



W.P.Nos.32152, 34628, 34629 of 2012 and batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 29.08.2022

Pronounced on : 01.09.2022

CORAM :

THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

**W.P.Nos.32152, 34628, 34629 of 2012, 27001 of 2014,
8297 of 2015, 28429 of 2014 and 22668 of 2015**

and

M.P. Nos.1, 1, 1, 2, 3 of 2012, 1, 1 of 2014, 1, 1, 2 of 2015

W.P.No.32152 of 2012:

Messrs Chempast Sanmar Limited,
Represented by its Assistant General Manager Legal,
K.G.Bhushanam

... Petitioner

Vs.

1.The Secretary,
Energy Department,
Government of Tamil Nadu,
Fort St.George,
Chennai – 600 009.

2.The Chairman,
Tamil Nadu Electricity Board,
144, Anna Salai,
Chennai – 600 002.

3.The Superintending Engineer,
Mettur Electricity Distribution Circle,
Tamil Nadu Generation and
Distribution Corporation Limited,
(TANGEDCO), Mettur Dam 636 401.

...Respondents



W.P.Nos.32152, 34628, 34629 of 2012 and batch

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 3rd Respondent in its proceedings in Letter No.SE/MEDC/HT SC No 23/D.212/2012 dated 08.11.2012 and the consequential demand in Letter No. SEM/DFC/AOR/HT/A4/F.HTSC23/R.541/12, dated 29.11.2012 and quash the same.

For Petitioner : Mr.K.Harishankar
For Respondents : Mrs.N.Senthil Selvi
Government Advocate for R1
Mr.Abdul Kalam
Standing Counsel for R2 and R3.

COMMON ORDER

In all the above writ petitions the challenge is to demand towards alleged dues for supply of electricity raised on the basis of audit objection. The challenge in all these Writ Petitions are almost on similar grounds, viz.,

a) That the demands are made mechanically on the basis of audit objection, thereby suffers from gross non-application of mind on the part of the authority raising the demand.

b) That the demands are raised merely on the basis of audit objection even though the audit objections are contrary to the orders of the Tamil Nadu Electricity Regulatory Commission.



W.P.Nos.32152, 34628, 34629 of 2012 and batch

c) That the demand towards alleged consumption/supply of electricity results in serious civil consequences, however, the impugned demands are raised in gross violation of principles of natural justice unilaterally without opportunity to the petitioners to even put forth their objection.

2. The present Writ Petitions give rise to the following common questions of law:

a. Whether the electricity dues would constitute purely contractual liability or is it statutory dues.

b. Whether the demand (in excess of admitted amounts) by the licensee through its officers is quasi-judicial or administrative in character and whether principles of natural justice would apply to such proceedings.

c. Whether the licensee acting through its officer/ authorities while making a revised demand on alleged short levy based on audit objection ought to apply its mind independently to the audit objection (or) is it permissible for the licensee and its authorities to raise demands merely based on audit objections.



W.P.Nos.32152, 34628, 34629 of 2012 and batch

d. What is the nature of audit objection.

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3. Before I proceed to answer the above questions, it may be relevant to very briefly refer to the facts:

(i)W.P.No.32152 of 2012:

The Writ Petition is filed challenging the demand made by the 3rd Respondent towards alleged drawal of excess energy over and above the permitted quota for the month of 12/08, 01/09 and 02/09. The demand was made pursuant to an audit objection, the 3rd Respondent had initially submitted that the audit objection and consequential demand was based on erroneous calculation. However, after stating that the audit objections were erroneous, raised the impugned demands on the basis of the audit slip/objecton on the basis of an erroneous calculation by the Audit. The calculation that has been adopted was found by the Tamil Nadu Electricity Regulatory Commission as erroneous, moreover the methodology adopted by the audit party was never communicated to the petitioner.

