



W.P.No.21686 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.10.2022

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

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W.M.P.No.18535 of 2016

M/s. Tarsun Steels India (P) Ltd.,
H.T.Sc.No.361, Palladam,
S.F.156/1B, Trichy Road,
Madhapur Village, Palladam,
Tiruppur – 641 664
rep. By its Managing Director,
S.Thangarajan

...Petitioner

Vs.

1. The Chairman and Managing Director,
Tamilnadu Generation and Distribution
Corporation Limited,
144, Anna Salai, Chennai – 600 002

2. The Superintending Engineer,
Tirupur Electricity Distribution Circle,
TANGEDCO, Tirupur.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari by calling for the records of the 2nd respondent in Lr.No.SE/TEDC/TRP/DFC/AO/HT/F.MRTREV/HTSC 361/D1038/16 dated Nil and quash the same as illegal, arbitrary and untenable under Law and against the provisions of Tamilnadu Electricity



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Supply Code 2004.

For Petitioner : Mr.AR.L.Sundaresan
Senior Counsel assisted by
Mr.A.R.Karthick Lakshmanan for
Mr.K.Seshadri
Counsel for the petitioner

For Respondents : Mr.L.Jaivenkatesh

ORDER

The present Writ Petition has been filed challenging the demand notice issued by the 2nd respondent for the payment of short levy consumption charges of Rs.4,90,62,768.67.

2. It is the case of the Writ Petitioner that the 1st respondent sanctioned H.T.Service Connection in H.T.Sc/No.361 for sanctioned demand 3600 K.V.A., to run said industry. The petitioner - Industry provided with electronic L&T meter, which records Load Survey data, billing data and tamper data, therefore, there would be no chance of defect and furthermore, the meter is tamper proof meter. The respondents would take meter reading on 26th of every month, after verifying the correctness of the reading.



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3. While the matter stood thus, on 19.01.2015, the officials from the respondents' office inspected the petitioner-industry and checked the function of the main meter located inside the factory and checked the meter fixed outside the premises on the public road and found no defect in the meter. In spite of the fact that there was no defect in the meters, the 2nd respondent compared the readings with the meter located in the sub-station, which is 6.5 kms away from the petitioner-industry and based on the readings in the meter located in sub-station, the bills for the period from 26.09.2013 to 19.01.2015 have been revised and claimed the said huge amount, as short levy. It is the further contention that the 2nd respondent has not given any opportunity to explain the petitioner's position before issuing the impugned demand.

4. As there was power cut till 05.06.2015, the consumption was low in the petitioner's industry. Based on the low consumption, the bills have been revised under the impugned order. The 2nd respondent, revised the bill, as if the meters were not recording the reading properly. If the meters become defective, the authorities should have removed and sent the same



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for testing by the accredited testing laboratory. No procedure were followed, as contemplated under Supply Code, 2004, therefore, a Writ Petition has been filed in W.P.No.26819 of 2015, whereas this Court, on the date of admission, on 28.08.2015, was pleased to direct the petitioner to submit his reply to the impugned demand notice treating it as show cause notice and directed the 2nd respondent to pass orders within a period of two weeks thereafter. Even after reply, the 2nd respondent without examining any officers, directed the petitioner to furnish certain documents. Again on 28.01.2016, the 2nd respondent directed the petitioner to attend the enquiry on 11.02.2016 and after attending the enquiry, the 2nd respondent has issued impugned demand notice dated Nil (but it was signed on 04.06.2016) after a lapse of 9 months. Hence the same is challenged in the present Writ Petition on the ground that none of the procedures contemplated in the provisions available in the Supply Code is followed before levying the amount, as short levy, without testing the meters.

5. In the counter, it is the contention of the respondents that the petitioner purchased both main and check meters, due to non availability of the meters at TANGEDCO. The same electronic L&T meters are provided



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to the petitioner-industry, HT SC No.361. The L&T electronic TOD meters are capable to record load survey data, billing data, tamper data, daily energy and power off time (No supply). The energy quota fixed to the petitioner was 13,50,000 unit per month and quota demand was 2592 KVA. For the restriction and control period of October 2013 to May 2014 and October 2014 to May 2015, the petitioner had not followed the power cut instruction and violated the conditions of supply during the power cut period for ten times and penalties were paid by the petitioner.

6. Further, it is the contention in the counter that on 19.01.2015, during inspection, special tests were carried out in the existing main metering and check metering arrangement, it was found that the energy recorded in the main HT TOD meter (L&T SI.No.13190786) and check HT TOD Meter (L&T SI.No.13190278) were 38.88% lower than the substation meter installed for Alagumalai feeder, which feeds supply to this HT service only. The CMRI data of main and check meters were analyzed from the date of effecting service by MRT along with the representative of L&T meter manufacturing company. It is found that there are data shifts from September 2013 and also as it shows multiple power failures occurred in



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the main and check meter, even though supply was continuously available in the 33 KV Alagumalai feeder.

