IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 19th DAY OF APRIL 2021

THE HON'BLE MS. JUSTICE P.T.ASHA

C.S.No.283 of 2004

TULSYAN NEC Limited, rep
By its Managing Director,
Sanjay Tulsyan
39, Dr.Harikrishna Naidu Street,
Ambattur, Chennai – 600 053

...Plaintiff

Vs

1.The Chairman
Tamil Nadu Electricity Board,
No.800, Anna Salai,
Chennai – 600 002.

2.The Superintending Engineer,
CEDC/West,
Tamil Nadu Electricity Board,
Thirumangalam,
Anna Nagar, Chennai – 600 040

3.The Additional Chief Engineer / Enquiry Officer
CEDC / West
Tamil Nadu Electricity Board,
Thirumangalam SS,
Chennai – 600 040.

... Defendants

Civil Suit filed by the plaintiff praying that this Hon'ble Court may be pleased to pass a judgment and decree in their favour and against the

Defendants:-

(a)for a declaration declaring the demand notice issued by the 3rd defendant by letter No.ACE/CEDC/W/AEE/GL/AE2/F Doc.HTSC 1111/D209/2004 dated 18.02.2004 as illegal, unconstitutional, inoperative.

(b)for a consequential decree for injunction restraining the defendants herein or their men, agents, subordinates, or anyone acting under them from recovering the sum of Rs.3,79,03,901/- from the plaintiff as penalty.

(c) for costs of this suit.

This suit having been heard on 24.02.2021in the presence of Mr.A.R.L.Sundaresan, Senior counsel for Mr.Kandavadivel, Advocates for the plaintiff herein, and Mr.P.H.Aravind Pandian, Additional Advocate General, Assisted by Mr.V.Viswanathan, appearing for the defendants herein and upon reading the plaint filed herein and the other exhibits therein referred to and upon perusing the evidenc adduced herein and having stood over for consideration till this date and coming on this day before this Court for orders in the presence of the said advocates for the parties hereto and this Court having observed that the allegation made against the plaintiff does not come within the category of theft of electricity set out in

Section 135 of the Electricity Act, 2003 or Section 39 of the Indian Electricity Act, 1910 and the instant case would not come within the provisions of Section 126 or 127 of the Act and consequently the suit filed is maintainable. That apart, even assuming that the jurisdiction of the civil Court is barred as on the date of the filing of the instant suit the appellate authority was not even established, and the defendants have not proved the allegations made by them, and

<u>it is ordered and decreed as follows</u>:-

That the demand notice issued by the 3rd defendant by letter No.ACE/CEDC/W/AEE/GL/AE2/F Doc.HTSC 1111/D209/2004 dated 18.02.2004, be and is hereby declared as illegal, unconstitutional and inoperative.

2. That 1. The Chairman, Tamil Nadu Electricity Board, 2.The Superintending Engineer, CEDC/West, 3. The Additional Chief Engineer / Enquiry Officer, CEDC / West, TNEB, Thirumangalam SS, the defendants herein, their men, subordinates or any person claiming through or under them be and are hereby restrained by an order of permanent injunction from recovering the sum of Rs.3,79,03,901/- (Rupees Three Crores Seventy Nine Lakhs Three Thousand and Nine Hundered One only) from the plaintiff herein.

3. That that defendants herein, do pay to the plaintiff herein, the costs of this suit, as and when taxed by the taxing officer of this Court, and noted in the margin thereof.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 19th DAY OF APRIL 2021.

Sd/-

ASSISTANT REGISTRAR (O.S-I)

//Certified to be true copy//
Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

KY

13.05.2021

C.S.No.283 of 2004

DECREE:

DATED : 19.04.2021

THE HON'BLE MS. JUSTICE
P.T.ASHA

FOR APPROVAL: 07/07/2021

APPROVED ON: 15/07/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.02.2021

PRONOUNCED ON : 19.04.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.S.No.283 of 2004

TULSYAN NEC Limited, rep
By its Managing Director,
Sanjay Tulsyan
39, Dr.Harikrishna Naidu Street,
Ambattur, Chennai – 600 053

...Plaintiff

Vs

1.The Chairman
Tamil Nadu Electricity Board,
No.800, Anna Salai,
Chennai – 600 002.

2.The Superintending Engineer,
CEDC/West,
Tamil Nadu Electricity Board,
Thirumangalam,
Anna Nagar, Chennai – 600 040

3.The Additional Chief Engineer / Enquiry Officer
CEDC / West
Tamil Nadu Electricity Board,
Thirumangalam SS,
Chennai – 600 040. ... Defendants

PRAYER: Suit is filed under Order VII, Rule 1 of Civil Procedure

Code r/w Order II Rule 2 of the Original Side Rules

(a)for a declaration declaring the demand notice issued by the 3rd defendant by letter No.ACE/CEDC/W/AEE/GL/AE2/F Doc.HTSC 1111/D209/2004 dated 18.02.2004 as illegal, unconstitutional, inoperative.

(b)for a consequential decree for injunction restraining the defendants herein or their men, agents, subordinates, or anyone acting under them from recovering the sum of Rs.3,79,03,901/- from the plaintiff as penalty.

(c) for costs of this suit.

(d) for such further or other reliefs as this Hon'ble Court may deem fit and proper and render justice.

For Plaintiff	:	Mr. A.R.L.Sundaresan Senior Counsel for Mr.Kandavadivel
For Defendants	:	Mr.P.H.Aravind Pandian AAG Assisted by Mr.V.Viswanathan

JUDGEMENT

The above suit is filed for a declaration that the demand notice issued by the 3rd defendant by their letter dated 18.02.2004 is illegal, unconstitutional, inoperative and for a consequential injunction restraining the defendants, their men, agents, subordinates, or anyone acting under them from recovering a sum of Rs.3,79,03,901/- from the plaintiff as penalty.

2. Plaintiff's case:

2.1. The plaintiff would submit that they are a private limited company established as early as in the year 1963. The plaintiff company was originally known as M/s. National Engineering Company Limited, which name was changed to TULSYAN NEC Limited in the year 2000, which is the present name of the plaintiff company. The plaintiff company consists of two divisions, the Steel division and Synthetics division.

2.2. The Steel division has two units, one in Ambattur, Chennai and the other at Gumudipoondi, Thiruvallur District. The Synthetics division has four units, three of which are at Karnataka and one at Goa. In addition to the above, the plaintiff company also has a Windmill division which has put up 6 windmills. Two of these windmills are in Kanyakumari and four of them are at Coimbatore.

2.3. The plaintiff company had entered into an agreement with the TNEB (as it was then known) to supply energy generated by the windmills to the Board. This supply of energy would be adjusted towards the electricity consumption at the plaintiff's unit at Ambattur.

