

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.37245 of 2007

1.A.Thambiran (Deceased)

2.S.Jothi
3.T.Selvaraj
4.T.Mageshwari
5.T.Shanthi

(P2 to P5 substituted as legal heirs of the deceased first petitioner, as per the order of this Court dated 12.02.2014 in MP.No.1/2013) .. Petitioners

Vs

1.The Assistant Engineer (TNEB)
Kondithope /CEDC/Central
No.23, Malayappan Street,
Chennai - 600 001.

2.The Executive Engineer (TNEB)
Office of the Executive Engineer,
Egmore (CEDC/Central)
No.128, Bricklin Road,
Chennai - 600 007.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus to call for the records relating to the notice of additional revised demand of Rs.4,986/- issued by the first respondent on 17.03.2007 and 31.08.2007 and the impugned order passed by the second respondent on 22.11.2007 and to quash the same and consequently, direct the 1st and 2nd respondents to restore the service connection no.108.26.240 and cost.

For Petitioners	: Mr.T.Selvaraj
For Respondents	: Mr.P.R.Dhilipkumar

ORDER

This writ petition has been filed by the petitioners to quash the notices dated 17.03.2007 and 31.08.2007 raising

additional revised demand of Rs.4,986/- by the first respondent and also the order dated 22.11.2007 passed by the second respondent and consequently, direct the respondents to restore the service connection no.108-26-240.

2.It is the case of the petitioners that they are the owners of the premises bearing Door No.57, Mulla Sahib Street, Sowcarpet, Chennai-600 079. The petitioners have been in occupation of the first floor of the premises and consuming electricity energy through service connection no.108-26-614. During the month of May 2005, they decided to occupy the second floor of the same premises additionally and the said portion was provided electricity through service connection no.108.26.240. However, due to improper and non-supply of electricity energy, the petitioners have not occupied the said portion, but they made complaints to the first respondent to replace the defective meter. On 21.12.2005, the defective meter was replaced by a new one and the petitioners were consuming electricity energy through the same. While so, the first respondent raised an additional demand to the tune of Rs.4,986/- in respect of the service connection no.108.26.240, for the period from 10/2004 to 06/2006 on 17.03.2007, to which, the first petitioner sent his reply on 21.03.2007 stating that the meter was working properly and they occupied the portion, after repairing a portion in the first floor of the premises and hence, the consumption of electricity was less from 12/2005 to 6/2006. However, without considering the said reply, the first respondent once again, sent the revised demand on 31.08.2007 and ultimately, disconnected the electricity service connection no.108.26.240 on 27.09.2007, due to non-payment of the said revised demand by the petitioners. The second respondent also confirmed the same vide his letter dated 04.12.2007. Aggrieved against the orders so passed by the respondents 1 and 2, the first petitioner has filed the present writ petition. During the pendency of this writ petition, the first petitioner died and his legal heirs were substituted as the petitioners 2 to 5, as per the order of this Court dated 12.02.2014 in MP.No.1/2013.

3.Upon notice, the first respondent filed a detailed counter affidavit, inter alia stating that the petitioners being consumers, are bound by the provisions contained in the Tamil Nadu Electricity Supply Code, 2004 and as such, they are estopped to dispute the same. According to the first respondent, though there was a defect in the meter, electricity supply was available, but the defective meter did not record the consumption of energy and the petitioners have used the energy during the meter defective period without recording in the meter. Hence, in terms of the provisions contained in Regulation 11 of the Tamil Nadu Electricity Supply Code, 2004, by taking the average consumption between 6/2004 and 8/2004 (during the

period the meter was functioning correctly), the revision of bill was worked out and the revision of charges for the past period, was ordered. It is further averred in paragraph 5 of the counter affidavit that Section 26(6) of the Indian Electricity Act, 1910 has no application inasmuch as the 1910 Act was repealed and the Electricity Act, 2003 came into force on 10.06.2003. Thus, the impugned notices issued by the first respondent are right and valid in law.

4. The learned counsel for the petitioners submitted that the first respondent, before revising the bill, ought to have followed the statutory provisions. According to him, the impugned notices have been issued in contravention of Section 26 (6) of the Indian Electricity Act by not referring the meter to the Electrical Inspector and making revision of charges beyond the statutory period of six months. The said action taken by the first respondent was also confirmed by the second respondent vide order dated 22.11.2007. Hence, the impugned notices as well as the consequential order of the second respondent are arbitrary, illegal and contrary to law. In support of his submissions, the learned counsel relied on the decision of this Court in *A.A.Mohd.Raffi v. Tamil Nadu Electricity Board* rep.by its Chairman, Chennai and two others [2000 (III) CTC 137], wherein, at paragraphs 6 to 9, it is observed and held as under:

"6. The learned, counsel for the petitioner has also relied on. In a similar circumstance. Justice S.Rajendra Babu (His Lordship as he then was) while considering Section 26(6) of Indian Electricity Act, has held that in respect of faulty recording of meters, the Board cannot raise bill without approaching Electrical Inspector under Section 26 (6) and getting meters tested. The same view has been reiterated by the learned Single Judge of the Delhi High Court in AIR 1987 Del.219.