(ii)W.P.Nos.34628 and 34629 of 2012:

The impugned demands are challenged on the basis of Audit Slip No.141 dated 03.12.2012 and Audit Slip No.144 dated 04.12.2012, which would



W.P.Nos.32152, 34628, 34629 of 2012 and batch

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reveal that the entire demand raised by the audit was on the basis that the correct demand quota had not been properly fed into the computer. It is the Respondent who is in charge of feeding the demand quota. It is stated that the petitioner has now mulcted with demand charges for the mistake/error committed by the Respondent. The response of the Respondent to the audit objection has also not been furnished resulting in violation of principles of natural justice.

The audit objection is unsustainable inasmuch as the view of the petitioner that it is contrary to the order passed by the TNERC in M.P.No.42 of 2008 and that the practice is for the licensee, i.e.. TANGEDCO, to fix the demand and energy quota.

(iii)W.P.No.27001 of 2014:

The Writ Petition is filed challenging the impugned proceedings of the 2nd Respondent, i.e. The Superintending Engineer, raising demand on the basis of audit report alleging shortfall on the premise that the proceedings are contrary to the orders of the Tamil Nadu Electricity Regulatory Commission in Order dated 07.09.2010 in M.P.No.6 of 2010.



W.P.Nos.32152, 34628, 34629 of 2012 and batch

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(iv)W.P.No.8297 of 2015:

The petitioner has filed a writ of certiorarified Mandamus to call for the records of the 2nd Respondent, i.e., the Superintending Engineer culminating in the order of the 3rd Respondent dated 12.12.2014 in A.P.No.65 of 2014 and to refund the excess amount collected pursuant to the notices dated 14.03.2012 and 06.03.2013 of the 2nd Respondent and 12.12.2014 of the 3rd Respondent.

(v)W.P.No.28429 of 2014:

The petitioner has filed a writ of certiorarified Mandamus to call for the records of the 2nd Respondent, i.e., the Superintending Engineer culminating in the order of the 3rd Respondent dated 26.09.2014 in A.P.No.17 of 2014 and to refund the excess amount collected pursuant to the notices dated 18.09.2013 and 26.09.2014 of the 2nd and 3rd Respondents respectively.

In both the above Writ Petitions in W.P.Nos.8297 of 2015 and 28429 of 2014, the challenge is on the ground that no adequate



W.P.Nos.32152, 34628, 34629 of 2012 and batch

WEB COPY

opportunity was granted to the petitioners to show cause and also contrary to the orders of the Tamil Nadu Electricity Regulatory Commission insofar as the Respondents have proceeded on the basis the optimum demand customer should not avail third party power during working days which was allotted to them.

(vi)W.P.No.22668 of 2015:

The petitioner has challenged the audit report No.153 dated 09.04.2014 passed by the third respondent and consequential order dated 18.04.2015 passed by the second respondent. The challenge is made on the ground that the petitioner was not given any opportunity before the demand was raised. The petitioner was not even running the Unit from 2011 to 2012 and though documents were furnished which would demonstrate the same, the demands have been made only on the basis of the audit report without even applying its mind to the documentary evidence in the form of returns of sales tax, central excise to show non production during the relevant period.



W.P.Nos.32152, 34628, 34629 of 2012 and batch

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4. I shall now proceed to answer the above questions in seriatim.

a. The first question is no longer res integra and stands resolved by the recent judgment of the Supreme Court in the case of ***Telangana State Southern Power Distribution Co. Ltd. v. Srigdhaa Beverages, reported in (2020) 6 SCC 404***, wherein, after referring to the earlier case laws, some of them being, viz., *Hyderabad Vanaspathi Ltd. v. A.P. SEB [Hyderabad Vanaspathi Ltd. v. A.P. SEB. (1998) 4 SCC 470]*, it was held that electricity dues are not purely contractual in nature but possibly statutory. The following observations are relevant:

a)Telangana State Southern Power Distribution Co. Ltd. v. Srigdhaa Beverages, (2020) 6 SCC 404: (2020) 3 SCC (Civ) 748 :- 2020 SCC OnLine SC 478 at page 409:

"10. We may also notice that there have been subsequent judicial pronouncements dealing with this aspect of electricity dues. A three-Judge Bench of this Court has held that the dues under the terms and conditions of supply partake the character of statutory dues (*Hyderabad Vanaspathi Ltd. v. A.P. SEB [Hyderabad*



W.P.Nos.32152, 34628, 34629 of 2012 and batch

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Vanaspathi Ltd. v. A.P. SEB, (1998) 4 SCC 470J). The mere fact that agreements were entered into with every consumer only served the purpose of bringing to the notice of the consumer the terms and conditions of supply, but did not make the dues purely contractual in character."

