IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.13141 of 2011

M/s Axles India Limited
represented by its President-Operations
Registered Office at 21, Pattullos Road
Chennai 600 002 .. Petitioner

-vs-

1. Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)
represented by its Director
144, Anna Salai
Chennai 600 002

2. The Superintending Engineer
Tiruvannamalai Electricity Distribution Circle
TANGEDCO (formerly TNEB)
Tiruvannamalai 606 604 .. Respondents

Petition under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent culminating in his impugned communication bearing Lr.No.SE/TEDC/AO/REV/AS/A1/F.BOAB/D.401-1/11 dated 26.05.2011, quash the same and direct the respondents not to proceed to levy, demand and/or collect the sum of Rs.44,31,521/- (Rupees Forty Four Lakhs Thirty One Thousand Five Hundred and Twenty One only) or any other amount from the petitioner on the ground that the meter provided to HT SC No.27 was defective, without referring the issue to an independent accredited laboratory by following the procedure prescribed by the Tamil Nadu Electricity Regulatory Commission in its order dated 08.09.2009 in MPM No.41/3, the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 and National Electricity Policy.

For Petitioner :: Mr.N.L.Rajah
Senior Counsel for
Mr.Arun Anbumani

For Respondents :: Mr.M.Varun Kumar
Standing Counsel

ORDER

M/s Axles India Limited represented by its President-Operations, being aggrieved by the impugned communication bearing Lr.No.SE/TEDC/AO/REV/AS/A1/F.BOAB/D.401-1/11 dated 26.05.2011 issued by the Superintending Engineer, Tiruvannamalai Electricity Distribution Circle calling upon the petitioner to pay a sum of Rs.44,31,521/- towards non adoption of correct average consumption/short levy during metering set defective period on or before 10.6.2011, on the ground that the petitioner had consumed more than 300000 units before 11/2008 and after 03/2010, has come to this Court questioning the correctness of the impugned order.

2. Mr.N.L.Rajah, learned Senior Counsel for the petitioner argued that in February 2010, the staff of the second respondent inspected the petitioner factory and they also decided that on account of defect in the metering set, the full extent of electricity consumed by the petitioner factory was not recorded in the meter. Resultantly, the Superintending Engineer, Tiruvannamalai Electricity Distribution Circle, the second respondent, in his letter dated 15.4.2010, made a demand of Rs.9,67,649/- towards short consumption, citing a reason that there was a metering set defect. Subsequently, the petitioner, by letter dated 28.5.2010, pointing out that the production volume of the plant was very low from November, 2008 to February, 2010 due to the global recession, stated that their power consumption went down naturally during that period and that there was no metering set defect. In the said letter, the petitioner also made it clear that the factory had declared leave for 15 days in January 2009 due to nil requirements from their customers and they had produced only 909 axle housings against the installed capacity of 9500 axle housings in the month of January, 2009 and the production figures submitted to the Central Excise department during 2008-09 was also enclosed along with the petitioner's letter to show that the petitioner factory had produced only 909 axle housings against the installed capacity of 9500 axle housings. But the second respondent herein, without even considering the said letter dated 28.5.2010, wrongly included the said amount in the next bill of the petitioner. As the petitioner is a running unit, they were constrained to make the payment in order to avoid disconnection.

3. When the matter stood as above, again the petitioner was surprised to receive a letter dated 22.11.2010 demanding a further sum of Rs.44,31,521/- towards non adoption of correct average consumption during the meter set defect period. The communication also indicated that the total short levy was

