

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No. 23408 of 2009

Tamil Nadu AIR Products Pvt. Ltd.,
rep. by its Managing Director,
118, V Cross Street,
Collectorate Colony,
Aminjikarai,
Chennai-29 ...Petitioner

vs

1.The Superintending Engineer,
MEDC/North, Tamil Nadu Electricity Board,
141,Anna Salai, Chennai-2.
2.The Chief Engineer, Distribution,
Chennai-Region,
Tamil Nadu Electricity Board,
802, Anna Salai, Chennai-2 .. Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of
Certiorari, calling for the records on files of the first
respondent in his proceedings in
Lr.No.SE/CEDC/N/AEE/GL/F/D1954/09 dated 27.10.2009 and
quash the same as arbitrary and illegal.

For Petitioner : Mr.T.V.Lakshmanan

For Respondents : Mr.S.K.Rameshwar

for EB

O R D E R

The prayer sought for herein in this Writ Petition is
for issuance of a Writ of Certiorari, calling for the
records on file of the first respondent in his proceedings
in Lr.No. /CEDC/N/AEE/GL/F/D1954/09 dated 27.10.2009 and
quash the same as arbitrary and illegal.

2.According to the petitioner, he was provided with a

service connection by Tamil Nadu Electricity Board as per H.T.A/C.1403 and they have been paying the electricity charges in accordance with the bill raised by the respondents.

3. While so, on 14.03.1993, the officials of the respondents checked the electricity meter and it was found that 'R' phase of CT secondary lead was found disconnected. Accordingly, proceedings were initiated by the Board whereby, the consumption charges were revised for the period from October, 1990 to February, 1993 and the petitioner was directed to pay a sum of Rs. 9,03,665/-. The said claim was disputed by the petitioner and they requested for revision of the levy. However, the first respondent refused to revise the bill and accordingly, the petitioner approached the second respondent and the matter was taken up by the second respondent and enquiry was conducted in the presence of the petitioner as well as officials of the respondents.

4. During the time of enquiry, the petitioner submitted that the revision of bill on the basis of consumption pattern was totally wrong as the meter was periodically checked by the electricity officials on several dates. It was also pointed out that on 09.11.1990, the defect in the off scale of the meter was rectified and on 11.12.1991, the meter was removed and replaced by a tested meter on 08.05.1992, again the defect in the off scale was rectified and finally on 17.12.1992, the meter was again replaced by a tested meter by Assistant Engineer of the Board. In such circumstances, the petitioner contended that the revision of bill could only be for the period from 17.12.1990 to 04.03.1993 and the earlier period cannot be taken into consideration for revising the bill. However, the second respondent confirmed the order of the first respondent and aggrieved by the same, the petitioner has filed the present writ petition before this Court in W.P.No.17834 of 1999 on 26.09.2008.

5. As per the direction of this Court in W.P.No.17834 of 1999 dated 26.09.2008, the impugned order dated 21.10.1999 was quashed and the matter was remanded back to the first respondent for fresh consideration in accordance with law.

6. As per the direction of this Court, the Electricity Officials Conducted enquiry and passed an impugned order dated 27.10.2009 and demanded the amount for the period of

10/90 to 3/93, concerning the defective meter. Aggrieved against the same, the present writ petition is filed.

7. The learned counsel for the petitioner prayed this Court to quash the impugned order passed by the first respondent dated 27.10.2009 and relied on the relevant judgment in W.P.No.16251 of 1998 in the case of ''Usman Sharif Vs. The Superintending Engineer, CEDC/N and others'', as follows:-

10.Mr.Justice P.Sathasivam, as he then was, in A.A. Mohd.Rafi V.Tamil Nadu Electricity Board and Ors.2000 3 M.L.J.293 while referring to the above said judgments has held that the procedure provided under Section 26(6) of the Electricity Act, 1910 has to be followed in cases where there is difference or dispute with reference to the Meter referred to in Section 26(1). This Court has also considered Clause 17(10) of the Terms and Conditions of Supply of Electricity and ultimately held that if the provision under Section 26(6) is not followed, the Board has no right or Jurisdiction to issue any supplementary bill.

11.On the established judicial precedent on this aspect especially with regard to the finding that the amount to be paid in case of dispute regarding the meter reading and applying the same to the facts and circumstance of the present case, it is patent that the third respondent has not at all followed the provisions contemplated under Section 26(6) of the Act. It is relevant to point out, that admittedly it is not a case of power theft and it is the case of dispute regarding meter reading and in such circumstance, the respondents have no other option than to follow the provision contained under Section 26(6) of the Electricity Act, 1910 and in the absence of following of the said provision, I am of the view that the impugned order of the third respondent is not sustainable in law. In view of the same, the impugned order of the third respondent is set aside and the writ petition stands allowed.

