IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No.17005 of 2011
and
M.P. No. 1 of 2011

Manisha Preeth,
W/o.R.Ravisandran ... Petitioner

Vs

1. The Assistant Engineer,
   Tamilnadu Electricity Board,
   (TANGEDCO)
   O & M, Napalayam,
   Chennai – 600 103.
2. The Assistant Accounts Officer,
   Revenue Branch,
   Tondiarpet/CEO/North,
   Chennai – 21.
3. The Assistant Audit Officer,
   Audit Branch,
   TANGEDCO,
   Chennai – 2. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records inproceedings in Lr.No.AAO/TPT.RB/AS/S.C.A/c.007.027.120.D765/11 dated 9.6.2011 on the file of the 2nd respondent and quash the same and further direct the 2nd respondent to drop all further proceedings pursuant to the impugned order.

For Petitioner : Mr.Sudharshana Sunder
For R1 to R3 : Mr.P.R.Dhilip Kumar
Standing Counsel

ORDER

The petitioner has challenged the impugned demand notice dated09.06.2011 bearing Lr.No.AAO/TPT.RB/AS/S.C.A/c.007.027.120.D765 /11.

2. By the impugned demand notice, a sum of Rs.4,31,532/- has been demanded from the petitioner based on the audit that the petitioner was allegedly in arrears of CC charges. The impugned demand notice therefore called upon the petitioner to pay the

aforesaid arrears within a period of 15 days.

3. The reason for arriving on the above figure in the audit is follows:-

"AUDIT SLIP No.34 Dt.2.6.2011 Rs.4,31,532/-
Non-adoption of correct average consumption
S.C.No.07.27.120 52KW IIIB

On a review of the above service, it is noticed that the meter card defective since 8/2008. But correct consumption has been adopted only in 2/09 to 6/09(7640 units). The new meter has been fixed on 21.7.2009 and again defective but correct average consumption has not been levied as per clause 11(2) of TNERC. The details are as follows:

<table>
<tr><th>Date/Month</th><th>Reading</th><th>Units</th><th>PF</th><th>Amount</th><td rowspan="18">The field has adopted based on 6/08 & 8/08 CC
10480
4805
15285

7642.5
Say 7640 units
But field to take average PF
065
031
96

0.48 PF penalty
85.48
37x1.5%
X 5.5%</td></tr>
<tr><td>31-10-07</td><td>11145</td><td>11144</td><td>048</td><td>91948</td></tr>
<tr><td>2/08</td><td>23109</td><td>11964</td><td>049</td><td>102671</td></tr>
<tr><td>4/08</td><td>33085</td><td>9976</td><td>055</td><td>80305</td></tr>
<tr><td>6/08</td><td>43565</td><td>10480</td><td>065</td><td>75731</td></tr>
<tr><td>8/08</td><td>48370</td><td>4805</td><td>031</td><td>47123</td></tr>
<tr><td>10/08</td><td>48820</td><td>450</td><td>002</td><td>7300</td></tr>
<tr><td>12/08</td><td>48930</td><td>110</td><td>004</td><td>4957</td></tr>
<tr><td>2/09</td><td>8307.7</td><td>Ar
7640</td><td>.04</td><td>42151</td></tr>
<tr><td>4/09</td><td>8192.9</td><td>7640</td><td>.04</td><td>42151</td></tr>
<tr><td>6/09</td><td>8133.5
FR 8961.5 IOL</td><td>7640</td><td>004</td><td>42151</td></tr>
<tr><td>8/09</td><td>1220</td><td>5169</td><td>0.48</td><td>43705</td></tr>
<tr><td>10/09</td><td>4240</td><td>3020</td><td>0.69</td><td>19741</td></tr>
<tr><td>12/09</td><td>4240</td><td>3020</td><td>0.69</td><td>19741</td></tr>
<tr><td>2/10</td><td>0</td><td>3020</td><td>0.69</td><td>19741</td></tr>
<tr><td>4/10</td><td>4240</td><td>3020</td><td>0.69</td><td>19741</td></tr>
<tr><td>6/10</td><td>0</td><td>3020</td><td>0.69</td><td>19741</td></tr>
<tr><td>8/10</td><td>0</td><td>3020</td><td>0</td><td>16470</td></tr>
<tr><td>31.10.10</td><td>0</td><td>3020</td><td>0</td><td>16482</td></tr>
</table>

Average consumption 7640 units with PF penalty 55.5%

This average has to be adopted from 10/08 CC to 6/09 instead of 2/09 to 6/09

Moreover the new meter changed on 21.7.09 with IC 0.2 also land defective and new meter again fixed on 1.11.10. That is during then defective period also same average consumption i.e. 7640 units with PF penalty 55.5% has to be followed. But in this case very meager average of 3020 units has been adopted has, caused heavy loss of revenue to TANGEDCO.

