

A consumer is the important visitor on our premises.  
He is not dependent on us. We are dependent on him.  
-Mahatma Gandhi



## **TAMIL NADU ELECTRICITY OMBUDSMAN**

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**Before The Tamil Nadu Electricity Ombudsman, Chennai**

**Present : Thiru. N. Kannan, Electricity Ombudsman**

### **A.P.No. 01 of 2024**

M/s. MK TRON Autoparts Pvt. Ltd.,  
82A & 82B, 160/2, 161/2B,  
SIDCO Industrial Estate,  
Thirumudivakkam, Chennai – 600 132.

..... Appellant  
(Rep. by Thiru R.K.Sethuraman, Advocate)

Vs.

1. The Superintending Engineer,  
Chennai Electricity Distribution Circle/South-I,  
TANGEDCO,  
110KV SS Complex, K.K.Nagar,  
Chennai-600 078.

2. Deputy Financial Controller,  
Chennai Electricity Distribution Circle/South-I,  
TANGEDCO,  
110KV K.K. Nagar, SS Complex,  
Second floor, Anna Main Road,  
K.K.Nagar, Chennai-600 078.

..... Respondents  
(Thiru S. Ajmal Khan, DFC/CEDC/South-I)

**Petition Received on: 03-01-2024**

**Date of hearing: 22-02-2024**

**Date of order: 08-03-2024**

The Appeal Petition received on 03.01.2024 filed by M/s. MK TRON Autoparts Pvt. Ltd., 82A & 82B, 160/2, 161/2B, SIDCO Industrial Estate, Thirumudivakkam, Chennai – 600 132 was registered as Appeal Petition No. 01 of 2024. The above appeal petition came up for hearing before the Electricity

Ombudsman on 22.02.2024. Upon perusing the Appeal Petition, Counter affidavit, written argument and the oral submission made on the hearing date from both the parties, the Electricity Ombudsman passes the following order.

## **ORDER**

### **1.0 Prayer of the Appellant:**

1.1 The Appellant has requested to waive the BPSC, and only the dispute regarding the shortfall levy charges is to be considered by applying the rules of the code for his HT SC No. 909-400-0872.

### **2.0 Brief History of the case:**

2.1 The HT supply was initially provided to M/s CASTWEL AUTO PARTS PRIVATE LIMITED on 12-06-2012 with a sanctioned demand of 1000 KVA. Subsequently, the Respondent raised a shortfall amount of Rs 58,08,999/- due to partial recording of energy for the period from 22-08-2012 to 11-01-2013 on 28.11.2013. Aggrieved over the inclusion of the shortfall amount by the Respondent to pay in the 07/2014 CC bill, the Appellant obtained an interim stay order in W.P 20279 of 2014 and MP No. 1 of 2014 dated 31-07-2014 from the Hon'ble High Court of Madras with conditions to pay 25% of the amount demanded on 28-11-2013.

2.2 Meanwhile, the Appellant changed the name of M/s. Castwel Autoparts Pvt. Ltd. to M/s M.K TRON AUTOPARTS PRIVATE LTD from 07.12.2021. Subsequently, the Hon'ble High Court disposed of the W.P 20279 of 2014 and MP No. 1 of 2014 on 23.03.2022 by directing the Appellant to avail alternate remedy before CGRF. Meanwhile, the Respondent stated that the Appellant was asked to approach on 04.06.2022 but turned up after a lapse of 10 months. The Appellant paid the balance amount of Rs 43,56,749/-, which was 75% of the shortfall amount of Rs 58,08,999/-, on 19-04-2023.

2.3 The Respondent further raised a BPSC amount for the shortfall amount of Rs. 86,52,242/- for the period from 15-12-2013 to 19-04-2023 on 04-05-2023. Aggrieved over the BPSC demand, the Appellant again approached the Hon'ble High Court of Madras in W.P. No 26060 of 2023 and W.M.P Nos. 25480 and 25481 of 2023, ordered on 07-09-2023 that until the Consumer Grievance Redressal Forum takes a call, TANGEDCO is required not to precipitate the issue. The CGRF/CEDC/South-I issued its order on 31-10-2023.

2.4 Aggrieved over the order of CGRF, the Appellant has preferred this appeal petition before the Electricity Ombudsman.

### **3.0 Orders of the CGRF :**

3.1 The CGRF of Chennai Electricity Distribution Circle/South-I issued its order on 31.10.2023. The relevant portion of the order is extracted below :-

#### **"Order of the Forum:**

*From the above findings, the following order is issued.*

- 1. The average calculated for the defective period from 22.08.2012 to 11.01.2013 is as per TNERC supply code 11(4) which is found in order.*
- 2. The third party energy supplied was taken into account for the average calculation during defective period.*
- 3. The BPSC for the defective period has been levied as per Tamil Nadu Supply code 5(4) (ii) (a) and the forum directs the petitioner to pay the BPSC levied.*

*The writ petition filed by the petitioner was also disposed with the direction, "Till the Consumer Grievance Redressal Forum takes a call, TANGEDCO was required not to precipitate the issue". Now the Consumer Grievance Redressal Forum heard the issue and order issued.*

*This petition is treated as closed."*

### **4.0 Hearing held by the Electricity Ombudsman:**

4.1 To enable the Appellant and the Respondents to put forth their arguments, a hearing was conducted in person on 22.02.2024.

4.2 On behalf of the Appellant, Thiru R.K.Sethuraman, Advocate attended the hearing and put forth his arguments.

4.3 The Respondent Thiru S. Ajmal Khan, DFC/CEDC/South-I, Chennai Electricity Distribution Circle/South-I attended the hearing and put forth their arguments.

4.4 As the Electricity Ombudsman is the Appellate authority, only the prayers which were submitted before the CGRF are considered for issuing orders. Further the prayers which require relief under the Regulations for CGRF and Electricity Ombudsman, 2004 alone are discussed hereunder.

#### **5.0 Arguments of the Appellant :**

5.1 The Appellant has stated that the claim under the head of BPSC amount along with GST of 18% worked out the same of Rs.86,52,242/- in respect of our HT service connection is highly arbitrary and not in accordance with rules of assessment of billing.

5.2 The Appellant has stated that the audited slip to collect short levy energy charges for the sum Rs.58,08,999/- for the defective meter period from 22/08/2012 to 11/01/2013 is also arbitrary and not based on average of electricity supplied during the previous months.

5.3 The Appellant has stated that as per the directions given in writ petition (W.P.20279/2014) dated 31/07/2014, our company deposited initially a sum of Rs.14,52,520/- (Fourteen Lakhs Fifty Two Thousand Two Hundred Fifty Only) is 25% of the total amount of demand Rs.58,08,909 /- as per High court interim order on 04/08/2014 and also the balance amount of 75% of Rs.43,56,749 /- was paid on 19/04/2023. Infact, the said amount of Rs.58,08,999/- was paid under protest since the calculation of quantum of electricity consumed during the defective period itself in dispute.

5.4 The Appellant has stated that the calculation given by your office for the claim of Rs.58,08,999/- based on audit report was inclusive of third party sale. The assessment quantum of electricity supplied must be done by MRT (meter relay test) but in our case the officials of your department has done the assessment which was not fair and not acceptable as per procedure. On the other hand, the MRT has not furnished the defective period specifically for adoption of average. Hence the billing assessment done by your officials has to be revised.

5.5 The Appellant has stated that they have availed the third party power supplies during the period from November-2012 to April-2014 and your office have taken the third party units also in calculation for making average consumption of 3,34,600 units and average is calculated from the period from February 2013 to May 2013 and the said average was taken for calculating consumption from the period August-2012 to January-2013 and to ascertain the consumption amount totalling to Rs.58,08,999 in the audit report which is highly erroneous and objectionable, (Details of third party consumption invoices of the period December-12 to April-13 is enclosed with this letter).

5.6 The Appellant has stated that the quantity of diesel consumption during the period from April 2012 to 31<sup>st</sup>May 2013 was 11,75,3110.180 LTR and the amount paid for same was Rs.5,51,18,664.42/-and details of the Diesel consumption is enclosed in annexure.

5.7 The Appellant has stated that it is also informed that there is no provision to levy BPSC on amount raised by audit branch. Therefore, it is once again requested that the revision of average billing has to be done based on the field recommendation / MRT recommendation and as per code provision in our case render justice.

