

(2006) 04 MAD CK 0290

In the Madras High Court

Case No : Writ Petition No. 10533 of 2005 and W.P.M.P. No. 11259 and 11260 of 2005

Annamalai Rubber Products

APPELLANT

Vs

The Tamil Nadu Electricity Board

RESPONDENT

Date of Decision : 28-04-2006

Acts Referred:

Electricity (Supply) Act, 1948 — Section 49
Electricity Act, 2003 — Section 185, 185(2), 50

Citation : (2006) 04 MAD CK 0290

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : A.R.L. Sundaresan, for the Appellant; A. Baskar for TNEB, for the Respondent

Judgement

P. Jyothimani, J.—Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent. This writ petition is filed challenging the order of the respondents dated 27.12.2004 and also to forthwith restore the service connection in A.142 at Shed No. 91 SIDCO Industrial Estate, Kappalur.

2. The case of the petitioner is that the petitioner is in possession of the building bearing No. 91 SIDCO, Industrial Estate and was provided with electricity service connection by the Tamil Nadu Electricity Board under Service connection No. 142, with effect from 23.07.1999. The load which was originally 50HP plus 800 watts was subsequently increased with additional load of 45 HP on 23.3.2000. While fixing the electronic meter, the Board has fixed VICTRI make with 5 amps capacity. On 27.12.2004, the petitioner was served with an order from the respondent alleging that on an inspection on 24.12.2004, it was found that the service connection had recorded only 40.46 per cent of the actual consumption and 50.54 percent of the consumption was not recorded in the meter. Therefore, the billing was to be revised under clause 19.16 of the terms and conditions of electricity supply and revision. It is also stated that the revision will have to be

made for the period from 23.12.2001 and accordingly an amount of Rs. 19,19,964/- was directed to be collected from the petitioner and the petitioner was called upon to pay the said amount within 30 days. This impugned order is challenged on many grounds including that the petitioner was not given an opportunity at the time of any inspection. That apart, it is the case of the petitioner that even the respondents in the letter dated 28.03.2005 have stated that the CGS V1CTRI meter will record even though current direction of all current transformer is reversed. The electricity connection was subsequently disconnected on 17.01.2005 and the industry was closed on account of the power disconnection. The order is also challenged on the other ground of violation of natural justice apart from the ground that it is not even stated as to how the amount of Rs. 19,19,964/- has been arrived at.

3. It is also the specific case of the petitioner that the respondent seeks to place reliance on Clause 19.16 of the terms and conditions of Electricity Supply which was framed u/s 49 of the Electricity Supply Act, 1948. While, the said Act has been repealed after the Electricity Act, 2003 has come into effect with effect from 10.06.2003 and therefore, the impugned proceedings under the clause 19.16 are not valid in law after the new Act has come into force. The Board has framed Electricity Supply Code which has come into effect after 01.09.2004 and as per the terms of the said Code especially Clause 7(8) and 11 a method has been provided to find out the defective meter and the quantity of electricity supply. When such procedures have not been followed, the impugned order is liable to be set aside.

4. On the other hand, the respondent has filed counter affidavit denying the allegations. According to the respondents, it was as per the Clause 19.16 for billing and payment framed by the Tamil Nadu Electricity Board, the revision was made. According to the respondent, the revision was properly intimated to the consumer regarding the less percentage of consumption. The service connection was disconnected due to the reasons of non-remittance of monthly consumption charges. According to the respondent, even though it is admitted that the notification of the Electricity Supply Act, 2003 was published in the Tamil Nadu Gazette in September 2004, the implementation of the rules and regulations were not communicated at the time when the revision of billing for service connection No. 142 was made. It is also the case of the respondent that when once the assessment is made under the Electricity Supply Code any assessment made within 24 months before the Electricity Act 2003 came into force and any revision made accordingly is permissible. Therefore, according to the respondents, the impugned order is valid in law.

5. Mr. A.R.L. Sundaresan, learned Senior Counsel appearing for the petitioner would submit that at the time when the inspection stated to have been conducted by the respondents on 24.12.2004, the Electricity Act of 2003 has already come into force which was on 10.06.2003. According to him, even the Electricity Supply Code framed under the Electricity Act of 2003 has also come

into force from 01.09.2004 and therefore, applying the old Clause 19.16 under the Electricity Act, 1948 and passing the impugned order based on the same itself will make the impugned order void. According to the learned counsel, Section 50 of the Electricity Act, 2003 which contemplates a duty on the part of the State Commission to specify the Electricity Supply Code and it was based on the said enabling provision the State Commission has also framed, the Tamil Nadu Electricity Supply Code of 2004 which was published in the official Gazette on 01.09.2004. The said code while speaking about the installation of meter in Rule 7 contemplates a periodical recalibration and standardisation of meters by means of standard instruments by the licensee. As it is seen in Rule 7(8) of the same Rule in respect of high tension service connections will be done in the presence of the consumers electrical engineers or his representative. Further, according to the learned Senior Counsel, the Clause 11 contemplates the assessment of billing in cases where the meter is defective or there was no meter. It is this Clause 11 contemplate the entire procedures to be followed in cases where a defective meter has been found out. According to the learned counsel, no one of the procedures contemplated under the said Tamil Nadu Electricity Supply Code of 2004 has been followed and the decision has been arrived at on assumption. According to the learned Senior counsel, while repealing the earlier Act 1948, Section 185 of the Electricity Act of 2003 categorically states any action taken or purported to have been done under the previous repealed laws shall be deemed to have been taken under the new Act provided they are not inconsistent with the provisions of the new Act. On the face of it, while the procedures contemplated under the Tamil Nadu Electricity Code framed as per the new Act is totally different from that of the procedures contemplated under the old Act of 1948, according to the learned counsel, Section 185 cannot protect the impugned order.