2.4. It is the case of the plaintiff that on 05.05.1997, the old electricity meter in the Ambattur unit was replaced with a new one. They were replaced with a new electronic meter called "Secure Meter". The service connection number was HT.1111. This meter had several unique features like recording energy consumption every half an hour and it could be stored for 39 days. That apart, the new meter had features to prevent tampering and fraud since it is so calibrated that tampering could be easily detected. It is the contention of the plaintiff that once in 30 days the Official from the Board would come and extract the recordings.

2.5. On 19.12.2002, the Assistant Executive Engineer (Operations and Maintenance), Ambattur, along with other Officials had come to the plaintiff's premises to check the meter. It is also the contention of the plaintiff that the meter was placed in a separate room and the lock to the entrance of this room is sealed. That apart, the key to the lock was with the department. On 19.12.2002, when the Officials had visited the premises, the seal on the PT secondary was found intact. However, the Officials had not commented on the genuineness or otherwise of the seal since they did not have the MRT records. The Officials thereafter sealed the gate lock and left.

2.6. On the next day i.e., 20.12.2002, the Assistant Executive Engineer (Operations and Maintenance), Ambattur, and five others came to the premises and broke the seal. They then checked the MRT seals on the PT Chamber and they opined that the seals were bogus and unauthorised. An FIR was lodged and a case registered against the plaintiff company, its Directors and Managing Directors. On the very same day an Observation Mahazar was prepared and a copy given to the General Manager, RMD, however he had not countersigned the same.

2.7. The plaintiff thereafter filed W.P.No.46795 of 2002 questioning the action of the Electricity Board and a petition for interim stay was filed in W.P.M.P.No.67967 of 2002 . This Court was also pleased to grant an interim stay of the proceedings.

2.8. Meanwhile, the Executive Engineer, O & M, Ambattur had issued a show cause notice to the plaintiff on 28.12.2002. The plaintiff submitted an interim reply and requested the Board to provide them with details so as to enable them to give a detailed reply. However, neither was there response from the Board nor did they deem it fit to provide the requested documents. Reminders were sent on 02.01.2003, 07.01.2003 & 09.01.2003. On 13.01.2003, the Executive Engineer, O & M, Ambattur finally replied that the records as sought for by the plaintiff cannot be issued to them at that stage and the plaintiff was asked to appear for an enquiry on 22.03.2003. The details were not supplied even when the plaintiff was asked to appear for an enquiry.

2.9. Since the plaintiff did not receive the documents they had not attended the enquiry and they had also informed the Executive Engineer, O & M, Ambattur that they had not been provided with the documents as requested by them and therefore the plaintiff had sought for time. However, without granting time, the 3rd defendant proceeded to pass an ex parte assessment order dated 22.03.2003, directing the plaintiff to pay a sum of Rs.3,79,03,901/- and permitted the plaintiff to pay this amount in 15 equal instalments.

2.10. The plaintiff challenged this order in W.P.No.9477 of 2003 and by order dated 27.08.2003, the impugned order was quashed and the 3rd defendant herein was directed to give a proper opportunity to the plaintiff to put forth their contentions and to conduct the enquiry afresh. This Court had also directed the 3rd defendant to supply the plaintiff will all the records. The plaintiff was also asked to deposit a sum of Rs.25,00,000/-. This conditional order was challenged by the plaintiff in W.A.No.3121 of 2003 and ultimately the Bench allowed the appeal and the order of the learned single Judge directing the plaintiff to deposit Rs.25,00,000/- was quashed.

2.11. Thereafter, the 3rd defendant has provided the documents as directed and an enquiry was held on various dates. During the enquiry, the witness on the side of the defendant Board who was cross examined by the Managing Director of the plaintiff was unable to answer several questions. To many of the questions there were only evasive replies like "No Comments". The witness had admitted that on 19.12.2002, the meter was functioning well. Though, the plaintiff had submitted written submissions to the 3rd defendant on 19.01.2004, the defendant Board reiterated the earlier order namely, directing the plaintiff to pay penalty of a sum of Rs.3,79,03,901/-. The plaintiff was permitted to pay the above sum in 15 equal instalments starting from 30.03.2004.

2.12. The plaintiff would submit that the 3rd defendant have not taken into account the fact that the AEE (O & M), Ambattur, who takes the monthly reading and cross checks the seals had done so on even on 27.11.2002. On that date he had found the seals to be intact which fact has also been admitted by the witness on the side of the defendant Board before the Enquiry Officer. The plaintiff would further submit that a mere perusal of the current consumption details of the plaintiff company for 2 ½ years would show an uniform consumption which factor has not been taken into consideration by the 3rd defendant. They have also not considered the fact that the total consumption for the period 06.07.2002 to 19.12.2002 had been adjusted against the energy generated by the windmills. Yet another factor which has escaped the attention of the 3rd defendant is that the meter serving this service connection is installed in a concrete room with a single access. The door to this room is kept sealed by the staff of the defendants and the key is also in their custody. Without taking into consideration any of these factors the impugned order had come to be passed. Therefore, the plaintiff is questioning the said order by filing this suit.

2.13. The plaintiff would submit that the appellate remedy is futile and even if the plaintiff were to avail this remedy it is only 25% of the penalty which would be waived. Therefore the plaintiff would not get a just remedy. Further the plaintiff has to deposit 40% of the penalty amount before filing the appeal. Likewise, if the Writ Petition is filed witnesses cannot be examined in Writ Proceedings. Therefore, none of these remedies are efficacious. Therefore the plaintiff has come forward with the instant suit.

3. Written statement of the 2nd defendant:

3.1. This defendant would admit that the meter had been replaced with an electronic meter called “Secured Meter”. It is the case of the defendant that any tampering of the meter can be detected only when the voltage is reduced below 5 volts and tampering cannot be detected during the monthly readings. The defendant would contend that the plaintiff has substituted two number seals provided in the secondary terminal cover of the PT chamber, with bogus seals. On 19th and 20th of December 2002 the officials of the defendants have detected this theft committed by the plaintiff.

3.2. The defendant would further submit that after the show cause notice was issued and despite granting several opportunities to the plaintiff to appear the plaintiff neither appeared nor collected the particulars demanded by them. The defendant would further submit that the plaintiff has rushed to file the instant suit without availing the appeal remedy and therefore the suit is not maintainable.

3.3. It is also the categoric case of the defendant that the department has not changed the seals after 15.05.1992 and the seal that is now found is a bogus one. The defendant would also submit that the plaintiff has not substantiated their claim that the factory was running only for 12 hours and not 24 hours. The defendant would submit that the bogus seal has been put only to steal electricity. The written statement of the 2nd defendant was adopted by both the 1st and 3rd defendants.

4. Amendment to the plaint:

4.1. On 13.09.2009, A.No.4788 of 2006 filed by the plaintiff seeking amendment of the plaint and the same was allowed. Paragraph nos. 14 (a) to 14 (h) were added pursuant to the amendment. The plaintiff has taken an additional defense to the impugned order stating that the order of the 3rd defendant dated 18.02.2004 is without authority and jurisdiction and consequently non-est, null and void.