...."16.1. That electricity dues, where they are statutory in character under the Electricity Act and as per the terms and conditions of supply, cannot be waived in view of the provisions of the Act itself, more specifically Section 56 of the Electricity Act, 2003 (in pari materia with Section 24 of the Electricity Act, 1910), and cannot partake the character of dues of purely contractual nature."

b. To answer the second question, it may be relevant to bear in mind that any order of enhancement of demands results in adverse civil consequences, if so, the question whether the proceedings is ministerial/administrative/quasi-judicial appears to pale into insignificance while examining the question of the need to comply with the principles of natural justice. The concept of natural justice as well as administrative law has undergone a sea change. It appears that while examining the question whether a particular proceeding ought to be in compliance with



W.P.Nos.32152, 34628, 34629 of 2012 and batch

WEB COPY

principles of natural justice, the test may no longer be as to whether such order/ proceeding is not whether one can fairly call the same to be ministerial/ administrative/quasi-judicial but whether civil consequences ensue. In other words, be it ministerial/ administrative /quasi-judicial, it appears that any proceeding which results or involves civil consequences then irrespective of whether such proceeding/order is administrative/quasi-judicial, the said proceedings ought to be in conformity with principles of natural justice. Its been a long while since the dividing line between administrative and quasi-judicial functions/powers have become blurred. The dividing line between administrative and quasi-judicial power was perceptibly mitigated in the case of *State of Orissa Vs. Dr.(Miss) Binapani Dei*, reported in *AIR 1967 SC 1269* and rubbed out to a point where it has virtually become non-existent in the case of *A.K. Kraipak and others Vs. Union of India and others*, reported in *(1969) 2 SCC 262*. Thereafter, the above principles have been consistently followed and the dichotomy, if any, which might have existed between administrative and quasi-judicial function vis-a-vis applicability of the doctrine of natural justice has been judicially abandoned/discarded as unsound as held in the case of



W.P.Nos.32152, 34628, 34629 of 2012 and batch

S.L.Kapoor vs. Jagmohan and others reported in ***(1980) 4 SCC 379***.

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The position that prevails is that whenever civil consequences ensue the distinction between an ministerial/administrative/quasi-judicial order with reference to applicability of principles of natural justice gets obliterated. The reason behind extending the applicability of natural justice is to ensure prevention of miscarriage of justice and compliance with natural justice could be a means of ensuring that. Thus, it may be necessary to extend the principle irrespective of the nature of the proceedings if the same were to result in civil consequences. Thus any demand on the basis of Audit Objection, ought to be in conformity with principles of natural justice.

Now as to what would constitute natural justice which the petitioners claim to have been violated in view of the fact that consequent to the impugned orders, they are subjected to demands that are at times astronomical and bears no connection or relation to the electricity that could have been possibly consumed or that such demands are contrary to the law governing the demand of electricity charges, in this regard, it may be relevant to note that the Hon'ble Supreme Court in K.I.Shephard's case



W.P.Nos.32152, 34628, 34629 of 2012 and batch

WEB COPY

reported in **1988 AIR 686, 1988 SCR (1) 188**, wherein, it was clarified that natural justice requires that persons likely to be affected by proposed ministerial/ administrative/quasi-judicial acts, decisions or proceedings be given adequate notice of what is proposed so that they may be in a position (a) to make representations on their own behalf; (b) or to appear at a hearing or enquiry, if one is held; and c) effectively to prepare their own case and to answer the case, if any, they have to meet.

