



TAMIL NADU ELECTRICITY OMBUDSMAN

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Present : Thiru A. Dharmaraj, Electricity Ombudsman

Appeal Petition No.18 of 2015

M/s G.J.Spinners,
LTCT SC No.353-009-762,
SF No.82/1, Sendrayanpalayam,
D.G. Pudur,
Sathyamangalam

... Appellant

(Rep. by Thiru N.L. Rajah, Advocate on 15.5.2015)
& Thiru. Narasimhan, Advocate on 16.7.2015)

Vs

The Superintending Engineer,
Gobi Electricity Distribution Circle,
TANGEDCO
Gobichettipalayam

... Respondent

(Thiru. Chandrasekar, EE/O&M/Sathy on 15.5.2015 &
Thiru R. Shanmugasundaram, EE/O&M/Sathy on 16.7.2015)

Date of hearing : 15-05-2015 & 16.7.2015

Date of Order : 14-09-2015

The petition dt. 28-12-2014 filed by M/s G.J. Spinners, D.G. Pudur, Sathyamangalam was registered as Appeal Petition No.18 of 2015. The above appeal petition came up for hearing before the Electricity Ombudsman on 15-5-2015 and 16.7.2015. Upon perusing the Appeal petition, Counter affidavit, written arguments of both the parties and after hearing both sides, the Electricity Ombudsman passes the following order :

ORDER

1. Prayer of the Appellant :

The Appellant prayed to quash the order of Hon'ble CGRF in CC No.12 of 2014 on 7.11.2014 and consequently direct the Respondent to quash the demand

for a sum of Rs.24,34,047/- (Rupees Twenty four lakhs thirty four thousand and forty seven only) issued by the Respondent namely TANGEDCO vide its demand notice LrNo.218/14 dt.15.9.2014 under the head of short levy charges due to defective meter covering the periods from August 2012 to August 2014 and pass such further or other orders as the Hon'ble Forum may deem fit and proper.

2. Brief History of the case :

- 2.1 M/s G.J. Spinners is a small scale industry engaged in Manufacture of 40's count yarn. The LTCT service connection no. is 353-007-762. The sanctioned load of the service connection is 112 KW. The Appellant purchased the above industry on 23.11.2012.
- 2.2 The above service was inspected by Assistant Executive Engineer/Enforcement/North Coimbatore on 5.8.2014 and found that the recording of meter is not correct. The Assistant Executive Engineer/MRT inspected and tested the meter on the same date and found that there was change in phase association and hence the recording of meter is not the actual consumption but less.
- 2.3 A meter of genius make was connected in series with the above meter with correct phase association on 19.8.2014 and reading of both the meters were recorded daily from 20.8.2014 to 3.9.2014 and found that the existing meter has recorded energy which is 34.93% less than the meter now connected in series with correct phase association.
- 2.4 The Appellant was asked to pay a sum of Rs.24,34,047/- towards shortfall due to change in phase association for a back period of 2years.
- 2.5 Aggrieved over the above demand of short fall, the Appellant filed a petition before the CGRF of GOBI EDC and the forum has confirmed the short fall amount.
- 2.6 Aggrieved over the orders of CGRF the Appellant filed a petition before the Electricity Ombudsman on 28.12.2014, without paying 25% of the short fall amount confirmed by the CGRF. Hence, the Appellant was informed to deposit 25% of the said amount with the licensee vide Electricity Ombudsman letter dt.7.1.2015. The Appellant paid sum of Rs.6,08,520/- on 4.2.2015 and

furnished a copy of receipt no.ERG 353RSIQ264 dt.4.2.2015. Accordingly the appeal petition was registered as appeal petition No.18 of 2015.

