

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

WA Nos. 968 of 2015 and batch

Between:

M/s Sarwottam Ispat Limited,
(Service Connection Nos.RRN-1527 & RRN-302),
Plot No.s 8 to 10 & 17, Industrial Estate,
Medchal, Ranga Reddy Dist., Telangana State,
Rep. by its Director, Subhash Goenka.

.....Appellant/
Petitioner

and

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

.....Respondents

DATE OF JUDGMENT PRONOUNCED: 19.05.2016

SUBMITTED FOR APPROVAL:

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HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE

AND

HON'BLE SRI JUSTICE P.NAVEEN RAO

- | | | |
|---|--|-----|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | No |
| 2 | Whether the copies of judgment may be marked to Law Reports/Journals | Yes |
| 3 | Whether His Lordship wish to see the fair copy of the Judgment? | No |

*** HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE**

AND

HON'BLE SRI JUSTICE P.NAVEEN RAO

-

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+ WA Nos. 968 of 2015 and batch

% Dated :19.5.2016

M/s Sarwottam Ispat Limited,
(Service Connection Nos.RRN-1527 & RRN-302),
Plot No.s 8 to 10 & 17, Industrial Estate,
Medchal, Ranga Reddy Dist., Telangana State,
Rep. by its Director, Subhash Goenka. petitioner

AND

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

! Counsel for Appellant : Mr. D.V.Nagarjuna Babu

**^Counsel for Respondents : Addl.Advocate General (TS)
Sri M P Chandramouli
Sri Challa Gunaranjan
Smt Jyothi Eswar Gogineni**

<GIST :

>HEAD NOTE :

? Cases referred :

AIR 2012 P&H 124
1993 Supp (4) SCC 136
(1991) 3 SCC 299

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND
HON'BLE SRI JUSTICE P.NAVEEN RAO**

WA Nos. 968, 969, 970, 972, 981, 982, 983, 985, 987, 988, 990, 991, 992,
993, 994, 997, 1003, 1004, 1037 of **2015** and WA 361 OF **2016**;

WA Nos. 355, 368, 353, 360, 388, 381, 384, 385, 386, 392, 373, 366, 400,
367, 375, 395, 382, 352, 351, 379, 356, 357, 369, 374, 343, 364, 365, 391,
354, 394, 393, 362, 358, 359, 387, 348, 397, 398, 372, 363, 402, 347, 346,
344, 345, 404, 399, 340, 341, 401, 350, 342, 376, 396, 383, 349, 370, 377,
378, 403, 371, 389, 390, 388 of **2016** and WA 193 of **2016**

Date: 19-05-2016

WA No.968 of 2015:

Between:

M/s Sarwottam Ispat Limited,
(Service Connection Nos.RRN-1527 & RRN-302),
Plot No.s 8 to 10 & 17, Industrial Estate,
Medchal, Ranga Reddy Dist., Telangana State,
Rep. by its Director, Subhash Goenka.

.....Appellant/
Petitioner

and

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

and two others.

.....Respondents

The Court made the following:

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

HON'BLE SRI JUSTICE P. NAVEEN RAO

WA Nos. 968, 969, 970, 972, 981, 982, 983, 985, 987, 988, 990, 991, 992, 993, 994, 997, 1003, 1004, 1037 of **2015** and WA 361 OF **2016**;

WA Nos. 355, 368, 353, 360, 388, 381, 384, 385, 386, 392, 373, 366, 400, 367, 375, 395, 382, 352, 351, 379, 356, 357, 369, 374, 343, 364, 365, 391, 354, 394, 393, 362, 358, 359, 387, 348, 397, 398, 372, 363, 402, 347, 346, 344, 345, 404, 399, 340, 341, 401, 350, 342, 376, 396, 383, 349, 370, 377, 378, 403, 371, 389, 390, 388 of **2016** and WA 193 of **2016**

COMMON ORDER: (Per the Hon'ble Sri Justice P.Naveen Rao)

The issues raised in the group of appeals are on provision of pre-paid meters to High Tension (HT) consumers and demand by the Power Distribution Companies for payment of additional consumption deposit on the ground that there is increase in consumption of electricity by HT Consumers.

2. The group of writ appeals arises from the common order of the learned single Judge in batch of writ petitions. Parties are referred to as arrayed in writ petitions. Petitioners are all companies involved in manufacturing various products and they draw electricity from the State Power Distribution Companies. As they consume high volume of electricity, they are classified as High Tension (HT) Consumers. In the

group of writ petitions, petitioners challenge the decisions of respective Power Utility Companies, demanding additional security deposit as a condition precedent to provide uninterrupted electrical energy to them and not providing pre-paid meters to supply power. In some of the writ petitions petitioners also challenged the legality of the A.P. Electricity Regulation Commission (Security Deposit) First Amendment Regulation, 2013 (Regulation No. 3/2013).

