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WP(MD)No.5285 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.10.2023

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.5285 of 2022

Thiagarajar Mills Private Limited,
Unit III, Nilakottai,
Dindigul – 624 208,
HTSC No.153

... Petitioner

VS.

1.The Tamil Nadu Generation and
Distribution Corporation Ltd., (TANGEDCO),
Rep.by its Chairman & Managing Director,
No.144, Anna Salai, Chennai – 600 002.

2.Executive Engineer,
Distribution, Batlagundu,
Dindigul EDC, TANGEDCO.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records comprised in Lr.No.EE/D/Batlagundu/C1/F-DOC/D.No.469/21 dated 21.02.2022 on the file of the second respondent and quash the same as arbitrary, illegal and contrary to the provisions of the Electricity Act, 2003 and Tamil Nadu Electricity Supply Code, 2010.



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For Petitioner : Mr.Raguvaran Gopalan

For Respondents : Mr.S.Dheenadayalan, Standing counsel

ORDER

Heard both sides.

2.The petitioner is a textile manufacturing company. It is enjoying HT service connection (HTSC No.153). The petitioner was putting up an additional construction. It had obtained a temporary LT connection for construction purpose. It appears that there was disruption of the LT service connection. Therefore, the petitioner had drawn energy from HT service connection for the construction activity. This was obviously an unauthorised use of electricity ie., use for a purpose other than for which the usage of electricity was authorised. This was found out when inspection was conducted by TANGEDCO officials on 18.12.2021. Faced with the prospect of prosecution, the petitioner paid compounding charges. Thereafter, provisional assessment order was issued on 21.12.2021. The petitioner offered their objections. Enquiry was held thereafter. Finally, the impugned assessment order came to be passed levying penalty. The penalty was paid by the petitioner under protest.



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3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

4.The respondents have filed counter affidavit and the learned standing counsel took me through its contents. According to the learned standing counsel, the impugned order does not call for interference.

5.I carefully considered the rival contentions and went through the materials on record. I am more than satisfied that the case on hand will fall under Section 135(1)(e) of the Electricity Act, 2003. The learned counsel appearing for the petitioner draws my attention to sub-clause (7) of Section 23(AA) of the Tamil Nadu Electricity Supply Code. It reads as under :

"23(AA)The Procedure for assessment of the electricity charges, disconnection of supply of electricity and removing the meter, electric line, electric plant and other apparatus in case of theft of electricity as detailed in section 135 of the Act is given below:

.....

(7) Where it is established that there is a case of theft of energy, the authorized officer shall assess the quantum of energy consumption for the past twelve months as per the assessment



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formula given in Form 8 in Appendix to this code and prepare provisional assessment order for the charges for such consumption at two times of the tariff applicable (i.e) the applicable tariff for the purpose for which the pilfered energy was used) and serve on the accused person under proper receipt. The authorized officer may reduce the period for such billing if it is established by the facts or documents submitted in the representation of the accused person or any such other evidence observed by the authorized officer. Wherever electronic meters are installed and the load curves are studied periodically, the period of theft could be limited to the exact period as could be determined scientifically. The authorized officer shall record reasons for such reduction in the period of billing, in the assessment order. The energy consumption arrived at as per the formula referred to in the said Form 8 will be charged excluding the energy consumption recorded by the meter as per the rates specified by the Commission's Tariff Order.

[Provided that if the quantum of energy consumption is recorded in the meter installed by the Distribution Licensee in the consumer's premises, the authorized officer shall arrive such energy consumption as per the assessment formula given in Form 8-A in Appendix to this Code]"

Form 8 Appended to the Code reads as follows :



Form B

[See Regulation 23 (AA) (7)]

FORMULA TO ASSESS THE QUANTUM OF ENERGY IN CASE OF THEFT OF ELECTRICITY

The following factors are to be considered to arrive at a formula for the assessment of quantum of energy in case of theft of electricity.

- (i) Nature of Service
- (ii) Connected load / Contracted demand
- (iii) Load factor
- (iv) Nature of feeder (Rural / Urban / Industrial) and supply restrictions in the feeder
- (v) Per day usage hours for which assessment has to be made.

The authorized officer may take into account the following and arrive at the least period (duration) of theft

- (i) for the period of twelve months
- (ii) for the period from the date of prior inspection if any by the Enforcement or meter testing wing to the date of detection
- (iii) from the date of service connection to the date of detection
- (iv) wherever electronic meters are installed and the load curves are studied periodically the period of theft could be limited to the exact period as could be determined scientifically

(v) Based on the document produced by the accused person.