3. Contentions of the Appellant in Appeal Petition :

- 3.1 The Appellant states that as per the procedure followed by the Respondent, the LTCT meters are fixed to the service connection only after properly checking and conforming the correct functioning by the MRT wing. The Appellant further states that the MRT wing of the Respondent is the expert wing in dealing CT meters.
- 3.2 The Appellant states that as per the practice followed by the Respondent, the monthly reading of LTCT services are being taken by the officials not below the rank of the Assistant Engineer and assessment made and demanded. The Appellant further states that in view of the LTCT supply the meters are regularly being inspected and monitored to ensure proper functioning by the MRT wing of the Respondent with necessary equipments.
- 3.3 The Appellant states that the latest such inspection was done on 10.2.2014 and the meter was found to be in order. The Appellant states that this being so, the Assistant Exe. Engineer, Enforcement, Coimbatore North, Coimbatore visited the Appellant's industry on 5.8.2014 for inspection of the meter and after inspection of the meter alleged malfunction in the meter. Consequently the MRT wing of the Respondent inspected the meter on the same day i.e. 5.8.2014 and it was reported that there was wrong wire connection in the meter and there might be faulty recording in the energy consumption.
- 3.4 The Appellant states that subsequently the Respondent fixed another meter conjoint to the existing the meter from 19.8.2014 to 3.9.2014 and recordings were taken by the Respondent . On assessing the new meter recordings, it has been informed by the Assistant Exe. Engineer/East, Sathy as follows :
In order to ascertain lesser consumption, a new (series) meter was fixed alongwith the existing defective meter and inspection made. On the basis of such inspection it has been found that the existing meter was defective and recorded only 65% of the consumption and not recorded the balance 35% consumption.

- 3.5 The Appellant states that vide Demand notice Ir.no.218/2014 dated 15.9.2014 the Respondent demanded the Appellant to pay a sum of Rs.24,34,047/- (Twenty four lakhs thirty four thousand and forty seven only) towards short levy assessed at 35% evenly for all the months form August 2012 to August 2014. The Appellant states that the letter specifically declared the meter as defective.
- 3.6 The SITRA norms are the bench mark by the high power committees and other bodies set up by the Government of India and if at all there is any defect in the meter, SITRA norms should be taken for computation of the alleged short levy.
- 3.7 For spinning mills with conventional machines like that of the Appellant the electricity consumption per each kilogram of 40's count yarn production as per SITRA norms is 3.60 units.
- 3.8 It was also pointed out that for the production of 220054 KGs of yarn produced from June 2012 to June 2014, adopting SITRA norms the consumptions works out to 792194 units which is more or less equal to the actual consumption recorded in the meter i.e. 782744 (the difference is 394 units per month from June 2012 to June 2014).
- 3.9 The learned CGRF failed to appreciate the fact that the findings of the Respondent are not based on laboratory test which has scientific value. In fact the entire procedure followed to arrive at the alleged short levy is not in a process known to law and is entirely arbitrary. The learned CGRF has failed to note that if there is any alleged defect in the meter the same should be tested in the testing laboratory equipped with scientific apparatus which are very well available with the Respondents laboratory. Instead, another meter connected in series and the recordings in the meter taken for arriving the alleged short coming is not an established procedure and hence the order is erroneous, without application of mind and is against the law.
- 3.10 The learned CGRF had failed to appreciate the provisions in sub section 1 of section 85 of the Electricity Act 2003, which clearly stats that "No licensee shall supply electricity after expiry of two years from the appointed date, except through installation of a correct meter in accordance with the regulations to be made in this regard by the authority". As such, it is the responsibility/duty of the licensee to install a correct meter. It has also been