3. By the order impugned, learned single Judge directed the respondent power utilities to install pre-paid meters to all High Tension Consumers within a period of six months from the date of receipt of the copy of the order. Learned single Judge further directed the petitioners to pay half of the additional consumption deposit amount demanded which should be refunded to the petitioners as soon as pre-paid meters are installed. No finding is recorded on the validity of the Regulations, 2013. The power utilities challenge the entire order of the learned single Judge. Some of the petitioners have also challenged the order of the learned single Judge only to the extent of directing them to pay half of the consumption deposit amount and they seek dispensing with security deposit until pre- paid meters are provided.

4. The facts in issue are in a very narrow compass. Power Distribution Companies classify the consumption of electricity into two groups, Low Tension (for short LT) and High Tension (for short HT). The petitioners are HT consumers. At the initial stage of entering into agreement for power supply, the Power Distribution Companies take deposit of amount based on anticipated demand for power supply for two months. The Power Distribution Companies review the power consumption by HT consumers periodically, in a cycle of 12 months, from the first agreement. If there is increase in consumption of power than originally estimated, it demands the HT consumer to deposit differential amount so that the deposit satisfies two months consumption charges. It also takes into consideration revision of power tariff,

if any. Such demand made for the block years 2014-15 and 2015-16, are assailed in the group of writ petitions.

5. Heard Sri D.V.Nagarjuna Babu, Sri M.P. Chandramouli, Sri Challa Gunaranjan, Smt. Jyothi Eswar Gogineni, for petitioners; Sri.P.Venugopal, learned Advocate General for Smt.Jagarlamudi Koteswari Devi- learned standing counsel for APSPDCL (State of AP); Sri J.Ramachander Rao, learned Additional Advocate General (State of Telangana) for Sri R.Vinod Reddy- learned standing counsel for TSTRANSCO; Sri Narayana Reddy, learned Assistant Solicitor General for the Central Government.

6.1 Learned counsel for petitioners would submit that all the petitioners have opted for supply of electricity through prepaid meters in terms of the provision contained in Section 47 (5) of the Electricity Act, 2003 (for short, 'Act'). Once such request is made, it is mandatory for the licensee to provide and supply electricity through pre-paid meters and licensee cannot insist the HT consumers to furnish security deposit /revised security deposit on the ground of increase in consumption of electricity and such action of the respondent power utilities is ex-facie illegal and contrary to the statutory mandate. It is illegal to insist differential amount of security deposit.

6.2 They would submit that as Section 47(5) casts duty on the licensee, it is for the respondent companies to secure the pre-paid meters and provide to the High Tension consumers. They are denuded of power to demand security deposit once request is made by the consumers for provision of pre-paid meters.

6.3 They would submit that it is ultra-virus the provision contained in Section 47 (5) of the Act. When statute vests right in the consumer to demand HT meters, licensee cannot fall back on the Regulation, 2013 to deny the request of the petitioners to provide pre paid meters and to insist for additional deposit.

6.4 They would submit that in the States of Madhya Pradesh, Punjab, West

Bengal, Uttar Pradesh, Orissas and Karnataka pre-paid meters are being installed. This would clearly demonstrate that pre-paid meters are available in the market for HT consumers and deliberately the respondent power utilities are not securing those meters. They would submit that the action of the respondent power utilities is deliberate and wilful. The respondent power utilities are not interested in providing pre-paid meters. By illegally collecting the consumption deposit, they are purchasing electricity at the cost of the high tension consumer. On account of illegal action of the respondent power utilities, petitioners are put to great hardship and suffering. In view of the demand made by the power utilities for higher deposit, petitioners' cash reserves are depleting and their cash flow has affected, which is resulting in crippling their business. By their actions, the statutory prescription to migrate to pre paid meters is diluted. Considering the statutory mandate and availability of pre-paid meters, Karnataka High Court and Jarkhand High Court have directed licensees to provide pre-paid meters and not to demand additional security deposit. Following the said decisions and in view of the statutory mandate, learned single Judge directed for provision of pre-paid meters within fixed time frame. Learned single Judge has granted sufficient time to secure pre-paid meters and no exception can be made to the said direction.

6.5 It is further contended that the learned single judge having recognised the right of petitioners to demand installation of pre-paid meters, erred in directing the petitioners to deposit 50% of the additional amount demanded and to that extent the direction of the learned single judge is erroneous. Petitioners cannot be compelled to make any additional deposit.