5.8 The Appellant has stated that they have already raised dispute with regard to claim of Rs.58,08,899 towards short Levy charges for the defective meter period from 22/08/2012 to 11/01/2013 by submitting our version dt. 26/06/2023 which is to be decided. The Appellant has stated that they paid the above said amount under

protest after the disposal of writ petition 2027/2014 dt.31/07/2014 directing to approach the CGRF to redress the grievance.

5.9 The Appellant has stated that the Respondent office issued the above Notice dt.04/05/2023 demanding BPSC of Rs.86,52,242/- with 18% interest after the disposal of the Writ petition is arbitrary and not the subject matter of issue. When the main issue of short fall Levy charges is under dispute the demand on the said amount demanding to pay BPSC is not in accordance with Tamil Nadu electricity code.

5.10 The Appellant has stated that they have challenged the demand of BPSC by way to writ petitions 26060/2023 in the High court recently in which orders were passed on 07/09/2023 to agitate the issue before this forum. As per Supply code of Tamil Nadu Electricity clause 49(4) bills are to be paid in the case of HT consumers within the due date and BPSC will apply only if the HT consumer neglects to pay the bill amount. In instant case our client were not in arrears of any Bills and it was due to defective meter the assessment was done for the quantum of electricity supplied and it was not arrears of bills.

5.11 The Appellant has stated that as per clause 11 (1) (2) & (3) of the code when the meter fixed is found defective or to have ceased to function the quantity of electricity supplied during the period when the meter was not installed or the meter installed was defective shall be assessed by taking average of the electricity supplied during the preceding four months period.

5.12 The Appellant has stated that hence the average calculated for short fall Levy charges is highly arbitrary and the code was not followed and consequently the levy of BPSC towards belated payment charges is also not fair.

5.13 The Appellant has prayed to waive the BPSC and dispute with regard to short fall Levy charges alone has to be considered by applying the rules of code.

## **6.0 Counter submitted by the Respondent:**

6.1 The Respondent has submitted that this petitioner's company M/s. M.K. Tron Autoparts Private Limited (formerly known as M/S. CASTWEL AUTOPARTS

PRIVATE LIMITED), bearing HT S/C No.09-909-400-0872 was effected with a sanctioned demand of 1000 KVA, in the name of M/S. CASTWEL AUTOPARTS PRIVATE LIMITED, bearing HTS/c No.09-909- 400-0872, situated at No. 82A & B SIDCO INDUSTRIAL ESTATE, THIRUMUDIVAKKAM, Chennai-44 on 12.06.2012. On 05.05.2021, The Name transfer from M/s. Castwel Autoparts Private Limited to M/s. MK TRON AUTOPARTS PRIVATE LIMITED effected from 07.12.2021, as per request and based on the documents.

6.2 The Respondent has stated that based on the request of the AEE /O&M / Thirumudivakkam vide Lr. No.AEE/O&M/Tmvkm/F HT872/D.1301/12, dt. 27.12.2012, the HT service connection was inspected to check the reason for the Partial voltage recorded in the HT Meter. In the 11 kV Potential Transformer & phase spout was cracked. 11 kV Potential Transformer was declared defective and replaced with a New tested healthy one. Normal metering supply was restored on 11.01.2013 @ 18.56 Hrs.

6.3 The Respondent has stated that the EE/MRT's has given Billing recommendation vide Lr.No.EE/MRT/S/AEE/Met/FHT A/cNo.872/D.157/2013, dt.02.02.2013 for the defective period from 22.08.2012 to 11.01.2013 for the all billing parameters of KWh, KVAh, KVA MD, PF and TOD energies. The date of partial voltage was ascertained from the CMRI downloaded data.

6.4 The Respondent has stated that based on the MRT's billing recommendation, the Average billing has been worked out for the defective period i.e from 22.08.2012 to 11.01.2013. Since, the meter defective within two months from the date of effecting supply, the Previous four months average could not taken and hence as per the TNEB supply code para 11 (Clause 4), succeeding four months periods after installation of the rectified meter was taken.

6.5 The Respondent has stated that the details of Average workings amount month wise is given below for meter defective period i.e 22.08.2012 to 11.01.2013:

For 08/2012 Rs.2,66,722/-  
For 09/2012.Rs. 15,79,106/  
For 10/2012 Rs. 16,03,870/-

For 11/2012.Rs. 14,56,253/-(3 party units adjusted)  
For 12/2012.Rs. 5,76,527/-(3 party units adjusted)  
For 01/2013..Rs.3,26,521/-

TOTAL ...Rs.58,08,999/-

Further, the HT consumer had availed 3rd party power units for the month of 11/2012 & 12/2012 and the same has also been taken in to account and adjusted in the CC bill.

6.6 The Respondent has stated that the intimation letter for short levy of Energy charges towards meter defective period for the above amount has sent vide Lr. No. SE/CEDC/S/DFC/AAO/HT/AS/AS7/FSC872/D.1194/13, dated 28.11.2013.

6.7 The Respondent has stated that on 03.06.2014, again the HT consumer has represented and requested to withdraw the Audit slip due to (1) the HT service effected only on 12.06.2012 and the full capacity of production was not commenced during the period pointed out by the Audit (2) the meter defect was rectified by the MRT wing on 10.01.2013 and actual date of defect was not pointed out by the MRT wing. The defect might had occurred at any one of the date between 28.12.2012 and 10.01.2013 ie the date of meter reading for 12/2012 to 10/01/2013.

6.8 The Respondent has stated that in our letter No.Lr.No.SE/CEDC/S/DFC/AAO/HT/AS/AS7/F SC 872/D.585/14, dt. 10.07.2014, has replied that from the CMRI downloaded data, it was concluded that the date of defect had occurred on 22.08.2012 and hence the HT Consumer's assumption that the defect might had occurred at any one of the day between 28.12.2012 to 10.01.2013 is not correct. Further, as per "TNERC Supply code Clause 11 Sub-clause (4), 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 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. The meter become defective immediately after the service connection is effected the quantum of electricity supplied during the period



is question is to be determined, by taking the average of electricity supplied during the succeeding four months periods after installation of healthy meter is applicable to HT Service also. Hence the average taken by the succeeding four months period is in order as per rules in force.

6.9 The Respondent has stated that the shortfall amount was included in the 07/2014 CC bill, since the HT consumer has not paid the amount. However, the HT consumer was obtained Interim stay order in Hon'ble High court of Chennai vide WP No.20279 of 2014 and MP No. 1 of 2014, dated 31.07.2014 and the Interim stay on condition that the petitioner pays 25% of the amount demanded in the letter dated 28.11.2013. Based on the Court order, the HT consumer was paid Rs.14,52,250/- vide Receipt No. 400C090624, dated 05.08.2014. On 11.08.2014, the Hon'ble High court issued an order and stated interim order already granted on 31.07.2014, is extended for a period of four weeks.

6.10 The Respondent has stated that in the meantime, the Hon'ble High court has issued an order on 23.03.2022 vide WP No.20279 of 2014 & MP No.1 of 2014 that the petitioner has an alternative remedy before Consumer Grievance Redressal Forum and this writ petition is closed directing the petitioner to avail the alternative remedy.

6.11 The Respondent has stated that based on the Hon'ble High Court order vide WP No.20279 of 2014 & MP No.1 of 2014, dt. 23.03.2022, the intimation letter vide reference Lr.No.CH/CGRF/CEDC/SI/EE /GL/PRO/F Doc/ D.655/22, dt.04.06.2022 has sent to the HT consumer to approach Consumer Grievance Redressal Forum. But, the HT consumer was started to attend the CGRF meeting after a lapse 10 months and also the HT consumer has not submitted any reports to the CGRF meetings which were subsequently held on various dates ie 07.06.2022, 30.06.2023, 27.07.2023, 30.08.2023 & 27.09.2023. On 19.04.2023, the HT consumer was paid the balance 75% amount of Rs. 43,56,749/- vide RT.No.109400119042311651068, dt.19.04.2023 also under protest. The Hon'ble

High Court has made a note in its order dated 07.09.2023, not to precipitate the issue until the disposal of the appeal and disposed of the matter.

