IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P. 5571 of 2011

Sri Akila Castings,
rep. by its Proprietor,
P.Praveen Prabhu,
Super B-4, Guindy Industrial Estate,
Guindy,
Chennai-32. ... Petitioner

Vs

1. Superintending Engineer,
TANGEDCO,
Chingleput Distribution Circle,
Chingleput-603 001.

2. Additional Divisional Engineer,
TNEB,
Maraimalainagar-603 209. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondent culminating in Order LR. No.SE/TANGEDCO/CGL/DFC/RCS/AS/F.HT.FC No.150/2011 dated 26.02.2011 for HT SC No.150 standing in the name of the petitioner quash the same and direct the respondent not to proceed to collect any amount from the petitioner on the ground that the meter provided for HT SC No.150 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 M.P.N.No.41/3 the Central Electricity Authority (Installation & Operation of meters) Regulation 2006 and National Electricity Policy.

For Petitioner : Mr.N.L.Rajah, Sr. Adv. for M/s.E.Jayasankar

For Respondents : Mr.S.K.Rameshuwar, Standing Counsel

O R D E R

This Writ Petition has been filed challenging the impugned order of the 1st respondent dated 26.02.2011 for HT SC No.150 standing in the name of the petitioner, quash the same and direct the respondents not to proceed to collect any amount from the petitioner on the ground that the meter provided for HT SC No.150 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 M.P.N.No.41/3 the Central Electricity Authority (Installation & Operation of meters) Regulation 2008 and National Electricity Policy.

2. The case of the petitioner is that the petitioner was a foundry and has the electricity connection with the sanctioned demand of 700 KVA. During 2007, the petitioner had a labour problem in their foundry and operations were closed from 19th February to 26th March. On account of this, the energy consumption during this period was February 2007 - 105272 units and March 2007 - 14272 units. The petitioner's average monthly consumption is 175822 units. While being so, the petitioner has lodged a complaint with the 2nd respondent on 03.04.2007 bringing to his notice that the EB structure jumper burnt off. The petitioner has also requested the 2nd respondent to switch off the board for one hour to enable the petitioner to rectify the default. The said problem was a short term problem, which was immediately rectified. However, on 14.03.2008, the petitioner was surprised to receive a communication from the 1st respondent that during the audit of the petitioner high tension service account for the period from 2006 to 2007, a sum of Rs.8,49,293/- as shortfall due to short levy of average has been noticed. The petitioner was informed that the above amount will be included in March 2008 current consumption bill annexing the AG audit slip. Immediately thereafter, the petitioner has sent a detailed reply dated 22.03.2008 and explained the above factual position to the 1st respondent. Even thereafter, the 1st respondent has demanded to pay the above said amount. Against which, the present Writ Petition has been filed by the petitioner.

3. Mr.N.L.Rajah, learned Senior Counsel appearing for the petitioner would submit that though the impugned demand disclosed that based on the defective meter, the average shortfall amount was demanded from February 2007 and March 2007. However, prior to that, no notice was issued to the petitioner to raise his objections. Without following the due process of law, the impugned order was passed based on the audit objection, which is unsustainable one. Even the MRT Wing inspected the property and found that there was a defective meter, they have to follow the procedures Central Electricity Authority

Regulation and Tamil Nadu Electricity Regulatory Commission Supply Code, but, without following the procedures contemplated under the Regulation, the 1st respondent is demanding the amount based on the audit objection.

4. The learned Senior Counsel appearing for the petitioner would also submit that when the meter was defective, the said meter ought to have been sent to a third party testing laboratory for appropriate test. This has been mandated by the Tamil Nadu Electricity Regulatory Commission in its order dated 08.09.2009 in M.P.No.41/3 the Central Electricity Authority (Installation and Operation of Meters) Regulation, 2006 and the National Electricity Policy. But, this was not done in the petitioner's case. Hence, the failure to do so renders the entire action illegal and unsustainable. Except the self-serving statement of respondents, there is no admissible evidence to establish that the meter was in fact defective.

5. Mr.S.K.Rameshuwar, learned Standing Counsel appearing for the respondents Board would submit that as per the Act, there is an alternative remedy available to the petitioner. The petitioner has to approach the Consumer Grievances redressal Forum constituted under the Electricity Act, 2003. As per clause 18 of the Tamil Nadu Electricity Supply Code, 2004 in respect of the errors in billing or meter defective, the consumer has to approach the Forum to redress his grievance. Without approaching the appropriate authority, filing the Writ Petition before this Court, which is unsustainable one. Accordingly, he prayed to dismiss the Writ Petition.

6. On perusal of records and on perusal of the impugned order dated 26.02.2011, it is seen that the impugned demand was raised by the respondents based on the audit enquiry No.4/2006-2007. However, the audit department has pointed out that during the audit of the petitioner's HT Service accounts for the period from 2006-2007, a sum of Rs.7,00,440/- vide audit enquiry No.4 is due in view of non-adoption of average billing during meter defective period. Accordingly, the respondents Board has demanded the shortfall amount of Rs.7,00,440/- by including CC Bill No.02/2011. But, the said demand order discloses that there is a defective meter in the particular period, for which, the audit department has made objections, thereby the respondents demanded the said amount. Further, if the meter is defective, there is a procedure contemplated under the Central Electricity Authority Regulation and Tamil Nadu Electricity Regulatory Commission Supply Code. In the present case, the procedure contemplated under the said Regulation is not followed. Hence, the impugned demand order was passed based on the audit objections without following due process of law and the same is non-est in law. Therefore, I am inclined to interfere with the

order passed by 1st respondent in LR. No.SE/TANGEDCO/CGL/DFC/RCS/AS/F.HT.FC. No.150/2011, dated 26.02.2011 and the same is set aside and this Court also remanded the matter back to the respondents Board to proceed with the matter in accordance with law.

7. Accordingly, the present Writ Petition stands allowed with the above terms. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

rpp

To

1. The Superintending Engineer,
TANGEDCO,
Chingleput Distribution Circle,
Chingleput-603 001.

2. The Additional Divisional Engineer,
TNEB,
Maraimalainagar-603 209.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+1cc to Mr.E.Jayasankar, Advocate, S.R.No. 74014
+1cc to Mr.S.K.Rameshuwar, Advocate, S.R.No. 73010

W.P. 5571 of 2011

BR(CO)
GN(04/10/2019)