7.1 Learned additional Advocate General for the State of Telanagana submitted that what is contained in Section 47(5) of the Act is only an enabling provision. The obligation to provide pre-paid meters on demand would arise subject to availability of such meters in the market. Section 47(5) is applicable to LT and HT consumers. As of now, LT pre-paid meters are available in the market and they are being provided as and when the consumer makes a request. As pre-paid meters for HT consumption of

electricity is not available, no meters can be provided. As long as pre-paid meters are not available, the distribution licensee is competent to demand security deposit for two months of estimated consumption. He further contended that the provision in sub-section (5) also enables the consumer to source the pre-paid meter. As contended by the learned counsel for petitioners if pre paid metes are available, the petitioners ought to have secured pre-paid meters from the market.

7.2 He further contended that technology for provision of pre-paid meters for HT consumers is entirely different from LT consumers. The pre-paid meter works on the principle of continuing power supply to the consumer till credit amount is available. In case of LT consumer, the electricity supply goes to the consumer directly through the wires which passes through the meter and, therefore, it is permissible to regulate the power supply. If the consumer exhausted the pre-paid amount, the meter can stop further supply of electricity. In case of HT consumers, the electricity do not go through wires which passes through the meter and, therefore, meter cannot regulate the amount of electricity consumed

vis-a-vis the amount already paid. Thus, meter has no control on supply of electricity and, therefore, it cannot disconnect even if the consumer exhausted the credit limit. No pre-paid meter is made to handle supply of HT electricity by the wires which go through the meter and record the consumption pattern.

7.3. He would contend that power utilities have been requesting the reputed manufacturers of electrical products to supply pre-paid meters and all of them have said that as of now technology is not available to provide pre-paid meters for HT consumers. Having regard to the assertions of the petitioners that in other states pre-paid meters are provided to HT consumers, a committee of officers were deputed to visit Madhyanchal Vidyuth Vitaran Nigam Limited, State of Uttar Pradesh and the Central Electricity Supply Company, Orissa Sate to study the pre-paid meters installed to HT consumers. The respective DISCOMS informed the committee members that

they have not provided meters for HT consumers. Learned Additional Advocate General (TS), therefore, submitted that as of now the pre-paid meters for HT consumers are not available and, therefore, the power utilities cannot provide the pre-paid meters.

7.4 He would submit that in exercise of power vested under Section 181 read with sub-section (1) and (4) of Section 47 of the Electricity Act, the State Regulatory Commission has notified regulations, 2013 dealing with the demand of the security deposit for provision of electricity to all the consumers. Having regard to the issue of non-availability of HT meters, the Regulation restrains HT consumers from demanding provision of pre-paid meters. Such regulation is made in valid exercise of power. It is not in violation of the provision in Section 47 as contended. These HT consumers entered into agreements with distribution companies wherein they have undertaken to comply with all the requirements of Electricity Act, 2003, Rules and Regulations made there under and provision of tariff. Thus, they are bound by the regulations made under the Act.

7.5. He would submit that there is no merit in the contention that the security deposit is being misused by the distribution companies and with their money, distribution companies are carrying on business in electricity. He submitted that electricity consumed by the consumer during the month is billed at the end of the month and is given 15 days time for payment of the amount. In case he defaults in payment, he would be given 15 days notice for payment of the amount due and only thereafter the power supply would be disconnected. This would show that the consumer would enjoy supply of power up to two months on credit basis. During this period, DISCOMS purchase power from power generators and have to pay them on such purchase. The DISCOMS borrow loans from the financial institutions and banks to meet the cost of power. He, therefore, submitted that consumption deposit is necessary for effective functioning.

7.6. He further submitted that bank guarantee furnished by the consumer do not help the licensee as the same cannot be utilized. Thus, the licensee has

to necessarily borrow more funds from the financial institutions on higher interest rate. Since the licensee cannot bear the interest component of loan obtained, it has to pass the same to the consumer and that would result in increasing the cost of electricity supplied. He further submitted that when the statute prescribes the collection of security deposit, furnishing of bank guarantee is not valid. He further submitted that learned single Judge erred in enabling the petitioners to pay only half of the additional consumption deposit demanded by the licensees and the same is contrary to the Electricity Act, 2003.

8. Learned Advocate General (AP) would contend that when statute vests power in the licensee to demand security deposit, writ Court cannot dispense with/reduce/ask to furnish bank guarantee. He would further submit that when pre-paid meters for HT consumption are not manufactured, licensee can not provide them to consumer and learned single Judge erred in directing licensee to provide the pre-paid meters within six months.

9. Based on the submissions of learned counsel, two points arise for consideration:

- 1) Is it mandatory for licensee to provide prepaid meter once a request is made by the HT consumer?
- 2) Is it legal to claim exemption from payment of additional security deposit on the ground that a request for installation of pre-paid meter is made?