6.12 The Respondent has stated that On 04.05.2023, vide Lr.No.SE/CEDC/SI/DFC/AAO/AS/HT/F HT 872/D.88/23, the Belated Payment Surcharge intimation letter was sent to the HT consumer for the period from 15.12.2013 to 19.04.2023 worked out for an amount of Rs.86,52,242/- with 18% GST, from the date of completing 15 days i.e. 15.12.2013 to 19.04.2023, for the balance 75% amount of Rs. 43,56,749/- as per the TNEB supply code and TNERC regulations.

6.13 The Respondent has stated that the belated payment surcharge was claimed only at the time of hearing before the CGRF and not before that. The same was claimed if the scenario of appeal is ordered against the Appellant, he will be liable to pay the Belated Payment surcharge. As per Regulation 14(1) of TNEB supply code, if any charges remains unpaid beyond the notice period, the service connection shall be liable to be disconnected forthwith without further notice and until full payment is collected. Moreover, if any arrears are not paid beyond the notice period by any consumer, he should pay the dues/arrears along with other necessary charges which imply the BPSC. Hence it is well established that any arrears not paid beyond notice period attract BPSC. Further, in the TANGEDCO's supply code 17 (2), stated "Notwithstanding the termination of the agreement, the consumer shall be liable to pay the arrears of Current consumption charges or any other sum due to the Licensee on the date of disconnection and meter rent, if any, up to the date of termination of the agreement and Belated Payment Surcharge (BPSC) up to the date of payment.

As per TNE Supply code is extracted below:

AS per Regulation (13)

*"For the HT Services xxxxx The consumer should notify the concerned office of the Licensee, if no bill or assessment is received. Non-receipt of the bills / assessments will not entitle the consumer to delay payment of the charges beyond the due date xxxxx".*

As per Regulations (5) (4) (1)

All bills are to be paid in the case of HT consumers, within the due date specified on the bill and in the case of LT consumers, within the due date and notice period specified in the consumer meter card.

- a) Where any HT consumer neglects to pay any bill by the due date, he shall be liable to pay belated payment surcharge from the day following the due date for payment. Where any LT consumer (except services relating to Public Lighting and Water supply and other services belonging to Local Bodies) neglects to pay any bill by the last day of the notice period, he shall be liable to pay belated payment surcharge from the day following the last day of the notice period"

In view of the above provisions, the request for waiver of BPSC is not feasible of compliance.

6.14 The Respondent has stated that TANGEDCO can raise an additional demand even after the limitation period stipulated under section 56(2) of Electricity Act 2003 in case of a mistake or bonafide error. Further, TANGEDCO has not followed any coercive means to collect the amount and no disconnection notice had been served on the Service connection owner for not paying the said arrear of Average and BPSC amount.

6.15 The Respondent has stated that TANGEDCO is eligible to collect BPSC along with arrears during the period of stay. The CGRF had carefully perused the records submitted before the forum and the passed the order to pay the Average amount and Belated payment surcharge only after considering the fact that the service was inspected by the MRT on 10.01.2013 based on the request of AEE/O&M/Thirumudivakkam and declared that the PT was found defective and a healthy PT was fixed on 11.01.2013. From the CMRI download data, it was concluded that the defect had occurred on 22.08.2012 and the defective period was taken from 22.08.2012 to 11.01.2013.

6.16 The Respondent has stated that in WP Nos. 4471 and 4472 of 2017 and WPMP Nos. 4708 and 4709 of 2017, dated 24.03.2023, the Hon'ble High court, Madras has ordered against the M/s. Ashok Leyland Limited as ordered stated that "the Petitioner Company, as per their own undertaking before the Superintending Engineer, Chennai EDC/North, Anna Salai, Chennai-2, has to settle the entire charges along with the belated payment charges as determined by the Tamil Nadu Electricity Board. Accordingly, the petitioner is directed to settle the amount due, within a period of eightweeks from the date of receipt of a copy of this order.

6.17 The Respondent has stated that the CGRF/CEDC South-1 is in order. There is no such any deviation against Law. The Appellant is not entitled to any relief in the above Appeal petition and this Appeal petition has to be dismissed and hence the average amount paid by the Appellant and the BPSC levied is as per the TNERC rules in force as said above and has to be paid by the Appellant.

## **7.0 Findings of the Electricity Ombudsman**

7.1 I have heard the arguments of both the Appellant and the Respondent. Based on the arguments and documents submitted by them, the following are the issues to be decided;

- 1) What constitutes the definition of a Meter?
- 2) What is the status of the Meter during the disputed short levy period?
- 3) What is the regulation for assessment when the meter is defective and the method adopted by the Respondent is as per regulation?
- 4)Whether the claim of the Appellant to reject BPSC is tenable ?

## **8.0 Findings on the first issue:**

8.1 I would like to discuss first what constitutes the definition of Meter? In this regard, I would like to draw attention to clause 2 (P) of the CEA (Installation and Operation of Meters) Regulations 2006, dated 17-03-2006, which pertains to the definition of the term.

*Clause 2(p)*

*“ Meter” means a device suitable for measuring, indicating and recording the conveyance of electricity any other quantity related with electrical system and shall include, wherever applicable, other equipment such as instrument transformer necessary for the purpose of measurement and also mean “correct Meter”, if its complied with the standards as specified in the schedule to these regulations .*

8.2 The inference drawn from the above discussion is that other equipment, such as instrument transformers, which are necessary for the purpose of measurement, are also considered part of the meter. This is particularly relevant in understanding the narrative that follows. Typically, an energy meter is provided to consumers to record the consumption of energy during the billing period. This recording is based on the computation of input voltage and input load current over a continuous period of time.

8.3 In industrial or high-commercial premises, machines and equipment often operate with a significant burden, measured in Volt Amperes (VA). If such high voltage/current is allowed directly to the energy meter, the meter may instantaneously burn or even explode. Therefore, it's not feasible to measure the quantity of electricity supplied at very high voltage/current by passing it entirely through an electric meter. Hence, it becomes necessary to convert the electricity supplied through the transformation of current and voltage, achieved by providing current transformer and potential transformer units. In such cases, the electricity undergoes a substantial reduction in voltage and current before passing through the electric meter. As a result, the meter reading may not accurately reflect the actual amount of electric energy supplied to the consumer. Therefore, it becomes essential to adjust the meter reading using the appropriate multiplying factor to determine the correct amount of electric energy supplied to consumers.

8.4 Therefore, it is concluded that the term "meter" encompasses, where applicable, other equipment such as instrument transformers necessary for the purpose of measurement, including CT and PT. Furthermore, it is also established that an energy meter is considered defective if any instrument transformer fails to provide input to the recording part of the meter.

## **9.0 Finding on the second issue:**

9.1 The subsequent issue to be decided pertains to determining the status of the Appellant's HT service Meter during the disputed short levy period from 22.08.2012 to 11.01.2013.

9.2 The Appellant contends that the Respondent (MRT) has not provided specific details regarding the defective period. However, upon examination of the documents submitted by the Respondent, it was discovered that the Appellant's service connection underwent inspection by the MRT on 10-01-2013. The technical division of the licensee declared that the R phase PT was cracked, resulting in the partial recording of voltage. This determination was acknowledged by the Appellant's staff on 10-01-2013.

9.3 Additionally, it was observed that on 11-01-2013, the defective PT was replaced with a functional one. Subsequent power checks confirmed that the energy recording was accurate, with billing recommendations provided for the defective period. These recommendations were endorsed by the Appellant's staff on 11-01-2013. Furthermore, it was noted that the EE/MRT communicated with the SE/CEDC/S1 Respondent, providing evidence of the tamper status report in Letter No. EE/MRT/S/AEE/M/F.HT872/D405 /2014 dated 10-04-2014, pertaining to the IVI event that occurred on 22-08-2012.

9.4 In view of the above, I would refer to the Section 35 of the Evidence Act 1872 which is discussed below:

*“35. Relevancy of entry in public record or an electronic record made in performance of duty. An entry in any public or other official book, register or record or an electronic record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty or by any other person in performance of a duty specially enjoined by law of the country in which such book, register or record or an electronic record is kept is a relevant fact.”*

9.5 Based on the aforementioned details, it is apparent that an entry in any public or other official book, register, or record is admissible as evidence under the

law of the country. Additionally, the MRT wing of the Licensee is authorized to determine the status of the meter after conducting a scientific test. Therefore, it is reasonable to agree that the period of defectiveness for the Appellant's HT service meter was concluded as 22-08-2012 to 11-01-2013.