4.2. It is the case of the plaintiff that with the coming into force of the Electricity Act, 2003 on 10.06.2003, the 3rd defendant ceased to have power, authority and jurisdiction to deal with the unauthorised use of electricity. The officer designated by the State Government for this purpose or by a Special Court constituted under

Section 153 of the Act alone could exercise this jurisdiction.

Therefore, the entire enquiry is vitiated. The new Act has repealed the provisions of the Electricity Act, 1910 and the Electricity (Supply) Act, 1948.

5. Additional written statement of the 2nd defendant:

The defense that the 3rd defendant ceased to have power, authority and jurisdiction to deal with the unauthorised use of electricity will not be available to the plaintiff since the new Act had come into force only on 10.06.2003 whereas the plaintiff's service connection was inspected on 19.12.2002, prior to the coming into force of the Act and all proceedings flowing from the said order were prior to the coming into force of the 2003 Act. Once again, the defendant had stated that the plaintiff has not exhausted the appeal remedy and has straight away moved this Court.

6.Issues framed:

The following issues had been framed in the instant case:

1.Whether the demand notice in letter No.ACE/CEDC/AEE/GLAE2/F.Doc.HTSC1111/D209/2004 dated 18.02.2004 is illegal, and inoperative?

2. Whether the plaintiff is guilty of theft of electrical energy as pleaded by the defendants?

3.Whether the defendants proved the offence of Theft of Electricity against the plaintiff as contemplated under Electricity Act 2003?

4.Whether the defendants proved that the plaintiff has substituted the two numbers of seals provided in the P.T. Secondary side with Bogus seals as pleaded in the written statement?

5.Whether the seals were changed by the defendants on 22.01.1993?

6.Whether the defendants have taken any action to establish the offence against the plaintiff before issuing the assessment order by downloading meter readings and by getting forensic lab report for counterfeit seals?

7.Whether the plaintiff is liable to pay the sum of Rs.3,79,03,901/- or any other amount to the defendants as demanded by the defendants?

8.Whether the plaintiff is entitled to the relief of decree of injunction against the defendants restraining *them from recovering the sum of Rs.3,79,03,901/-?*

9.Whether the suit is not maintainable on account of the alternative appellate remedy against the demand notice dated 18.02.2004 as pleaded by the defendants?

10.Whether the impugned demand dated 18.02.2004 of the 3rd defendant is illegal for not following the provisions of the Electricity Act, 2003?

11.Whether the action of the defendants under the old Act is saved by Section 185 (ii) (a) of the Electricity Act 2003?

12.Whether the plaintiff is entitled to maintain the suit without resorting to the relief through appeal against third defendant order provided, under the Terms and conditions of the Board for the relief he claims under the suit?

13.To what other reliefs the parties are entitled to?

7. Trial:

One K.G.S.Mani an authorised representative of the plaintiff has been examined as P.W.1 and Ex.P.1 to Ex.P.45 have been marked on the side of the plaintiff. The following exhibits have been marked subject to objections: Ex.P.23 series, Ex.P.44 and Ex.P.45. The

Assistant Engineer (O & M), Ambattur, has been examined as D.W.1 and has marked only Ex.D.1 which is the authorisation letter given to the witness to adduce evidence before the Court of law.

8. Submissions:

8.1. Mr.A.R.L.Sundaresan, learned senior counsel arguing on instructions from the learned counsel for the plaintiff would submit that the very order was flawed since the defendant Board has not stated what was the nature of the alleged tampering. He would submit that the defendants have admitted that the meter is situate in a small room which has an outer door which is locked and sealed by the officials of the defendant Board after every meter reading and the key to this room is only with the defendants. The allegation does not state that the outer door has been tampered with.

8.2. He would further argue that the defendants have kept away the best evidence from the Court by not producing the card maintained by the Board corresponding with the consumer's card. Ex.P.44 clearly shows that the seals have been changed on 22.01.1993 and by not producing the Board's card it is clearly evident that the defendant Board does not want to be caught on the wrong foot. He would draw the attention of the Court to the various admissions that have been elicited from D.W.1, the Board's witness, who has clearly stated that the main gate has not been tampered with and has also admitted that the MRT seal register has not been produced. The witness has also admitted that in case any suspicious details are noted the same would be immediately noted in both the cards and complaint lodged to the higher officials. It is the categoric admission of the witness that no suspicious details were noticed during the earlier reading on 27.11.2002. It is therefore, all the more necessary for the defendants to have produce the card maintained by the Board.

8.3. He would draw the attention of the Court to Ex.P.47 which is the consumer's electricity consumption card for the period 24.02.1992 till 01.08.1992. In this card there is the entry of the reading taken on 15.05.1992. There is no entry to show that the seal on the PT secondary has been removed and resealed on 15.05.1992 though it is the case of the defendants that resealing took place on 15.05.1992. He would therefore submit that without proving the allegations by producing the documentary evidence which is in the possession of the defendants, the levy of penalty by the impugned order is per se illegal and liable to be set aside.

8.4. As regards the question of maintainability the learned senior counsel would submit that on the date of the filing of the suit the Electricity Appellate Authority had not been constituted. That apart, he would argue that the alternate remedy is not efficacious and on the contrary is onerous. The defendant Board had issued a circular in Memorandum No.CE/CH/43243/94-1 dated the 22nd June 1994, in which the Board has given instructions to the appellate authority that where assessment has been modified then the modification should be based on fool proof evidence and where assessment has been reduced by 25% or more the same should be done only with the approval of the Chairman. This circular makes the entire appellate remedy farcical.

8.5. He would state that an appeal can be filed only subject to the condition that 75% of penalty amount is deposited upfront. The learned senior counsel would submit that the date of alleged occurrence is 19.12.2002 is prior to the enactment of the Electricity Act, 2003. The order that is challenged in this suit is however passed after the Act had come into force. However, the proceedings which culminated in the passing of the impugned order is on account of the orders of this Court in W.P.No.9477 of 2003 as modified by orders in W.A.No.3121 of 2003. The Jurisdiction of this Civil Court has not been ousted and under Section 9 of the Code of Civil Procedure the suit is very much maintainable before this Court. He would rely on the Judgement reported in (***1997) 5 SCC 120*** - Punjab State Electricity Board and another Vs. Ashwani Kumar, ***(1998) 4 SCC 470*** - Hyderabad Vanaspathi Ltd., Vs. A.P. State Electricity Board and others and ***(2009) 8 SCC 646*** - Nahar Industrial Enterprises Limited Vs. Hong Kong and Shanghai Banking Corporation and the circular, Ex.P.44, in support of his argument that the jurisdiction of the civil Court has not been ousted.