- stipulated in clause 7(8) of the Supply Code, that at periodical intervals, the meter shall be recalibrated and standardised by means of standard equipments by the licensee. Though periodical inspection have been undertaken by the MRT wing of Respondent and also meter calibrations done, no fault in the recording has been found by the MRT wing of the Respondent.
- 3.11 The learned CGRF has failed to appreciate the fact that for installing meter with wrong wire connection and also failed to find any default in the functioning of the meter in their periodical inspections, now the respondents is shifting their failure on the Appellant and are demanding huge sum. It is the mistake of the Respondent and hence for the mistakes committed by the Respondents, the consumers shall not suffer.
- 3.12 The Appellant states that in the case of S.A. Ahamed Vs Tamil Nadu Electricity Board (AIR 2001) Madras 117 the Hon'ble High Court of Madras has held that the Electricity Board cannot be allowed to take advantage of their own mistakes. The following observations in paragraph 14 of the judgment read as below : "*The mistakes here is arising not on account of any act on the part of the consumer. The Board cannot be allowed to take advantage of their own mistakes*". The learned CGRF has failed to consider the fact that the incorrect wiring has been done by the Respondent. As held by the Hon'ble High Court of Madras, the mistakes has not been committed by the Appellant and the Respondents cannot take advantage of their own mistakes by demanding such a huge sum from the Appellant.
- 3.13 The Learned CGRF failed to see that even assuming without conceding that the Appellant's meter was faulty, CGRF ought to have seen that SITRA has fixed norms for spinning mills and the same are the yardsticks for performance of the spinning mills. The norms quoted are bench marks by high power committees set up by government of India and as such the norms alone are the valid ground for arriving at the lesser consumption which has been completely ignored in this case.
- 3.14 The learned CGRF has failed to consider the copies of production statements by the appellant. Without taking into account the production, upholding the demand is erroneous, unjustifiable and against the law.
- 3.15 The learned CGRF failed to see that the assessment of lesser consumption does not correlate with the production of the yarn.

3.16 The learned CGRF failed to see that the correctness and healthiness of the series meter has not been demonstrated or established.

4. Contention of the Respondent in the Counter affidavit :

4.1 A new industrial LTCT service connection under tariff IIIB has been effected in SF No.82/1, Sendrayanpalayam, Village in the name of Thiru.N.B. Venkatesan for a load of 112 KW on 31.3.2006.

4.2 The above LTCT service connection has been inspected by the Assistant Exe. Engineer/Enforcement/North/Coimbatore on 5.8.2014 and found that the consumption in all the three phases are not recorded and consequently, the MRT wing of the respondent has inspected the meter of the above service connection on the same day and it is found that the phase association of Y \emptyset and B \emptyset were found interchanged in the meter terminal and in order to arrive the short levy a new meter (in series) was fixed along with the existing meter and inspection made, on the basis of such inspection, it was found that the existing meter recorded only 65% of the consumption and balance 35% consumption was not recorded in the meter.

4.3 As per regulation 21(2) of Supply Code of Tamil Nadu Electricity Regulatory Commission a demand for the short levy amount of Rs.24,34,047/-(Rupees Twenty four lakhs thirty four thousand and forty seven only) issued to the consumer on 15.9.2014 by Assistant Exe. Engineer/O&M/East /Sathy.

4.4 After receiving demand notice the consumer had filed a petition before the CGRF vide petition no.12/2014 and CGRF /Gobi EDC has passed an order on 7.11.2014 that the demand issued by the Assistant Exe. Engineer/O&MEast/Sathy is correct and also the consumer has been permitted by CGRF to pay the above said arrears in 24 months instalments.

4.5 In order to arrive short levy a new meter (make : Genus) was connected in service along with the existing meter (Make : Secure) on 19.8.2014 as agreed by the consumer and with his concurrence. From 20.8.2014 to 3.9.2014 (except on 24.8.2014, 28.8.2014 & 31.8.2014) the reading in both new and existing meter were taken and recorded and based on the readings the Executive Engineer/General cum MRT/Gobi reported that an average of 34.93% short fall recording in secure make meter in comparison to Genus make meter. The readings taken are furnished below :

Existing meter		Additional check meter	
Make	: Secure		Genus
Sl. No.	: TEB 07520		3737140
PT Ratio	: 3x240v		3x240 V
CT Ratio	: -/5A		/-5A
Class	: 0.5		0.5
LB	: 5A		5A
Imp	: 8000 Units		12000 Units
PO No.	: 2786/2000		157/D674/13
	Dt.23.10.00		Dt.23.8.13

