BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.01.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.18539 of 2020

M.Syed Ibrahim ... Petitioner

Vs.

1.The Superintendent Engineer,
Ramanathapuram Electricity Distribution Circle,
TANGEDCO, Near RTO Office,
Bharathi Nagar,
Ramanathapuram – 623 503.

2.The Assistant Executive Engineer,
Keelakarai Sub Station,
Ramanathapuram Electricity Distribution Circle,
TANGEDCO, TNEB Ramnad Road,
Vannanthurai, Kilakarai – 623 517
Ramanathapuram District.

3.Tamil Nadu Electricity Ombudsman,
4th Floor, SIDCO Corporate Office Building,
Thiru-Vi-Ka Industrial Estate,
Guindy, Chennai – 600 032. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 10.11.2020 passed by the 3rd respondent in Appeal No.11/2020 and quash the same and consequently directing the Respondents No.1 and 2 to correct the defect in meter reading bearing No.303-013-587 in the Current Consumption of excess bill charges to rectify or adjust the units recorded for the period of 14.07.2017, 18.09.2017 and 21.11.2017 and also direct them to refund the excess demand charges collected from the petitioner within the time stipulated by this Court.

For Petitioner : Mr.S.A.S.Alaudeen

For Respondents : Mr.S.Deenadhayalan,
Standing Counsel.

ORDER

Heard the learned counsel on either side.

2.The writ petitioner is running a clinical medical lab at Keelakarai. He is enjoying the petition mentioned electricity service connection. The case of the petitioner is that the average bimonthly consumption would be any where between 50 to 70 units. However, on 14.07.2017, the meter indicated reading of 170 units. When the meter reading was taken again on 18.09.2017, it indicated consumption of 170 units for the preceding two months. At the instance of the petitioner, the meter was replaced on 20.09.2017. But then, when reading was taken on 21.11.2017, the meter reading indicated consumption of 173 units. The case of the petitioner is two fold. The original meter was defective. When the new meter was installed, instead of making it run from "0", the earlier reading of 82 units was maintained. That is why, an excess reading was shown on 21.11.2017. Even though according to the petitioner, it was a reconditioned meter, it has been running without any defect ever since. The petitioner's request was that the consumption charges for excess reading noted on 14.07.2017, 18.09.2017 and 21.11.2017 should be refunded and compensation also awarded. The petitioner's case went before the Electricity Ombudsman who vide order dated 10.11.2020 rejected the petitioner's claim. Challenging the same, the present writ petition came to be filed.

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

4.The learned standing counsel for TANGEDCO supported the impugned order and called upon this Court to dismiss the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. The petitioner has been running the clinical medical lab since 2001. Except the readings recorded on the aforesaid three occasions, namely, 14.07.2017, 18.09.2017 and 21.11.2017, the consumption has been consistent. The bi-monthly reading has been consistently in the range of 50 to 70 units. This was the position before 14.07.2017 and after 21.11.2017.

6.The only question that calls for consideration is whether the excess reading recorded on the aforesaid three occasions was due to defective meter.

7.Admittedly, TANGEDCO officials on their own replaced the meter on 20.09.2017. Clause 7 of the Tamil Nadu Electricity Supply Code, 2004 deals with installation of meter. It clearly states that the meter installed by TANGEDCO should be accurate and precise. Clause 7(9) and (10) deals with replacement of meter. The said provision reads as follows:-

> *"**7. Installation of meter. -***
>
> *(9) If the consumer considers that the meter is defective, he may apply to the licensee to have a special test carried out on the meter at any time and the cost of such a test shall be borne by the licensee or the consumer accordingly as 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]. The meter shall be deemed to be correct if the limits of error do not exceed those laid down in the relevant rules made under the Act. The consumer may also be allowed to install a check meter after recalibration by the licensee. Such check meter shall be of high quality, high precision and high accuracy and sealed by the licensee. Whenever the licensee's meter becomes defective, the check meter reading may be taken for billing.

(10) The procedure to be followed for replacement of defective, damaged / burnt meter shall be as follows:-

(i) It is the responsibility of the licensee to replace all defective meters [belonging to the licensee] at his cost.

(ii) Since the safe custody of the meter is the consumer's responsibility, replacement of meter due to damages shall be at the cost of consumer.

(iii) The cost of replacement for burnt meters shall be met by the licensee unless it is proved otherwise that the burning out is due to the fault of the consumer.

(iv) When the meter is owned by the consumer and becomes defective / damaged or when the meter is burnt due to the fault of the consumer, it is the responsibility of the consumer to replace the meter by a healthy one, if he elects to continue to have his own meter. Otherwise, the licensee shall replace the meter and enter into an agreement for hire and collect the specified deposits."

8.In this case, the petitioner made a oral complaint to the local officials. The authorities ought to have followed the procedures laid down in the Code. The disputed meter should have been sent to the notified lab. That was not done. The officials on their own had replaced the meter. In fact, the Ombudsman himself had rendered a finding that the replacement of the meter about which the petitioner had lodged complaint was not as per the provisions laid down in the Act and the Code. As a result, the petitioner has been deprived of the opportunity to demonstrate that the original meter was defective. The petitioner cannot be blamed. It is the responsibility of TANGEDCO to replace a defective meter. Having replaced a meter, TANGEDCO cannot now contend that the original meter was in a good condition. If the meter was really in a good condition, there was no need for replacement. If TANGEDCO replaces a meter without following the standard procedure, the Ombudsman as well as the

Court are obliged to infer that the original meter was defective. Therefore, I hold that the reading recorded on 14.07.2017 and 18.09.2017 was on account of the defect in the meter installed by TANGEDCO. I take it that in normal circumstances, the meter reading would be 70 units.

9.The reconditioned meter was installed on 20.09.2017. It is not necessary that TANGEDCO should buy a new meter and install the same. A reconditioned meter can also be installed. But then, the reconditioned meter should indicate the starting reading as “0” and it should be in a good condition. In this case, the meter reading was not reduced to “0”. The learned counsel for the petitioner draws my attention to the meter reading recorded on 20.09.2017. It is seen therefrom that the meter reading was shown as 82. When bi-monthly consumption of the petitioner's lab was only around 70 units, the meter installed on 20.09.2017 could not have read 82 units. The reading that was recorded on 20.11.2017 was not because of any defect in the meter but because of the failure on the part of the officials to record the consumption from “0” units onwards. Therefore, I hold that the petitioner is entitled to refund of the charges for 282 units. The Ombudsman has failed to approach the issue from a proper perspective. He has not taken into account the facts set about above. Therefore, the impugned order is set aside. TANGEDCO is directed to refund the charges calculated for 282 units in the year 2017 to the petitioner. Instead of making refund, it can be adjusted as against the petitioner's future consumption. Even though the learned counsel for the petitioner strongly contended that compensation must be awarded, I refuse the relief. TANGEDCO is a Government instrumentality rendering service to the public. I asked the learned counsel for the petitioner if the petitioner was made to go to Chennai to attend the hearing. He fairly stated that since the hearing took place during pandemic period, the petitioner attended the hearing only through virtual conference mode. Though the petitioner had obviously been put to difficulties, he was not made to go to Chennai. If the petitioner had been made to go to Chennai to attend the hearing before the Ombudsman, I would have definitely awarded a substantial sum towards compensation. The petitioner may rest content with the declaration of this Court that his stand was justified and it was TANGEDCO which was at fault.

10.The impugned order is set aside and the writ petition is partly allowed. No costs.

22.01.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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