.2002, there was no representation on behalf of the petitioner and no adjournment was sought for by the petitioner side on 10.6.2002.

3. This stand taken in the counter affidavit is false as the petitioner's request letter is referred to as Sl. No. 2 in the reference column of the impugned order. In that letter, the petitioner has sought for extension of time to submit the reply to the notice. Once, there is a request on the first instance from the petitioner seeking time to submit his reply, there is no justification on the part of the respondents to pass the order hurriedly on 17.6.2002 even before the expiry of the 7 days time, starting from 11.6.2002 (i.e.), the date on which, the request letter was received by the respondents as stated in paragraph 16 of the counter affidavit.

4. In matters of this nature where amounts are claimed as due to the state or its body, the officer in the cadre of Superintending Engineer should be careful to avoid passing orders in hurry and consequently avoid unnecessary litigations. If the authority had waited till 19.6.2002 as per the request, the petitioner cannot complain if he fails to give an explanation. If the order was not passed in haste, the filing of the writ petition only on the ground of violations of principles of natural justice could have been avoided.

5. This writ petition has been filed in the year 2002 and interim stay of recovery of the huge amount was granted without any condition by order dated 30.10.2002 and made absolute on 23.9.2003. Assuming that there is theft of energy, if the authority had waited for the full seven days and proceeded thereafter, the money due to the department could have been realised long before. This attitude and approach of the authority in dealing cases should be avoided. The Board should issue direction so that, the money lawfully due to the Board does not get locked up in litigation due to faulty orders passed, more particularly, on the plea of violations of principles of natural justice.

6. In the present case, a huge amount is demanded in the impugned order. Since the order has been passed in violation of the principles of natural justice, this Court is constrained to set aside the same and remit the matter for re-consideration to the Superintending Engineer. Accordingly, this writ petition is allowed by way of remand.

7. The impugned order is set aside and the matter is remanded to the Superintending Engineer for re-consideration on merits after hearing the

petitioner. In order to avoid any further delay, the petitioner is directed to submit his reply to the show cause notice on or before 17.2.2002 without waiting for a copy of this order. The authority shall thereafter hear the petitioner in person either on 27.2.2012 or on 28.2.2012 as may be fixed and pass orders in accordance with law within two weeks thereafter. No costs. A report to be filed to this Court after the order is passed and registry to list on filing the report.