Rs.53,99,170/- and after deducting a sum of Rs.9,67,649/- already calculated and collected, a sum of Rs.44,31,521/- was shown as again short levy. In view of the above, the petitioner made detailed representations dated 6.12.2010 and 23.2.2011, but there was no response whatsoever from the respondent. Again finding no response, the petitioner once again sent another detailed reply on 11.5.2011. In spite of the repeated representations, the respondents have not come forward to reconsider the request of the petitioner for obtaining a report on the meter set whether it is defective or not. Adding further, Mr.Rajah also submitted that the entire premise on which the second respondent has issued the impugned order shows that the meter fixed in the petitioner factory was defective, but this was stoutly denied by the petitioner giving various reasons. When the petitioner has objected the foundation on which the second respondent issued the impugned order calling upon the petitioner to pay a huge sum of Rs.44,31,521/- on the ground that the meter was defective, the respondents should have followed the procedure for determining the quantity of electricity supplied under Section 11(2) of the Tamil Nadu Electricity Supply Code, which has not been done. Again referring to Regulation 7(9) of the Supply Code, he has contended that the disputed energy meter should have been sent for special test and the special test for the disputed energy meters including the suspected/defective meters shall be carried out in the third party testing laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories (NABL) and till such time the Third Party Meter Testing Arrangement is established, the licensee shall have the special test conducted by the Chief Electrical Inspector to the Government of Tamil Nadu. But the said regulation has been completely overlooked. Moreover, placing reliance on Regulation 7(9) of the Supply Code, the learned senior counsel submitted that when the petitioner had submitted repeated representations attacking the approach adopted by the respondents on various grounds cited by the petitioner that the production volume of their plant was very low from November, 2008 to February, 2010 due to global recession, consequently their factory also declared leave for 15 days in January, 2009 due to zero requirement from their customers and they have also produced only 909 axle housings against the installed capacity of 9500 axle housings in the month of January 2009 and that a new meter was also installed on 25.4.2009 introducing five slot billing, the respondents ought to have come forward to comply with Regulation 7(9) of the Tamil Nadu Electricity Supply Code, which makes it clear that if the consumer considers that the meter is defective, he may apply to the licensee to have a special test carried out on the meters and the cost of such a test shall be borne by the licensee or the consumer according as the meter is found defective or correct as a result of such a test. Without complying with Regulation 7(9) of the Tamil Nadu Electricity Supply Code, the impugned order, without even calling for any explanation whatsoever, ought not to have been issued. Therefore, the impugned proceeding is liable to be quashed.

4. A detailed counter affidavit has been filed by the respondents. Mr.M.Varun Kumar, learned standing counsel for the respondents, supporting the impugned order, restating the stand taken in the counter affidavit, submitted that the internal audit party of TANGEDCO (erstwhile TNEB) has audited the file relating to the petitioner factory and raised objection that there is no provision to calculate the shortfall and insisted to levy the shortfall as per clause 11 of the TNERC. Adding further, he has stated that when the check meter arrangement was provided after erecting and testing of new 11 KV metering set with revised 5 slot time of day meter at HTSC No.27 of M/s Axles India Ltd., Cheyyar by MRT section of TANGEDCO, after charging the new check meter set the power consumption and instant parameters were taken for ensuring accurate recording of both main meter and check meter. Since the main metering set was declared as defective, after recording the check metering test values with the main metering set values, the energy recorded from both the meters were not equal, the meter defect was confirmed. Consequently, the internal audit party of TANGEDCO also has audited the file relating to the petitioner factory and they also raised objection that there was no provision for calculating the shortfall narrated therein. In view of the fact that the defective meter was confirmed as mentioned above, the BOAB audit has arrived at the average consumption of 3,65,200 units per month based on the consumptions recorded for July 2008, August 2008, September 2008, October 2008 and the short levy has been arrived at Rs.53,99,170/- for the period from November, 2008 to January, 2010. After adjusting the amount of Rs.9,67,649/- already collected, the balance amount of Rs.44,31,521/- has been raised as the demand. Continuing his arguments, the learned standing counsel for the respondents also stated that when the consumer considers that the meter is defective, they should have applied to the licensee to have a special test carried out on the meter at any time. But till date, the petitioner has not made any request.