7. According to the respondents, in view of the above, the meter did not record actual energy. The meter recorded 61.12% of energy only. Petitioner's bills were revised for remaining 38.88% unrecorded energy of 83.227 Lakh units for the period from 01.09.2013 to 19.01.2015 for an amount of Rs.4,90,62,769/- (Rupees Four Core Ninety Lakh Sixty Two Thousand Seven Hundren and Sixty Nine Only).

8. Also, it is the contention of the respondents in the counter that the revision of bills to the petitioner are based on the average consumption from July 2015 to October 2015, as per Regulation 11 of Supply code, the petitioner has not followed the Restriction and Control conditions and exceeded the permitted demand and during the restriction and control periods for ten times. The production statement given by the petitioner was compared with the consumed energy on the day from CMRI downloaded data from 01.09.2013 to 19.01.2015, hence opposed the Writ Petition.



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9. The learned Senior Counsel for the petitioner would submit that the petitioner provided with a main meter inside the premises and check meter outside the premises. The officials of the respondents inspected on 19.01.2015, thereafter, demand notice was issued claiming huge amount holding that during the inspection, it was found that energy recorded in the main HT TOD meter (L&T SI.No.13190786) and check HD TOD meter (L&T SI.No.13190278) were 38.88% lower than the substation meter installed for Alagumalai feeder, which feeds supply HT Service only and levied a sum of Rs.4,65,47,061/-.

10. It is the contention of the learned Senior Counsel for the petitioner that there is a difference of percentage between the meters fixed in the petition premises and the meter fixed in the sub-station of the respondents, accordingly, the impugned order has been passed by levying such huge amount. It is his contention that Installation of Meter is explained in Regulation 7 of Tamilnadu Electricity Supply Code 2004. As per Regulation 7, the licensee shall ensure that such meter is of high quality, high precision and accuracy and shall arrange to recalibrate the same at consumer cost.



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11. Sub Regulation 9 of Regulation 7 states that if the consumer considers that the meter is defective, the meter has to be tested by the Third Party testing laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories (NABL). Till the Third Party Meter Testing Arrangement is established, the licensee shall have the special test conducted by the Chief Electrical Inspector to Government of Tamil Nadu.

12. The further contention of the learned Senior Counsel for the petitioner is that Regulation 23 Chapter 4 of the Supply Code deals with Tampering of Meters etc., According to him, in case of suspected theft of tampering meter, such tampered meter shall be taken out and sealed at the time of inspection, as prescribed in sub regulation (3), shall be sent to the third party accredited meter testing laboratory, as arranged by the licensee or supplier concerned, therefore, without following provisions to findout as to whether there was any defective in the meters fixed in the petitioner-Industry, the respondents merely on the basis of their inspection, came to the conclusion that there was a difference in a reading recorded in the meter fixed in the writ petitioner-Industry and sub station.



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13. It is the further contention of the learned senior counsel for the petitioner that it is admitted case of the respondents that at the time of inspection, the meter fixed at the premises of the writ petitioner neither found defective nor tampered, such being the case, merely because some difference recording was shown in sub meter fixed at the sub station, which is situated nearly 7 kms away, the respondents cannot term that the meter reading recorded at the Industry of the writ petitioner is not correct. Hence it is the contention of the learned senior counsel for the petitioner that the entire demand raised in the impugned order is without any basis and not following any procedure, as mandated in the Electricity Supply Code.

14. Whereas the learned counsel appearing for the respondents would submit that on 19.01.2015 during inspection, they found that the meter fixed at the writ petitioner-Industry is not according to the original reading by comparing meter fixed at the sub-station. The levy has been fixed from 01.09.2013 to 19.01.2015. The 2nd respondent revised the bills from 01.09.2013 to 19.01.2015 based on the average consumption of 13,23,195 units per month for no restriction and control period including the



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evening and night peak hours and 11,81,850 units per month for restriction and control period excluding evening and night peak hours, therefore, it is his contention that impugned order does not suffer from any irregularity, hence pleaded to dismiss the present Writ Petition.

15. I have heard the contentions on either side and perused the entire materials placed on record.

16. The impugned order has been passed by raising demand of Rs.4,65,47,061/- mainly on the ground that main and check meters installed at the writ petitioner-Industry found incorrect recording from 01.09.2013 to 19.01.2015, therefore, revised bills from 01.09.2013 to 19.01.2015, has been passed based on the average consumption per month. The impugned order itself would indicate that during the inspection, on 19.01.2015, the 2nd respondent along with the Execution Engineer / Enforcement / Coimbatore and Executive Engineer / O&M/ Palladam, has not noticed tampering or defective in the meter, whereas, they have noticed only a change of energy recorded in the main and check meters were 38.88% lower than the substation meter installed for Alagumalai Feeder, which feeds supply to this HT service only and it is not the case of the 2nd respondent that the meter



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installed in the petitioner-Industry was found tampered or defective at the time of inspection.

17. It is relevant to note that when the impugned order is passed based on the allegation of incorrect recording of the meter, the proper procedure to take a decision is to test the meter as per Law. The Sub Regulation 3 of Regulation 7 of the Electricity Supply Code 2004 deals with Installation of Meter where the consumer elects to purchase his own meter, licensee shall ensure that such meter is of high quality, high precision and accuracy and shall arrange to recalibrate the same at consumer cost.