10. It is useful to analyze provision in Section 47 of the Act, 2003, to appreciate the rival contentions. It reads as under:

Section 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 person; or

(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to such 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 sub-section (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.

11. Part VI of the Electricity Act, deals with distribution of electricity. Sections 42 to 60 are placed in this Part. It contains provisions ranging from, duty on the licensee to develop and maintain efficient and economical distribution system(Section 42); casts duty on licensee to supply electricity on demand(Section 43); vests power in the licensee to recover charges(Section 45), expenditure(Section 46), to demand security (Section 47) and to disconnect supply in default of payment of electricity dues (Section 56); mandates licensee to supply electricity only through correct meter (Section 55); Sections 57 to 60 vest power in the Electricity Regulatory Commission on various aspects of supply of electricity. The Act recognizes the fact that the electricity is an essential service and that the demand is more than the supply and there is larger public interest in ensuring proper distribution of electricity. Cumulative reading of all the provisions in this chapter would bring out the intent of the Parliament, i.e., establishment of efficient supply network to nook and corner of the country so that electricity is available to all on demand.

12. The Act mandates supply of electricity on demand by consumer. Efficient supply of electricity pre-supposes financial viability of the licensee. The distribution licensee draws electricity from the generator on payment of

costs levied by the generator. It makes all the infrastructure facilities for drawing the electricity from the generators and supplies to the end user. The consumer can request for supply of electricity from the licensee and once such a request is made, subject to fulfillment of all legal requirements electricity has to be supplied and various provisions of the Act and Regulations made there under would govern the relationship between the licensee and the consumer. However, it is purely a commercial transaction between the licensee and consumer. When supplier agrees to supply electricity, it is permissible for the supplier to impose restrictions subject of course to the various provisions of the Act and the Regulations. As noted above, Part VI of the Act deals with supply of electricity and the competency of the distribution licensee to demand amounts from consumers for various purposes including demand of security. This Chapter vests power in the distribution licensee to levy charges for the electricity supplied, to recover charges incurred and to demand security deposit for the electricity supplied.

13. Section 47 of the Act vests power in the distribution licensee to demand security deposit to supply electricity as determined by the regulations. In terms thereof, distribution licensees are collecting security deposit equivalent to consumption charges on electricity for a period of two months. In a cycle of every 12 months, the licensee reviews the consumption pattern by a consumer and if there is increase in consumption, the licensee demands additional deposit towards increased demand. This section vests power in the licensee to refuse supply of electricity if the consumer fails to provide security deposit or additional security deposit.

14. Electricity is not a free commodity. The licensee has to purchase from generator. The consumer has to pay for what he consumes. From out of the charges levied from the consumer, the licensee generates revenue. Ordinarily whenever any person purchases a product, he has to pay the value of the product upfront. In so far as electricity supply is concerned, the licensee supplies electricity on credit basis and assesses the electricity consumed during a given period and recovers the charges. Discoms extend ordinarily one month credit period and by statutory fiat, the consumer gets one more

month to repay the amount for the electricity consumed. In the post consumption pay system licensee runs the risk of recovery of his dues and has to go through rigorous legal procedures. The stark reality is, there are innumerable defaulters. Delay in payment may choke the licensee and can paralyze electricity distribution system. It is not in public interest to paralyze supply of electricity. Thus, to safe guard his interest and in the larger public interest, licensee can demand security deposit for the electricity supplied. Section 47 recognizes this right in no uncertain terms.

15. Supply of electricity is distinct from provision of meters. Provision of meters enables the supplier to know how much of electricity is consumed by the consumer in a block period and based on the consumption recorded, as per the tariff already determined, collects the consumption charges from the consumer. It also enables the consumer to know electricity consumed by him. It is not in dispute that electric meters are provided. As per the system prevailing, electricity is supplied through ordinary meters and consumption charges are levied and collected based on the electricity consumed during the block period. Section 55 imposes mandate on the licensee to supply electricity through installation of a correct meter. This section does not impose obligation to provide pre-paid meter but only obligates to provide correct meter. This mandate is incorporated into the Act only to ensure that there is proper accounting and auditing of distribution of electricity. The mandate of Section 55 is to provide efficient meter whether it is pre-paid or post-paid. Admittedly, pre-paid meters for HT consumption with proven technology are not available.