Date of reading	Secure make	Genus make	Diff in %
20.8.14	1248	1894.4	34.19
21.8.14	1200	1870.4	35.84
22.8.14	948	1466.0	35.34
23.8.14	1052	1612.4	34.76
25.8.14	2380	3623.2	34.31
26.8.14	1380	2097.6	34.21
27.8.14	1416	2154.0	34.26
29.8.14	2368	3568.0	33.63
30.8.14	1608	2503.6	35.77
01.9.14	2492	3902.8	36.15
02.9.14	1220	1921.6	36.51
3.9.14 at 11.55 hrs	852	1301.2	34.52

4.6 Further, the Executive Engineer/General cum MRT/Gobi, recommended to revise the billing based on the above short fall percentage and also as per rules in force, Based on the Executive Engineer/General cum MRT/Gobi's report the Assistant Exe. Engineer/O&M/East/Sathy has revised the billing and issued a demand notice to the consumer for an amount of Rs.24,34,047/- (Rupees Twenty four lakhs thirty four thousand and forty seven only) for the period of 2 years i.e. from August 2012 to August 2014.

4.7 Initially the existing meter secure make bearing No.TEB07520 and the seals already provided in the compartment box were checked and found intact. Then a power check was also conducted in that meter and readings were recorded in the register.

4.8 Another meter genus make bearing SI No.3737140 has been connected in series with the existing secure make meter. Respective initial recordings were taken in both the meters before put into service. Power check has been conducted on both the meters and results are recorded in the register.

4.9 It has been decided to run the industry for half an hour on load to find out the recorded consumption in both the meters. Therefore, again initial recordings were taken in both the meters and the load was given for another half an hour. At the end of half an hour final reading were taken on both the meters. It was found that the consumption is more or less the same.

4.10 In order to find out the short levy and the short fall in recorded consumption the connections in the existing secure meter changed again into the previous status i.e. by changing of phase association in Y and B phases alone leaving R phase association as it is. At the same time the connections for the newly provided genus meter is given with correct phase associations of each phase but in series with the secure make meter.

4.11 A power check for the above provision has been conducted for both the meters. The recordings were recorded in the register from 20.8.2014 to 3.9.2014 (except on 24.8.2014, 28.8.2014 & 31.8.2014) Every day at a particular time the recordings on each meter were taken by the AE/O&M/DG Pudur and dated signature was obtained from the consumer on each day.

4.12 This arrangement and the above activities were carried out in the presence of the consumer also with his concurrence. Based on the above readings only assessment was made.

5. Hearing held by the Electricity Ombudsman:

5.1 To enable the Appellant and the Respondents to putforth their arguments in person, a hearing was scheduled on 23-4-2015. As the Appellant's advocate requested for postponement of the above hearing, the hearing was conducted on 15.5.2015 and another hearing was conducted on 16.7.2015.

5.2 Thiru N.L. Rajah, Advocate has attended the hearing on behalf of the Appellant and putforth his arguments on 15.5.2015 and Thiru. K. Narasimhan, Advocate attended the hearing and putforth his side arguments on 16.7.2015.

5.3 Thiru Chandrasekar, EE/O&M/Sathy attended the hearing on 15.5.2015 and putforth his arguments and Thiru. R.Shanmugasundaram, EE/O&M/Sathy attended the hearing conducted on 16.7.2015 and putforth his side arguments.

6. Argument putforth by the Appellant's representative on the hearing date:

6.1 Thiru N.L. Rajah, Advocate reiterated the contends of the appeal petition.

6.2 The learned advocate argued that no show cause notice was issued while claiming short fall amount for a back period of 24 months. Hence, he argued that no opportunity was given to the Appellant to contest the claim. He further argued that issuing a demand notice directly without issue of any show cause notice is against the principle of natural justice. The learned advocate cited, the order of High Court of Madras in WP 1381 of 2003 in support of the argument. He also informed that there are many such orders of High Court of Madras and hence he argued that the demand notice issued for the short fall amount is to be set aside and the Respondent shall be ordered to issue a show cause notice first.

6.3 The learned advocate also argued that the meter was not tested in accredited lab to declare it as defective and no test results was also furnished by the Respondent to establish that the meter is defective.