18. Sub-Regulation 4 of Regulation 7 makes it mandatory that after installation, the security seals shall be affixed in the presence of the consumer or his representative on the meter box cover, current transformer chamber, terminal cover of the meter, test block, cut outs, air-break switch and gate and such other part of the installation as the licensee may decide). After such safety measures adopted by the licensee, then, it is the duty of the consumer to see that the meter and the seals are not stolen, damaged or tampered with. Only after then the consumer shall run his wiring from such point of supply. Sub-Regulation 5 of Regulation 7 states that the quantity of electricity recorded by such meter shall be taken as the quantity



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actually supplied by the licensee.

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19. It is not the case of the 2nd respondent that they have not taken any safety measure while fixing the meter, at the initial stage, it is also not their case that at time of inspection, on 19.01.2015, the meters were either found defective or tampered. It is also relevant to note that if the consumer considers that meter fixed is a defective or tampered, there is a special mechanism under Sub-Regulation 9 of Regulation 7 in such a case, licensee to have a special test carried out on the meter at any time and the cost of such test shall be borne by the licensee or the consumer if the meter is found defective or correct as a result of such a test. [The aforementioned special test for the disputed energy meters including the suspected/defective meters shall be carried out in the Third Party testing laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories (NABL) and till such time the Third Party Meter Testing Arrangement is established, the licensee shall have the special test conducted by the Chief Electrical Inspector to Government of Tamil Nadu]. Therefore, the said Sub-Regulation 9 of Regulation 7 makes it clear that whenever there is a complaint with regard to defective meters, proper test



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has to be conducted by the licensee that too with the 3rd party testing laboratory. Till such test is conducted by the 3rd party testing laboratory, the licensee shall have the special test conducted by the Chief Electrical Inspector to Government of Tamil Nadu.

20. Admittedly, in this case, it is not the case of the consumer that the meters are defective, similarly, it is not the case of the respondents that they have also found that the meters are incorrect or defective, but the impugned order has been passed only on the ground that the meter fixed at the premises of the petitioner are found recording incorrect energy, therefore according to respondents, it is only the meter is over tampered and not reflecting right energy supply, if such being the contention of the respondents, on the date of inspection, on 19.01.2015, they ought to have sealed meter, subjected the meter for analysis by the accredited laboratory.

21. Sub-Regulation 9 of Regulation 23 deals with the Tampered Meters, in case of suspected theft through a tampered meter, such tampered meter taken out and sealed at the time of inspection, as prescribed in sub regulation (3), shall be sent to the third party accredited



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meter testing laboratory as arranged by the licensee or supplier concerned or to the Chief Electrical Inspector to the State Government till such time the third party meter testing arrangement is established by the licensee or supplier concerned, as the case may be. Only after testing in the laboratory, where it is established that there is a case of any theft or tampering, the procedure for assessment could be followed by the respondents, as per Supply Code.

22. Though Regulation 23 made applicable to the Tampering, Distress or Damage to the Electrical Plant, Meters etc., the same principle is also applicable to the present case for the simple reason that levy has been made only on the ground of defective recording in the meter, without establishing defect found in the meter, merely on the basis of recording shown in the meter of the licensee, namely, the 2nd respondent, which has been fixed in their sub-station, which is admittedly at the distance of 6.5 kms from the petitioner-Industry, hence this Court is of the view that without establishing the fact that the meter, in fact, is found defective or recording incorrect details by subjecting meters to the laboratory, as contemplated in the Regulations, the respondents cannot by mere inference on the basis of their own recording sub-station, can come to the conclusion that there were



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excess energy used by the petitioner.

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23. It is also relevant to note that the distance between the sub-station and the petitioner-Industry is 6.5 kms, as per the 2nd respondent. Therefore, possibility of leakage or pilferage in the above distance is also cannot be ruled out. Therefore, merely on the basis of their own recording in their sub-station, the petitioner cannot be clothed with liability to pay huge amount on the ground that the energy consumed is not been properly reflected in the meter without establishing any tampering in their meter.

24. It is further to be noted that the meter has been installed only for the purpose of calculating the energy used and supplied. While installing the sub-station meter, the same should have been made in the presence of consumer and the licensee have not installed the meter in the presence of consumer and if at all the respondents intends to rely on recording of their sub-station meter, the installation should have been made in the presence of Writ Petitioner, which also not been done in this case.

25. In such view of the matter, the impugned order passed by revising



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the bills based on their own calculations without examining the meter by subjecting the same in a 3rd party test laboratory accredited by the National Accreditation Board or by the Electricial Inspector of the Government of Tamilnadu, revision made by the 2nd respondent cannot be sustained in the eye of law. Further, it is also submitted on behalf of the petitioner that a deposit is made pursuant to the earlier direction of this Court while admitting the Writ Petition, if it is so, the same shall be adjusted in future bills.

Accordingly, the impugned order is set aside and the Writ Petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

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Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking Judgment
ssd

N.SATHISH KUMAR, J.,

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