#### **10.0 Findings on the third issue:**

10.1 In view of the Appellant HT service meter was defective, I would like to discuss in detail about Assessment of billing in cases where there is no meter or meter is defective. Therefore, I would like to refer regulation 11 of TNE Supply Code Regulation that was in force during the meter defective period which is reproduced below.

**"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 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 periods 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 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.”*

10.2 Upon thorough examination of the aforementioned regulation, it is evident that regulations 11(2), 11(4), 11(5), and 11(6) prescribes the procedures for computing the average consumption during the period of meter defect.

10.3 In the present case, the Appellant argues that the calculation should be conducted in accordance with clause 11(2) of the TNE Supply Code Regulation. They contend that the average should be based on the preceding four months, and they assert that the Respondent's calculation deviates from this rule. The Appellant highlights that the Respondent used the average of the succeeding four months, contrary to the actual assessments made in September and October 2012. However, the Respondent maintains that the meter became defective within two months from the date of supplying electricity. Consequently, they argue that clause 11(4) of the TNE Supply Code Regulation should be applied, which permits using the succeeding four months' period after the installation of the rectified meter when the previous four months' average cannot be obtained due to meter defects.

10.4 In the absence of preceding four months' consumption data to calculate the average as per regulation 11(2) of the TNE Supply Code, I accept the version of the Respondent. They have taken the succeeding four months' consumption to calculate the average, as per regulation 11(4) of the TNE Supply Code, to claim the average shortfall for the period when the meter was defective from 28-08-2012 to 11-01-2013.



10.5 Accordingly the Respondent adopted regulation 11(4) TNE Supply Code and arrived short fall amount for the period of 22-08-2012 to 11-01-2013 as detailed below;

M/S. M.K TRON AUTOPARTS PV. LTD., (FORMERLY KNOWN AS CASTWEL AUTOPARTS P LTD)

AVERAGE WORKING CALCULATION							
SI No	Months	Normal hour Units	Peak Hour Units	Night hour Units	Demand	Rate per Unit	
1	Feb-13	336040	89640	113740	573.47	Normal Rate	5.5
2	Mar-13	310820	84830	101700	581.42	Peak Rate	1.1
3	Apr-13	347350	94010	114790	539.12	Night Rebate	(-) 5%
4	May-13	344430	92440	104230	572.56		
		1338640	360920	434460	2266.57		
		4	4	4	4		
		334660	90230	108615	566.64		
		11155	3008	3621			

**AVERAGE PERIOD from 22.08.2012 to 11.01.2013**

Months		To be Billed	Already Billed			Difference in Unit	Shortfall Amount
8/2012 (22.08.2012 to 27.08.2012)	Normal Consumption	55775	15824			39951	219730.50
	Peak Hr. Consumption	15040	2745			12295	13524.50
	Night Hour Consumption	18105	5648			12457	-3425.68
							229829.33
	Demand charges	566.64	-486			80.64	24192
							254021.33
	E Tax 5%						12701.07
							<b>266722.39</b>

**AVERAGE for the MONTH OF 09/2012**

Months		To be Billed	Already Billed			Difference in Unit	Shortfall Amount
Sep-12	Normal Consumption	334660	77160			257500	1416250.00
	Peak Hr. Consumption	90230	12550			77680	85448.00

	Night Hour Consumption	108615	28690			79925	-21979.38
							1479718.63
	Deman charges	566.64	-486			80.64	24192
							1503910.63
	E Tax 5%						75195.53
							<b>1579106.16</b>

**AVERAGE for the MONTH OF 10/2012**

Months		To be Billed	Already Billed			Difference in Unit	Shortfall Amount
Oct-12	Normal Consumption	334660	73010			261650	1439075.00
	Peak Hr. Consumption	90230	11890			78340	86174.00
	Night Hour Consumption	108615	28810			79805	-21946.38
							1503302.63
	Demand charges	566.64	-486			80.64	24192
							1527494.63
	E Tax 5%						76374.73
							1603869.36

**AVERAGE for the MONTH OF 11/2012**

Months		Average Units	LESS : Third Party Units Adjusted	Billed Units		Balance to be billed (Average - 3rd Party - Billed Units)	Shortfall Amount
	Normal Hr. units	334660	57200	43700		233760	1285680.00
	Peak Hr. units	90230	10140	7230		72860	80146.00
	Night Hr. Units	108615	22900	19000		66715	-18346.63
							1347479.38
	Demand charges	566.64	-435.21	131.43	300		39429.00
							1386908.38
	E Tax 5%						69345.42
							1456253.79

**AVERAGE for the MONTH OF 12/2012**

Months		Average Units	LESS : Third Party Units Adjusted	Billed Units		Balance to be billed (Average - 3rd Party - Billed Units)	Shortfall Amount
Dec-12	Normal Hr. units	334660	250200	0		84460	464530.00
	Peak Hr. units	90230	70650	0		19580	21538.00
	Night Hr. Units	108615	68300	0		40365	-11148.00
							474920.00
	Demand charges	566.64	-319.46	247.18	300		74154.00
							549074.00
	E Tax 5%						27453.70
							576527.70
<b>AVERAGE for the MONTH OF 01/2013</b>							
Months		Average	LESS : Third Party Units Adjusted	Billed Units		Balance to be billed (Average - 3rd Party - Billed Units)	Shortfall Amount
1/2013 (27.12.2012 to 10.01.2013)	Normal Hr. units	167330	7715	107419		52196	287078
	Peak Hr. Units	45120	0	21213		23907	26297.7
	Night Hr. Units	54315	7715	37858		8742	-2404.05
							310971.65
	E Tax 5%						15548.58
							<b>326520.23</b>

### ABSTRACT

MONTH	AMOUNT
Aug-12	266722.39
Sep-12	1579106.16
Oct-12	1603869.36
Nov-12	1456253.79
Dec-12	576527.70
Jan-13	326520.23
	5808999.63

10.6 Hence the above calculation of arriving short levy for the defective period of 22-08-2012 to 11-01-2013 of the Respondent vide Lr.No.SE/CEDC/S/DFC/AAO/HT/AS/AS7/F.SC872/D.1194/13, dated 28.11.2013 for Rs.58,08,999/- is as per regulation 11(4) of TNE Supply Code.

10.7 Further, the Appellant stated that the details of third-party consumption invoices for the period from December 2012 to April 2013 were furnished. However, upon scrutiny, no such enclosures were found, and during the hearing, the documents were not produced. Therefore, it is noted that both the Appellant and the Respondent failed to provide documentary evidence regarding the purchase or adjustment of energy for third-party power purchase for the period from January 2013 to May 2013.

10.8 It is noticed from the above working sheet that the Respondent calculated the monthly bill of the Appellant based on receiving details of third-party units injected into the grid by the generator/exchange. It's important to note that the Appellant did not avail third-party purchases during the defective period of August 2012, September 2012, and October 2012, but did so during November 2012, December 2012, and January 2013. As the main contention of the Appellant is the waiver of BPSC, the same will be discussed below.

#### **11.0 Findings on the fourth issue:**

11.1 Further, I would like to discuss under what conditions can BPSC on arrear be claimed during a legal dispute?

11.2 The Appellant contends that there is no provision within the supply code to impose BPSC on the amount raised by the audit branch. Furthermore, they argue that demanding BPSC while the primary issue of short-fall levy charges is under dispute is not in accordance with the supply code. Therefore, they request the rejection of the BPSC demand amounting to Rs. 86,52,242/- along with 18% GST.

11.3 The Appellant further argued that as per Section 5(4) of the Tamil Nadu Electricity Supply Code, 2004, belated payment surcharge can only be imposed if a bill is raised and payment is not made. Given that an interim injunction was granted by the

Hon'ble Madras High Court in WP No.20279 of 2014 and MP No. 1 of 2014, dated 31.07.2014, and the interim stay was conditioned on the petitioner paying 25% of the amount demanded in the letter dated 28.11.2013, therefore, the imposition of belated payment surcharge does not apply.