6.4 The learned advocate argued that if the meter is defective only regulation 11 of the Supply Code has to be adopted to arrive at the average consumption during the meter defective period. Instead of adopting the above regulation to compute the average consumption, percentage calculation was adopted for which there is no provision in the Supply Code.

6.5 The period of short fall is taken as 2 years. there is no rationale behind fixing back period of 2 years, for collecting the arrears. The Respondent argument of section 56(2) of the Electricity Act 2003, is not maintainable as there is no mention about the meter defective period in section 56(2).

6.6 With regards to the argument of the Respondent that the short fall claim is due to wrong phase association. The learned advocate argued that the wrong phase

association was due to the mistake of the licensee's officers only and not due to any mistake of the Appellant.

6.7 Citing the orders of Madras High Court in the case of S.A. Ahamed Vs TNEB (AIR 2001, Madras 117), the learned advocate argued that the Respondent cannot take advantage of their own mistakes and claim a short fall as the incorrect wiring was done by the licensee's officers only.

7. Arguments putforth by the Respondents representative on the hearing dates :

7.1 The Executive Engineer/O&M/Sathy reiterated contents of the counter.

7.2 The EE argued that the consumption recorded was less than the actual by 35% due to interchanging of phase association of Y phase and B phase.

7.3 He also informed that a good meter with correct phase association was erected in series with the existing meter with wrong phase association and established the reduction in the consumption in existing secure make meter when compared with the Genus meter fixed with correct phase association. He informed that the above arrangement was done with the concurrence of the consumer only. He further argued that the short fall claimed is only the units consumed but escaped from billing. The consumer has actually paid the CC charges for 65% of the actual consumption. Hence, he argued that claiming of the short fall is reasonable only.

7.4 The EE also argued as per regulation 12 of Supply Code, the licensee is having right to claim the short fall amount if the consumer is undercharged. As the consumer was undercharged in the regular bills, the Respondent argued that the left over consumption was claimed as short fall now.

7.5 The EE also argued as per regulation 12(2), the licensee can claim short fall for a back period of 2 years. Hence, he argued that the claim of short fall for 2 years is as per regulation only.

7.6 With regards to the issue of show cause notice, the EE pleaded that they need some more time to give their argument on the above. Accordingly, the Respondent has given the following as his additional counter statement vide letter dt.4.6.2015.

(i) The question of issue of show cause notice does not arise as there is no such provision in TNERC Code. Besides the consumer himself made a representation to Superintending Engineer/Gobi for connecting another meter in series along with the existing one for ascertaining the performance and to arrive at the real loss sustained by TANGEDCO. He has fully accepted the outcome of such a study.

(ii) The Appellant has availed the statutory alternate remedy provide under section 42(5) and 42(6) of the Electricity Act 2003 and filed his grievance before the Redressal forum and also appealed before the Electricity Ombudsman. Therefore, by citing the show cause notice issue the appellant cannot evade his liability to pay short levy on the established lesser consumption.

(iii) It has also been stated that the power check is data evidence, and therefore has scientific value. The facts proved on scientific data have to be accepted.

(iv) Even if it has been taken the wrong association of phases is done by the TNEB, the benefit viz., the lesser payment on lesser recording of consumption has been enjoyed by the appellant. For the unlawful benefit, the appellant is liable to make good the loss.

(v) As per provisions in clause 12(1) of the Supply Code, the respondent board is well within its rights to recover the short levy on account of lesser recorded

consumption. Irrespective of the date of occurrence of the defect, the demand has been limited for the back period of 24 months as specified in section 56(2) of the Electricity Act 2003. Hence, the demand is lawful.

7.7 On 16.7.2015, the Respondent informed that the Appellant has given consent to erect a meter in series with the existing meter to arrive at the short fall amount. Hence, he argued that as the calculation of short fall was made with the concurrence of the Appellant, issue of show cause notice is not necessary. He also furnished the copy of the minutes signed by the consumer and the licensee's officers in support of the above argument.

