

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16-10-2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.No.33701 of 2015

M/s.Khivraj Motor Pvt.Ltd.,
Rep. by its Authorised Signatory,
Mr.B.Girisha,
No.480, Anna Salai,
Nandanam,
Chennai-35.

... Petitioner

Vs.

1. The Assistant Engineer, (Operation & Maintenance)
Tamil Nadu Generation & Distribution Company Ltd.,
Chennai Electricity Distribution Circle (Central),
CIT Nagar-II,
Chennai-600 035.

2. The Chairman,
Tamil Nadu Electricity Board,
No.414, Anna Salai,
Chennai-2.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the Writ of Certiorari to call for the records relating to the impugned order Lr.No.:AE/O & M/CIT-II -F Board Audit/No.54,DT.20.05.2015 demanding payment of a sum of Rs.1,74,098/- (Rupees One lakh Seventy four Thousand and Ninety eight only) on the basis of the Board Audit Slip. No.73, dated 04.06.2012 in service connections bearing account no:182-001-442 in premises bearing door No:480, Anna Salai, Khivraj Compex, Nandanam, Chennai-35 and quash the same as illegal, arbitrary and against the provisions of the Electricity Act, 2003, and the Tamil Nadu Electricity Supply Code, 2004.

For Petitioner : Mr.M.Venkatakrishnan

For Respondents : Mr.Dilipkumar
Standing Counsel for E.B.

ORDER

The petitioner is owner of the commercial premises measuring an extent of 2246 sq.ft. in the fifth floor and proportionate undivided share in the premises bearing Door No.480, Anna Nagar, Khivraj Complex-I, Nandanam, Chennai-35, and the premises are provided with electricity supply through service connection No.182-001-442 and the same was under the occupation of M/s,Ashok Leyland Limited. During the said relevant period the electricity consumption charges was charged under the tariff LT V.

2. The respondent raised a bill demanding payment of Rs.1,74,098/- on the basis of the Board Audit Slip No.73 dated 04.06.2012, on the ground of non-levy of excess KW penalty charges, by calculating the average charge, during the defective meter period namely, from October, 2010 to March 2011. On receipt of the impugned order dated 20.5.2015, the petitioner, after enquiring his tenant, submitted an explanation to the first respondent on 7.10.2015 requesting an opportunity to explain repudiating the claim of the respondents, before taking coercive steps. On 09.10.2015, the said request was rejected by the respondent. Aggrieved over the impugned demand order, the petitioner is before this Court.

3. Heard, Mr.M.Venkatakrishnan, learned counsel appearing for the petitioner and Mr.Dilipkumar, learned Standing Counsel appearing for the respondents-Electricity Board.

4. If the short fall is raised on the basis of audit objection, the petitioner should be put on notice and an explanation should have been obtained from the petitioner before passing any order. Even though, the explanation was received from the petitioners the same was not considered and the demand was raised on shortfall for a sum of Rs.1,74,098/-. It is not an usual and mandatory charge and it is only a short fall on the basis of audit objection. Therefore the respondents are duty bound to explain what is the audit objection and the petitioner should be given an opportunity to put forth explanation repudiating the claim made by the respondents.

5. Without considering the objection, the respondents cannot unilaterally on their own audit objection, make the claim. Therefore, the impugned order suffers and the same is set aside and the matter is remanded to the respondents for fresh disposal.

6. The respondents are directed to give an opportunity of hearing of the petitioner and to decide about the shortfall as per law. As an interim measure, without prejudice to the determination to be made, the petitioner is directed to deposit 50% of the demand amount on or before 30.10.2015 to the respondents and in case the petitioner is able to convince that he is not liable to pay the

amount demanded, the respondents shall return the amount to the petitioner within one week thereafter, otherwise, if it is found that the petitioner is liable to pay the amount, the same can be appropriated.

7. With the above observations, the writ petition is disposed of. No costs. Consequently the connected M.P.No.1 of 2015 is closed.
vk

Sd/-
Assistant Registrar (CS-III)

/ True Copy/

Sub-Assistant Registrar

To:

1. The Assistant Engineer,
(Operation & Maintenance)
Tamil Nadu Generation &
Distribution Company Ltd.,
Chennai Electricity Distribution Circle (Central),
CIT Nagar-II, Chennai-600 035.
2. The Chairman,
Tamil Nadu Electricity Board,
No.414, Anna Salai,
Chennai-2.

+1 C.C. to Mr.M.Venkatakrishnan, Advocate in Sr.No.57452

W.P.No.33701 of 2015

SVI (CO)
sd : 29/10/2015

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