11.4 The Respondent argued that as per Regulation 5(4) of the TNE Supply Code, the request of the Appellant for waiver of BPSC is not feasible for compliance, and TANGEDCO is entitled to collect BPSC along with arrears during the period of stay. The CGRF carefully perused the records submitted before the forum and passed the order to pay the Average amount and Belated Payment Surcharge only after considering the fact that the service was inspected by the MRT on 10.01.2013, based on the request of AEE/O&M/Thirumudivakkam. It was declared that the PT was found defective, and a healthy PT was fixed on 11.01.2013. From the CMRI download data, it was concluded that the defect had occurred on 22.08.2012, and the defective period was taken from 22.08.2012 to 11.01.2013.

11.5 The Respondent has stated that in WP Nos. 4471 and 4472 of 2017 and WPMP Nos. 4708 and 4709 of 2017, dated 24.03.2023, the Hon'ble High Court, Madras, ordered against M/s. Ashok Leyland Limited as "the Petitioner Company," stating that as per their own undertaking before the Superintending Engineer, Chennai EDC/North, Anna salai, Chennai-2, they have to settle the entire charges along with the belated payment charges as determined by the Tamil Nadu Electricity Board.

11.6 In this regard, I would like to refer Regulation 5(4) of TNE Supply Code which is given below;

*"5. Miscellaneous charges*

xxxx

xxxx

xxxx

*(4) Belated payment surcharge (BPSC)*

*All bills are to be paid in the case of HT consumers, within the due date specified in the bill and in the case of LT consumers, within the due date and notice period specified in the consumer meter card.*

*\*\* (ii) (a) Where any HT consumer neglects to pay any bill by the due date, he shall be liable to pay belated payment surcharge from the day following the due date for*

payment. Where any LT consumer (except services relating to Public lighting and water supply and other services belonging to Local Bodies) neglects to pay any bill by the last day of the notice period, he shall be liable to pay belated payment surcharge from the day following the last day of the notice period.

(b) Where the local bodies neglect / fail to pay any bills in respect of LT services for Public Lighting and Public Water Works, and other services of Local Bodies, the belated payment surcharge shall be applicable for the payments made beyond 60 days from the date of demand. In case of payment made beyond 60 days from the date of demand, the belated payment surcharge shall be payable from the day following the 60<sup>th</sup> day of demand.

(c) The surcharge shall be for a minimum period of fifteen days and where the delay exceeds fifteen days but does not exceed one month, it shall be for the number of whole months, and for any fraction of a month, it shall be proportionate to the number of days.

(iii) If the due date in the case of HT consumers and the last day of the notice period in the case of LT consumers falls on a holiday, the surcharge is payable from the day following the next working day.

**\*\* Substituted as per Commission's Notification No TNERC/SC/7-7 dated 14.12.2007 (w.e.f. 9.1.2008) which before substitution stood as under :**

(i) Where any HT consumer neglects to pay any bill by the due date, he shall be liable to pay belated payment surcharge from the day following the due date for payment. Where any LT consumer neglects to pay any bill by the last day of the notice period, he shall be liable to pay belated payment surcharge from the day following the last day of the notice period. The surcharge shall be for a minimum period of fifteen days and where the delay exceeds fifteen days but does not exceed one month, it shall be for one whole month and where the delay exceeds one month, it shall be for the number of whole months and for any fraction of a month it shall be proportionate to the number of days.

\*\*\* (iv) In the case of LT Consumers (except Local Bodies) the surcharge shall be 1.5% per month for the outstanding arrears towards the price of electricity supplied. In respect of LT services belonging to Local Bodies, the surcharge shall be 0.5% per month for the outstanding arrears towards the price of electricity supplied.

**\*\*\* Substituted as per Commission's Notification No TNERC/SC/7-7 dated 14.12.2007 (w.e.f.9.1.2008) which before substitution stood as under :**

(iv) In case of LT consumers (except Local Bodies and Government Departments) the surcharge shall be 1.5% per month for the sum outstanding towards the price of electricity. In case of Local Bodies and Government Departments, the surcharge shall be 1% per month for the sum outstanding towards the price of electricity supplied.

(v) \*\*\*

(vi) In case of sums other than price of electricity supplied which are outstanding, surcharge shall be leviable at the discretion of the Licensee at a rate not exceeding 1.5 % per month.

*(vii) In the case of short assessment included in a subsequent bill, surcharge shall accrue in the case of HT consumers, after the due date for the payment of the subsequent bill wherein the short assessment is included and in the case of LT consumers, it shall accrue from the day following the last day of the notice period.*

*(viii) In the case of short assessment permitted to be payable in installments, the surcharge shall accrue only when there is default in the payment schedule and the surcharge shall be worked out from the day following the day on which the installment fell due and shall be payable along with the amount of installment due.*

*(ix) Where the service connection stands terminated, the amount of Security Deposit and the interest accrued thereon shall first be adjusted against belated payment surcharge and the remainder if any, against other dues.*

*(x) The belated payment surcharge is payable only on any outstanding amount excluding belated payment surcharge component.*

*(xi) The belated payment surcharge shall not be levied on electricity tax and electricity tax shall not be levied on the belated payment surcharge.”*

11.7 From the plain reading of the above, it is understood that consumers are required to pay the difference in arrears in the case of short assessment. If they neglect to pay by the last day of the notice period, they shall be liable to pay belated payment surcharge from the day following the last day of the notice period.

11.8 From the given documents, it is found that the Respondent raised a short levy for the defective period of 22-08-12 to 11-01-13 vide Letter No. SE/CEDC/S/DFC/AAO/HT/AS/AS7/FSC872/D.1194/13, dated 28.11.13, amounting to Rs. 58,08,999/-.

11.9 Subsequently, the shortfall amount was included in the 07/2014 CC bill. Only after receiving the demand notice and CC bill, the Appellant filed W.P.No.20279 of 2014 and M.P no 1 of 2014 on 31-07-2014 in the Hon'ble High Court of Madras and obtained an interim injunction on 31-07-2014 with the condition that the Appellant has to pay 25% of the amount raised by the Respondent on 28-11-13. The Hon'ble High Court disposed of the W.P 20279 of 2014 and MP No.1 of 2014 on 23.03.2022 by directing the Appellant to avail alternate remedy before CGRF. The Respondent reported that the Appellant did not attend the CGRF after a lapse of 10 months. In the meantime, the Respondent stated that the Appellant was asked to approach CGRF on 04-06-2022. Subsequently, it was reported by the

Respondent that the Appellant did not furnish any report on various CGRF meetings held on 07-06-2022, 30-06-2023, 27-07-2023, 30-08-23 & 27-09-23.

11.10 The Respondent has stated that on 04.05.2023, via Letter No. SE/CEDC/SI/DFC/AAO/AS/HT/F HT 872/D.88/23, the Belated Payment Surcharge intimation letter was sent to the HT consumer for the period from 15.12.2013 to 19.04.2023, calculated for an amount of Rs. 86,52,242/- with 18% GST. This surcharge was calculated from the date of completing 15 days, i.e., 15.12.2013, to 19.04.2023, for the balance 75% amount of Rs. 43,56,749/- as per the TNE supply code.

11.11 Aggrieved over the BPSC demand, the Appellant again approached the Hon'ble High Court of Madras in W.P.No.26060 of 2023 and W.M.P Nos. 25480 and 25481 of 2023. The order dated 07-09-2023 stated that until the Consumer Grievance Redressal Forum takes a decision, TANGEDCO is required not to precipitate the issue.

11.12 From the above, it is observed that until the disposal of the appeal, the Respondents shall refrain from precipitating the issue of BPSC. However, there is no prohibition on demanding legitimate revenue of the licensee such as BPSC and short levy at a later date in case of errors in billing, as per the TNE Supply Code Regulations, 2004. Therefore, the argument of the Appellant that the subject matter of BPSC was outside the scope of the complaint is not acceptable.

