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WP.No.12345 of 2017

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 01.11.2022**

**CORAM:**

**THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

**WP.No.12345 of 2017 &**

**WMP.Nos.13107 & 16397 of 2017**

M.R.Saradha

...Petitioner

... Vs ...

1. State Rep. by The Tamilnadu Electricity Ombudsman,  
No.19 – A, Rukmini Lakshmipathy Salai,  
[Marshal Road], Egmore, Chennai – 600 008.
2. The Superintending Engineer,  
Tiruppur Electricity Distribution Circle,  
TANGEDCO, No.18A, Jyothi Nagar,  
Perumanallur Road, Tiruppur.
3. The Executive Engineer – Tiruppur,  
Tiruppur Electricity Distribution Circle,  
TANGEDCO, Kumar Nagar,  
Avinashi Road, Tiruppur.
4. The Assistant Executive Engineer – Enforcement,  
Tamil Nadu Electricity Board, TANGEDCO,  
Tiruppur.

...Respondents

Prayer:- Writ Petition filed, under the Article 226 of Constitution of India,  
to issue Writ of Certiorari to call for the records of the first respondent



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Order dated 22.03.2017 passed in Appeal Petition No.48 of 2016/D465 and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.Abul Kalam

### **ORDER**

This Writ Petition has been filed to quash the proceedings of the first respondent Order dated 22.03.2017 passed in Appeal Petition No.48 of 2016/D465 demanding the petitioner to pay Rs.14,34,352/- towards revised charges effecting for the period from 01.12/2-1- to 28.11.2015.

2. The case of the petitioner is that the petitioner is the owner of the premises bearing No.11, Lakshmi Nagar Extension Jupiter Company Backside Street, Tiruppur and the said premises was let on rent to run a small cottage industry for manufacturing ice cubes under the name and style of M/s.Tiruppur Ice. The cottage industry was functioning with the electricity connection bearing the service No.205-007-393 and they have been categorized and charged under the Tariff III. The said cottage industry was initially running with a load capacity of 25 HP and further as



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an additional load capacity was provided and it was increased to 40 HP.

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The petitioner was very prompt in paying the electricity consumption charges. While so, the third and fourth respondents inspected the service connection and alleged that since 01.12.2010, there has been no consumption recorded in R-Phase and the said reading is at 0. But till the date of the above inspection, there was no complaint about the alleged defect pointed out by the Electricity Department and the petitioner has been paying the electricity charges promptly. Further, the third and fourth respondents have replaced the Meter in the absence of the petitioner and issued a letter directing the petitioner to pay a sum of Rs.14,34,452/- towards the revised charges effecting for the period from 01.12.2010 to 28.11.2015. Against the said Order, the petitioner preferred an appeal before the first respondent. During the pendency of appeal, the petitioner submitted a representation to the Enquiry Officer requesting them to send the alleged defective meter for inspection to a third party independent Expert to ascertain the accuracy of the meter. But the same was not looked into by the respondents. Hence, seeks to quash the impugned Order passed by the first respondent.



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3. The respondents 2 to 4 filed a counter stating that the petitioner's service connection was inspected and on inspection it was found that there was supply in three phases, the consumption was recorded only in two phases and R phase voltage was missing. The meter recordings were retrieved through CMRI and on scrutiny of the downloaded data, it was found that R phase voltage was missing from 01.12.2010 and has not been restored upto 28.10.2015, i.e., on the date of inspection and the R Phase voltage recording was always ZERO from 01.12.2010 to 28.10.2015. Therefore, the short levy on the unrecorded consumption was assessed and a demand for Rs.14,31,685/- has been issued to the petitioner. The appeals filed by the petitioner before the Consumer Grievance Redressal Forum and the first respondent have been dismissed. It is the further contention of the respondents that the MRT report is an expert opinion in terms of the provisions contained in Section 45 of the Evidence Act and the MRT report is based on CMRI downloaded data evidence and this evidence based on the laboratory test has got scientific value. Further, the petitioner has also not produced any expert opinion rebutting the claims made in the Test Report of MRT. Hence, the respondents are lawfully entitled to



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recover the demand issued in accordance with regulation 11 [6] of the Supply Code. Hence, prayed for dismissal of this Writ Petition.