8.6. Per contra, Mr.P.H.Aravind Pandian, learned Additional Advocate General instructed by the learned counsel for the defendant Board would raise the issue of maintainability as a preliminary defense stating that when the Act provides for an alternate remedy, the filing of the suit without exhausting the alternate remedy is per se not maintainable. He would rely on the Judgement of the Hon'ble Supreme Court in (***1997) 5 SCC 120*** - *Punjab State Electricity Board and* *another Vs. Ashwani Kumar*, the Judgement of this Court reported in ***2012-1-L.W.648*** - *Thirumangalam Agricultural Producers Co-op Marketing Society Ltd., rep. through its Special Officer, Thirumangalam, Madurai. Vs. The Superintending Engineer, Madurai Electricity Distribution Circle, Tamil Nadu Electricity Board, K.Pudur, Madurai.* He would also bring to the notice of this Court that the Judgement reported in ***2013-4-L.W.379*** - Tamil Nadu Electricity Board Vs. M/s.S.P.S. Pneumatic Products (P) Ltd., Tuticorin, where a different note has been struck with regard to the maintainability of a case.

8.7. He would submit that pleadings raised by way of an amendment questioning the authority of the 2nd defendant in passing the impugned order cannot be countenanced since the enquiry was only pursuant to the order of this Court in W.A.No.3121 of 2003. He would also submit that the enquiry has been initiated in the year 1992 itself when the 2003 Act was not even in the realm of reckoning.

8.8. He would draw the attention of the Court to some of the depositions made before the Enquiry Officer. He would submit that the person who has deposed on behalf of the plaintiff is not an employee of the plaintiff but is only a consultant who is a retired employee of the defendant Board. He would refer to the admissions made by this witness regarding the inspection that has been carried out by the MRT wing on 15.05.1992 and the entry regarding the resealing of the 2 nos. HT 4 seals on the PT secondary. He would therefore submit that it is these seals which have been tampered with and a bogus seal affixed. Therefore the admission of the plaintiff would clearly prove that the seal has been tampered with. He would also rely upon the witness of the Board that the main gate was not sealed which clearly indicates that there has been tampering by the plaintiff.

9. Issue Nos.1, 2, 4 & 5:

The issues are as follows:

1.Whether the demand notice in letter No.ACE/CEDC/AEE/GLAE2/F.Doc.HTSC1111/D209/2004 dated 18.02.2004 is illegal, and inoperative?

2. Whether the plaintiff is guilty of theft of electrical energy as pleaded by the defendants?

4.Whether the defendants proved that the plaintiff *has substituted the two numbers of seals provided in the P.T. Secondary side with Bogus seals as pleaded in the written statement?*

5.Whether the seals were changed by the defendants on 22.01.1993?

9.1. The defendants have passed an order levying penalty on the plaintiff on the ground that the plaintiff has tampered with the seals of the PT (Potential Transformer) secondary chamber relating to service connection no.1111. The plaintiff's case is that there has been no tampering by them, whereas, the defendant would submit that the seals have been tampered with and therefore the plaintiff is liable to pay the penalty.

9.2. It is the defendants' case that on 19.12.2002, when the defendants had inspected the plaintiff's factory they observed that two of the seals of the PT chamber appeared to be different. However, they were unable to confirm the same on that day as the records from the AEE/MR/North was required to compare the seals. Thereafter, on the succeeding day i.e., 20.12.2002, when the officials of the defendant

Board had cross checked the seal on the PT chamber with the sample seals it was found to be different. Therefore, the liability of the plaintiff would entirely rest on the fact as to whether there has been a tampering of the seals.

9.3.The onus rests on the defendants to prove the above for the following reasons:

(a)The case of the defendant is that the seal which was originally put by them on 15.05.1992 has been tampered with and a bogus seal affixed.

(b)The registers and the sample seals are in the custody of the defendants.

The defendants' case is that the sealing of the PT chamber was done as early as on 15.05.1992 and thereafter the same has not been touched. However, it is the case of the plaintiff that after 1992 there has been a resealing done on 22.01.1993. This fact can easily be proved by perusing the meter card maintained by the defendant Board since the Board's witnesses during the initial enquiry before the Enquiry Officer has stated that entries made in the consumer's meter card is carried over in the card that is maintained by the Board. Ex.P.43

is the consumer's card which shows the entry made on 22.01.1993 that the seals on the PT secondary was removed and resealed. The marking of this document was objected to as being fabricated. To disprove this exhibit the defendant had to only produce the corresponding meter card of the Board. This has not been produced which leads the Court to only conclude that Ex.P.43 is not a fabricated document and can be relied upon.

9.4. The Observation Mahazar is the document which is the genesis for the show cause notice issued to the plaintiff and the penalty being imposed thereafter on them. The Observation Mahazar has been marked as Ex.P.4 on the side of the plaintiff (the defendant has not come forward to mark any document except for Ex.D.1 – the authorisation letter authorising D.W.1 to adduce evidence). The Observation Mahazar contains the following notings:

> *i)MRT security seals affixed on the Ring Main Gear were checked and the MRT seals provided on the PT chamber had the impression of the MRT/CEDC/North seals.*

> *ii) EE/MRT/CEDC/West has confirmed the*

genuineness of the other MRT seals provided by the MRT/West except PT chamber.

iii)The genuineness of the seals on the PT chamber could not be confirmed for want of the MRT records of CEDC/North.

9.5. The Observation Mahazar would indicate that for want of these records on 19.12.2002, the officials have decided to revisit the factory the next day along with the requisite records. They had therefore put a seal on gate and closed the meter room. On 20.12.2002, the officials had come to the factory and the gate seals were opened in the presence of the General Manager, RMD of the plaintiff company. The Mahazar would simply state that when checked by the MRT/CEDC/West with the available MRT records it was found that the seal available on the PT chamber was unauthorised and bogus. However, the Mahazar is absolutely silent on how the seal was found to be unauthorised and bogus. This document gives no details in this regard.

9.6. Thereafter, on the basis of this Observation Mahazar, a

First Information Report was registered followed by the events leading to the impugned order. A perusal of the documentary evidence would clearly show that despite several request being made by the plaintiff to the defendants to provide them with the materials which form the basis of the conclusion that the plaintiff are guilty of theft of energy, the defendants have not come forward to provide these details. The plaintiff had made these request under Ex.P.7, Ex.P.9, Ex.P.14, Ex.P.16, Ex.P.17, Ex.P.21 and Ex.P.25.

9.7. The defendants have thereafter issued Ex.P.6, show cause notice. The show cause notice would introduce a new fact that the plaintiff has tampered with the fuse carriers of the PT secondary and prevented the recording of the metre. This anamoly has not been recorded in the Observation Mahazar dated 19.12.2002 / 20.12.2002. The show cause notice would state that on account of this tampering the plaintiff is guilty of theft of energy and the Executive Engineer (O & M), Ambattur would state that an approximate loss caused by the plaintiff on account of this theft of energy to the Board was to the tune of Rs.3,79,03,901/-. The show cause notice does not enclose with it the working sheet as to how the defendant had quantified this loss. The show cause notice directed the plaintiff to be present for enquiry on 10.01.2003.