11.13 The issue to be decided is whether the licensee is eligible to demand BPSC when there is a legal dispute with interim stay. In this regard, I would like to refer to the judgment issued by the Hon'ble Supreme Court of India in M/s. Kanoria Chemicals and Industries vs. U.P State Electricity Board in SLP (C) no.6558 of 1990. The relevant paras are discussed below;

*“JUDGMENT B.P. JEEVAN REDDY, J.*

*Civil Appeals [Arising out of SLP (C) Nos.6588/94, 21905-06/93, 21913-14/93, 6479/94 & 23250/94 Leave granted in Special Leave Petitions.*



*These appeals are preferred against the judgment of a Division Bench of the Allahabad High Court dismissing the writ petitions filed by the Appellants. The Appellants are large consumers of electricity.*

*By a Notification dated April 21, 1990, the Uttar Pradesh State Electricity Board had revised the electricity rates/tariffs under Section 49 of the Electricity (Supply) Act, 1948. The Notification inter alia provided for payment of interest in case the bill amount is not paid within the specified period. Clause 7(b) read as follows:*

*"7(b) For delayed payment: In the event of any bill of whatever nature it may be not being paid by the due date specified therein, the consumer shall pay an additional charge per day of seven paise per hundred rupees or part thereof on the unpaid amount of the bill for the period by which the payment is delayed, beyond the due date specified in the bill, without prejudice to the right of the Board to disconnect the supply."*

*The validity of the aforesaid Notification was questioned in the Allahabad High Court by way of a writ petition filed by the Eastern U.P. Chamber of commerce and Industry, Allahabad and certain individual consumers. On the Interlocutory Application filed in the said writ petition, the High Court passed the following Order on July 25, 1990:*

*"In this case S/Sri Sudhir Agarwal and S.C. Budhwar have filed appearance on behalf of Respondents. They pray for and are granted two weeks' time for filing rejoinder affidavit. List this petition for disposal, if possible at the admission stage, on 16th August, 1990. This is necessary in view of recurrence of this matter in large number of cases and revenue in large scale being affected for electricity charges.*

*Meanwhile till 23-8-1990 unless recalled earlier, the operation of the notification dated 21.4.1990 shall remain stayed. The Respondents are restrained from realising the additional amount of electricity charges from petitioners in pursuance of the said notification. However, the petitioner shall continue to pay at the old rate."*

*[Emphasis added] The said order was continued by subsequent Order dated August 30, 1990 and September 7, 1990.*

*It appears that besides the above writ petition, several other writ petitions were filed questioning the aforesaid Notification. In every writ petition, there was an Interlocutory Application praying for stay of operation of the said Notification but there does not appear to be any uniformity in the interim orders made by the High Court in those writ petitions. For example, in Writ Petition No.300097 of 1990 filed by the Employer Association of Northern India, the interim order was to the following effect:*

*"Meanwhile effect shall not be given to the notification dated 21st April, 1990 as against the petitioners. However, it is made clear that in the event of failure of the writ petition the petitions shall deposit with the relevant authority within a period of one month from the date of dismissal of the writ petition the difference between the amount of electricity dues,*

which will be paid hereinafter by the petitioners under our order and the sum which may be calculated on the basis of the impugned notification."

[Emphasis added] All the said writ petitions challenging the said Notification were ultimately dismissed by a Division Bench on March 1, 1993.

From this stage onwards, we will refer to the facts and contentions in civil appeal arising from Special Leave Petition (C) No.6588 of 1990 [preferred by M/s. Kanoria Chemicals and Industries Limited], as representative of the facts and contention in all the matters being disposed of under this judgment. Though the individual facts vary, the questions arising in these appeals are common.

After the dismissal of the writ petitions on March 1, 1993 as aforesaid, Kanoria says, it deposited the difference amount between pre-revised and the revised electricity rates. It did not, however, deposit the "additional charges" leviable under clause 7(b), referred to above, which are generally referred to - and referred to hereinafter - as "late payment surcharge". Thereupon, the Board issued a notice of demand calling upon Kanoria to pay the late payment surcharge in a sum of Rs.3,27,01,408.88p. [calculated upto February 28, 1993]. Similar demand notices were served upon other Appellants also. A fresh batch of writ petitions were filed by several consumers including the Appellants herein questioning the notices demanding late payment surcharge under clause 7(b). **The main contention of the Appellants before the High Court was that inasmuch as the High Court had stayed the operation of the Notification dated April 21, 1990 [by its Order dated July 25, 1990 as continued from time to time], clause 7(b) remained inoperative during the period July 25, 1990 to March 1, 1993 and, therefore, no late payment surcharge can be levied on the amount withheld by Appellants under the orders of the court, even though their writ petitions were dismissed ultimately.** According to the Appellants, it was not a case where the court enjoined the Board from collection the dues according to the aforesaid Notification, or was it a case where the collection of bill amount was stayed simplicitor. It was a case, they submitted, where the operation of the very Notification was stayed which meant that from the date of the stay order, clause 7(b) did not operate and was not effective till the dismissal of the writ petitions. Strong reliance was placed upon the decision of this Court in Adoni Ginning Factory v. Secretary, Andhra Pradesh State Electricity Board [1979 (4) S.C.C. 560]. The said contention has been rejected by the Division Bench. R.A. Sharma, J., speaking for the Division Bench, first examined the nature and effect of the interim orders passed by courts pending disposal of substantive matters and then opined that in Adoni Ginning, **this Court cannot be said to have held that in the case of stay of operation of the Notification, interest does not accrue at all. Sharma, J. pointed out that the said decision was concerned only with the period during which an order of injunction restraining the Board from collecting the revised charges was in operation and this Court opined that an order of injunction does not prevent the accrual of interest provided by the relevant tariffs/rules.** Sharma, J. pointed out that the recoverability of the interest amount of the period covered by an order of stay of the Notification was not at all in issue in Adoni Ginning and, therefore, it cannot be said that there is any decision on the said question. Affirming the opt-repeated principle that a decision is an authority only for what it actually

*decides, the learned Judge opined that the consumers are liable to pay the late payment surcharge under clause 7(b) of the said Notification even for the period covered by the aforementioned order dated July 25, 1990 [as extended from time to time]. The learned Judge also pointed out that the interim orders passed in various writ petitions were not uniform and by way illustration set out in the interim order in Writ Petitionz No.30097 of 1990 [quoted by us hereinabove]. The correctness of the judgment is called in question in this batch of appeals.*

*Sri R. Vaidyanathan, who lead the arguments on behalf of the Appellants, submitted that the impugned decision of the High Court is clearly contrary to the principles enunciated by this Court in Adoni Ginning and cannot, therefore, stand. Counsel relied upon another order this Court dated April 23, 1996 in special leave Petition (C) No.9087-88 of 1996 [M/s. Hindalco Industries Limited v. State of Uttar Pradesh]. Learned counsel submitted that clause 7(b) of the Notification dated April 21, 1990 was penal in nature inasmuch as the late payment surcharge provided by it works out to 25.5 interest per annum. Such high rate of interest, learned counsel submitted, cannot but be characterized as penal.*

*Inasmuch as the decision in Adoni Ginning constitutes the sheet-anchor of the Appellant's case, it is necessary to closely examine the facts and ratio of the said decision. Electricity charges were enhanced by the Government of Andhra Pradesh under an Order dated 30th January, 1955. The enhancement was questioned by certain consumer by way of writ petitions in Andhra Pradesh High Court. The High Court stayed the operation of the Government Order enhancing the rates. The writ petitions came up for hearing before a learned Single Judge on February 22, 1957 and were allowed. The Government of Andhra Pradesh preferred writ appeals which were allowed by a Division Bench of that court on 19th December, 1958 upholding the validity of the enhancement. Thereafter, the Andhra Pradesh State Electricity Undertaking with effect from 1st April, 1959 issued bills to several consumer call in upon them to pay the arrears of enhanced charges. No demand was made under these notices for surcharge [for delayed payment of Bill amount] on the arrears. Meanwhile several consumers approached this court and obtained order of injunction restraining the Government/Board from realising from them the "amount of arrears occasioned by the enhancement of rates". Injunction was granted by this Court subject to certain conditions including the condition that in the event of the dismissal of their appeals, the Appellants shall pay the arrears with interest calculated @ one percent per annum. All the appeals were dismissed by this Court on 25th March, 1964. Thereafter, the Electricity Board issued demand notices calling upon the consumers to pay surcharge @ twelve percent per annum on the arrears in respect of which they had obtained order of injunction pending their appeals before this court. On receipt of these demand notices, the consumers again approached the High Court by way of writ petitions questioning the demand. Their writ petitions were allowed by a learned Single Judge observing that no surcharge was leviable during the period when the order of injunction granted by this Court was operation. The writ appeal preferred by the Board were, however, allowed by a Division Bench against which decision some of the consumers approach this Court again. It is, therefore, clear that the only dispute in Adoni Ginning pertained to the liability of the consumers to pay surcharge @ twelve percent per annum on the amount not collected from*

