
(2016) 12 MAD CK 0027

In the Madras High Court

Case No : W.P.(MD)No. 17157 of 2013, M.P.(MD) Nos. 1 of 2013 and 1 of 2014

Dr. I. Mansoor

APPELLANT

Vs

The Assistant Engineer

RESPONDENT

Date of Decision : 16-12-2016

Acts Referred:

Tamil Nadu Electricity Supply Code, 2004 — Clause 11(4), Clause 14(2)

Citation : (2017) 1 LW 954 : (2017) 2 MLJ 334 : (2017) 1 WritLR 449

Hon'ble Judges : Mr. R. Suresh Kumar, J.

Bench : Single Bench

Advocate : Mr. C. Jeganathan, Advocate, for the Petitioner; Mrs. S. Srimathy Standing Counsel, for the Respondent

Final Decision : Disposed off

Judgement

Mr. R. Suresh Kumar, J. - The prayer in the writ petition is for a Writ of Certiorari, calling for the records pertaining to the impugned order made in Lr.No.AEE/N/T/Rama A.No. 297/13 dated 08.10.2013, on the file of the respondent herein and to quash the same.

2. The petitioner was running a hospital at Devipattinam Road, Ramanathapuram. For the said hospital there were three service connections bearing Nos.301-0061526, 301-0061527 and 301-0051540. The petitioner had been regularly paying the electricity charges. While so, in respect of service connection No.301-0051540, the Metre was found faulty in May, 2009 and the same was not immediately rectified by the respondent. The said faulty Metre was rectified only after a long time i.e., during May, 2013. During this faulty Metre period i.e., between May, 2009 and May, 2013 the petitioner had paid only the minimum charges. Therefore, after having rectified the defect of the Metre, the respondent has proceeded to calculate the number of Units the petitioner would have consumed during this period and accordingly, a calculation was made by the respondent and based on which the impugned order dated 08.10.2013, was passed, by and under which, the respondent has directed the petitioner to pay a

sum of Rs. 8,97,778/- as reassessment charges for current consumption during the fault Metre period. Along with the said impugned order, a working sheet has been attached. Challenging the said order, this Writ Petition has been filed.

3. Heard both sides.

4. The learned counsel for the petitioner would submit that the petitioner's building has 3 service connections and since the petitioner did not avail all the three service connections, he had submitted an application dated 07.06.2013, to the respondent to cancel two service connections and one can be retained. However, after four months of making such application, the present impugned order dated 08.10.2013, was issued suddenly, by which the recovery of Rs.8,97,778/- was sought to be made. Before passing the impugned order no notice was given and the petitioner was not taken into confidence as to what basis the calculation has been made to arrive at such a huge amount payable to the respondent for the alleged consumption of current during the faulty Metre period. Therefore, the petitioner submits that the impugned order is liable to be interfered with.

5. Per contra, the learned counsel for the respondent would contend that admittedly the Metre of the petitioner's service connection in S.C. No.301-0061540 was faulty from May, 2009 to May 2013. Therefore, during this faulty Metre Period, the petitioner was paying only minimum charges. Further, having rectified the fault on 14.05.2013, it has become necessary to make a reassessment of the actual consumption to the petitioner for the said faulty Metre. In this regard, the learned Standing Counsel for the respondent relied on Clause 11 of the Tamil Nadu Electricity Supply Code, 2004. According to the learned Standing counsel under Clause 11(5) of the Code, assessment shall be made on the basis of any consecutive four months period during the proceeding twelve months when the conditions of working were similar to those in the period covered by the building. The learned Standing Counsel has particularly relied upon sub clause 4 of clause of 11 of the Code, which reads as follows:

"11(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 connection 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."

Only based on the said method as provided under clause 11(4) of the Tamil Nadu Electricity Supply Code, 2004 the average consumption of the petitioner for four months after the defect of the Metre was rectified during May, 2013 was taken into account and accordingly, the assessment has been made for the entire

period between May, 2009 and May 2013 and accordingly the said amount to the tune of Rs.8,97,778/- was arrived. Hence, there is no infirmity in the impugned order as the same has been issued after having adopted the method provided under the Code, especially under Clause 11(4) as referred above.

6. This Court considered the above rival submissions of the learned counsel on either side.

7. Admittedly, the Metre pertaining to the service connection in dispute of the petitioner was faulty from May, 2009 to May, 2013 and that the said position has not been disputed even by the petitioner and it is also not disputed that during this period only minimum for 140 Units alone has been paid to the respondent. The Metre was rectified on 14.05.2013 and only thereafter, the reassessment process was taken and according to the respondent the reassessment process was completed by following the procedure in Clause 11 of the Code especially sub-clause 4 of Clause 11.

8. If we have a cursory reading of Clause 11 of the said Code, sub-clause (2) can also be usefully referred to hereunder:

"14(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."

According to the said sub-clause, the quantum of electricity supplied during the period in question shall be determined by taking the average of the electricity supplied during the proceeding four months, has also been provided for. When that being so, whether the calculation made by the respondent by taking into account the four months average consumption after rectification is made is justifiable one has to be looked into. As has been given, either to take four months average prior to the fault of the Metre or four months average subsequent to the rectification of the faulty Metre, the procedure to be adopted by the respondent is to have a calculation in both ways and if there is any vast difference of average between proceeding four months and succeeding four months of faulty Metre period, then certainly the mean average between these two periods shall be taken into account.

9. In the present case, the petitioner has three connections. Either the petitioner might have consumed lesser power prior to May 2009 and higher Units after May, 2013 or vice versa and therefore, in order to ascertain the actual consumption calculation has to be made only by taking average of previous four months and subsequent four months. Here in this case no such procedure is adopted by the respondent. Therefore, this Court is of the view that the impugned order has to be quashed and the matter can be remanded back for being reassessed by adopting the method provided under Clause 11(2) and 11(4) of the Code.

10. In the result, this Writ Petition is disposed of with the following orders:

(i) The impugned order is quashed and the matter is remanded back to the respondent for reconsideration and recalculation.

(ii) While making reassessment and recalculation, the respondent shall take into account the average consumption of the petitioner for four months prior to the faulty Metre period i.e., prior to May, 2009 and average consumption of four months subsequent to the faulty Metre period i.e., after May, 2013 and if the difference of both average is vast, the further average between the two period can also be taken as basis for calculating the actual consumption during the faulty Metre period. Accordingly, if any excess amount comes payable by the petitioner, the same can be recovered from the petitioner.

(iii) This exercise as indicated above shall be done by the respondent within three months from the date of receipt of a copy of this order.

(iv) For the said exercise, the petitioner shall cooperate with the respondent by providing the data of consumption, the petitioner had made prior to the faulty Metre period to the respondent.

11. No costs. Consequently, connected Miscellaneous Petitions are closed.