8. Written arguments dt. 12.8.2015 of the Appellant :

8.1 The Appellant has furnished his written argument on 12.8.2015. The additional arguments which are not stated in the petition alone are furnished below :

8.2 The Appellant states that the Hon'ble High Court of Madras in a similar case in WP 1946 of 2010 has clearly held in para 10 of the order dated 16.7.2013 that *“ . . . it is patently and latently evident that the petitioner has not been provided with an opportunity to contest the claim made by it with regards the excess penalty charges amounting to Rs.7,64,680/- etc., In this regard it can be aptly stated that there has been negation of principles of natural justice. Viewed in that perspective, the said order of the 3rd Respondent dated 12.1.2010 bristles with legal infirmity”*.

8.3 The Appellant humbly states that the Respondents maintain a dairy in which the visit by the MRT wing is recorded and the signature of the Appellant is obtained. During the visit of the Assistant Exe. Engineer/Enforcement, Coimbatore North on 5.8.2014 the AEE, Enforcement Coimbatore North himself verified the dairy available with him and confirmed the date of last visit as 10.2.2014 and questioned the MRT wing as to how they did not detect the fault earlier.

8.4 The Appellant strongly denies that the meter was fixed with the concurrence of the Appellant and he had accepted the result of the same and puts the respondents to the strict proof for the same.

8.5 The Appellant further states that the signature of the Appellant was obtained stating that the same is for random checking of their meter by fixing new connecting meter.

8.6 The Appellant states that in case production of the Appellant is taken into account consumption correlates with the production of the yarn as per SITRA norms.

9. Written arguments of the Respondent :

9.1 At the time of effecting the supply, power check test and MF check test was conducted.

9.2 As per the request of the consumer in person to the Superintending Engineer/GEDC/Gobi, the Superintending Engineer/GEDC/Gobi has given the order for providing additional meter (in series with the existing meter) for analysing the consumption pattern.

9.3 The check meter provided for consumption pattern analysis is a healthy one. The practice being adopted to ascertain the short levy in case of wrong association of phase connection is to connect another healthy meter in series with the existing one.

9.4 It is submitted that there was no metering camp on 10.2.2014.

9.5 The theoretical calculation of wrong phase association is furnished as below:

$$\begin{aligned} 3\phi \text{ power} &= R \text{ phase power} + Y \text{ phase} + B \text{ power} \\ &= V_R I_R \cos 30^\circ + V_Y I_B \cos 150^\circ + V_B I_Y \cos 270^\circ \\ &= V_R I_R \cos 30^\circ + V_Y I_B \cos 150^\circ + 0 \end{aligned}$$

9.6 A similar case related to Dindigul EDC during the year 2006 was already disposed by the Hon'ble Electricity Ombudsman is also enclosed herewith for kind perusal and consideration please.

10. Findings of the Electricity Ombudsman:

10.1 I have heard the arguments of both sides. As the learned advocate has raised the issue of show cause notice before raising any demand of short levy, I would like to consider the above issue before going into the merits of the case.

10.2 The learned advocate representing the Appellant forcefully argued that before issue of the demand notice claiming difference in amount for a back period of two years, the Respondent ought to have issued a show cause notice. Hence, he argued that the Appellant was deprived of an opportunity to contest the claim.

10.3 He further argued that issuing of a demand notice to pay a sum of Rs.24,43,047/- without issue of any show cause notice is against principle of natural justice. He has cited, orders of Madras High Court in W.P.No.1946 of 2010 in support of his argument and also informed that many such orders were issued by the Hon'ble High Court of Madras on the same lines.

10.4 The Respondent argued that the question of issue of show cause notice does not arise as there is no such provision in the TNERC Code. Further, the consumer himself made a representation to Superintending Engineer/Gobi EDC for connecting another meter in series with the existing meter to ascertain the performance and to arrive at the real loss sustained by the TANGEDCO. He has also accepted the outcome of such study. The respondent also furnished the copy of minutes signed by the Appellant in support of the above argument.