16. Learned single Judge placed heavy reliance on two decisions of Karnataka High Court and Jharkhand High Court and proceeded to hold that Section 47 (5) obligates licensee not to insist for security deposit once a request is made for supply of electricity through pre-paid meters. We have carefully gone through the said decisions. With respect, the learned single Judge and the Karnataka and Jharkhand High Courts proceeded on the wrong premise that a duty is caste on the licensee to provide pre-paid meters; that

the said meters are available in the market; and that the movement HT consumer demand to provide pre-paid meter, security deposit cannot be insisted. We have repeatedly asked the learned counsels appearing for petitioners to place on record material to show that technology is available and pre-paid meters for HT consumption are available in the market. But no information is placed on record in support of their stand. On the contrary, learned Additional Advocate General (TS) categorically asserted that such meters are not available in India, which statement is not denied. He placed on record the correspondence from Uttar Pradesh and Orissa State Power Distribution Companies and correspondence from the manufacturers to show that no such meters are available. Learned single Judge also recognizes the fact that pre-paid meters are not readily available and therefore grants six months time to the distribution licensees to secure pre-paid meters.

17. It is the stand of the respondent licensees that the technology for provision of electricity through pre-paid meter for LT consumers and HT consumers is entirely different. Technology is available for supply of electricity to LT consumers through pre-paid meters. For LT consumption power supply passes through the wires passing through the meter and therefore the meter can calculate the amount of power utilized by the consumer and equate the same with the value of consumption charges. Once, the requisite amount of electricity is consumed, the meter stops supply of electricity. Therefore, the licensee can regulate supply of electricity effectively to LT consumers. The correspondence placed on record would disclose that no pre-paid meters which are tested and suitable for HT consumption are available in the market.

18. At this stage, it is useful to extract the letters written by Larsen & Tourbo Limited, Genus, Elster the companies involved in manufacture of electric meters and distribution licensees of States of UP and Orissa distribution companies.

19.1 **LARSEN & TURBO LIMITED**

The Chief General Manager – P&MM
M/s TSSPDCL
Corporate Office, 4th Floor,
Mint Compound
Hyderabad.

Dear Sirs,

Sub:- Availability of Pre-paid HT Trivector Meters

We would like to bring to your kind notice, as on date Pre-paid concept is applicable for whole current/ direct connected single phase & three phase energy meters only. Where in connect / disconnect happens depending on the charged value in terms of currency or indirectly energy consumed. Such connect/disconnect is inbuilt in direct connect meters. HT/LT CT operated meters are connected with external CT & PT and for these consumers billing depends on various parameters hence pre-paid meters in this segment is yet to be in discussion stage. We do manufacture Single phase and three phase Whole Current Pre-paid Meters for consumer billing.

Thanking you, assuring you best of our attention at all times, we remain.

Yours faithfully,

For LARSEN 7 TOURBRO LIMITED

Sd/-

(G Srinivasa Rao)

Manager Sales & Marketing

Marketing & Protection System.

.....

19.2

Genus

Energizing lives

Ref.: GPIL/HYD/DJM/0815

12th Aug, 15

The Chief General Manager (P&MM),
SPdc OF ts Ltd., 4th floor, Corporate Office,
Mint Compound,
Hyderabad.

Sub: SPDC of ts Ltd., - P&MM Wing – Availability of Pre-paid meters to HT consumers.

Ref: Your letter No.CGM/P&MM/E-21/f, Pre-paid HT/D.No.2752/14,dt.1.8.2015.

Sir,

We are thankful for the enquiry made vide your letter mentioned under the reference.

As we are aware a Pre-paid meter works on the principle of continuing power supply to the consumer till there is credit amount available, i.e., consumer pays the electricity charges in advance and meter allows flow of electricity correspondent to the amount.

Once the electricity for that amount is exhausted by the consumer the meter cut the supply, if further amount is not deposited.

For this principle to work it is mandatory that consumer's supply goes through the same wires which passes through meter.

In case of CT operated meter (LT CT and HT) the supply to the consumer goes not directly through the wires which passes the meter, and therefore, it is not possible to disconnect the supply once the credit is exhausted.

We therefore, donot have meter for this application.

Thanking you,

Yours sincerely
(for Genus Power Infrastructure Ltd.)

Sd/-
Dhananjaya Mehta
(AGM-Mkts.)

.....

19.3

Elster
Regd. & Marketing Office,
Elster, Metering (P) Ltd.

The Chief General Manager/P&MM
Southern Power Distribution Co. of Telangana Ltd.
SPDC of TS Ltd, 4th Floor
Mint Compound, Hyderabad.

Our Ref: EMPL/TSSPDCL/Regret HT Pre-paid/8215/RPK

Dt. 2.8.2015

Sub: HT Pre-paid meters – reg.

Ref: Your letter No.CGM/P&MM/E-21/F.Pre-paid HT/D.No.2752/14, dated 01.8.2015.

Dear Sir,

We acknowledge with thanks the receipt of your above referred letter regarding availability of HT pre-paid meters.

