

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/01/2004

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THE HONOURABLE MR.JUSTICE C.NAGAPPAN

W.P.No.16249 of 1996

and

W.M.P.No.12090 of 1998

M/s.Shree Ganapathy Industries,
represented by its
Managing Partner, Govindasamy .. Petitioner

-Vs-

The Assistant Engineer,
Distribution/Sipcot,
MEDC-North,
Gummidipoondi .. Respondent

Writ petition filed under Article 226 of the Constitution of
India praying to issue a writ of certiorari as stated therein.

For petitioner : Mr.S.Vijayakumar
for Mr.S.Mohan

For respondent : Mr.G.Vasudevan

:ORDER

The petitioner has sought for issuance of writ of certiorari to quash
the order of the respondent in Lr.No.JE/D/SIP/GPD/FDOC/D.221/96 dated
4.10.1996.

2. The petitioner is a firm engaged in the business of manufacturing
of G.I.Wire and M.S.Wire and obtained electricity service connection on
11.11.1994. According to the petitioner, a complaint was lodged by them in
July, 1995 stating that the meter was running even without any load and the
main switch was in the off position and on 2.8.1995 , the Department inspected
the meter and found the meter running even without any load and a new meter
was installed and connected on 11.1.0.1995 and that was also defective and
another new meter was fixed on 8.8.1996 and the respondent, without any notice
or enquiry, in his proceedings bearing Lr.No.JE/D/SIP/GPD/FDOC/D.221/96 dated
4.10.1996 enclosed a bill revision statement pertaining to the period from
December, 1995 to 8.8.1996 and demanded a sum of Rs.5,63,187/- towards the
difference in charges for the said period as detailed in the statement annexed

to the impugned order.

It is further stated by the petitioner that during the relevant period, the actual meter reading of electricity consumed by the petitioner were recorded and actual charges had already been collected based on that readings. The petitioner has further stated that there was peak hour restriction in consumption of electric energy during the period from December, 1995 to August, 1996 and machinery were not operated for one shift out of three shifts in a day and the production statements would authenticate this fact. It is further stated that there was only minimum production due to financial constraint and labour unrest during the relevant period and the petitioner did not consume much electricity and the rate of consumption worked out on average consumptions at a uniform rate is arbitrary and incorrect.

According to the petitioner, the impugned order has been made in contravention of Section 26(6) of the Indian Electricity Act by not referring the meter to the Electrical Inspector and making a revision of charges beyond the statutory period of six months and hence the impugned order is liable to be quashed.

3. The respondent in its counter has stated that the Assistant Executive Engineer/APTS/North inspected the service connection of the petitioner and reported defects in the function of the meter and it was replaced on 11.10.1995 and the replaced meter was also found to be defective and a third meter was fixed on 8.8.1996 and the current consumption charges in the service connection has been worked out on the basis of the meter reading shown by the third meter and the bills were revised as per clause 17.10 of the terms and conditions of supply of electricity.

4. Heard the learned counsel for the petitioner as well as the respondent.

5. Admittedly, the service connection of the petitioner was effected on 11.11.1994 and the meter then fixed was found to be defective and replaced on 11.10.1995 and the replaced meter was also found to be defective and a third meter was fixed on 8.8.1996. In the impugned order, the respondent has demanded a sum of Rs.5,63,187/-, pursuant to bill revision from December, 1995 to 8.8.1996 on account of loss of consumption charges due to the defectiveness of the meter. The petitioner has challenged the impugned order on the ground that it is in contravention of Section 26(6) of the Indian Electricity Act and has sought for quashing it.

6. The learned counsel for the respondent contended that the bills were revised as per Clause 17-10 of the terms and conditions of supply of electricity. The procedure for assessment of quantity of electricity supplied during the period where the meter is found to be defective is stipulated in Clause 17.10 of the terms and conditions of supply of electricity. Section 26 of the Indian Electricity Act, 1910 deals with meters and under Sub Section (6), the procedure to be followed in a case of difference or dispute as to the correctness of the meter is stated in the following terms.

"Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of such Inspector ceased to be correct, such inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector have been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity: Provided that before either a licensee or a consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven days' notices of his intention so to do."

In the above provision, it is stipulated that if there is difference or dispute with regard to the correctness of the meter, the consumer or the Board may make an application to the Electrical Inspector and on such application being made, the Electrical Inspector has to verify and ascertain the correctness of the meter and if the meter is found to be defective, the Electrical Inspector shall estimate the amount of energy supplied to the consumer for a period not exceeding six months.

7. In the present case, the above procedure has not been followed. The respondent Board has itself estimated the amount of energy supplied to the consumer for a period more than six months and has passed the impugned order demanding payment of that sum. As per Section 26 (6) of the Act, the Authority to declare the meter as ceased to be correct is only the Electrical Inspector and on making of such declaration, he has to estimate the amount of energy supplied to the consumer, during such time, not exceeding six months.

8. In this context, the Order of a learned single Judge of this Court in a similar case reported in A.A.Mohd. Raffi v. Tamil Nadu Electricity Board rep. by its Chairman, Anna Salai, Madras-2 and 2 others (2000 (III) CTC 137) is brought to my notice and I am in agreement with the view taken. The impugned order has been passed in utter disregard of the provision in Section 26(6) of the Indian Electricity Act and it is liable to be quashed.

9. The writ petition is allowed as prayed for. It is open to the respondent to proceed afresh in accordance with law. No costs. Connected WMP.No.12090 of 1998 is closed.

vks

To
The Assistant Engineer,
Distribution/Sipcot,
MEDC-North,
Gummidipoondi