4. It is the contention of the learned counsel appearing for the petitioner that though the petitioner gave a representation to the Enquiry Officer requesting them to send the alleged defective meter for inspection to a third party independent Expert to ascertain the accuracy of the meter, the meter has not been sent for opinion of an independent expert. It is his further contention that the Electricity Department has admitted that as early as 2010 a new tested healthy Genus make meter was installed in the premises and the very same Electricity Department claims that the meter turned defective on the very same day and it is settled principal of law that for the wrongful act and negligence on the part of the respondent, the petitioner cannot be blamed and demand such a huge amount from the petitioner. Hence, prayed to quash the impugned demand notice of the respondents.

5. Whereas, it is the contention of the respondents that the MRT report is an expert opinion in terms of provisions contained in Section 45



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of the Evidence Act and it cannot be degraded. Further, the petitioner has also not produced any expert opinion rebutting the claims made in the Test report of MRT. Hence, prayed to dismiss the Writ Petition.

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

7. The impugned order has been passed by raising demand of Rs.14,31,685/- mainly on the ground that R phase voltage recording was always Zero from 01.12.2010 to 28.10.2015, therefore, impugned demand has been raised by the respondents. The impugned order indicate that during the inspection, on 28.10.2015, the Assistant Executive Engineer, Enforcement along with Assistant Executive Engineer, Tirupur and they have noticed that the R Phase voltage recording was always Zero from 01.12.2010 to 28.10.2015.

8. 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



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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.

9. 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 actually supplied by the licensee.

10. 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-



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

11. Admittedly, in this case, the impugned order has been passed only on the ground that the meter fixed at the premises of the petitioner in R Phase voltage recording always Zero from 01.12.2010 to 28.10.2015,



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therefore according to respondents, it is only the meter was either tampered or not reflecting right energy supply, if such being the contention of the respondents, on the date of inspection, on 28.10.2015, they ought to have sealed meter, subjected the meter for analysis by the accredited laboratory.

12. 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 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.

13. Though Regulation 23 made applicable to the Tampering, Distress or Damage to the Electrical Plant, Meters etc., the same procedure is also applicable to the present case for the simple reason that



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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, 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 can come to the conclusion that there were excess energy used by the petitioner.

14. Further, even though there is a procedure to be adopted under Supply Code 11 for assessment of misreading of meter, it is the Sub regulation 1 of Supply Code 11 makes it clear that before such assessment, it should be established that the meter is defective. Therefore, without establishing the fact that the meter is defective, the assessment cannot be made by invoking Supply Code 11. Though it is stated that they have obtained expert opinion as contemplated under section 45 of the Evidence Act, the so called expert is under the control of TANGEDCO and that cannot be given much credence, as the procedure enumerated under Supply



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Code 7, 9 and 23 by subjecting the meter for third party accredited laboratory has not been done.

15. It is further to be noted that the meter has been installed only for the purpose of calculating the energy used and supplied. It is relevant to not that before assessment, it has to be established that the meter was defective and has not reflected the original reading. Without establishing the above fact, merely on the basis of inspection report, assessment cannot be made unilaterally. Whether the meter reading is defective or tampered or not recording correct reading, is to be established as per the procedure referred above.

16. In such view of the matter, the impugned order passed by revising the bills based on their own calculations without examining the meter by subjecting the same in a 3<sup>rd</sup> party test laboratory accredited by the National Accreditation Board or by the Electrical Inspector of the Government of Tamilnadu, 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



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earlier direction of this Court while admitting the Writ Petition, if it is so, the same shall be adjusted in future bills.

17. Accordingly, the impugned Order is set aside and this Writ Petition is allowed. Consequently, connected miscellaneous petitions are closed. No costs.

**01.11.2022**

vrc

To,

1. The Tamilnadu Electricity Ombudsman,  
No.19 – A, Rukmini Lakshmipathy Salai,  
[Marshal Road], Egmore, Chennai – 600 008.
2. The Superintending Engineer,  
Tiruppur Electricity Distribution Circle,  
TANGEDCO, No.18A, Jyothi Nagar,  
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4. The Assistant Executive Engineer – Enforcement,  
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**N.SATHISH KUMAR, J.**

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