8.The learned counsel appearing on behalf of the respondents submitted that the consumption recorded in the meter on earlier occasion shows excess consumption of power

and it was only on account of the defective meter that, such a low consumption was recorded and as such, the respondents were right in assessing the electricity bill on the basis of the consumption pattern.

9. Section 26(6) of the Indian Electricity Act, 1910 (hereinafter referred to as "the Act") provides that in case any difference or dispute arises as to whether the meter fixed by the department was correct or not, the matter shall be decided upon the application of either party, by an Electrical Inspector and where the meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector have been correct. Therefore it is evident that a particular procedure is contemplated under Section 26(6) of the Act in the event of either the petitioner or the respondents dispute the functioning of the meter.

10. There was nothing to indicate in the impugned order to the effect that the meter was subjected to the examination by the Electrical Inspector and on the basis of the test report furnished by the Electrical Inspector the proposed levy was made. As per the impugned order, the respondents have sought to recover money for the entire period from October, 1990 to February, 1993 which was not permissible in law.

11. In view of the above, the impugned order dated 27.10.2009 is set aside and the matter is remanded back to the concerned authority for fresh consideration and passing of appropriate orders in accordance with law. No costs.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

tta
To

1. The Superintending Engineer,
MEDC/North, Tamil Nadu Electricity Board,
141, Anna Salai, Chennai-2.

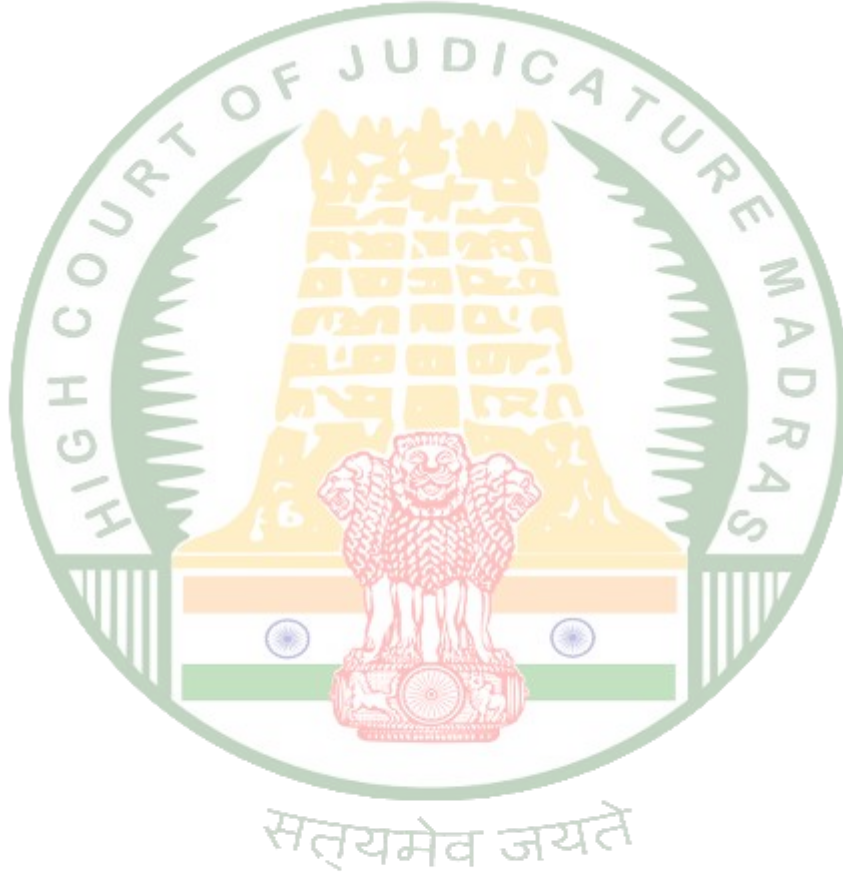
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2.The Chief Engineer, Distribution,
Chennai-Region,
Tamil Nadu Electricity Board,
802, Anna Salai, Chennai-2

+1cc to Mr.T.V.Lakshmanan , Advocate SR.No. 60056
+1cc to Mr.P.R.Dhilip kumar , Advocate SR.No. 60045

W.P.No. 23408 of 2009

A.SK(18/09/2019)



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