*them under the orders of injunction granted by this Court pending their appeals. It is significant to notice that the dispute in the said case did not pertain to the liability of the consumers to pay the surcharge amount for the period covered by the order of stay granted by the High Court; the Board did not choose to demand any surcharge for that period. The contention of the Appellants in Adoni Ginning was that by virtue of the injunction order granted by this Court, the consumers cannot be said to be in default in paying the electricity charges and, therefore, no surcharge was leviable. The contention was rejected by this Court [D.A. Desai and O. Chinnappa Reddy, JJ.]. The Court pointed out that according to clause (9), a consumer was liable to pay the bill amount within thirty days, in default of which he was liable to pay "an additional charge of one percent on the amount of the bill for every month delay or part thereof". The contention urged by the Appellant therein was repelled in the following words:*

*"The injunction granted by this court restrained the government from realising the arrears of enhanced charges..... All that the injunction did was to restrain the Board from realising the arrears which meant that the Board was restrained from taking any coercive action such as disconnection of supply of electricity etc. for the realisation of the arrears. The operation of G.O. No.187 dated 30th January, 1955, as such was not stayed. Thus the obligation of the consumers to pay charges at the enhanced rates was not suspended though the Electricity Board was prevented from realising the arrears. It was up to the consumers to pay or not to pay the arrears. If they paid the arrears they relieved themselves against the liability to pay surcharge. If they did not pay the arrears they were bound to pay the surcharge if they failed in the appeals before the Supreme Court. This was precisely what was pointed out by the Electricity Board in the Bills issued to the consumers after the Supreme Court granted the injunction. We may mention here that the Electricity Board is not demanding any surcharge on the arrears for the period during which the Andhra Pradesh High Court had granted stay. It was explained by the learned Counsel for the Electricity Board that no surcharge was claimed for that period as the operation of G.O.No.187 dated 30th January 1955 had itself been stayed at that time. Surcharge was claimed for the period during which the appeals were pending in the Supreme court since the Supreme Court did not stay the operation of G.O.No.187 but only restrained the Board from collecting the arrears.*

*That no stay of G.O.No.187 was ever intended to be granted by the Supreme Court is also clear from the circumstance that there was no injunction restraining the Electricity Board from collecting future charge at the enhanced rates. the Electricity Board was, therefore, right in claiming surcharge for the period the during which the appeals were pending in the Supreme Court and not Claiming surcharge for the period during which the Writ Petition and Writ appeals were pending in the High Court."*

*[Emphasis added] The learned counsel for the Appellants in the appeals before us rely upon the portions underlined in the above passage as a decision supporting their contention that where the operation of Government Order is stayed, no surcharge can be demanded upon the amount withheld. We find it difficult to agree. In our respectful opinion, the underlined portions do not constitute the decision of the court. They merely refer to the*

fact that the Board itself did not make a demand for surcharge amount in respect of the period covered by stay under its own understanding of the effect of the stayed order granted by the High Court and that it was justified in its opinion. The demand was, the court pointed out, in respect of the period covered by the order of injunction granted by this Court. **This Court held expressly that the grant of and injunction does not relieve the consumers of their obligation to pay the charges at the enhanced rates and, therefore, the demand for surcharge/interest for such period is not illegal.** The portions underlined cannot be understood as laying down the proposition that in respect of the period covered by stay, no demand can be made. No such proposition can be deduced from the said passage for the reason that the liability for the said was not at all in issue in the said decision. Unless put in issue and pronounced upon, it cannot be said that there was a decision on the said issue. There was no list between the parties with respect to the period covered by the stay order of the High Court. If so, it cannot be said that any decision was rendered by this court on the said issue or aspect, as it may be called. We, therefore, agree with the High Court that Adoni Ginning cannot be read as laying down the proposition that the grant of stay of a Notification revising the electricity charges has the effect of relieving the consumers/petitioners of their obligation to pay late payment surcharge/interest on the amount withheld by them even when their writ petitions are dismissed ultimately. Holding otherwise would mean that even though the Electricity Board, who was the Respondent in the writ petitions succeeded therein, is yet deprived of the late payment surcharge which is due to it under the tariff rules/regulation. It would be a case where the Board suffers prejudice on account of the order of the court and for no fault of it's. It succeeds in the writ petition and yet loses. The consumer files the writ petition, obtains stay of operation of the Notification revising the rates and fails in his attack upon the validity of the Notification and yet he is relieved of the obligation to pay the late payment surcharge for the period of stay, which he is liable to pay according to the statutory terms and conditions indeed form part of the contract of supply entered into by him with the Board. We do not think that any such unfair and inequitable proposition can be sustained in law. No such proposition flows from Adoni Ginning. It is a matter of common knowledge that several petitioners [their counsel] word the stay petition differently. On petitioner may ask for injunction, another may ask for stay of demand notice, the third on may ask for stay of collection of the amount demanded and the fourth one may ask for the stay of the very Notification. Such distinctions are bound to occur where a large number of writ petitions are filed challenging the same Notification. the interim orders made by the Court may also vary in their phraseology in such a situation. Take this very case while the consumers has asked for stay of operation of the Government Order revising the rates, those very consumers asked for an injunction when they came to Supreme Court. Furthermore, as pointed out rightly by the High Court, the order of the stay granted by the High Court in writ petitions questioning the validity of the Notification dated April 21, 1990 were not uniform. In the case of writ petition filed by the Eastern U.P. Chamber of Commerce and Industry, Allahabad, the operation of the Notification was stayed while in the case of the writ petition filed by the Employers Association of Northern India, it was directed that "effect shall not be given to the notification dated 21st April, 1990 as against the petitioner shall deposit with the relevant authority within a period of one month from the date of dismissal of the writ petition the difference between the amount of electricity dues to be paid hereinafter by the petitioner

*under our orders and the sum which may be calculated on the basis of the impugned notification". The words "sum which may be calculated on the basis of the impugned notification" in the later order clearly mean and include the late payment surcharge as well. The acceptance of the Appellants' argument would thus bring about a discrimination between a petitioner and a petitioner just because of the variation of the language employed by the court while granting the interim order though in substance and in all relevant aspects, they are similarly situated. It is equally well settled that an order of stay granted pending disposal of a writ petition/suit or other proceeding, comes to an end with the dismissal of the substantive proceeding and that it is the duty of the court in such a case to put the parties in the same position they would have been but for the interim order of the court. Any other view would result in the act or order of the court prejudicing a party [Board in this case] for no fault of its and would also mean rewarding a writ petitioner in spite of his failure. We do not think that any such unjust consequence can be countenanced by the courts. As a matter of fact, the contention of the consumers herein, extended logically should mean that even the enhanced rates are also not payable for the period covered by the order of stay because the operation of the very Notification revising/enhancing the tariff rates was stayed. Mercifully, no such argument was urged by the Appellants. It is understandable how the enhanced rates can be said to be payable but not the late payment surcharge are provided by the same Notification - the operation of which was stayed.*

*As has been pointed out by S.C. Agrawal, J., speaking for a three-Judge Bench in Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association, Madras 1992 (3) S.C.C.1], "while considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence."*

*Sri Vaidyanathan relied upon an unreported order dated April 23, 1996 in Special Leave Petition (C) Nos.9087-88 of 1996 [Hindalco Industries v. State of U.P.]. We have seen the order but we do not find anything in the said order supporting the contention of the learned counsel.*