In the present proceedings that this Court is concerned with, there is no doubt that enhancement of demand results in adverse civil consequence. Resultantly, the inescapable/irresistible conclusion appears to be that the proceedings must be in compliance with principles of natural justice lest the proceedings/power itself would become vulnerable to challenge on the ground of suffering from the vice of arbitrariness thereby falling foul of Article 14 of the Constitution of India.

c. Now coming to the third question, it appears that while the consumer is liable to pay on the basis of the Tariff for electricity consumed, it is open to the Board as a licensee to recover the dues in



W.P.Nos.32152, 34628, 34629 of 2012 and batch

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respect of the electricity supplied. The provisions of the Act does not designate or identify a particular officer / class of officers, who is/are conferred with the authority to recover the dues. Despite repeated queries as to whether there are any provisions under the Act, which identifies the officer, who is conferred with the power/authority to collect the dues, there was no response which was forthcoming. It appears that the audit party may not have the authority to collect the dues, which would be evident from the fact that the audit party, while identifying the issues and in most cases, the quantum of dues, passes on the report / objection to the concerned officer to raise the demand on the consumer. The officer concerned thereafter issues a demand notice on the basis of the audit objection. If the audit party was conferred / vested with the authority/power to raise demands, the need for the audit party to forward the same to the officer concerned to raise the demands on the consumer would not have arisen. It clearly reflects recognition of the limitation of the audit party to raise a demand on the consumer. As a sequitur, it appears that only the officer, who raises the demand on the consumer can be treated as the one, who has the authority/power to raise demands. If that be so, it seems extremely doubtful if the officer concerned can act



W.P.Nos.32152, 34628, 34629 of 2012 and batch

WEB COPY

merely on the dictates of the Audit, nor can the audit thrusts or imposes its views on the officer concerned, who is vested with the power to recover the dues from the consumer. This, in turn, in my view, would impose an obligation on the officer concerned to apply his mind independently to the audit objection / slip / point and not raise demands mechanically treating the audit objection as dictates that are binding. If the officer concerned were to raise demands mechanically without applying his mind, it would constitute abdication of his authority. It is important to also keep in mind that these dues that are being raised results in civil consequences, which adversely impacts the consumer and thus, irrespective of the nature of the function/power exercised be it ministerial, administrative or quasi-judicial, it appears that the officer concerned, who raises a demand, ought to be convinced in his mind of the legitimacy/legality of such demand. It is axiomatic that the authority which performs an act resulting in civil consequences ought to apply its mind independently and it is impermissible to abdicate its authority. In this regard, it may be relevant to note that there has been instances where the audit objections had proposed/suggested demands being raised contrary to the orders of the Regulatory Commission which is clearly



W.P.Nos.32152, 34628, 34629 of 2012 and batch

WEB COPY

impermissible. Further as a matter of fact, there are instances as in these writ petitions where demands are raised on the basis of audit which is in conflict with the order of Regulatory Commission. The Regulatory commission have the trappings of a Tribunal when it exercises adjudicatory function and thus the order of the Regulatory Commission as a result of its adjudicatory function would be binding unless overturned by a superior body. Neither the audit nor the authority raising the demand on the basis of the audit or otherwise can act contrary to the orders of the Regulatory Commission.

d. The fourth question relates to the nature of the audit, though not with reference to the audit under the Electricity Laws but question has arisen as to the nature of the audit functions in the context of Income Tax proceedings and while examining the same, it was held by Hon'ble Supreme Court in the case of *Indian & Eastern Newspaper Society v. CIT, reported in (1979) 4 SCC 248 : 1979 SCC (Tax) 336 at page 253* wherein after setting out the functions and nature of audit has clarified that the function of audit is essentially executive and cannot be attributed with powers of supervision of quasi-judicial functions. The relevant



W.P.Nos.32152, 34628, 34629 of 2012 and batch

portions of which reads as under:

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“11. Whether it is the internal audit party of the Income Tax Department or an audit party of the Comptroller and Auditor-General, they perform essentially administrative or executive functions and cannot be attributed the powers of judicial supervision over the quasi-judicial acts of income tax authorities. The Income Tax Act does not contemplate such power in any internal audit organisation of the Income Tax Department; it recognises it in those authorities only which are specifically authorised to exercise adjudicatory functions. Nor does Section 16 of the Comptroller and Auditor-General (Duties, Powers and Conditions of Service) Act, 1971 envisage such a power for the attainment of the objectives incorporated therein. Neither statute supports the conclusion that an audit party can pronounce on the law.....”