9.8. By their reply dated 28.12.2002 (Ex.P.7) the plaintiff apart from refuting the allegations that they had tampered with the MRT seals had questioned the basis on which the loss has been calculated by the defendants and also requested the defendants to provide them with the working sheet. The plaintiff had also sought for the load survey graph of each month to be sent to them for a period of 1 year prior to the show cause notice. The plaintiff had also given a working of the electricity consumed by them for a period of five months prior to the date of notice along with the wind mill generation in units for the same period to demonstrate that the power consumption has been more or less uniform with minor variations.

9.9. Along with their letter dated 14.02.2003 (Ex.P.16), the plaintiff has enclosed two photographs showing the meter room gate with lock and seal. A perusal of this photo graph would show that in order to gain entry into the meter room, the gate seal (lock put on the shutter of the room) has to be removed and only then can a person access the meter room. It is this lock that is sealed by the Board officials after the meter reading. In case some one enters the room the seal will definitely be broken. The witness has also admitted to this fact.

9.10. Ex.P.27, Ex.P.30, Ex.P.32, Ex.P.35, Ex.P.37 are the enquiry proceedings. In the enquiry proceedings the officials of the defendant Board who were present on 19.12.2002 and 20.12.2002 have been examined and the consumer has also been permitted to cross examine the witnesses. The answers of these officials to some of the questions require to be considered in order to arrive at the finding to the above issues.

9.11. The AEE / ABT has been examined as the 1st witness and he has been one of the persons who had gone to the site on the date of inspection. The witness has admitted that he has been regularly checking the reading and inspecting the meters. To a question as to whether he had found an abnormality while taking the readings the witness has answered in the negative. He has also deposed that in case there is any abnormality the same would be immediately reported to the

Higher officials. The witness has admitted that prior to 19.12.2002 the meter reading was taken on 27.11.2002 and on the said date he did not find any seal missing, broken or changed. To the question as to whether the meter room can be accessed without breaking the gate seal, the witness answered that it is possible. To a specific query as to whether he found the gate seal broken on 19.12.2002 the witness would state that there was no gate seal on 19.12.2002 but would admit that this has not been recorded in the Observation Mahazar dated 19.12.2002. In answer to the question as to how they presumed that the PT seals were bogus, the witness has answered as follows:

> *"The team of MRT Engineers inspected the RMG and the secondary seals of the PT were compared with the original seals and came to the conclusion that the present seal is bogus".*

The witness was however not able to answer as to the records with which or the seals with which disputed the seals were compared and he has answered that the EE / MRT is the official to answer this question.

9.12. The EE/O & M/ ABT (I/C) would also state that the gate seal was not found sealed at the time of their inspection on 19.12.2002. He would also admit that this has not been recorded in the Observation Mahazar. The witness in answer to the specific query as to how despite records given to show that the seal numbers were matching, on the basis of different impression it is concluded that the seals were bogus, the witness would state that the seals were inspected by the MRT and they reported that the seals were bogus. In answer to the question as to the documents and evidence based upon which the show cause notice was issued, the witness would submit that he has acted as per terms and conditions of the supply.

9.13. The AEE/MRT/North when asked to narrate about the happenings of 19.12.2002 would submit as follows:

> *"AEE/MRT/North: As per the request of the AEE/Enforcement cell I accompanied the APTS on 19.12.2002. On that day I was asked to verify the seals available in the PT top cover seals. As the seals were belongs to North circle I was requested to check. At that time the register having seal nos. was not available and the same will be traced at the MRT office I could not verify the*

seals. On 20.12.2002 I had produced the seal register to AEE/MRT/West & EE/MRT/West."

He would state that the change of seal made on 15.05.1992 has not been carried over in the consumer's meter card. He has deposed that the representative of the plaintiff had acknowledged the same on 15.05.1992 in the card maintained by the Board.

9.14. The EE/ MRT in response to a question as to the number of seals provided on the PT chamber on the date of inspection (19.12.2002) replied that there were two secondary seals and three primary ones. A question was put to the witness as to whether there were any other seals bearing north impression apart from the two seals in question on 19.12.2002, the witness has stated that the seal which is used for the comparison was the seal handed over by the MRT / North lab. The witness in answer to the specific question as to why the disputed two seals were not cross checked with the three seals already found to be genuine would submit that the impression in all the three seals are different as they are made from different sealing pliers. The witness has also answered that it is quite possible for different seals giving different impression. When the witness was shown the sealing register of the date 15.05.1992 and questioned on the separate entry being made in the right hand corner within brackets indicating the same to be an interpolation he merely denied the suggestion but did not give any explanation for the same. The witness has also not been able to give a plausible answer as to whether the PT seal had been changed on 22.01.1993. The witness would state that it has to be checked with the contents of the meter card maintained by the department. However, the said meter card has not been produced by the defendants.

9.15. It is rather surprising that when the entire allegation against the plaintiff is that the plaintiff had tampered with the seals in the PT secondary, the defendant has not produced any evidence before the Court to show how the seal had been tampered and the basis on which they have come to the conclusion that the seal has been tampered with. In the Observation Mahazar which is the first document recording the tampering, the defendants have not given any details as to how the seals has been tampered with. In one breath the defendant would state that the seals have been tampered with and in the other they would state that bogus seals have been used. If it is the former case the defendants should show how it has been tampered with. There is no photographs of the tampered seals on the date on which the officials have inspected the premises and discovered the tampering. No details on how the tampering has been done is also provided. If it is the latter, then the defendants should place before the Court a sample of the original seals and the seal that was found on the PT chamber in the plaintiff's premises on 19.12.2002 and 20.12.2002. This exercise has not been undertaken by the defendants.

9.16. The case of the defendant is that the seal was put on 15.05.1992 and thereafter till the date of inspection on 19.12.2002 there has been no resealing of the PT Chamber. However, the plaintiff has produced Ex.P.43 to show that the seal had been changed on 22.01.1993. In the enquiry before the Enquiry Officer, the witnesses have stated that corresponding entries would be made in the card retained by the Board. However, that card has not been filed at the time of enquiry which took place in the year 2003 itself. D.W.1 was shown Ex.P.47 in which there is no mention about the seals being changed on 15.05.1992. The witness has admitted to the same. He has also admitted that in Ex.P.43 there is an entry regarding change of seals on 22.01.1993.