(vi) For any other reasonable period as assessed by the authorized officer to the best of his judgment

$$U = \frac{L \times LF \times H \times D}{DF}$$

Where

U = Quantum of energy Assessed in Units

L = Load / demand in KW

LF = Load factor

H = Number of hours the load is considered to be used in a day

D = Duration of assessment in days

DF = Diversity Factor

Inserted as per Commission's Notification No. TNERC/SC/T-4, dated 25-5-2007 (w.e.f. 13-5-2007).



The following tables give the Load Factor, and the Number of hours per day usage for different categories of usage of the pilfered Energy.

TABLE - A

<i>Usage Categories of pilfered energy</i>	<i>Diversity factor</i>	<i>Load Factor</i>	<i>Number of</i>
Domestic (without Air conditioning load) and Huts	1	30%	12
Domestic (with Air conditioning load)	1	March to September 70%	12
		Other months 30 %	
Industrial including cottage industries power looms etc.,	1	50%	As per Table - B
Public lighting and water supply	1	100%	8
Agricultural	1	100%	10
All other categories	11	90%	12

TABLE - B

	<i>Category</i>	<i>Number of hours per day.</i>
1	Fed by High Tension rural feeders having only 14 hours of supply per day :-	
	i. Day Shift only	6
	ii. Night Shift only	5
	iii. Both day and night shifts	14
2.	Fed by High Tension feeders having 24 hours of supply :-	
	i. Day shift only	8
	ii. 2 Shifts	16
	iii. 3 Shifts	24



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i. The term "Usage Categories" given in Table - A refers to the purpose for which the suspected pilfered energy is used. For example if the pilfered energy in a hut service connection is used for domestic purpose, the assessment shall be made under 'domestic category', if it is used for commercial purpose, it shall be assessed under 'all other categories' as mentioned in the above Table - A.

ii (a) For High Tension Service connections, the maximum demand shall be assessed as 75% of the total connected load at the time of inspection subject to a minimum of the contracted demand. A power factor of 0.90 lag may be used for conversion of KVA or KW.

(b) Assessment of demand charges:-

Twice the appropriate H.T. tariff rate for maximum demand.



Form 8A which was introduced on 15.06.2011 reads as follows :

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^{***} [Form 8-A

[(See proviso of clause 23 (AA) (7)]

FORMULA TO ASSESS THE QUANTUM OF MISUSED ENERGY IN THE CASE WHOEVER DISHONESTLY USES ELECTRICITY FOR THE PURPOSE OTHER THAN FOR WHICH THE USAGE OF ELECTRICITY WAS AUTHORIZED AS REFERRED IN SECTION 135 (1)(e) OF THE ELECTRICITY ACT 2003

i) Quantum of misused energy, $U = a \times (b / c)$ kWh

where

a - Total consumption recorded during the preceding period of

existence of such violations limited to a specified period

b - misused load found at the time of inspection

c - total connected load found at the time of inspection

(ii) Penal charges on account of unauthorized use of energy

$$= (2 \times U \times d) - (U \times e)$$

where

U - Quantum of misused energy, kWh

d - Tariff of unauthorized use

e - Tariff of authorized use

(iii) Period of unauthorized use

The authorized officer may take into account the following and arrive at the least period (duration) of unauthorized use of electricity:

(a) for the period of twelve months

(b) for the period from the date of prior inspection if any by the licensee's officer

to the date of detection

(c) from the date of service connection to the date of detection

(d) wherever electronic meters are installed and the load curves are studied

periodically, the period of unauthorized use of electricity could be limited to the

exact period as could be determined scientifically.

(e) Based on the valid document produced by the accused person,

(f) For any other reasonable period as assessed by the authorized officer

to the best of his judgment]

^{***} Inserted as per Commission's Notification No. TNERC/SC/7-27, dated 25-05-2011 (w.e.f. 15-06-2011)



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6.It is beyond dispute that these two forms are materially different from each other. When the petitioner's case falls under Section 135(1)(e) of the Act, the authority ought to have applied the formula set out in Form 8A. In this case, the authorities have applied Form 8. Only on this ground, the impugned order is set aside. The matter is remitted to the file of the second respondent. The second respondent will issue fresh notice to the petitioner and after eliciting petitioner's response and after holding enquiry pass final order on merits and in accordance with law. In this case, the unauthorized use of electricity is admitted. The only question that calls for consideration is quantum. I have already held that Form 8A will have to be applied. An order shall be passed on these lines within a period of three months from the date of receipt of copy of this order.

7.This writ petition is allowed. No costs.

10.10.2023

Index : Yes / No
Internet : Yes/ No
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To

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