5. At this stage, in reply, the learned senior counsel for the petitioner, drawing the notice of this Court to their own representation dated 11.5.2011, stated that they have rightly made a request to provide the facility for third party testing of meter, therefore, it is not open to the respondents to say that the petitioner has not even made any request as per Regulation 7(9) of the Supply Code. Even after the written request made by the petitioner, the second respondent has proceeded arbitrarily calling upon the petitioner to pay a huge

sum of Rs.44,31,521/- on the ground that there was a defective meter without even complying with the mandatory conditions mentioned in the Code. Hence, the impugned order cannot be espoused by this Court.

6. I also fully agree with the arguments advanced by Mr.N.L.Rajah, learned senior counsel for the petitioner. Firstly, when the second respondent issued the impugned proceeding calling upon the petitioner to pay a sum of Rs.44,31,521/- citing a reason that the meter installed in the petitioner factory was defective, this Court has to see whether the conditions mentioned in Regulation 7(9) of the Code have been followed. In this context, it is pertinent to extract Regulation 7(9) of the Tamil Nadu Electricity Supply Code, which reads as follows:-

> "7(9) If the consumer considers that the meter is defective, he may apply to the licensee to have a special test carried out on the meters at any time and the cost of such a test shall be borne by the licensee or the consumer according as the meter is found defective or correct as a result of such a test. The aforementioned special test for the disputed energy meters including the suspected/defective meters shall be carried out in the third party testing laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories (NABL) and till such time the Third Party Meter Testing Arrangement is established, the licensee shall have the special test conducted by the Chief Electrical Inspector to the Government of Tamil Nadu. The meter shall be deemed to be correct if the limits of error do not exceed those laid down in the relevant rules made under the Act. The consumer may also be allowed to install a check meter after recalibration by the licensee. Such check meter shall be of high quality, high precision and high accuracy and sealed by the licensee. Whenever the licensee's meter becomes defective, the check meter reading may be taken for billing."

7. It is the admitted case of both parties that Regulation 7(9) of the Tamil Nadu Electricity Supply Code mandates that if the consumer considers that the meter is defective, he may apply to the licensee to have a special test carried out on the meters at any time and the cost of such a test shall be borne by the

licensee or the consumer, as the meter is found defective as a result of such a test, the special test for the disputed energy meters including the suspected/defective meters shall be carried out in the third party testing laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories (NABL). When this is the legal position, after the second respondent raised the demand citing a reason that the meter set installed in the petitioner factory was defective, the petitioner also in their repeated representations dated 6.12.2010 and 11.5.2011 have made it clear that a new meter was installed on April 25, 2009 while introducing 5 slot billing and the metering set fault may have occurred in a short span, accordingly requested the respondents to withdraw the amount towards non adoption of correct average consumption. In yet another representation dated 11.5.2011, they have also made it clear that if the electricity board contends that there is a defect in the meter, it must provide a facility for third party testing of meter. Therefore, when the petitioner also came forward openly asking the respondent-TANGEDCO to provide the facility for third party testing of meter to find out whether it is defective or not, the respondents are duty bound to follow Regulation 7(9) of the Tamil Nadu Electricity Supply Code mentioned supra. Admittedly, in the present case, the respondents have not complied with and followed Regulation 7(9) of the Code. Secondly, when there is no finding on the meter installed in the petitioner factory that it is defective, the impugned demand made by the respondents against the petitioner to pay the amount mentioned therein on the ground that there is a defective meter, is wholly unwarranted. Therefore, the impugned order is set aside and the writ petition stands allowed. However, as the defective meter has been removed from the petitioner factory by the respondents in sealed condition, it is open to them to follow Regulation 7(9) of the Tamil Nadu Electricity Supply Code. No costs.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

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To

1. The Director
Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)
144, Anna Salai
Chennai 600 002

2. The Superintending Engineer
Tiruvannamalai Electricity Distribution Circle
TANGEDCO (formerly TNEB)
Tiruvannamalai 606 604

+1cc to Mr.Arun Anbumani, Advocate SR.No.77487

+1cc to Mr.M.Varun Kumar, Advocate SR.No.77815

W.P.No.13141 of 2011

GP(CO)
GMY(16/10/2019)