IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: **15.11.2022**

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

W.P.No.26332 of 2017
and W.M.P.No.27989 of 2017

1 Ramesh M.Thakker ... Petitioner

Vs.

1 The Chairman
Tamilnadu Generation and Distribution
Corporation Ltd., Anna Salai, Chennai 2.

2 The Assistant Engineer (O & M),
Purasaiwalkam, Tamilnadu Generation and
Distribution Corporation Ltd.,
37, Medavakkam High Road,
Kilpauk, Chennai 10. ... Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, to call for the records relating to the order passed by the 2nd respondent in his impugned Letter 21.4.2017 in Ka. No. A.E/O & M/Purasai/NW/Ko.Arrears/A.No.20/2017 quash the same.

For Petitioner : Mr.G.Vasudevan
For Respondents : Mr.L.Jai Venkatesh,
Standing Counsel

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O R D E R

Challenging the demand notice issued by the second respondent in Lr.No.உ/பொ /இ.பு/புரசை/வ.மே/கோ./Audit/அ.எண். dated 18.7.2017, the present Writ petition has been filed before this Court.

2. According to the petitioner, the petitioner is having service connection, bearing account No.148/008/439, Tariff V-Commercial, with the capacity of sanctioned load of 19 KW from June 2016. The petitioner is regularly paying the consumption charges without any default. According to the petitioner, the impugned letter dated 21.4.2017 was issued claiming a sum of Rs.7,95,826/- as shortfall for the period from February 2015 to April 2016 without assigning any reason or prior notice. On receipt of the impugned letter, the petitioner made a representation to the Executive Engineer of the TANGEDCO explaining the facts that since the earlier tenant namely, Karur Vysya Bank Ltd. vacated the premises on 15.1.2015 since then for the period from February 2015 to April 2016 the premises had been kept vacant. Thereafter, the petitioner obtained permission from the competent authorities to run the restaurant only in the month of April 2016 and utilizing the premises and power supply from May 2016 onwards. The Commercial Tax Department issued permission to run the hotel only on 21.4.2016. Hence, the contention of the petitioner is that the demand has been made only on the basis of audit shortfall, without following any procedure under law. The second respondent deliberately changed the meter in April 2016 by a New Static Electronic Meter with MD Recording facility Meter, though the meter was not defective and the change of meter was not indicated in the Meter Card. Hence, the writ petition challenging the impugned demand notice.

3. Counter affidavit has been filed on behalf of the respondents wherein it is stated that in respect of the aforesaid service connection, assessment was made for the energy consumed from February 2015 to April 2016 and the same was recorded as average i.e., 160, 40, 150, 110, 20 80, 0, 130 and the assessment amount was paid i.e. Rs.4,318/-, Rs.2,870/-, Rs.3,928, Rs.3,590/-, Rs.2,773/-, Rs.3,176/-, Rs.2,660/- and Rs.3774/-. The contention of the respondent is that the consumption before the average period i.e. October 2014 and December 2015 is 11,480 and 8570 units average. However, suddenly, the consumption was reduced and the respondent Board had replaced the defective meter on 22.4.2016 and after replacing the meter, the consumption is 9110 and 17,930 units and paid Rs.85,712/- and Rs.1,67,400/- average. It is the contention of the respondent that the defective meter was replaced by a healthy meter on 22.4.2016. The shortfall amount under dispute was levied for the energy consumed during the period from February 2015 to April 2016 only. The shortfall amount claimed in the above first 30 days was sent to the petitioner on 21.4.2017 and second 7 days notice sent to the petitioner on 16.6.2017 and third and final notice issued to the petitioner on 18.7.2017. According to the respondents, the petitioner has not intimated the vacant premises and he has intimated the vacant position only on the receipt of third and final notice issued by the respondents. Therefore, audit shortfall amount is reasonable, genuine and in accordance with the regulations of the Tamil Nadu Electricity Regulation Commission. It is further

contended that the Board Office Audit branch, Audit Team has audited the above Service connection in A/c No.148 : 008 : 438 of the petitioner and found that the petitioner has paid very meager amount for the Service connection from the date of service connection till the date of replacement of defective meter. Therefore, the audit team worked out the average energy consumption as per Tamil Nadu Electricity Regulatory Commission Rule for the defective meter from February 2015 to April 2016 and arrived a shortfall amount of Rs.7,95,826/- and the aforesaid shortfall amount has been intimated to the petitioner vide impugned letter dated 21.4.2017. Therefore, the writ petition is liable to be dismissed as devoid of merits.

4. The learned counsel appearing for the petitioner would submit that originally, the premises was occupied by Karur Vysya Bank as tenant and vacated the premises as early as on 15.1.2015. Till they vacated the building, electricity charges have been paid as per the meter reading. After the premises fell vacant, the petitioner opened hotel only in the month of April 2016. As the building fell vacant till the hotel being run in the said premises, energy consumption charges have been paid as per the meter reading only. Since less consumption shown in the meter, average amount has been paid as per the meter reading. Thereafter, the respondent replaced the meter which according to the respondent is defective, with new healthy meter on 22.4.2016. Now, the

respondent issued the impugned demand letter dated 21.4.2017 claiming huge amount only on the basis of audit objection, not based on any other aspect. The defective theory advanced by the respondent cannot be accepted for the reason that the respondent should ascertain the fact that the existing meter was defective and thereafter proceed further in accordance with law, which has not been done so in the present case. According to the petitioner, merely because there was no electricity consumption during the period the premises fell vacant, on the basis of audit objection alone, the respondent levied huge amount against the petitioner as shortfall. Therefore, the impugned demand notice is liable to be quashed.

