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**Case No.21 of 2000**

consumption of electricity and the disconnection notice issued by him in case of failure to pay the amount by the appellant.

2. The brief facts of the case is that the appellant runs a Cinema hall, known as Shakti Cinema in the city of Berhampur. Electricity is supplied to the Cinema hall by Southco. In the month of May, 2000, officials of Southco had come for the inspection of the meter of the Cinema Hall. As neither the Proprietor nor the Manager of the said Hall were present, Executive Engineer, B.E.D., Berhampur served a notice on the appellant, intimating that there would be a joint inspection of the meter by the Executive Engineer, B.E.D. in presence of MRT staff and the representative of the appellant. The meter was inspected on 6.5.2000 and a dump report was made wherein it was revealed that 'Y' phase pressure terminal was missing and 'Y' phase C.T. terminal was found reversed. As a result, the meter was recording 35.67% less of the total consumption.
3. The appellant contends that, all the seals of the meter were intact and it was not possible for any one to tamper with the meter. The aforesaid test reports dated 6.5.2000 were not accepted by the appellant. As the meter had been sealed by the Standard Testing Laboratory (STL), Bhubaneswar, the Asst. Electrical Inspector, Berhampur was requested to inspect the meter. On 8.5.2000, there was a joint inspection of the meter by Asst. Electrical Inspector, Berhampur and Executive Engineer, B.E.D., Berhampur in presence of the appellant. The report is placed at Annexure-3. It is contended by the appellant that all the seals of the STL, Bhubaneswar and MRT, Southco were found to be OK and intact. The 'Y' phase and C.T. terminal of the meter were OK. Then the meter was sent to STL for testing as no conclusion could be drawn from the inspection of the meter. The appellant therefore prays that the penal bill along with disconnection notice be quashed.
4. The contention of the respondent, Executive Engineer, Berhampur is that the Sems meter of the appellant was checked on 6.5.2000 with the help of MRT staff in presence of the appellant. It is found during inspection that 'Y' phase pressure

terminals are missing (inside meter) and 'Y' phase C.T. terminals are found to be reversed. The meter is found to be recording 35.67% less. As the T.T.Box seal belonged to STL, the meter was again jointly tested by the team including the appellant, Executive Engineer, B.E.D. and the Asst. Electrical Inspector on 8.5.2000. It was found that all the seals of STL, Bhubaneswar and MRT, Southco are found to be OK. The 'Y' phase of CT terminal of the meter is getting current, but as per the Dump report the 'Y' phase pressure terminal is missing. The meter is recording 36.32% less consumption. It was decided by the Joint Inspection team to send the meter to STL.

5. Accordingly, the meter was sent to STL after being duly sealed in the presence of appellant's representative. The test was carried out on 5.7.2000 in the presence of the representative of the appellant at STL. The test results revealed that:

- (a) Backside plastic seal of SEMS meter has been tampered.
- (b) 'Y' phase PT wires tampered and disconnected. So the meter is getting only two phase supply instead of three phases.
- (c) Terminal seal was not present. The error is (-) 33.30% and is beyond permissible limit.

6. The respondent, Executive Engineer, B.E.D. contends that the meter was OK upto 20.7.99 as per the Dump report of 30.7.99. but subsequently it had been tampered. That is why a penal bill amounting to Rs.1,88,251.75 from August, 1999 till date of inspection meter, that is 8.5.2000, along with a meter cost of Rs.10,640/- has been claimed on the appellant, the meter cost being included as the meter has become defective due to tampering. The consumption pattern before tampering during the period of tampering and after tampering has shown that the appellant has fraudulently manipulated the meter obviously to reduce consumption. That the meter had been tested by the Dy. Electrical Inspector, u/s 26(6) of the Indian Electricity Act, 1910, which is statutory in nature and binding on both the parties. The appellant has tampered the Company seals affixed on the back side of the meter which has been testified by the STL. Therefore raising penal bill and

serving a disconnection notice by the Executive Engineer, B.E.D. due to nonpayment of the aforesaid bill by the appellant is justified.

7. The appellant subsequently filed an amendment petition stating that the meter should have been tested by STL in presence of the appellant and respondents. While the meter was brought to the STL in a sealed cover, the seal had been removed in the absence of the appellant and the meter had been placed on the testing table in STL. The appellant had wanted to implead Dy. Electrical Inspector, STL as a party to the case.
8. The Dy. Electrical Inspector, who was subsequently impleaded as a party, stated that although the appellant's representative responded to notice to be present at the time of the opening of the seal on 5.7.2000, he played truant at the crucial time and avoided to put his signature on the test report. After physical verification, the following remarks are given:
  - (a) Backside plastic paper seal No.096394 of M/s SEMS tampered.
  - (b) 'Y' phase P.T. wire tampered and disconnected from 'Y' phase voltage stud inside the meter. So meter is getting only 2 phase supply instead of three phase.
  - (c) Terminal seal was not there.
9. The appellant was given an opportunity to cross-examine the Dy. Electrical Inspector, but he did not do so.
10. Section 26(6) of the Indian Electricity Act, 1910 provides that where any difference or dispute arises as to whether any meter is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector and while the meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of energy supplied to the consumer, or the electrical quantity contained in the supply during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been

correct. In the instant case, the Dy. Electrical Inspector, to whom the meter was referred to for testing, has reported that the meter has been tampered for which it was showing less reading. The Asst. Electrical Inspector added that he agrees with the calculation of actual consumption as arrived at by the Executive Engineer, B.E.D., Berhampur (from the date of tampering till disconnection).

11. Having examined the contention of Licensee and the findings of the Electrical Inspector, we find that the meter has been rendered defective while it was in the consumer's premises and under his effective control. We therefore proceed to determine the following:

- a) Date from which the meter has been rendered defective and recorded reduced consumption
- b) the amount of unauthorised consumption during the period
- c) the rate at which the bills are to be preferred, and
- d) whether cost of the meter can be charged to the consumer.

12. Our findings are as below:

- a) As per the Dump load report on 30.07.99 placed in Annexure VII(B), the meter was OK upto 20.07.99 and has, thereafter, recorded reduced consumption due to missing of the 'Y' phase as established by the Electrical Inspector. Therefore, we agree with the licensee that the revised bills should be prepared from the date from which it has recorded reduced consumption.
- b) The contention of the Licensee and findings of Electrical Inspector that the meter was recording 33.3% less at the time of testing through dump load does not fully satisfy us as we are not sure if the 3 phases in consumer premises were ideally balanced.
- c) Application of penal charges under Section 105(3) of OERC Distribution (Conditions of Supply) Code, 1998 is not appropriate as it does not relate

to any unauthorised load. The case comes under Regulation 60(2) of the above Code and hence billing has to be made on load factor basis.

- d) Regarding realisation of the cost of a new meter, the same can only be done by the Licensee on certification of the Electrical Inspector that the impugned meter has been damaged during the process of tampering and called for replacement.
13. We, therefore, reject the prayer of the appellant and have to sustain the order of Executive Engineer while directing the Executive Engineer to modify the bills as per directions given.

**Sd/-**  
**(H.S. SAHU)**  
**MEMBER**

**Sd/-**  
**(D.K. ROY)**  
**CHAIRMAN**