

* THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

+ WRIT PETITION Nos.37713 of 2014; 17358, 17359, 17430, 17444, 18905, 18909, 18914, 18921, 18939, 19106,
19111, 19115, 19211, 19264, 19289, 19323, 19347, 19365, 19380, 19394, 19531, 19536, 19573, 19586, 19712, 19736,
19824, 19828, 19848, 19893, 19942, 20050, 20470, 20472, 20478, 20480, 20484, 20486, 20495, 20496, 20724, 21321,
21550, 21573, 21582, 21583, 21821, 22151, 22325, 22372, 22443, 22448, 22472, 22479, 22580, 22584, 22591, 22592,
22593, 22606, 22621, 23451, 23467, 24626, 24630, 24631, 24634, 24645, 24646, 24657, 24681, 24692, 24732, 25118
and
25725 of 2015.

% 26—08—2015

M/s. AGI Glaspac, rep. by its President
Hyderabad and others

...Petitioners

vs.

\$ The Southern Power Distribution Company of Telangana Limited,
Mint Compound, Hyderabad, rep. by its Chairman
and Managing Director and others

... Respondents

!Counsel for the Petitioner : Sri Challa Gunaranjan
Sri K.V.Upendra Gupta
Sri D.V.Nagarjuna Babu
Sri M.P.Chandramouli
Sri B.S.Shivaji

^Counsel for the Respondents : Sri R.Vinod Reddy (S.C. for TSTRANSCO)
Smt.Jagarlamudi Koteswari Devi
(S.C. for APSPDCL)
Sri M.Ravindra (S.C. for APEPDCL)
M/s.Indus Law Firm

<Gist :

>Head Note :

? Cases referred

1. W.P.No.13836 of 2015 dated 05.06.2015 (Karnataka High Court)
2. W.P.No.6227 of 2011 dated 02.07.2015 (Jharkhand High Court)

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

W.P.Nos.37713 of 2014; 17358, 17359, 17430, 17444, 18905, 18909, 18914, 18921, 18939, 19106, 19111, 19115,
19211, 19264, 19289, 19323, 19347, 19365, 19380, 19394, 19531, 19536, 19573, 19586, 19712, 19736, 19824, 19828,
19848, 19893, 19942, 20050, 20470, 20472, 20478, 20480, 20484, 20486, 20495, 20496, 20724, 21321, 21550, 21573,
21582, 21583, 21821, 22151, 22325, 22372, 22443, 22448, 22472, 22479, 22580, 22584, 22591, 22592, 22593, 22606,
22621, 23451, 23467, 24626, 24630, 24631, 24634, 24645, 24646, 24657, 24681, 24692, 24732, 25118 and 25725 of
2015.

COMMON ORDER:

These Writ Petitions are being disposed of by this common order in view of the common point of law involved in all these Writ Petitions. Learned counsel for the petitioners as well as the learned Standing Counsel for respondents were heard.

2. The petitioners in this batch of cases are HT consumers and they challenge the demand made by the respondents for payment of additional consumption deposit amount consequent to the review of adequacy of consumption deposit for the year 2015-16. In all these cases, the petitioners, as HT consumers had already deposited the consumption deposit amount at the time of sanction of service connection. The present demand relates to the deposit of amount consequent to additional consumption.

3. The case of the petitioners is that in spite of demand to install pre-paid meters, the respondents are not installing the pre-paid meters, but demanding the additional consumption deposit amount. The statute provides for non-payment of any deposit amount, if the pre-paid meters are installed. The respondents cannot avoid installation of

pre-paid meters and demand deposit of the amount. The respondents, on the other hand, submit that the pre-paid meters are not available in the market in respect of HT consumers above 45 KV and the additional consumption deposit amount is necessitated due to consumption history of the petitioners in the preceding 12 months.

4. Section 47 of the Electricity Act, 2003 (for short, the Act) gives power to the distribution licensee to demand reasonable security for the electricity supplied to the consumer. But, if the consumer is prepared to take the supply through a pre-paid meter, the distribution licensee cannot demand security. Section 47 of the Act is relevant and it reads as follows:

“ 47. Power to require security:- (1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him reasonable security, as may be determined by regulations, for the payment to him of all monies which may become due to him-

- (a) in respect of the electricity supplied to such persons; or
- (b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to person, in respect of the provision of such line or plant or meter,

and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the failure continues.

(2) Where any person has not given such security as is mentioned in subsection (1) or the security given by any person has become invalid or insufficient, the distribution licensee may, by notice, require that person, within thirty days after the service of the notice, to give him reasonable security for the payment of all monies which may become due to him in respect of the supply of electricity or provision of such line or plant or meter.

(3) If the person referred to in sub-section (2) fails to give such security, the distribution licensee may, if he thinks fit, discontinue the supply of electricity for the period during which the failure continues.