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7640 1500x4.00 =    6000
     6140x4.70 =   28858
               ----------------
                   34858
55.5% PF Penalty 19346.19
               -----------------
                   54204.19
     5% Tax         2710.20
         FC           60.00
               ------------------
                    56974.39
               ------------------
Say Rs.56974/-
(31/8/10) 8/10 CC 7640/60x31  3947x5.00 =   19735
                              1500x4.00 =    6000
                              2193x4.70 =   10307.10
                                          --------------
                              55.5% PF  =   36042.10
                                             20003.36
                                          ---------------
                                             56045.46
                              5% Tax          2802.27
                              FC                60.00
                                          ----------------
                                             58907.73
                                          ----------------
Say Rs.58908/-
10/10 CC average Rs.59982/-
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Details of Shortfall

Month	To be billed	Already billed	Shortfall
10/08	56974	7300	49674
12/08	56974	4957	52017
2/09	56974	42151	14823
4/09	56974	42151	14823
6/09	56974	42151	14823
8/09	56874	43705	13269
10/09	56974	19741	37233
12/09	56974	19741	37233
2/10	56974	19741	37233

Month	To be billed	Already billed	Shortfall
4/10	56974	19741	37233
6/10	56974	19741	37233
8/10	58908	16470	42438
10/10	59982	16482	43500
		Total Shortfall	431532

The above audit shortfall amount Rs.431532/- may be collected and intimate to audit with collection details".

4. It is the contention of the respondents that the petitioner has an option to approach the Consumer Grievance Redressal Forum as is contemplated under Section 11 of the Tamil Nadu Electricity Regulatory Commission's Code/The Tamil Nadu Electricity Supply Code. On the other hand, it is the contention of the learned counsel for the petitioner that the demand is clearly barred under Section 56(2) of the The Electricity Act, 2003.

5. The learned counsel for the petitioner submits that the petitioner was not aggrieved by the calculations and therefore there was no question of assessment to drive the petitioner to approach the Consumer Grievance Redressal Forum in terms of Section 11(7) of the Tamil Nadu Electricity Supply Code.

6. I have considered the arguments advanced by the learned counsel for the petitioner and the respondents.

7. There is an embargo on the respondents from demanding arrears as per sub-clause 2 to Section 56 of the Electricity Act, 2003. As per the aforesaid provision, no sum due from any consumer shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for the electricity supplied.

8. In this case, the demand notice is dated 09.06.2011. Therefore, the demand, if any, can be made only for a period commencing from 10.06.2009 to 09.06.2011. In this case, the demand has been made for a period commencing from October 2008 to October 2010, based on the audit note. Therefore, the demand for the period prior to two years from the date of impugned notice is unsustainable. Therefore, to that extent, the impugned order seeking to demand arrears of charges from the petitioner is quashed. However, whether the respondents were justified in demanding amount based on the audit objection is to be determined by the respondents.

9. The petitioner has also given a representation dated 24.06.2011. This representation has not been considered by the respondents. While quashing the impugned order, I therefore direct the respondents to issue appropriate show cause notice to the petitioner within a period of 30 days from the date of receipt of a copy of this order to show cause as to why the arrears should not be collected from the petitioner for the period within the limitation prescribed under Section 56(2) of the Electricity Act, 2003.

10. The petitioner shall thereafter give a reply/representation to the same before the concerned authority/concerned officer of the respondents. Such order shall be passed by such officer/authority after following the principles of natural justice by affording an opportunity of hearing to the petitioner. Pending such proceedings, no further recovery shall be made from the petitioner.

11. In case, the amount paid by the petitioner is in excess of the amount to be determined, the same shall be allowed by adjusted against future bill or refunded. On the other hand, if the consumption was excess, the petitioner shall be directed to pay the amount within the prescribed time limit as per the provision of the Act.

12. This Writ Petition is disposed of with the above observations and directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

arb

To
1. The Assistant Engineer,
   Tamilnadu Electricity Board,
   (TANGEDCO)
   O & M, Napalayam,
   Chennai - 600 103.
2. The Assistant Accounts Officer,
   Revenue Branch,
   Tondiarpet/CEO/North,
   Chennai - 21.

3. The Assistant Audit Officer,
Audit Branch,
TANGEDCO,
Chennai - 2.

+1 cc to M/s.D.Kanagasundaram, Advocate Sr.No. 14497
+1 cc to M/s.p.R.Dhilip Kumar, Advocate Sr.No. 14296

W.P. No. 17005 of 2011
and
M.P. No. 1 of 2011

PA(CO)
RMP(29/03/2021)