10.5 The Respondent also argued that statutory alternate remedy provided under section 42(5) and 42(6) of the Electricity Act 2003 was availed by the Appellant. As the Appellant has filed his grievance before the CGRF, the Respondent argued that

he has been given an opportunity to contest the claim. Further, the appellant has also filed an appeal before the Electricity Ombudsman. Hence, he argued that the Appellant cannot evade his liability to pay the short levy of the established lessor consumption citing the show cause notice.

10.6 As the Appellant has cited the order of High Court of Madras judicature in W.P.No.1946 of 2010 in support of his argument the relevant paras of the above judgment is extracted below :

10.6.1 W.P. No. 1946 of 2010 dated 16.7.2013

The case is related to levy of excess penalty charge amounting to Rs.7,64,680/- for exceeding the energy quota fixed. The relevant para 10 & 11 of judgment dt.16.7.2013.

“10. As far as the present case is concerned, at the risk of repetition, this Court points out that it is the specific case of the Petitioner that as per Quota Order dated 15.06.2009, energy Quota was 253136 units and the third party purchase in the month of December 2009 was 154816 units and in all, the Petitioner was to utilise 4,07,952 units during the month of December and the consumption of the Petitioner/Industry was only 390540. To put it succinctly, the plea of the Petitioner was that no excess consumption was availed by it. When such being the ground reality, then, this Court is of the considered view that the Petitioner ought to have been provided with a Demand Notice at the earliest point of time requiring it to submit its explanation if any. As a matter of fact, only after perusing /considering the explanation submitted by the Petitioner, if any order has been passed by the 3rd Respondent on merits, then only, it should have raised the demand in question in a proper and correct manner. However, on going through the contents of the impugned order dated 12.01.2010 issued by the 3rd Respondent, it is patently and latently evident that the Petitioner has not been provided with an opportunity to contest the claim made by it as regards the excess penalty charges amounting to Rs.7,64,680/- etc. In this regard, it can be aptly stated that there has been a negation of Principles of Natural Justice. Viewed in that perspective, the said order of the 3rd Respondent dated 12.01.2010 bristles with legal infirmity. Therefore, this Court is left with no option but to interfere with the said order dated 12.01.2010 passed by the 3rd

Respondent and sets aside the same, to prevent an aberration of Justice. Consequently, the Writ Petition succeeds.

11. *In the result, the Writ Petition is allowed, leaving the parties to bear their own costs. Consequently, the order passed by the 3rd Respondent in Letter No.SE/CEDC/N/HT/DFC/N/F/F1824/D/09 dated 12.01.2010 is hereby set aside by this Court for the reasons assigned in this Writ Petition. In the circumstances of the present case, which float on the surface, this Court directs the 3rd Respondent to issue a fresh Demand Notice to the Petitioner within a period of one week from the date of receipt of copy of this order, by specifying the relevant period and also furnishing the necessary Break-up details in regard to the purported excess penalty charges amounting to Rs.7,64,680/- etc. claimed by it. Thereupon, the Petitioner is granted 10 days time to submit its explanation/representation in regard to the claim made by the Electricity Department. Further, the 3rd Respondent, after receipt of explanation from the Petitioner, is directed to pass a reasoned speaking order on merits in a dispassionate and objective manner within a period of four weeks, by assigning outline of process of reasoning in the subject matter in issue, in the manner known to law and in accordance with law. Consequently, connected Miscellaneous Petitions are closed.”*

10.7 On a careful reading of the above judgments, it is noted that an opportunity to contest the claim made by the Respondent has to be given to the Appellant before issue of any demand notice while claiming the short fall amount.

10.8 As the respondent has argued that the Appellant has given concurrence for connecting the meter in series with the existing meter and to calculate the short fall amount based on the outcome of the above arrangement, relevant para of the minutes of the meeting signed by the Appellant is extracted below :

“ xxxx xxxx xxxxx

This arrangements and the above activities were carried out in the presence of the consumer, with his concurrence. The results arrived will be taken for calculating the short levy and for making assessment.

xxx xxxx xxxx”

10.9 The above para is the last para of the minutes before the meter details. The minutes was signed by the appellant on 19.8.2014 and on the licensees side the following persons have signed in the minutes.