9.17.When the witnesses have admitted that entries are made both in the consumer's card as well as the card maintained by the Board simultaneously, the non-production of the same appears to be deliberate and this Court has to draw adverse inference against the same. All witnesses have uniformly stated that prior to 19.12.2002, there has been no allegation of tampering of meter or tampering of the seal. The last reading prior to the date in question was done on 27.11.2002 and on this day there is no adverse entry in the card maintained by the Board. When one party comes forward with a definite case that the other party has committed an act of theft and the same is denied, the onus is on the party alleging theft to prove the same. In the instant case this proof has not been filed and the onus discharged. Further the defendant has not let in any evidence to show that the tampering of the seal has resulted in theft of energy. The defendant has not produced evidence to show any abnormal variations in the consumption of electricity by the plaintiff.

9.18.The demand notice dated 18.02.2004 (Ex.P.46) does not refer to the admissions that the consumer has been able to elicit from the witnesses examined on the side of the defendant Board. The 3rd defendant has proceeded to blindly accept the department's case totally overlooking the fact that the department has not produced the documentary evidence which they claim is available with them, the corresponding meter card of the Board, sealing register of CDEC/West, CDEC/North or the photographs showing foul play. These documents have not been produced for the scrutiny of the Enquiry Officer. In the absence of the defendant proving their allegation the demand raised by the 3rd defendant is totally baseless. The 3rd defendant has also failed to appreciate the fact that in order to access the meter room for perpetrating the foul play the plaintiff's official have to first break open the seal put by the Board on the main gate and this would have been the first thing that the officials would have taken note of.

9.19. The Observation Mahazar, Ex.P.4 does not contain any statement that this gate seal has been tampered with or broken. However, during the enquiry before the Enquiry Officer, the witness on the side of the Board would make a statement that when they visited the place, the gate seal was not intact. This is nothing but an after thought and an attempt on the part of the defendants to develop their case.

9.20. The Enquiry Officer has simply taken note of only the first part of the endorsement on 22.01.1993 in Ex.P.43 regarding the P.T.Chamber measurement. However, he has totally ignored the later endorsement that 9 nos of MRT seals were removed and resealed. This in my view is very fatal error since this endorsement has been signed by 4 officials of the defendant Board, viz; AE/MRT/N, AEE/SPL(M&C), AE/O&M/ABT and AEE/O&M/ABT. The defendant who have claimed that this entry is a false entry has not produced the corresponding card of the Board particularly when witnesses have admitted that corresponding card is maintained by the Board. The impugned order has totally brushed under the carpet these flaws / anamolies. In these circumstances, the above issues are answered in favour of the plaintiff.

10. Issue No.3:

Issue no.3 reads as follows:

3.Whether the defendants proved the offence of Theft of Electricity against the plaintiff as contemplated under Electricity Act 2003?

10.1.The first document accusing the plaintiff of tampering is Ex.P.4, the Observation Mahazar. The Observation Mahazar only states that the MRT seals in the PT chamber when checked by the MRT/CEDC/West with the available MRT records was found to be unauthorised and bogus. Therefore, the allegation that was made against the plaintiff was that the seal on the PT chambers are unauthorised and bogus.

10.2.Under Section 135 of the Electricity Act, 2003 the following are the instances of theft of Electricity:

> *"(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee or supplier as the case may be; or*
>
> *(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or*

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity,

(d) uses electricity through a tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorised."

A reading of this provision with the allegation made in the Observation Mahazar would show that the same does not fall within theft of electricity as contemplated under the Electricity Act, 2003.

10.3. The show cause notice dated 21.12.2002 would state as follows:

"During the inspection it was found that there was theft of energy by replacing the genuine MRT seals by bogus seals on the secondary covers of Potential Transformer Chamber of Metering Set and tampering the fuse carriers of the PT secondary and prevented recording of the meter. (describe the actual mode of thefts with details of artificial means found in the service /

unauthorised reconnection of a disconnected service connection). By committing the said offence, you have dishonestly abstracted, consumed and used energy with intent to defraud the Board and thereby you have caused loss of revenue to the Board.

The above said illegal abstraction, consumption and use of energy is punishable under Section 39 (1) of the Indian Electricity Act, 1910/39 A of Indian Electricity Act, 1910".

10.4. The show cause notice has been issued under Section 39 (1) of the Indian Electricity Act, 1910. Section 39 (1) of the Indian Electricity Act would read as follows:

"Theft of energy – (1) Whoever dishonestly abstracts, consumes or uses any energy shall be punishable with imprisonment for a term, which may extend to three years, or with fine, which shall not be less than one thousand rupees. or with both: and if it is proved that any artificial means not authorised by the licensee exist for the abstraction, consumption or use of energy by the consumer, it shall be presumed, until the contrary is proved, that any abstraction,

consumption or use of energy has been dishonestly caused by such consumer.”

A reading of this section and the contents of the Observation Mahazar would clearly show that the offence alleged against the plaintiff does not come within the above provision.

10.5. A comparison of the show cause notice with the Observation Mahazar would clearly indicate that the allegation of "*tampering fuse carriers of PT secondary and prevented recording of the meter*" is an allegation which has been subsequently added and which does not form a part of the Observation Mahazar. In the Observation Mahazar, the officials who had conducted the inspection has not made any reference to the fuse carriers of the PT secondary having been tampered with. There is no document to prove this allegation. The defendant who could have proved the theft of electricity by producing the readings to show any abnormal changes in the meter regarding has failed to produce the same. The logical conclusion that can be drawn is that there has been no theft of energy. Therefore, issue no.3 is answered against the defendant.

11. Issue No.6:

*I*ssue no.6 would read as follows:

6.Whether the defendants have taken any action to establish the offence against the plaintiff before issuing the assessment order by downloading meter readings and by getting forensic lab report for counterfeit seals?

11.1. The inspection of the premises of the plaintiff was done on 19.12.2002 and 20.12.2002 and the show cause notice was issued on 21.12.2002. The FIR was also lodged on 21.12.2002. The defendants have not produced any proof to show that the bogus seals have been sent for the forensic lab report. Further, the downloaded meter readings have not been provided to the plaintiff despite their request for the same and orders of this Court directing them to provide the same. The Meter card of the Board and the downloaded meter readings have not been produced before this Court as well. Further the EE/O & M/ ABT (I/C) has deposed before the Enquiry Officer that the Show cause notice has been issued as per the terms and conditions of the supply.

11.2. A mere perusal of the answers given by the witnesses on the side of the defendant Board before the Enquiry Officer clearly shows that prior to the issuing of the impugned assessment order, the 2nd defendant has not perused the relevant records. Each of the witnesses would shift the responsibility on the other department with reference to documents. The witnesses have uniformly stated that till 19.12.2002 they have not found any abnormal usage of electricity and the plaintiff's meter reading has been consistent without major variations. The plaintiff would also admit that on the date of the previous recording i.e., 27.11.2002 there was no tampering of the meter or the seals. Further the EE/ O & M/ ABT (I/C) has deposed before the Enquiry Officer that the show cause notice has been issued as per the terms and conditions of the supply.