However, we regret to inform that as of date, we do not have any action plan for manufacturing HT pre-paid meters in the near future.

In case any activity is taken in hand in future for manufacturing HT pre-paid meters, we would be pleased to inform you about the same.

Thanking you once again and assuring you of our best attention, we remain,

Your faithfully,
For Elster Metering (P) Ltd.

Sd/-
Anil Deshpande
Vice President – Marketing.

.....

19.4

Madhyanchal Vidyut Vitran
Nigam Limited
Lucknow.

E-mail: commvvn1@gmail.com.

Letter No.2059 – Dir (Comm) MVVNI/

dt. .05.11.2015

Sub: TSSPDCL – Comml – Adopting of pre-paid metyers to HT consumers in Telangana.

Ref: Hon'ble High Court order in WP No.37713 of 2014, dt. 26.8.2015.

To
The Chairman and Managing Director,
TSSPDCL, 5th floor, Corporate Office,
Mint Compound, Hyderabad.

Sir,

Kindly refer to your letter no. CMD/CGM(Comml)/SE©/DE©/ADE-1/D.No.1794 / 15, dt.19.10.2015, regarding adopting of pre-paid meters to HT consumers.

In this connection it is to inform that there is no pre-paid meter installed on HT consumers in the jurisdiction of Madhyanchal Vidyut Vitran Nigam Limited, Lucknow in Uttar Pradesh.

Yours sincerely
Sd/-
Director (Commercial)
MVVNL

19.5

CENTRAL ELECTRICITY SUPPLY UTILITY OF ODISHA
Head office :IDCO Towers, 2nd floor, Janpath, Bhubaneswar- 751022

....
...

No. CESU/Com./F-3(Vol-III) 27137
To

Date: 6.11.2015

The Chairman and Managing Director,
TSSPDCL, 5th floor,
Corporate Office, Mint Compound,
Hyderabad

Sub: Adoption of prepaid meters to the HT consumers

Ref: Your office letter No. CMD/CGM(Comml)/SE(C) /DE(C)/ADE-I/D No.1794/15 dated 19.10.2015.

Sir,

With reference to the above, this is to inform you that the prepaid meters for HT consumers have not been installed in the jurisdiction of Central Electricity Supply Utility of Orissa (CESU).

Yours faithfully,
Sd/-
CGM (COMMERCE)

20. In view of the above correspondence it is beyond pale of doubt that pre-paid meters for HT consumption are not available. Since pre-paid meters for HT consumption are not available, if the stand of the petitioners is accepted, it

would mean that the licensee cannot demand any deposit once a request for pre-paid meter is made irrespective of availability of the pre-paid meters in the market and he would pay only electricity charges to the extent consumed by him after the block period of consumption i.e., monthly/bi-monthly. In other words, for this entire period, the licensee has to purchase power from the generator at his own cost and collect charges from consumer only after the block period to the extent power consumed. This would only choke the licensee and would result in paralyzing supply of electricity.

21. Section 47 vests power in the licensee to demand security deposit as condition precedent to supply electricity and stop supply if security deposit/ additional security deposit is not made. Sub Section (5) carves out exception to main provision. It being an exception to the main provision in Section 47, it has to be understood in the limited context i.e, availability of pre-paid meters. The provision in Section 47 (5) has to be understood to mean that if efficient pre-paid meters for HT consumption are available in the market and consumer request for supply of electricity through pre-paid meters, the licensee has to provide meters and in such case, licensee cannot refuse to provide meter and demand for security deposit. Provision in Sub- Section (5) of Section 47 should be read in conjunction with all other provisions of this Act and more particularly Section 55. Availability of efficient pre-paid meters is *sine que non* for enforcing this provision. As submitted by learned Advocate General (AP) and learned Additional Advocate General (TS) representing respective distribution companies, pre-paid meters are available for LT consumers and on demand said meters are provided, whereas, pre-paid meters with proven technology for HT consumers are not available in the market and therefore they cannot be provided even if a demand is made. We are of the opinion that unless pre-paid meters with proven technology are available to supply electricity to HT consumers, there is no obligation on the licensee to supply those meters.