- (i) TA/MRT/Gobi, (ii) AE/MRT/Gobi, (iii) AE/O&M/DG Pudur
- (iv) AEE/MRT/Gobi (v) AEE/O&M/Sathy, (vi) EE/O&M/Sathy (i/c)
- (vii) EE/GI/MRT/Gobi

10.10 In this regard, the Appellant argued that the signature of the Appellant was obtained stating that the same is random checking of the meter by fixing a new meter and he has not given any acceptance for the results of the same. He further argued that connecting a meter in series and recordings of the meter taken for arriving the alleged short coming is not an established procedure and is not a process known to law.

10.11 As the quantum of short levy, the period for which it was to be levied etc are known only when the short fall is levied, the arguments of the Respondent that the concurrence given for connecting the meter in series absolve them from issue of show cause notice is not acceptable to me.

10.12 As the Hon'ble High Court of Madras Judicature has viewed the non issue of show cause notice as negation of principle of natural justice and directed the licensee to issue a fresh demand notice to the petitioner giving a time to offer his explanation and then pass an order on merits in the case referred in para 10.6, I am of the view that a fresh show cause notice shall be issued to the Appellant in the case on hand also.

10.13 Regarding refund of the amount collected, I would like to refer the orders of the Hon'ble High Court in W.P.No. 30920 of 2013 and M.P.No. 1 of 2013 dt.29.11.2013. The para 13 of the order dt.29.11.2013 in W.P.No. 30920 of 2013 and M.P.No.1 of 2013 which is relevant is extracted below :

“Hence, this court is not inclined to accept the contentions of the learned counsel for the petitioner that whenever a demand is set aside, on the ground of violation of principles of natural justice, the amount collected by a public body should

invariably be ordered to be refunded, when the matter is remitted to the authorities for fresh consideration, on merits”

10.14 As the present case also remitted back to concerned authorities for issuing a show cause notice due to violation of principle of natural justice, I am of the view that the above order of the High Court is applicable to this case also. Hence, I am of the view that the matter shall be remitted to the authorities for issue of show cause notice and the refund of the 25% of the short levy collected by the Respondent shall be decided based on the final orders of the concerned authority of the licensee.

11. Conclusion :

11.1 In view of my findings in para 10.12 & 10.14 above, the demand notice dt. 15.9.2014 is set aside and the Respondent is directed to issue a fresh show cause notice to the Appellant calling upon him to offer his explanation as to why the demand towards the short fall amount due to wrong phase association in the meter could not be made within a week from the date of receipt of the order duly detailing the reasons for such claim. On receipt of the show cause notice, the Appellant is directed to submit his representation with regards to the claim made by the licensee within 10 days from the date of receipt of show cause notice. The Respondent after receipt of the representation from the Appellant is directed to pass a reasoned speaking order on merits in a dispassionate and objective manner within a period of three weeks therefrom.

10.2 With the above findings the Appeal Petition No. 18 of 2015 is finally disposed of by the Electricity Ombudsman. No Costs.

(A. Dharmaraj)
Electricity Ombudsman

To

1) M/s G.J.Spinner,
LTCT SC No.353-009-762,
SF No.82/1, Sendrayanpalayam,
D.G. Pudur,
Sathyamangalam.

2) The Superintending Engineer,
Gobi Electricity Distribution Circle,
TANGEDCO
132, Cutchery Street,
Gobi- 638 452.

3) The Chairman,
(Superintending Engineer),
Consumer Grievance Redressal Forum,
Gobi Electricity Distribution Circle,
TANGEDCO
132, Cutchery Street, Gobi- 638 452.

4) The Chairman & Managing Director,
TANGEDCO,
NPKR Malaigai,
144, Anna Salai,
Chennai – 600 002.

5) The Secretary
Tamil Nadu Electricity Regulatory Commission
No.19A, Rukmini Lakshmi pathy Salai
Egmore,
Chennai – 600 008.

6) The Assistant Director (Computer) - **FOR HOSTING IN THE TNEO WEBSITE PLEASE**
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