(emphasis supplied)

The audit cannot impose its view on the officer raising the demand, it appears to me that the role of audit is at best to point errors, if any, in raising demand and leave it to the discretion of the officer concerned to pass appropriate orders. The officer raising the demand has a duty not to act mechanically but to pass orders after applying his mind independently to the Audit point. In other words, the Audit objection ought not to be



W.P.Nos.32152, 34628, 34629 of 2012 and batch

WEB COPY

treated as binding or conclusive rather it is a material (or) a starting point for making further enquiry if the officer raising the demand is convinced with the audit objection and thereafter proceed to evaluate and assess in accordance with law, before raising any demand.

5. From the above discussion, it appears that assuming the audit is part of the licensee, cannot raise a demand, the audit functions are administrative being an internal exercise. The audit by themselves do not affect the rights or impose an obligation, it is only when the audit objection is acted upon and gets translated into proceeding for demand, the consumer gets affected. In any view, enhanced/ excess demand can be raised only after putting the consumers on notice of the reason and the material forming the basis of such enhanced demand, failure to do so would result in violation of principles of natural justice.

6. To a pointed question as to whether there is any provision under the Electricity Act which prescribes the method and the manner for raising any additional demand be it on the basis of audit slip or on the basis of a revisit by the authority vested with the jurisdiction, it was



W.P.Nos.32152, 34628, 34629 of 2012 and batch

WEB COPY

submitted that the provision which appears to govern/cover the situation appears to be Regulation 13(2) of the Tamil Nadu Electricity Supply Code, 2004. The relevant portions are extracted hereunder:

"13. Servicing of bills :

(1) For the HT services, bills shall normally be sent by post or by hand delivery but the Licensee takes no responsibility for loss in transit. The consumer should notify the concerned office of the Licensee, if no bill or assessment is received. Non-receipt of the bills/ assessments will not entitle the consumer to delay payment of the charges beyond the due date. For LT services, entry in consumer meter card shall be the bill of demand and there will be no separate issue of bill.

(2) For any arrears other than the regular current consumption bill, it is the Licensee's obligation to inform the consumer by a separate communication with details."

A reading of the above provision would show that it is the licensee's obligation to inform the consumer in respect of any error other than the regular current consumption bill which is indicative of the fact that any demand must be made after putting the consumer on notice. Assuming that there is no provision which expressly provides for putting the consumers on notice in the event of an enhanced demand, it is trite law that in the absence of any express provision, excluding applicability of



W.P.Nos.32152, 34628, 34629 of 2012 and batch

WEB COPY

natural justice, the same must be read into the provision.

7. It appears that the Respondent is under a duty to inform the consumer of the reasons resulting or forming the basis of the enhanced demand including the audit report/objection. This Court also makes it clear that before proceeding further on the basis of the audit slip, it is incumbent on the officer to independently apply his mind and satisfy himself of the need to proceed further on the basis of the audit slip/objection/ suggestion. Failure to do so would vitiate the proceedings for being in violation of the principles of natural justice. I find that the impugned proceedings suffers from the above vice.

8. Having setting out the legal position, it was submitted by the learned counsel for the Board that the demands would be worked out keeping the above principles/ directions.

9. In view of the above, the impugned demands are set aside with liberty to the Respondents to raise fresh demands keeping in mind the



W.P.Nos.32152, 34628, 34629 of 2012 and batch

legal position set out above after affording the petitioners a reasonable opportunity.

10. The Writ Petitions are disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

01.09.2022

mka/ lm

Index : Yes/No

Speaking Order/Non-speaking Order

To:

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W.P.Nos.32152, 34628, 34629 of 2012 and batch

MOHAMMED SHAFFIQ, J.

mka/ lm

Pre-delivery Order in
W.P.Nos.32152, 34628, 34629 of 2012,
27001 of 2014, 8297 of 2015,
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01.09.2022