



WP.No.40206 of 2016

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

**WP.No.40206 of 2016 &
WMP.Nos.34238 & 34239 of 2016**

M/s.G.J.Spinner,
LT CT SC No.353 007 762,
S.F.No.82/1, Sendrayanpalayam,
D.G.Pudur, Gobichettipalayam.

... Petitioner

Vs

1. The Superintending Engineer,
TANGEDCO, Gobi Electricity Distribution Circle,
Gobichettipalayam.

2. Tamilnadu Electricity Ombudsman,
No.19-A, Rukmini Lakshmipathy Salai,
Egmore, Chennai – 600 008.

... Respondents

Prayer:- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue a Writ of Certiorafied Mandamus to call for the records of the second respondent culminating in his impugned Order in Appeal Petition No.10 of 2016 dated 19.10.2016, quash the same and direct the respondents



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to refund to the petitioner the amounts collected through the impugned order for its service connection No.353-007-762 or adjust the same towards future bills amount.

For Petitioner : Mr.N.L.Rajan, S.C.,
for Mr. E.Jayasankar

For Respondents : Mr.J.Ravindran,
Additional Advocate General
Asst. by Mr.M.Abul Kalam – R1 & R2

ORDER

This Writ Petition has been filed to quash the impugned Order in Appeal Petition No.10 of 2016 dated 19.10.2016 and direct the respondents to refund to the petitioner the amounts collected through the impugned order for its service connection No.353-007-762 or adjust the same towards future bills amount.

2. Brief facts leading to filing of this Writ Petition is as follows :

The petitioner is a small scale industry engaged in manufacturing of 40's count yarn. The electricity supply to the industry is in the category of LTCT with the sanctioned demand of 112 K.W. The service connection number for the petitioner's unit is 353-007-762. The same was inspected by



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the Assistant Executive Engineer on 05.08.2014 as a matter of routine. Till such inspection, it was observed that there was malfunction of the meter. Accordingly, the meter was inspected by the MRT Wing of the respondent and it was observed that the consumption recorded in all the three phases were not evenly recorded by the meter. In order to confirm the same, the meter was checked by MRT wing on the same day by conducting usual tests. It had been found that the phase associations of Y phase and B phase were found interchanged in the meter terminal and consequently, consumption recorded by the meter was lesser than that of the actually consumed electricity. To ascertain the actual shortfall in consumption recorded, a new LTCT check meter was connected in series with the existing meter in the service connection No.353-007-762 and based on the same, the short fall in consumption was assessed for the back period of 24 months and a sum of Rs.24,34,047/- was levied being the short fall for which show cause notice has been issued and thereafter, final Order has been passed. Challenging the same, the petitioner had moved before Ombudsman. However, he is not successful. Challenging the same, the present Writ Petition has been filed.



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3. It is the case of the respondent that the meter has been inspected by the officials and found that Y and B phase has been interchanged. Accordingly, they fixed new meters series with the existing meters and consumption was recorded from 20.08.2014 to 30.09.2014 with the concurrence of the petitioner. The result were analyzed by the MRT wing and on detailed scrutiny of the readings, it was confirmed that there was 35% short fall in recording of the consumption by the existing meter due to wrong phase association. Accordingly, demand notice has been issued and hence prays for dismissal of this Writ Petition.

4. The learned Senior Counsel appearing for the petitioner submitted that it is not the case of the respondent that there was tampering. On the other hand, the respondent has taken a stand that it is only a defective meter and in such case, proper procedure has to be followed as per law and it has not been done. According to him, without following any procedure, assessment has been made. If there is any tampering of the meter, it has to be subjected to the test before accredited laboratory or by the Electrical



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Engineer of the State, which has not been done so in this case. Therefore,

unilateral levy without following any procedure is not valid in the eye of law.

5. The learned Additional Advocate General would submit that there was tampering in the meter. Though it is stated that it is tampering, it is his contention that it is a defective meter. Hence, it is his contention that if the levy has not been properly made, the matter may be remanded to the authorities to follow proper procedure to levy charges, after affording opportunity to the parties.

6. I have perused the entire records. It is not the case of tampering or theft of electricity. Levy has been made mainly on the ground that there is shortfall in consumption was due to wrong wiring in the meter terminals and due to defects in the meter. The stand taken by the petitioner is that such defective meter has been fixed by the authorities themselves. Such being the position, even if the meter is found to be defective one, as contended by the petitioner, for levying differential amount, for assessment in cases where



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there is a defective meter, separate procedure as contemplated under

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Regulation 11 of the Tamilnadu supply Code, which reads as follows :

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

(1) Where supply to the consumer is given without a meter or where the meter fixed is found defective or to have ceased to function and no theft of energy or violation is suspected, the quantity of electricity supplied during the period when the meter was not installed or the meter installed was defective, shall be assessed as mentioned hereunder.

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

(3) In respect of High Tension service connections, where the meter fixed for measuring the maximum Demand becomes



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defective, the Maximum Demand shall be assessed by computation on the basis of the average of the recorded demand during the previous four months.

(4) Where the meter becomes defective immediately after the service connection is effected, the quantum of electricity supplied during the period in question is to be determined by taking the average of the electricity supplied during the succeeding four months periods after installation of a correct meter, provided the conditions in regard to the use of electricity in respect of such Low Tension service connections are not different. The consumer shall be charged monthly minimum provisionally for defective period and after assessment the actual charges will be recovered after adjusting the amount collected provisionally.

(5) If the conditions in regard to use of electricity during the periods as mentioned above were different, assessment shall be made on the basis of any consecutive four months period during the preceding twelve months when the conditions of



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working were similar to those in the period covered by the billing.

(6) Where it is not possible to select a set of four months, the quantity of electricity supplied will be assessed in the case of Low Tension service connections by the Engineer in charge of the distribution and in the case of High Tension service connections by the next higher level officer on the basis of the connected load and the hours of usage of electricity by the consumer.

7. A perusal of the impugned Order shows that no such procedure has been followed. Similarly, if it is a case of tampering or energy theft, appropriate procedure has to be followed under the Regulation 23 of Supply Code. To find out tampering, the meter has to be subjected to test by the Accredited Laboratory. Sub Clause 9 Regulation 23 relate to tampering of meters, which has also not been followed. Considering the above specific rules for assessment procedure particularly in the event of defective meters, before such assessment Order, assessment has to be made in accordance with the regulations. The impugned Order does not speak about any such



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procedure followed. In such view of the matter, the impugned Order is set aside and the matter is remanded to the authorities for passing fresh Order following the regulations as per law by giving appropriate opportunity to the Writ Petitioner. Such fresh Order shall be passed within a period of four months from the date of receipt of a copy of this Order.

8. With the above directions, this Writ Petition is disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

08.11.2022

vrc

To,

1. The Superintending Engineer,
TANGEDCO, Gobi Electricity Distribution Circle,
Gobichettipalayam.
2. Tamilnadu Electricity Ombudsman,
No.19-A, Rukmini Lakshmipathy Salai,
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