(4) The distribution licensee shall pay interest equivalent to the bank rate or more, as may be specified by the concerned State Commission, on the security referred to in sub-section (1) and refund such security on the request of the person who gave such security.

(5) A distribution licensee shall not be entitled to require security in pursuance of clause (a) of sub-section (1) if the person requiring the supply is prepared to take the supply through a pre-payment meter.”

5. After enactment of the Act, a National Electricity Policy was notified in compliance with Section 3 of the Act by the Central Government. The said policy was formulated in consultation with the Central Electricity Authority (CEA) and State Governments. Section 3(1) of the Act provides for formulating such policy which reads as follows:

“ 3. National Electricity Policy and Plan:- (1) The Central Government shall, from time to time, prepare the National Electricity Policy and tariff policy, in consultation with the State Governments and the Authority for development of the power system based on optimal utilization of resources such as coal, natural gas, nuclear substances or materials, hydro and renewable sources of energy.”

6. The National Electricity Policy addresses various issues including the issue of distribution. The said policy, with regard to the meters, states as follows:

“5.4.8. The Act mandates supply of electricity through a correct meter within a stipulated period. The Authority should develop regulations as required under Section 55 of the Act within three months.

5.4.9. The Act requires all consumers to be metered within two years. The SERCs may obtain from the Distribution Licensees their metering plans, approve these, and monitor the same. The SERCs should encourage use of pre-paid meters. In the first instance, TOD meters for large consumers with a minimum load of one MVA are also to be encouraged. The SERCs should also put in place independent third-party meter testing arrangements.”

7. In pursuance of the provisions of the Act, a Tariff Policy was also notified by the Central Government on 06.01.2006 in continuation to the National Electricity Policy notified on 12.02.2005. In para 8.4.3, it is stated as follows.

“ 8.4 Definition of tariff components and their applicability:

1...

2...

3. The State Commission may provide incentives to encourage metering and billing based on metered tariffs, particularly for consumer categories that are presently unmetered to a large extent. The metered tariffs and the incentives should be given wide publicity.”

8. Though the Act does not define pre-paid meters, the Regulations made by the Central Electricity Authority called the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006, define a pre-paid meter as a meter which facilitates use of electricity only after advance payment. The said Regulations were made in exercise of the powers under sub-section (1) of Section 55 and Clause (e) of Section 73 read with sub-section (2) of Section 177 of the Act. The State Commission was given power to make regulations under Section 181. Though the

said Regulations deal with, among other things, the reasonable security payable to the distribution licensee under sub-section (1) of Section 47 and payment of interest on security under sub-section (4) of Section 47, it does not empower the State Commission to make any regulations with regard to sub-section (5) of Section 47. This is understandable in the context of sub-section (1) of Section 47 as sub-section (5) of Section 47 is an exception to the said sub-section (1) of Section 47.

9. In spite of the demand made by the petitioners every year for installation of pre-paid meters, the respondents are not providing the same, but are insisting for payment of deposit of amount of two months average consumption and this Court is giving liberty to the petitioners to pay one month amount in cash and another month amount by way of bank guarantee. This has become a yearly affair without any concrete steps for installation of meters even in the face of statutory provision, National Electricity Policy and Tariff Policy.

10. It is also relevant at this stage to notice that the A.P. Electricity Regulatory Commission framed Regulation No.3 of 2013 and published the same on 09.12.2013 called 'Andhra Pradesh Electricity Regulatory Commission (Security Deposit) First Amendment Regulation, 2013'. Clause 4(3) of the Regulations originally framed was substituted as follows:

“ The distribution Licensee shall extend power supply through a correct meter of the following types depending upon load requirement of a consumer

- (i) LT whole current meters
- (ii) Current Transformer operated meters
- (iii) HT meters

The choice of providing pre-payment meters lies with distribution licensee.

If the distribution licensee provides a choice to consumers to opt pre-payment meter, and if any consumer intending to avail/avails supply through a LT whole current prepayment meter, the distribution licensee shall not be entitled to collect security deposit from such person. In case, a security deposit already stands collected by the Licensee from such a consumer, the same shall be refunded by adjustment of the then outstanding dues to the Licensee or any amount becoming due to the Licensee immediately thereafter.

Consumers availing power supply through a Current Transformer (CT) operated meters of HT meters are not eligible to avail power supply through prepayment meters, as such meters with proven technology and technically viable meters are not available in the market.”