6. On the other hand, Mr. A. Baskar learned counsel appearing for the respondent would contend that any action taken within a period of 24 months before the new Act has come into force is validated as per the Tamil Nadu Electricity Supply Code 2004 and therefore, according to him, the impugned order cannot be set aside.

7. I have heard the learned counsel for the petitioner as well as the learned counsel for the respondent and perused the entire records.

8. Admittedly, the Electricity Act 2003 has come into effect with effect from 10.06.2003, u/s 185 of the said Act, the previous acts including the Electricity Supply Act, 1948 was stands repealed. However, Section 185(2) saves certain action taken up by the authorities under the earlier Act, while leaving the saving clause, Section 185(2) categorically states that the saving under the earlier enactments shall be insofar as the same are not inconsistent that the provisions of the present Act. In the present case while it is admitted by the respondent that the impugned order was passed is based on the clause 19.16 terms and conditions of supply of Electricity which was framed as per the previous Act of

1948.

9. It is relevant to point out that the impugned order which is dated 27.12.2004 was admittedly passed based on the report of the officials of the respondent dated 24.12.2004. On the said date namely 24.12.2004, admittedly, the Tamil Nadu Electricity Supply Code of 2004 has come into effect from 01.09.2004. The said code framed by the Tamil Nadu Government in accordance with the powers conferred u/s 50 of the Electricity Act of 2003 provides an exhaustive procedure of assessment of billing in cases where there was no meter or defective meter. The relevant rule under the Tamil Nadu Electricity Supply Code 2004 namely Rule 11 which formulates the procedure as follows:

11. Assessment of billing in cases where there is no meter or meter is defective.-

(1) Where supply to the consumer is given without a meter or where the meter is fixed is found defective or to have ceased to function and no theft of energy or violation is suspected, the quantity of electricity supplied during the period when the meter was not installed or the meter installed was defective, shall be assessed as mentioned hereunder.

2) The quantity of electricity supplied during the period in question shall be determined by taking the average of the electricity supplied during the preceding four months in respect of both high tension service connections and low tension service connections, provided that the conditions in regard to use of electricity during the said four months were not different from those which prevailed during the period in question.

3) In respect of high tension service connections, where the meter fixed for measuring the maximum demand becomes defective, the maximum demand shall be assessed by computation on the basis of the average of the recorded demand during the previous four months.

4) Where the meter becomes defective immediately after the service connection is effected, the quantum of electricity supplied during the period in question is to be determined by taking the average of the electricity supplied during the succeeding four months period after installation of a correct meter, provided the conditions in regard to the use of electricity in respect of such low tension service connections are not different. The consumer shall be charged monthly minimum provisionally for defective period and after assessment the actual charges will be recovered after adjusting the amount collected provisionally.

5) If the conditions in regard to the use of electricity during the periods as mentioned above were different, assessment shall be made on the basis of any consecutive four months period during the preceding twelve months when the conditions of working were similar to those in the period covered by the billing.

6) Where it is not possible to select a set of four months, the quantity of electricity supplied will be assessed in the case of low tension service connections by the engineer in charge of the distribution and in the case of high tension

service connections by the next higher level officer on the basis of the connected load and the hours of usage of electricity by the consumer.

7) In case the consumer does not agree with the assessment made by the engineer or the higher level officer, as the case may be, the matter may be referred to the next higher level officer of the licensee. In case the consumer is still not satisfied, the consumer is at liberty to approach the respective Consumer Grievance Redressal Forum of the licensee.

10. It is not even the case of the respondent in the counter affidavit that this was the procedure available under the earlier Act of 1948 and the rules framed thereunder by the Government of Tamil Nadu. While so, it is clear that the impugned order passed under clause 19 of the earlier Rules cannot be stated to have been saved by the saving clause u/s 185(2) of the Electricity Supply Act, 2003. A reference to the report dated 24.12.2004 stated to be the basis for passing of the impugned order also shows that the assessment has been arrived at even after finding that MRT Security seals are intact but stating that the CT wirings were checked and found that CT Secondary Wiring in B phase was found reversed as M and L points were interchanged that was the reason stated to have been found for less recording of the meters. Apparently, that is not the procedure contemplated under the Tamil Nadu Electricity Supply Code of 2004 Rule 11 which I have enumerated above. It is also relevant to point out that the inspection report does not reveal that the inspection was done in the presence of the petitioner. In view of the said factual position and also due to legal reasoning, I am of the considered view that the impugned order passed by the respondent is opposed to the Electricity Act, 2003 and the Tamil Nadu Electricity Code 2004 and accordingly the same is set aside. The writ petition stands allowed. It is open to the respondent Board to proceed as per the New Act and code if so advised. There is no order as to costs. Consequently, connected W.P.M.Ps. are also closed.