11.3. A reading of the impugned order does not disclose the documents based upon which the Enquiry Officer has come to the conclusion that the plaintiff is guilty of theft of electricity and liable to pay penalty as claimed in the impugned order dated 18.02.2004. Therefore, issue no.6 is answered against the defendants.

12. Issue Nos.9, 10, 11 and 12:

The issues are as follows:

9.Whether the suit is not maintainable on account of the alternative appellate remedy against the demand notice dated 18.02.2004 as pleaded by the defendants?

10.Whether the impugned demand dated 18.02.2004 of the 3rd defendant is illegal for not following the provisions of the Electricity Act, 2003?

11.Whether the action of the defendants under the old Act is saved by Section 185 (ii) (a) of the Electricity Act 2003?

12.Whether the plaintiff is entitled to maintain the suit without resorting to the relief through appeal against third defendant order provided, under the Terms and conditions of the Board for the relief he claims under the suit?

12.1. The defendants have raised a preliminary objection that the suit is not maintainable in view of the alternate remedy existing in respect of an appeal to the Board. The learned AAG had relied on the Judgement reported in ***2012-1-L.W.648*** - *Thirumangalam Agricultural*

Producers Co-op Marketing Society Ltd., rep. through its Special Officer, Thirumangalam, Madurai. Vs. The Superintending Engineer, Madurai Electricity Distribution Circle, Tamil Nadu Electricity Board, K.Pudur, Madurai in support of this argument. In the said Judgement the learned Judge at paragraph no.60 has observed as follows:

> *60. On a careful consideration of respective contentions and for the foregoing and qualitative discussions mentioned supra, this Court is of the considered view that the Appellant/Plaintiff has a viable, efficacious and alternative remedy of approaching the appropriate authorities mentioned under the Tamil Nadu Electricity Board. As a matter of fact even the Tamil Nadu Electricity Department proceedings clearly enjoins the assessment to be made by the Executive Engineer/Superintending Engineer, in case when a party does not agree with the assessment made by the Assistant Executive Engineer, also, an appeal forum is also provided before the appropriate authority as per the Terms and Conditions of supply of Electricity and as per clause 6.03 and 8.04 of the schedule and also the appellate authority*

can dispose of the appeal in the manner known to law. When such a self-contained remedy is available under the Tamil Nadu Electricity Act, then, the present suit filed by the Appellant/Plaintiff before the Civil Court is a premature and otiose one."

12.2. He would submit that under the terms and conditions of supply of electricity, an appeal in respect of orders in case of theft of energy would lie with the Chief Engineer. However, a perusal of the impugned order does not indicate a conclusion by the 3rd defendant that there has been a theft of energy. In fact the following conclusion has been arrived at by the 3rd defendant:

"After carefully considering the evidences and documents furnished by you and Board side officials, the assessment authority has come to the following conclusion.

1.The bogus seals on the PT secondary are the foreign materials in the metering arrangement.

2.You said that the impressions on the seal may vary from person to person while pressing. It is true. But MRT reported that not only the impressions but also the *style of the letters in the seals viewed from the sample seal.*

3.You have stated that the PT seals should have been compared with sample seal of 22.1.93 and not with sample seal of 15.5.92 since the PT séals had been changed by MRT on 22.1.93. The EE/MRT/West reported that the MRT seals on PT secondary seals had not-been changed after 15.5.92.

It is seen that on 22.1.93, PT jumper measurement was taken by MRT and Special Maintenance without disturbing the PT secondary. So there was no need to replace MRT seals on PT secondary on that day.

4. You submitted that while calculating penal levy, the working hours of factory was taken as 24 hours a day whereas the actual duration of working was only 12 hours a day and six days a week. But during the enquiry on 29.11.2003, when you put this question to EE/O&M/ Ambattur he replied that the factory had been running at 12'o clock mid night on 19.12.2002 and also at 3.15 p.m on 19.12.2002. Also you had not produced any documentary evidence in proof of your claim that the factory had been *working only for 12 Hours a day and 6 days in a week.*

5.If the voltage applied to the PT secondary had been maintained above the threshold voltage there would not be any tamper indication in the CMRI."

Therefore a perusal of the above would clearly indicate that there is no categoric finding that there has been a theft of energy. On the contrary such a charge is absent in the impugned order, Ex.P.46. In these circumstances, the alternative remedy becomes otiose.

12.3. In the judgement reported in ***2013-4-L.W.379*** - Tamil Nadu Electricity Board Vs. M/s.S.P.S. Pneumatic Products (P) Ltd., Tuticorin, the learned Judge was considering a case similar to the instant case wherein a plea had been taken that the suit filed was not maintainable in the light of the New Electricity Act, 2003. The learned Judge relying upon the Judgement reported in ***1994 Writ Law Reporter 197 - P.Subramaniam Vs. The Assistant divisional Engineer (O & M), South Tamil Nadu Electricity Board, Rajaram Nagar, Salem and others*** had concluded as follows:

"20. The very same view was taken by this Court in the decision reported in (P. Subramaniam vs. The Asst.

Divisional Engineer (O & M), South Tamil Nadu Electricity Board, Rajaram Nagar, Salem and others) 1994 Writ Law Reported 197 wherein it was held in para-4 that "there is absolutely no evidence to show that the petitioner committed theft and respondents either in the pre-assessment notice or in the assessment order or in the impugned appellate order have not referred to any piece of evidence to show that the petitioner had committed theft. Without this basic fact being properly proved, I do not know how the question of calculating damages at all arises. The respondents proceed as if the petitioner had committed theft continuously for a period of one year prior to the dates of inspection, but there is absolutely no scope for such assumption. While I do not want to minimize the crime of theft of electrical energy if it could be properly proved, I do not appreciate the manner in which the respondents are taking action in such cases. "This decision is squarely applicable to the facts of the case inasmuch as the appellants Department has not produced any material to show that the plaintiff indulged in theft of electricity *energy. In fact, this Court, in the order dated 05.09.2002 made in Crl.R.C. No.1301 of 199 categorically given a finding that the seals on the outer doors are intact, which means the seals affixed on the meter could not have been tampered with without tampering the outer door. Therefore, I hold that the Electricity Board failed to prove that the plaintiff indulged in theft of electricity energy and consequently, I answer the question of law Nos. 3 and 4 in favour of the plaintiff and against the defendants."*

12.4. The defendants have invoked the provisions of the old Electricity Act, 1910. Though the impugned order is of the year 2004, after the enactment of the Electricity Act, 2003, however, the said order is pursuant to the orders of this Court passed in W.A.No.3121 of 2003. Section 185 (2) (a) of the Electricity Act, 2003 saves the action taken by the department since the theft of energy which is dealt with in Section 39 of the earlier Act, namely, Electricity Act 1910 is incorporated as Section 135 in the Electricity Act, 2003. However as already observed the allegation made against the plaintiff does not come within the category of theft of electricity set out in Section 135 of the Electricity Act, 2003 or Section 39 of the Indian Electricity Act, 1910.