11. The learned counsel for the petitioners submit that the above Amendment Regulation made by the APERC in purported exercise of sub-section (1) and (4) of Section 47 of the Act is beyond its regulation making power under Section 181, as it entrenches upon the legislative provision in sub-section (5) of Section 47. They further submit that when the Act and the National Policy provide for pre-paid meters, it is not open to the respondents to say that such meters with proven technology and technically viable meters are not available in the market. They rely on two Regulations made by the Maharashtra Electricity Regulatory Commission, Punjab State Electricity Regulatory Commission and West Bengal Electricity Regulatory Commission and submit that in those States and in the States of Uttar Pradesh, Orissa and Karnataka also, the pre-paid meters are being installed. They further submit that since the petitioners are HT consumers, the liability on account of demand made by the respondents is depleting their cash reserves and if pre-paid meters are installed in their premises, there will be no need to make cash deposits as demanded by the respondents. They alleged that the respondents are purposely postponing the installation of meters in order to gain advantage by having huge cash deposits from the petitioners.

12. The learned counsel for the respondents submits that in spite of their best efforts, they are not able to get pre-paid meters for consumers consuming electricity above 45 KVA.

13. Sri Challa Gunaranjan, learned counsel appearing for petitioners, produced before this Court an article written by Amit Kumar Gupta on pre-paid metering system and submitted that there will be immense benefits by such system to the State Electricity Boards, private entities and citizens of India. He relied on the following paragraphs in the said article.

“Prepayment metering system is very simple. The consumer has a new kind of meter installed in his house which has an inbuilt disconnecting device. The customer buys electricity in advance by paying at any of the Vending office. Once the amount is exhausted the meter automatically disconnects the supply after providing an alarm. The consumer can reconnect himself by buying more electricity and recharging the meter.

Historically, prepayment metering system dates back to over 100 years. The first prepayment meters were manufactured by GE in the year 1899 which were coin operated similar to the coin operated telephone booths. Technological advancement saw new generation of Prepayment Meters using Magnetic cards and then Smart cards. The latest generation of Prepayment Meters uses Keypad technology, wherein there is a telephone like keypad on the meter for recharging.

Geographically, prepayment meters have been deployed across the globe. South Africa and UK have deployed this system in huge volumes and with considerable success. Other countries who have adopted the system include Brunei, Argentina, USA, Poland, New Zealand, Malaysia, Israel, Zimbabwe, Nigeria, Kuwait, France, Bangladesh and India.

Benefits to Utility:

- a) Upfront payment for electricity
- b) No unpaid bill
- c) No meter readings
- d) Lower overheads
- e) No incorrect bills
- f) No disconnection/reconnection
- g) No account queries
- h) Tamper and fraud detection
- i) Load Control"

14. The Central Electricity Authority published Technical Specification for Procurement of Prepayment Metering System and it observed the benefits as follows.

"1.1 ...

- (i) Better revenue collection.
- (ii) Load Management.
- (iii) Reduced Overhead.
- (iv) The system offers convenience of payment to the customer: The consumer shall be able to pay at any time any where.
- (v) Consumer is encouraged to save the energy as the system displays the consumption of electrical energy in Rupees.
- (vi) Show true cost of consumption and money left.
- (vii) Improved budgeting.
- (viii) No billing errors or surprise billing; disputes avoided."

Improved revenue collection and consumer satisfaction are the outcomes of prepayment metering system."

Apart from the above, the Specifications cover various aspects of the pre-paid meter to be installed in the premises of the consumers.

15. He also relied on a decision of the Karnataka High Court in **Vijayaa Steels Limited v. Bangalore Electricity Supply Company Limited** (W.P.No.13836 of 2015 dated 05.06.2015) in which an identical issue was decided. The relevant portion of the judgment reads as follows.

" 5. In view of sub-section (5) referred to above, if the person requiring the supply is prepared to take the supply through a pre-payment meter, he shall not be liable to furnish security as contemplated under clause (a) of sub-section (1) referred to above. In this case, as the petitioner is prepared to take the supply through a pre-payment meter, and as pre-payment meter is presently not available, it is appropriate that respondent Nos.1 & 2 shall supply electricity to the petitioner by collecting approximate monthly energy charges in advance without insisting for any security as contemplated under clause (a) of sub-section (1) WP.No.13836/2015 referred to above. The amount of the petitioner lying in deposit with respondent nos.1 & 2 shall be adjusted towards energy charges. This order shall cease to be in force once respondent Nos.1 & 2 provide a pre-payment meter to the petitioner. The writ petition is disposed of in the above terms."

16. He also relied on another decision of the Jharkhand High Court in **M/s. T&T Metals Pvt. Ltd. V. Jharkhand State Electricity Board** (W.P.No.6227 of 2011 dated 02.07.2015). In identical circumstances, the Jharkhand High Court held as follows.

