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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. (MD)No.17396 of 2020

and W.M.P. (MD) No.14533 of 2020

(Through Video Conference)

Ranee Paradise Theatre
Thanjavur,
Rep. by its Lease Holder,
Mani V.Shanthavel

... Petitioner

Vs

1.The Superintending Engineer,
Tamil Nadu Generation and Distribution Corporation,
1 Vallam Road, Thanjavur.

2. The Executive Engineer,
Tamil Nadu Generation and Distribution Corporation,
Court Road Junction,
Thanjavur.

3. The Assistant Engineer,
Tamil Nadu Generation and Distribution Corporation,
Court Road Junction,
Thanjavur.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned demand made by the 3rd respondent in his letter dated 23.07.2019, letter No.267 dated 21.10.2020 and consequently, confirming demand issued by the 2nd respondent in his proceedings No.615/2020 dated 16.11.2020 and quash the same and consequently directing the respondents to restore the Electricity Service Connection bearing No.471-001-532 in respect of Ranee Paradise Theatre situated at Thanjavur.

For Petitioner : Mr.C.Jeganthan

For Respondents : Ms.Parameswari
for Mr.S.M.S.Johnny Basha,
Standing counsel



O R D E R

This writ petition has been filed challenging the impugned demands made by the third respondent by his letters dated 23.07.2019 and 21.10.2020, which were consequently confirmed by the second respondent in the impugned proceedings No.615 of 2020, dated 16.11.2020 and the petitioner has also sought for a consequential direction to the respondents to restore the electricity service connection by the petitioner bearing No.471-001-532 in respect of Ranee Paradise Theatre situated at Thanjavur.

2. Ms.Parameswari, learned counsel appearing on behalf of Mr.S.M.S.Johnny Basha, learned standing counsel accepts notice for the respondents. By consent of both sides, this writ petition is taken up for final disposal at the stage of admission itself.

3. The case of the petitioner is that, he is running a theatre in the name and style of 'Ranee Paradise Theatre' at Thanjavur, on lease, from Jeyabalan and three others, ever since 2010. According to the petitioner, the impugned demands as well as the impugned proceedings have been issued against the petitioner in violation of Rule 11(2) (4) of the Tamil Nadu Electricity Supply Code.

4. The learned counsel for the petitioner drew the attention of this Court to Rule 11 of the Tamil Nadu Electricity Supply Code, which reads as follows:-

11. Assessment of billing in cases where there is no meter or meter is defective:

.....

(2) The quantity of electricity supplied during the period in questions shall be determined by taking the average of the electricity supplied during the preceding four months in respect of both high tension service connections and low tension service connections, provided that the conditions in regard to use of electricity during the said four months were not different from those which prevailed during the period in question.

.....

(4) Where 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 four months period after installation of a correct meter, provided the conditions in regard to the use of electricity in respect of such low tension service connection are not different. The consumer shall be charged monthly provisionally for defective period and after



assessment the actual charges will be recovered after adjusting the amount collected provisionally.”

5. After referring to the aforementioned Rules, the learned counsel for the petitioner would submit that, under the impugned order, the demands have been made by the third respondent only based on the average of the meter readings taken during the previous four months and not for the period of four months subsequent to the fixing of the new meter, which is in violation of the aforementioned Rules. However, it is the contention of the learned standing counsel for the respondents that, if aggrieved by the impugned orders, the only remedy available to the petitioner is to file a Statutory Appeal as per the Statutory Provisions contained under the Tamil Nadu Electricity Supply Code and therefore, according to him, the writ petition is not maintainable.

6. Learned counsel for the petitioner has also submitted before this Court that since the procedure contemplated under the aforementioned Rules have been violated by the respondents, the petitioner is entitled to file this writ petition, despite the fact that, there is a Statutory Appellate remedy available under the Tamil Nadu Electricity Supply Code.

7. As seen from the aforementioned Rules, the quantity of electricity supply, during the period in question, shall be determined by taking the average of the electricity supplied during the preceding four months in respect of both High Tension Service connections and Low Tension service connections provided, with the condition in regard to the use of electricity during the said four months, were not different from those which prevailed during the period in question.

8. Sub Rule (4) of Rule 11 also stipulates that, 'where 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 four months period after installation of a correct meter, provided the conditions in regard to the use of electricity in respect of such low tension service connection are not different'. The impugned demands pertains to the period from February 2018 to April 2018. Admittedly, the faulty meter was replaced in the month of May 2018. As seen from the aforementioned Rules, the respondents ought to have taken the average of the meter readings for the preceding four months prior to the installation of the new meter as well as the average meter readings subsequent to the installation of the new meter. However, as seen from the impugned order, the same has not been done and the third respondent has taken only the average



of meter readings for the preceding four months, prior to the installation of the new meter.

9. It is also the contention of the petitioner that the Theatre was not in operation for some time due to strike and therefore, consumption charges demanded by the respondents under the impugned order is excessive. The impugned orders have been passed without hearing the petitioner and without adhering to the procedure contemplated under Rules (2) and (4) of the Tamil Nadu Electricity Supply Code.

10. After giving due consideration to the aforementioned factors, this Court is of the considered view that the impugned demands dated 23.07.2019 as well as 21.10.2020 issued by the third respondent will have to be quashed and the consequential proceedings of the second respondent dated 16.11.2020 will also have to be necessarily quashed.

11. Since the error is apparent from the face of the impugned proceedings, this Court is of the considered view that the writ petition is maintainable and therefore, rejects the contentions of the learned standing counsel that instead of preferring the Statutory Appeal under the Tamil Nadu Electricity Supply Code, the petitioner has filed this writ petition. However, considering the fact that the petitioner has consumed the electricity during the subject period by running his Theatre, he must be put on terms for directing the respondents to consider the matter afresh on merits and in accordance with law.

12. This Court is of the considered view that the petitioner will have to pay 30% of the impugned demand within a period of two weeks from the date of receipt of a copy of this order and only on such payment, the third respondent shall decide the matter afresh on merits and in accordance with law.

13. For the foregoing reasons, the impugned demands dated 23.07.2019 and 21.10.2020 of the third respondent and the consequential proceedings of the second respondent dated 16.11.2020 are hereby quashed on condition that the petitioner pays 30% of the impugned demands to the third respondent within a period of two weeks from the date of receipt of a copy of this order. On such payment, within the stipulated time, the third respondent shall restore the electricity connection to the petitioner and decide the matter afresh and pass final orders on merits and in accordance with law, after giving adequate opportunity to the petitioner to place all his contentions, including granting him the right of personal hearing, within a period of twelve weeks from the date of receipt of a copy of this order.



14. With the aforesaid directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected W.M.P.(MD) No.14533 of 2020 is closed.

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Sd/-

Assistant Registrar (AE)

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Sub Assistant Registrar (CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To:

- 1.The Superintending Engineer,
Tamil Nadu Generation and Distribution Corporation,
1 Vallam Road, Thanjavur.
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Thanjavur.
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Thanjavur.

+1 CC to Mr.C.JEGANATHAN, Advocate (SR-23840[F] dated
03/12/2020)

Order made in
W.P. (MD)No.17396 of 2020
Dated:
02.12.2020

KM (23.12.2020) 5P 5C