7. It is also relevant to refer Clause 17.10 of Terms and Conditions of Supply of Electricity. The said clause is as follows:

"17.10. Where supply to the consumer is given without a meter or where the meter fixed is found defective or to have ceased to function and no theft of energy or violation is suspected, the quantity of electricity supplied during the period when the meter was not installed or the meter installed was defective, will be assessed as mentioned hereunder:

The quantity of electricity, supplied during the period in question will be determined by taking the average of the

electricity supplied during the preceding four months in respect of High Tension service connections and two assessment periods (four months) in respect of Low Tension service connections, provided that the conditions in regard to use of electricity during the said four months 2/3 two assessment periods were not different from those which prevailed, during the period in question. In respect of High. Tension service connections, where the meter fixed for measuring the maximum demand becomes defective, the maximum demand will be assessed by computation on the basis of the average of the recorded demand during the previous four months.

When the meter becomes defective immediately after the service connection is effected, the quantum of electricity supplied during the period in question is to be determined by taking the average of the electricity supplied during the succeeding two assessment periods, provided the conditions in regard to the use of electricity in respect of such Low Tension service connections are not different,"

Eventhough in the counter filed by the second respondent there is a reference to Clause 17.10 of Terms and Conditions of Supply of Electricity, it is not reflected in the order impugned whether the third respondent had followed any such procedure. It is settled law that it is not open to the respondents to improve their case by furnishing certain details in the counter affidavit.

8. I am satisfied that before passing the impugned order, the third respondent neither followed section 26(6) of the Indian Electricity Act nor complied with Clause 17.10 of Terms and Conditions of Supply of Electricity. I have already stated that before revising the bill or claiming enhanced amount with regard to defective meter, the respondents have to follow the above referred statutory procedures, 'In the absence of any such details in the order impugned, the order of the third respondent, dated 8.6.1996, is liable to be quashed.

9. In the light of what is stated above, the impugned order of the third respondent, dated 8.6.1996, is quashed and the writ petition is allowed.

The third respondent herein is permitted to proceed afresh and pass appropriate orders as mentioned above, It is stated by the learned counsel for the petitioner that he had deposited a sum of Rs.26,773 as security deposit at the time when he obtained Service Connection SC No. 56. According to him, the said amount is still lying with the respondents. In such circumstances, without prejudice to the stand of the petitioner, he is directed to deposit a sum of Rs.40,000 (Rupees forty thousand only) within a period of three weeks from the date of receipt of a copy of this order, before the third respondent. On such deposit being made, it is open to the third respondent to proceed and pass appropriate orders as stated above. The writ petition is allowed to the extent mentioned above. No costs. Consequently, all the connected W.M.Ps. are closed."

Thus, the learned counsel sought to quash the impugned notices issued by the first respondent as well as the order of the second respondent.

5.The learned counsel for the respondents reiterated the averments as were made in the counter affidavit filed by the first respondent.

6.Heard both sides and perused the records.

7.The challenge made in this writ petition by the petitioners is to the revised demand of the first respondent to the tune of Rs.4,986/- representing the electricity consumption charges for the meter defective period i.e., from 10/2004 to 06/2006 through service connection no.108.26.240.

8.Admittedly, the meter relating to the service connection in question, was found defective and the same was replaced only on 21.12.2005, after making repeated representations by the petitioners.

9.It is the specific case of the petitioners that due to non-supply of electricity, they have not occupied the disputed portion and they have been in possession of the same, after repairing the portion in the first floor of the premises. Further, the first respondent, before making revision of bill for the defective meter period, ought to have followed the statutory provisions as contemplated under Section 26(6) of the Indian Electricity Act, 1910, whereas, according to the respondents, Section 26(6) of the Indian Electricity Act, 1910, has no application inasmuch as the 1910 Act was repealed and the Electricity Act, 2003 came into force with effect from 10.06.2003 and hence, the impugned demand raised by the first

respondent is perfectly valid in law. Such stand so taken by the respondents was seriously refuted by the learned counsel for the petitioners, in his reply to the arguments made by the learned counsel for the respondents.

10. Irrespective of the submissions made by the parties, this Court, in order to give quietus to the issue involved herein and also as agreed by the learned counsel on either side, is inclined to set aside the impugned notices as well as the consequential order issued by the respective respondents and remand the matter to the respondents for fresh consideration.

11. Accordingly, the notices dated 17.03.2007 and 31.08.2007 issued by the first respondent and order dated 22.11.2007 passed by the second respondent are set aside. The matter is remanded back to the respondents for passing a fresh order, on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioners. Such an exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

12. This writ petition stands allowed to the extent as indicated above. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Engineer (TNEB)
Kondithope /CEDC/Central
No.23, Malayappan Street, Chennai - 600 001.

2. The Executive Engineer (TNEB)
Office of the Executive Engineer,
Egmore (CEDC/Central)
No.128, Bricklin Road, Chennai - 600 007.

+1 cc to M/s.T.Selvaraj, Advocate, Sr.No. 1745

+1 cc to M/s.P.R.Dhilipkumar, Advocate, Sr.No. 2090

WP.No.37245 of 2007

CSL/30.04.2019