22. At this stage it is useful to note the observations in the following decisions on HT consumers.

23.1. In **MANDI GOBINDGARH INDUCTION FURNACE ASSOCIATION V.**

PUNJAB STATE ELECTRICITY REGULATORY COMMISSIONER^[1],

Punjab and Haryana High Court observed as under:

“15. In respect of the argument that the consumers, the members of the petitioner Association are prepared to take supply from a pie-payment meter in terms of sub-section (5) of Section 47 of the Act, suffice it to state that option for facility for pre-payment meter is available ***as and when it is provided by the licensee.*** Therefore, whether the facility is available with the licensee for pre-payment meter or not, has not been brought on record. The only averment made by the petitioner association in para 15 is that most of the members of the petitioners' association are prepared to take the supply through the prepayment meter. It appears that none of the petitioner have applied for supply through pre-payment meter nor it has come on record that such facility is available with the licensee. Therefore, it is premature to examine the said argument in any further detail. However, it is stated that as and when the members of the petitioner association or any other consumer seeks supply through pre-payment meter, the same shall be considered by the respondents, ***if it is technically feasible to be granted.***”

23.2. In **FERRO ALLOYS CORPN.LTD. VS. AP.STATE**

ELECTRICITY BOARD AND ANOTHER^[2], Supreme Court observed as

under:

“106. Thus, it will be clear that the true nature of the transaction in these cases is one of advance payment of charges for consumption of electricity estimated for a period of approximately three months. Such an advance is liable to be made good and kept at the stipulated level from month to month. It is open to the consumer to permit adjustment of the advance in the first instance. Thereafter, he could make good the shortfall in consumption charges and the security deposit before actual disconnection. Actually speaking, it is only after three months the disconnection takes place. Hence, it is like a running current account.

107. The cycle of billing by the Board demonstrates that in the very nature of things, the consumer is supplied energy on credit. The compulsory deposit in the context of billing cycle is hardly adequate to secure payments to the Board by the time the formal bill by the Board is raised on the consumer. In one sense, the consumption security deposit represents only a part of the money which is payable to the Board on the bill being raised against the consumer. Thus, the Board secures itself by resorting to such deposit to cover part of the liability,

108. For supply of electricity the Board needs finance for production, supply and other charges necessary for supply of electricity. The effect is, the Board is obliged to bear the liability of hundreds of crores of rupees per annum. It has no option but to pay the charges and deposits in order to keep the power available at a level to meet with the demand of the consumers. It is the case of the Board that it has opened letters of credit by making advance deposits in favour of National Thermal Power Corporation and the suppliers. Coal India Limited has also asked the Board to open revolving letters of credit in favour of coal companies/Coal India Limited. Despatch of coal is only against the letter of credit.

109. From the above, it is clear that while the Electricity Board is required to make colossal advances to generate electricity and supply to consumers, the consumers use and consume electricity on credit ranging from 2 to 3 months

depending upon the category of consumers. To off-set part of the amount the consumer owes to the Board continually to ensure timely payment of bills by the Board to its suppliers, the advance consumption deposit is required to be kept with the Board before commencing supply to the consumer. The clauses in the contract in relation to conditions of supply of electric energy enable the Board to adjust the bill against such deposits. Therefore, this is not a case of mere deposit of money as in commercial transaction. In demanding security deposit it is open to the Court to take note of pilferage as laid down in *Ashok Soap Factory v. Municipal Corporation of Delhi* [MANU/SC/0462/1993](#) : [1993]1SCR124 :

--The variation in the electricity consumed by different consumers indicated that the charge of pilferage of electricity and gross under-utilisation or consumption of electricity compared to the sanctioned load was not without foundation-

110. ***In these circumstances, we conclude that the object of security deposit is to ensure proper payment of bills.***"

23.3. In **HINDUSTAN ZINC LTD. ETC. ETC. VS. ANDHRA PRADESH**

STATE ELECTRICITY BOARD AND OTHERS^[3], Supreme Court held as under:

"27. It was also contended on behalf of the appellants that the generation of electricity by the Andhra Pradesh Electricity Board is both thermal as well as hydro, the quantity from each source being nearly equal and the entire electricity generated is fed into a common grid, from which it is supplied to all categories of consumers. On this basis, it was argued that the rise in the fuel cost which led to the fuel cost adjustment applicable only to the H.T. consumers was unreasonable and discriminatory since the burden of rise in fuel cost was placed only on the H.T. consumers. ***In our opinion, this argument has no merit. The H.T. consumers, including the power intensive consumers, are known power guzzlers and in power intensive industries, electricity is really a raw material. This category of consumers, therefore, forms a distinct class separate from other consumers like L.T. consumers who are much smaller consumers.*** There is also a rational nexus of this classification with the object sought to be achieved. Moreover, the power intensive consumers have been enjoying the benefit of a concessional tariff for quite some time, which too is a relevant factor to justify this classification. Placing the burden of fuel cost adjustment on these power guzzlers, who had the benefit of concessional tariff for quite some time and have also a better capacity to pay, cannot, therefore, be faulted since the consumption in the power intensive industries accounts for a large quantity. (emphasis supplied)