"8. From perusal of the aforesaid provisions, it is clear that if a consumer prepare to take supply of electricity through prepayment meter, then the licensee have no other option than to supply the electricity to the consumer through prepayment meter. It is also clear that in that event, the licensee is not entitled to demand security deposit as provided under Section 47 (1) of the Electricity Act. Admittedly, the petitioner vide annexure-2, had shown his desire to take supply of electricity through prepayment meter. From the various counter affidavits filed by the respondent, it is clear that the respondent is denying the claim of the petitioner, merely on the ground it has not yet made arrangement to supply the electricity through prepayment meter. The aforesaid excuse of the respondent appears to be against the law.

9. The respondent being a 'State' within the meaning of Article 12 of the Constitution, is duty bound to follow the law if it wants to do business of supply of electricity. It is not open to the respondent to take a plea that it will not follow the law because it had not made arrangement for the same. Therefore, on the basis of the above excuse, the prayer made by the petitioner cannot be denied.

10. The second excuse given by the respondents in its counter affidavit filed before the 'Forum' that the meter is not available in the market, is also not correct. According to the petitioner, such meters are available in the market. Even

the respondent had stated in the counter affidavit filed before the 'Forum' that the consumer may be directed to make available the prepayment meter to the respondents so that the Board may install it after making proper testing. This shows that such meters are available in the market. It is worth mentioning that [Section 55 \(1\)](#) and [Clause 13.2.1 of the Electricity Supply Code Regulations, 2005](#) cast a duty upon the respondent to install the said meter for supply of the electricity. Under the aforesaid circumstances, the respondent, being a licensee for the supply of electricity, is duty bound to provide prepayment meter in the premises of the petitioner and make electricity supply in accordance with law.

11. In view of the discussions made above, I allow this application and I hereby quash the impugned orders passed by the Electricity Ombudsman, Jharkhand. I also quash the demand made by the respondent from the petitioner to deposit revised security money for the financial years 2010-11 and 2012-13. I further direct the respondents to make arrangement for supply of electricity in the premises of the petitioner by installing prepayment meter as per [Section 47 \(5\)](#) of the Act and second proviso to [Clause 10.1 of the Electricity Supply Code Regulations, 2005](#). I further restrain the respondents from demanding security money from the petitioner as per [Section 47 \(1\)](#) of the Act. However, I direct the petitioner to make payment of the current bill regularly."

17. The Act deals with distribution of electricity in part VI of the Act. Section 42 lays down the duties of distribution licensees and open access. Section 43 casts a duty to supply electricity on request. Section 45 enables the distribution licensee to recover charges for supply of electricity. Section 46 gives power to the distribution licensee to recover expenditure. Section 47 provides for security to be given by a consumer utilizing supply of electricity in respect of the electricity supplied to him/her/it. As stated above, sub-section (5) thereof disentitles the distribution licensee from requiring security, if the consumer is prepared to take the supply through a pre-paid meter.

18. In view of the above clear provisions contained in sub-section (5) of Section 47, the distribution licensee is not entitled to demand security, if the consumer demands supply through a pre-paid meter. In view of the implementation of the system of pre-paid meter in various States, it is not open to the distribution licensees in Telangana and Andhra Pradesh States to state that the pre-paid meters are not available. If the licensee does not provide meters in spite of legislative intent, it is equally open to the petitioners to contend that so long as the pre-paid meters are installed, they need not deposit the amount. The amount is required for ensuring the payment of electricity charges by the consumer. It is not as if all the consumers are defaulters after supply of bills and there is a method for recovery of the amount immediately after monthly consumption including by way of disconnection of electricity. Most of the HT consumers require electricity for their industrial units and they cannot face the risk of disconnection of electricity. However, this will not enable the petitioners, who are the HT consumers, not to pay the amount which is provided under Section 47(1) of the Act. Hence, in this batch of cases, a balance has to be struck between the demand made by the petitioners for pre-paid meters and the plea taken by the respondents that such type of meters are not available in the market and the demand of two months additional consumption deposit for the electricity consumed by the consumers. It is not open to the respondents to deny installation of pre-paid meters by taking shelter under Amendment Regulation No.3 of 2013 which is contrary to legislative provision contained in sub-section (5) of Section 47 of the Act. As observed above, it is not open to the distribution licensee to demand additional consumption deposit amount by postponing the installation of pre-paid meters also.

19. In view of the above, the respondents are directed to install pre-paid meters to all the HT consumers, who require the supply through a pre-paid meter, within a period of six months from the date of receipt of a copy of this order. Till such time, the petitioners shall pay half of the additional consumption deposit amount demanded by the respondents which shall be refunded to the petitioners as soon as the pre-paid meters are installed.

20. The Writ Petitions are, accordingly, allowed to the extent indicated above. Miscellaneous petitions, if any, pending in all these Writ Petitions shall stand closed. There shall be no order as to costs.

A.RAMALINGESWARA RAO, J

Date: 26.08.2015

TJMR