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W.P.No.12785 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2023

CORAM : JUSTICE N.SESHASAYEE

W.P.No.12785 of 2020
and WMP.No.15793 of 2020

Fuso Glass India Pvt. Ltd.
Rep. by its Director
Plot No.D-3, SIPCOT Industrial Park
Irukkattukottai
Sriperumbudur - 602 105.

... Petitioner

Vs.

The Superintending Engineer
Chenglepattu Electricity Distribution Circle
TANGEDCO, No.130, GST Road
(Opp. New Bus Stand)
Chengalpattu - 603 001.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorari, calling for the records in the Award in A.P.No.14 of 2019 dated 13.12.2019 on the file of the Tamil Nadu Electricity Ombudsman and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.



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For Petitioner : Mr.Aravindan
For Respondents : Mr.L.Jai Venkatesh
TNEB Standing Counsel
Assisted by Mrs.Keerthana R.Shenoi

ORDER

This petition is filed for issuing a Writ of Certiorarified Mandamus, to call for records of the award passed by the Tamil Nadu Electricity Ombudsman in A.P.No.14 of 2019, dated 13.12.2019.

2.The petitioner is an industrial unit, which enjoys high tension three phase electricity service connection for its industrial purposes in HTSC.No.408. While so, the electricity connection was required to be temporarily terminated to facilitate the technicians of the petitioner for rectifying certain cable termination defect. During this visit, the official of the respondent claims that they have found the CT Ratio in the R-Phase of the service meter was defective. Subsequently, the respondent raised a demand for Rs.92,45,223/- vide its notice dated 29.05.2014, whose claim is based on the following two factors :

(a) As stated earlier, the current drawn through R-phase of the 3-Phase



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connection has passed through a defective current transformer, as a result when the current reached the meter, it was not read correctly; and

(b) The period for which this could have happened was estimated on a presumption based on the monthly current consumption of the petitioner between June 2011 and June 2013, and by so doing, a shock drop in consumption was seen recorded from February 2012 to January 2013.

3. Aggrieved by the same, the petitioner approached this Court in W.P.No.15320 of 2014, wherein a stay was granted to the petitioner on a condition to deposit 50% of the demand amount and the said order was duly complied with by the petitioner, and this Court while disposing the said writ petition on 24.08.2018 had directed the petitioner to approach the Consumer Grievance Redressal Forum. The said Forum had made a marginal change to the demand made by the respondent, and changed the month for the claim, and fixed the liability of the petitioner. Thereafter, the petitioner filed an appeal in A.P.No.14 of 2019, before the Tamil Nadu Electricity Ombudsman, Chennai.



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4. Before the Ombudsman, the respondent contended that there is some error in assessing the loss to the respondent and stated in the counter that the petitioner would be liable to pay only Rs.81,36,122/- The Ombudsman disposed of the matter vide its proceedings dated 13.12.2019. The operative portion of the Ombudsman proceedings reads as below :

"9.17 On a careful reading of the above regulation, it is noted that regulation 11(2), 11(4), 11(5) and 11(6) are the regulations dealing with the method to arrive at the average consumption for the meter defective / no meter period. In the case on hand, the meter is not defective, the meter is in usage in the consumer premises throughout the defective period and billing was also made regularly whereas only due to ratio error in R phase CT, one phase (R phase) current consumption was not recorded.

9.18 As the meter is not totally defective, regulation 11(2), 11(4) and 11(5) cannot be made applicable for the energy meter of the appellant as one (R-phase) phase current consumption alone was not recorded. The method of calculation adopted for computing shortfall by the respondent by applying regulation 11(5) is wrong. Therefore taking advantage of regulation 11(6) of TNE Supply Code, the billing revision shall be made based on the actual consumption recorded in other 2 Phases.



9.19 *Therefore the respondents are directed to arrive short fall units by taking 50% of the 2/3 consumption recorded in the meter since 1/3 consumption was not recorded due to ratio error in R Phase CT so as to give a fair advantage to the consumer instead of taking an average based on regulation 11(5) of the TNE Supply Code. Hence the Respondent is eligible to collect only 50% of the amount already paid by the Appellant as per the current consumption units recorded for the defective billing periods, over and above the 2/3 amount. Further I am of the opinion that the above calculation is acceptable.*

10. Conclusion :

10.1 In view of my findings in para 9 above, the respondents are directed to revise the short fall units by taking 50% of the 2/3 consumption recorded in the meter since 1/3 consumption was not recorded due to ratio error in R phase CT so as to give a fair advantage to the consumer instead of taking an average based on regulation 11(5) of the TNE Supply Code within 30 days from the date of receipt of this order. Hence the Respondent is eligible to collect only 50% of the amount already paid by the Appellant as per the current consumption units recorded for the defective billing periods, over and above the 2/3 amount. Revised demand notice along with clear working shall also be given to the appellant.

10.2 Compliance report in this regard shall be submitted within 45 days from the date of receipt of this order."

This is now under challenge.



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5. Heard Mr.M.Aravindan, learned counsel for the petitioner and Mr.L.Jai Venkatesh, learned Standing Counsel for the respondent, assisted by Mrs.Keethana R.Shenoi. Mr.A.C.Bhupendran, Assistant Executive Engineer / MRT, TANGEDCO is also present to assist the Court, and through whom, this Court had the benefit to understand some technical aspects involved in this case.

6. First to the technical aspect of the issue, the petitioner was allotted 33 KV load of electricity and this is supplied to the petitioner in Three Phases. This load is first fed into the current transformer (a step-down transformer), from which the current would pass through the meter. According to the respondent, the defect was found not in the meter, but in the current transformer or step-down transformer. Then the estimate loss to the respondent by an analysis of general pattern of consumption by the petitioner, during a period of time including the period involved in this case.

7. The issue here is, is the petitioner liable and whether the Ombudsman has done a right job of scientific basis. Here, the learned counsel for the



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circulated a CMRI data, routed as downloaded, and also circulated a copy of the same to the counsel for the petitioner.

9. The learned counsel for the petitioner would now submit that (a) at no time before this, CMRI data was known to the petitioner; and (b) though the Ombudsman has not referred to this data, the petitioner never had a opportunity to address the issue. Indeed, even the correctness of the same is not known, since the data could be downloaded within a period of 60 days. In short, the learned counsel suspected the correctness of the said CMRI data.

10.1 There as two parts : First the issue involves considerable amount of facts, part of which are scientific in character. Secondly, the grievance of the petitioner is that it never had an opportunity to address the CMRI data, now made available.

10.2 Since complicated question of facts are involved, it may not be appropriate for this Court to address the same in this jurisdiction, and since the petitioner's grievance is that it is not able to oppose the correctness of CMRI data now made available, it is only fair and appropriate, that a fair



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opportunity should be given to the petitioner to defend the same.

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11. Accordingly, this petition is allowed and the award of the Ombudsman dated 13.12.2019 in A.P.No.14 of 2019 is set aside, and the matter is remanded back to the Tamil Nadu Electricity Ombudsman for him to hear the petitioner and dispose of the same within a period of twelve weeks from today. No costs. Consequently, connected miscellaneous petition is closed.

18.07.2023

Index : Yes / No

Speaking order / Non-speaking order
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To:

1. The Superintending Engineer
Chenglepattu Electricity Distribution Circle
TANGEDCO, No.130, GST Road
(Opp. New Bus Stand)
Chengalpattu - 603 001.
2. The Tamil Nadu Electricity Ombudsman
19-A, Rukmani Lakshmipathi Salai
(Marshal Road), Egmore
Chennai - 600 008.



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N.SESHASAYEE.J.,

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