*Sri Vaidyanathan contended that the rate of 'late payment surcharge' provided by clause 7(b) is really penal in nature inasmuch as it works out to 25.5 percent per annum. Learned counsel also submitted that the petitioners understood the decision in Adoni Ginning as relieving them of their obligation to pay interest for the period covered by the interim order and that since they were acting bonafide they should not be mulcted with such high rate of interest. We cannot agree that the rate of late payment surcharge provided by clause 7(b) is penal, but having regard to the particular facts and circumstances of this case and having regard to the fact that petitioners could possibly have understood the decision in Adoni Ginning as relieving them of their obligation to pay interest/late payment surcharge for the*

*period of stay, we reduce the rate of late payment surcharge payable under clause 7(b) to eighteen percent. But this direction is confined only to the period covered by the stay orders in writ petitions filed challenging the Notification dated April 21, 1990 and limited to March 1, 1993, the date on which those writ petitions were dismissed.*

***For the above reasons, the appeals fail and are dismissed subject to the above mentioned direction with respect to the rate of levy of late payment surcharge under clause 7(b) of the Notification dated April 21, 1990.***

*Writ Petition (C) No.761 of 1993 Writ Petition (C) No.761 of 1993 too is dismissed for the same reasons. No costs.”*

11.14 Further I would like to refer the judgment issued by Hon'ble High Court of Madras in WP Nos.4471 and 4472 of 2017 and WPMP Nos. 4708 and 4709 of 2017ofM/s. Ashok Leyland Limited Vs. The Secretary, Ministry of Energy Department and ors. The relevant paras are discussed below;

*“17. The Hon'ble Supreme Court in the case of Nava Bharat Ferro Alloys Ltd vs. Transmission Corporation of Andhra Pradesh Limited [(2011) 1 SCC 216], wherein in paragraphs 27 and 38, it has been held as under:-*

*“27. Suffice it to say that the decision of this Court in Kerala SEB case [(1996) 1 SCC 597] does not grant any relief to a defaulting consumer once the demand is upheld nor does it interfere with the principle of restitution which would entitle the successful party to be relegated back to the position it would hold had there been no judgment adverse to it.*

*38. It is manifest from the above that both on the question of restitution of the benefit drawn by a party during legal proceedings that eventually fail as also on the general principle that a party who fails in the main proceedings cannot benefit from the interim order issued during the pendency of such proceedings, this Court found against the consumers and upheld the demand for payment of additional charges recoverable on account of the delay in the payment of the outstanding dues. Far from lending any assistance to the Appellant Company the decision squarely goes against it and has been correctly appreciated and applied by the High Court.”*

*18. In the case of State of UP vs. Prem Chopra [2022 SCC OnLine SC 1770], wherein in paragraph 24, the Apex Court held as follows:*

*“24. From the above discussion, it is clear that imposition of a stay on the operation of an order means that the order which has been stayed would not be operative from the date of passing of the stay order. However, it does not mean that the stayed order is wiped out from the existence, unless it is quashed. Once the proceedings, wherein a stay was granted, are dismissed, any interim order granted earlier merges with the final order.*

*In other words, the interim order comes to an end with the dismissal of the proceedings. In such a situation, it is the duty of the Court to put the parties in the same position they would have been but for the interim order of the court, unless the order granting interim stay or final order dismissing the proceedings specifies otherwise. On the dismissal of the proceedings or vacation of the interim order, the beneficiary of the interim order shall have to pay interest on the amount withheld or not paid by virtue of the interim order.”*

*19. The learned Senior Counsel for the Respondent-Electricity Board brought to the notice of this Court that the petitioner has given a letter of undertaking on 16.08.2017, which reads as under:-*

*“I, P.K.Ranganathan, son of Thiru P.V.Krishnaswamy, for and on behalf of M/s.Ashok Leyland Limited, Foundry Division, under HT Sc.No.1072 is hereby undertake :-*

*1. To pay the short fall of arrears if any found till the latest date in respect of H.T.Sc No.1072 of M/s.Hinduja Foundries Limited, in one lumpsum or by inclusion in our current consumption bill as claimed without any condition.*

*2. To abide by the High Court Order in the cases WP Nos.1961 of 2022 and WP No.12222 of 2003 and WP Nos.4471 and 4472 of 2017 and CMA No.2485 of 2003 if disposed in favour of TANGEDCO, we agree to pay the charges along with Belated Payment Surcharges.*

*3. If any kind of arrears found out on later date in respect of H.T. supply of M/s.Hinduja Foundries Limited. Under H.T.Sc.No.1072, consequent on change of name to name, we undertake to pay the same in one lump sum as claimed and also agree to include the said amount in our current consumption bill of M/s.Ashok Leyland Limited, Foundry Division, under H.T.Sc.No.1072, falling which the Service Connection may be disconnected without any further notice.”*

*20. Now CMA No.2485 of 2003 has been dismissed and therefore, the petitioner-Company, as per their own undertaking before the Superintending Engineer, Chennai EDC/North, Anna Salai, Chennai-2, has to settle the entire charges along with the belated payment charges as determined by the Tamil Nadu Electricity Board. Accordingly, the petitioner is directed to settle the amounts due, within a period of eight weeks from the date of receipt of a copy of this order.*

*21. Accordingly, both the writ petitions are devoid of merit and consequently, the writ petitions stand dismissed. The connected miscellaneous petitions are also dismissed.”*

11.15 It is evident from the above orders that TANGEDCO is eligible to collect BPSC along with arrears during the period of stay. A distinction needs to be made between quashing an order and the stay of operation. Quashing an order results in the restoration of the position as it stood on the date of passing of the



order that has been quashed. On the other hand, the stay of operation of an order means that the order which has been stayed would not be operative from the date of passing of the stay order, but it does not mean that the said order has been wiped out from existence.

11.16 From the foregoing paragraphs, it is understood that the demand for arrears along with BPSC during the period of stay can also be claimed. However, in this case, the Hon'ble High Court of Madras referred the matter back to CGRF. In view of the above, the claim of the Respondent, as per Letter No. SE/CEDC/SI/DFC/AAO/AS/HT/F HT 872/D.88/23, to pay the Belated Payment Surcharge for the period from 15.12.2013 to 19.04.2023, amounting to Rs. 86,52,242/- with 18% GST, from the date of completing 15 days, i.e., 15.12.2013, to 19.04.2023, for the balance 75% amount of Rs. 43,56,749/- as per the TNE supply code, was found to be correct. However, the amount is yet to be paid by the Appellant. Hence, the Respondent is entitled to claim the BPSC until the date of payment.

11.17 Based on the above findings, it is concluded that the Appellant should pay the BPSC amount for the short levy from 15-12-2013 until the date of payment. Accordingly, the Respondent is directed to collect the BPSC.

## **12.0 Conclusion:**

12.1 Based on my findings in the paragraphs above, the Appellant's prayer for waiver of the BPSC surcharge is set aside, and the Appellant should pay the BPSC amount from 15-12-2013 to the date of payment.

12.2 With the above findings A.P.No.01 of 2024 is disposed of by the Electricity Ombudsman.

**(N. Kannan)**  
Electricity Ombudsman

“நுகர்வோர் இல்லையேல், நிறுவனம் இல்லை”  
“No Consumer, No Utility”

To

1. M/s. MK TRON Autoparts Pvt. Ltd.,  
82A & 82B, 160/2, 161/2B,  
SIDCO Industrial Estate,  
Thirumudivakkam, Chennai – 600 132.

2. The Superintending Engineer,  
Chennai Electricity Distribution Circle/South-I,  
TANGEDCO,  
110KV SS Complex, K.K.Nagar,  
Chennai-600 078.

3. Deputy Financial Controller,  
Chennai Electricity Distribution Circle/South-I,  
TANGEDCO,  
110KV K.K. Nagar, SS Complex,  
Second floor, Anna Main Road,  
K.K.Nagar, Chennai-600 078.

4. The Chairman & Managing Director,  
TANGEDCO,  
NPKRR Maaligai, 144, Anna Salai,  
Chennai -600 002.

– By Email

5. The Secretary,  
Tamil Nadu Electricity Regulatory Commission,  
4th Floor, SIDCO Corporate Office Building,  
Thiru-vi-ka Industrial Estate, Guindy,  
Chennai – 600 032.

– By Email

6. The Assistant Director (Computer)  
Tamil Nadu Electricity Regulatory Commission,  
4th Floor, SIDCO Corporate Office Building,  
Thiru-vi-ka Industrial Estate, Guindy,  
Chennai – 600 032.

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