12.5. That apart Section 145 of the Electricity Act, 2003 which bars the jurisdiction of the Civil Court is restricted to matters which an Assessing Officer referred to in Section 126 or the appellate authority referred to in Section 127 or the Adjudicating Officer appointed under this Act is empowered to do so. The instant case would not come within the provisions of Section 126 or 127 of the Act and consequently the suit filed is maintainable. That apart, even assuming that the jurisdiction of the civil Court is barred as on the date of the filing of the instant suit the appellate authority was not even established. Therefore, issue nos.9 and 12 are answered in favour of the plaintiff and the issue nos.10 and 11 are answered in favour of the defendants.

13. Issue nos.7, 8 and 13:

The Court has framed the following issues:

7.Whether the plaintiff is liable to pay the sum of Rs.3,79,03,901/- or any other amount to the defendants as demanded by the defendants?

8.Whether the plaintiff is entitled to the relief of *decree of injunction against the defendants restraining them from recovering the sum of Rs.3,79,03,901/-?*

13.To what other reliefs the parties are entitled to?

14. Considering the fact that the defendants have not proved the allegations made by them in the impugned order for the reasons set out in detail in the issues supra, the plaintiff is not liable to pay the sum of Rs.3,79,03,901/- or any other amount to the defendants as demanded by them and is therefore entitled to a decree for injunction against the defendants from recovering a sum of Rs.3,79,03,901/-

15. In the result, there shall be a decree:

(a) declaring the demand notice issued by the 3rd defendant by letter No.ACE/CEDC/W/AEE/GL/AE2/F Doc.HTSC 1111/D209/2004 dated 18.02.2004 as illegal, unconstitutional and inoperative;

(b) The defendants, their men, subordinates or any person claiming through or under them are restrained by an injunction from recovering the sum of Rs.3,79,03,901/- from the plaintiff; and

(c) The defendants shall pay costs to the plaintiff.

Sd./- P.T.A.J
19.04.2021

List of witness on the side of the Plaintiff:

P.W.1	-	K.G.S.Mani

List of Exhibits marked on the plaintiff's side:

Ex.P.1	-	Authorization Letter
Ex.P.2	-	Letter from AEEE/O&M/ABT intimating inspection
Ex.P.3	-	Letter from AEEE/O&M/ABT intimating for continuation of inspection next day
Ex.P.4	-	Observation Mahazar
Ex.P.5	-	First Information Report
Ex.P.6	-	Show Cause Notice
Ex.P.7	-	Interim reply from the Plaintiff and requesting some details
Ex.P.8	-	Interim Stay in W.P.M.P.No.67967 of 2002 in W.P.No.46795 of 2002
Ex.P.9	-	Reminder sent by the Plaintiff requesting certain details and documents
Ex.P.10	-	Notice from the 3rd Defendant to the Plaintiff to attend enquiry.
Ex.P.11	-	Letter from the Plaintiff to the 2nd Defendant to postpone the date of enquiry
Ex.P.12	-	Letter from the Plaintiff to the 2nd Defendant to postpone the date of enquiry

Ex.P.13 -	Letter from the EE/O&M/ABT refusing to give details which are requested by the Plaintiff
Ex.P.14 -	Interim reply from the Plaintiff requesting certain details
Ex.P.15 -	Letter from 3rd Defendant fixing enquiry on 14.02.2003
Ex.P.16 -	Letter from Plaintiff to 3rd Defendant seeking certain documents
Ex.P.17 -	Letter from Plaintiff to 3rd Defendant seeking certain documents
Ex.P.18 -	Assessment Order by 3rd Defendant
Ex.P.19 -	Order in W.P.M.P.No.12061 of 2003 in W.P.No.9477 of 2003
Ex.P.20 - Statement	Letter from 3rd Defendant enclosing CMRI from July 2002 to 20.12.2002
Ex.P.21 -	Letter from Plaintiff requesting certain details
Ex.P.22 -	Order in W.A.No.3121 of 2003
Ex.P.23 -	Letter from Board to the Plaintiff enclosing certain datas in the form of graph

Ex.P.24	-	Letter from 3rd Defendant to the Plaintiff intimating enquiry on 18.11.2003
Ex.P.25	-	Letter from Plaintiff to the 3rd Defendant requesting details which has not supplied on 10.11.2003
Ex.P.26	-	Letter from the Board to the Plaintiff
Ex.P.27	-	Enquiry Proceedings
Ex.P.28	-	Letter from Plaintiff to the 3rd Defendant requesting him to require the presence of the certain Board Officials for examination
Ex.P.29	-	Letter from the 3rd Defendant to the Plaintiff refixing enquiry on 29.11.2003
Ex.P30	-	Enquiry Proceedings
Ex.P.31	-	Letter from 3rd Defendant to the Plaintiff intimating next enquiry on 05.12.2003
Ex.P.32	-	Enquiry Proceedings
Ex.P.33	-	Letter from 3rd Defendant intimating next enquiry on 12.12.2003
Ex.P.34	-	Letter from Plaintiff to the 3rd Defendant requesting adjournment
Ex.P.35	-	Enquiry Proceedings
Ex.P.36	-	Intimation to the Plaintiff
Ex.P.37	-	Enquiry Proceedings
Ex.P.38	-	Expert opinion obtained b the Plaintiff

Ex.P.39	-	Letter from Plaintiff to 3rd Defendant giving details of power consumption, production and energy consumption
Ex.P.40	-	Letter from 3rd Defendant to Plaintiff enclosing copy of letter M/s. SECURE Meters Limited
Ex.P.41	-	Letter from Plaintiff to the 3rd Defendant correcting certain details in the letter dated 12.01.2004 submitted to the Board
Ex.P.42	-	Written Submission submitted by the Plaintiff to the 3rd Defendant
Ex.P.43	-	Extract of Meter Reading Card No.H.T./S/C.No.1111 for the period 25.08.1992 to 22.01.1993
Ex.P.44	-	Memorandum of TNEB
Ex.P.45	-	Assessment order of M/s. Triveni Alloys Limited
Ex.P.46	-	Assessment Order by 3rd Defendant
Ex.P.47	-	Extract of Meter Reading Card No.H.T./S/C.No.1111 for the period 24.02.1992 to 01.08.1992
Ex.P.48	-	Central Excise Forms RT12 Statement for the Period July 2001 to May 2003

<u>List of Witness on the side of the Defendants:</u>

D.W.1	-	P.Shanmugam Assistant Executive Engineer

List of Exhibits marked on the Defendant's side:

Ex.D.1 - Authorization Letter

Sd./- P.T.A.J
19.04.2021

//Certified to be true copy//
Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.