24. Section 181 vests power in the State Electricity Regulatory Commission to make regulations consistent with the provisions of the Act and the Rules made thereunder. In exercise of such power and in super-cession of the earlier regulations, Regulation No. 3 of 2003 is notified. Having regard to the concern expressed by the distribution licensees that the pre-paid meters for HT consumers are not available, the Commission restrained HT consumers from demanding to provide pre-paid meters, since such meters

with proven technology are not available in the market. Learned judge did not record finding on validity of this regulation and no challenge is made. As noticed above, even a plain reading of Section 47 (5) of the Act, it cannot be said that obligation vests on the distribution licensee to provide electricity without demanding security deposit the moment the HT consumer makes a request for supply of pre-paid meter. It is not in dispute that pre-paid meters are not available in the market. Thus, this regulation only furthers the objective underlying in Section 47(5) of the Act. We see no illegality in demanding security deposit/additional security deposit.

25. Section 47(2) enables the distribution licensee to demand additional security, if the security provided by the consumer is invalid or insufficient. Sub section 3 further vests power in the licensee to stop supply of electricity if the additional amount demanded is not paid. When this provision vests power in the licensee, a demand made by the licensee in terms thereof cannot be held as arbitrary or illegal. As long as pre-paid meters are not installed, it is mandatory for the consumers to pay the security deposit as demanded by the licensee. Therefore, waiving of security deposit merely because a request for provision of HT pre-paid meter is made when no such meters are available does not arise. Such a request is contrary to statutory scheme and liable to be rejected. It is not the case of the petitioners that the amount of deposit demanded is in excess of what is required by the tariff determined by the Regulatory Commission. They cannot insist for supply of electricity without complying with the demand for additional security deposit. Section 47 does not envisage waiver of security deposit nor prescribe alternative mode of providing security, such as bank guarantee. There is no ambiguity in the provision. Thus, there is no scope for 'playing in the joints' to grant the relief of waiver/ reduction of deposit. When the statute vests power in the licensee to demand security deposit and licensee exercises such power and no provision is made for waiver/ reduction / alternative mode of providing security, it is not permissible for this Court, in exercise of equity jurisdiction under Article 226 of the constitution of India, to direct the distribution licensee to dispense with payment of security deposit or to furnish bank guarantee or

reduce the security deposit demanded. Contrary to the statutory mandate, no direction can be issued. When the language of the provision is plain, simple and clear, it is not permissible for the Court to interpret the same in different manner or issue directions contrary to the statutory mandate. No case is made out by petitioners to wave additional security deposit.

26. Both points are answered against the petitioners and in favour of the licensees. Orders of the learned single Judge, directing the distribution licensee to provide pre-paid meters in six months and permitting the petitioners to deposit only half of the amount demanded are not sustainable. The common order made in group of writ petitions, under appeal is set aside. As a consequence, the demand of petitioners to wave additional security deposit has no merit and contrary to statutory prescription. Accordingly, the writ appeals filed by distribution licensees are allowed and the writ appeals filed by HT consumers/petitioners are dismissed. Order accordingly.

Miscellaneous petitions if any pending shall stand closed. Having regard to facts of the case there shall be no order as to costs.

DILIP B. BHOSALE, ACJ

P.NAVEEN RAO, J

Date:19.05.2016
Tvk/kkm

At this stage, in view of the prayer for interim protection,
Mr. J. Ramchander Rao, learned Additional Advocate General for the State of
Telangana and Mr. Krishna Prakash, learned Special Government Pleader

for the State of Andhra Pradesh submit that they shall follow the due procedure and they shall not take any coercive action against the petitioners for a period of six weeks.

Their statement is recorded and accepted.

DILIP B. BHOSALE, ACJ

P.NAVEEN RAO, J

Date:19.05.2016

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**HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND
HON'BLE SRI JUSTICE P.NAVEEN RAO**

WA Nos. 968, 969, 970, 972, 981, 982, 983, 985, 987, 988, 990, 991, 992, 993, 994, 997, 1003, 1004, 1037 of **2015** and WA 361 OF **2016**;

WA Nos. 355, 368, 353, 360, 388, 381, 384, 385, 386, 392, 373, 366, 400, 367, 375, 395, 382, 352, 351, 379, 356, 357, 369, 374, 343, 364, 365, 391, 354, 394, 393, 362, 358, 359, 387, 348, 397, 398, 372, 363, 402, 347, 346, 344, 345, 404, 399, 340, 341, 401, 350, 342, 376, 396, 383, 349, 370, 377, 378, 403, 371, 389, 390, 388 of **2016** and WA 193 of **2016**

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Date:19.05.2016

Tvk/kkm

[\[1\]](#) AIR 2012 P&H 124

[\[2\]](#) 1993 Supp (4) SCC 136

[\[3\]](#) (1991) 3 SCC 299