5. The learned Standing Counsel appearing for the respondents would submit that the audit team inspected the premises on 22.4.2016 found that the meter was defective and thereafter, replaced with healthy meter on 22.4.2016. Based on the meter reading and also following the Regulations of the Tamil Nadu Electricity Supply Code, 2004, the shortfall amount of Rs.7,95,826/- has been arrived by the respondent. Hence, the writ petition is liable to be dismissed.

6. Heard the learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents and perused the materials available on record.

7. The contention of the writ petitioner that earlier, the premises was in occupation of the Karur Vysya Bank is clearly established by the letter of the Bank dated 10.11.2014 wherein it is stated that they will be shifting the Bank to some other premises by the end of 2014. The average monthly consumption charges paid in the aforesaid service connection and relevant ledger also produced before this court by the respondent. On perusal of the record shows that as long as the bank was in occupation of the premises, average electricity charges paid till January 2015 is more than Rs.50,000/-. It is the case of the petitioner that the Bank vacated the premises in the month of January, 2015 and the said premises fell vacant till April 2016. The writ petitioner only in the month of April 2016 started his hotel business in the said premises and till such time, the building fell vacant. Entries in the consumption ledger shows that a minimal electricity charges have been received by the respondent as per the meter reading. Thereafter, in the year 2016, when the petitioner started hotel business in the month of April 2016, demand notice has been issued by the respondent claiming a sum of Rs.7,95,826/-. It is relevant to note that in the demand notice, there is no whisper whatsoever made on what basis, such amount has been arrived. The counter affidavit filed by the respondent clearly indicate that this issue has been raised only by the Board office Audit Team. Since they found that the electricity consumption charges in respect of the said premises comes as meager amount for certain period, they raised objections. Thereafter, the authorities in order to sort

out the audit objections, swung into action as if there was a defective meter. It is relevant to note that the ledger entries produced by the respondent clearly shows that till the Bank was in occupation, there was no complaint. Electricity consumption charges ranging from Rs.60,000/- to Rs.80,000/- were paid regularly when the premises was occupied by the Bank. When the aforesaid premises fell vacant, only minimal meter reading amount was collected by the respondent as electricity consumption charges. Therefore, only after audit objection, stand has been taken by the respondent as if there was defective meter.

8. It is relevant to note that Regulation 7 Sub Clause 8 makes it clear that at periodical intervals, the meters shall be recalibrated and standardised by means of standard instruments by the licensee. In respect of high tension service connections, however, such recalibration will be done in the presence of the consumer's electrical engineer or his representative, if the consumer so desires. If the meter is found defective/incorrect, the adjustments in bills shall be made for error beyond permissible limits as laid down in the relevant rules made under the Act. The sub clause 8 to Regulation 7 further makes it clear that if the meter is defective, the meter should be tested by 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. No such procedure whatsoever has been followed in the present case. Though it is stated that check meter has been fixed, average consumption has been taken and on the basis of average consumption, shortfall has been levied without following the procedure contemplated under the Regulation 7 of the Tamil Nadu Electricity Supply Code 2004. First of all, the respondent ought to have established that the meter was defective. On perusal of the ledger entries shows that the meter was perfectly alright till the bank was in possession of the premises and the electricity charges have been periodically received by the respondent. The issue raised only after the bank vacated the premises and thereafter, when the Audit Team from the Board Office inspected the premises, found that minimal amount has been received by the respondent towards electricity charges, raised objection. The respondent in order to meet the audit objection swung into action and come out with the theory of defective meter without even establishing that the said meter is defective as provided under the Tamil Nadu Electricity Supply Code 2004. Consequently, the respondent after replacing the mater, has arrived a sum of Rs.7,95,826/- as shortfall amount for the period from February 2015 to April 2016, without following the procedure contemplated under the Regulation 7 of the Tamil Nadu Electricity Supply Code 2004.

9. This Court is of the view that when the respondents are experts while calculating electricity charges and also fixing the meter, if they want to fix liability on the petitioner or any other consumer on the ground of defective meter, it is bounden duty of the respondent first to establish that the meter is defective and thereafter, proceed further as per the Regulation for levying the shortfall. Without doing so, the respondent unilaterally swung into action for claiming such a huge amount as shortfall cannot be sustained in the eye of law. Consequently, the impugned demand notice issued in Lr.No.உ/பொ /இ.பு/புரசை/வ.மே/கோ./Audit/அ.எண். dated 18.7.2017 is set aside.

10. Accordingly, the writ petition is allowed. No costs. The amount already deposited by the writ petitioner pursuant to the interim order passed by this Court shall be adjusted in the future bills. Connected miscellaneous petition is closed.

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Speaking/Non Speaking order
Index: Yes/No
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