

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.04.2016

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P. No.14408 of 2016

Servalakshmi Paper Ltd., HTSC No.209

(Water Pump House),

No.31, (Old No.10Z),

Bharathi Park, 7th Cross,

Coimbatore 641 011

Rep., by its Deputy General Manager

- Accounts

Mr.H.S.Seetharaman

... Petitioner

Vs

1.The Tamilnadu Generation and Distribution,

Corporation Ltd., (TANGEDCO),

Rep., by its Chairman,

No.800, Anna Salai,

Chennai - 600 002.

2.The Superintending Engineer,

TANGEDCO,

Tirunelveli Electricity Distribution Circle,

Tirunelveli.

3.The Accounts Officer/Revenue,

TANGEDCO,

Tirunelveli Electricity Distribution Circle,

Tirunelveli.

4.Tamil Nadu Electricity Regulatory Commission,

Rep., by its Secretary,

19-A, Rukmini Lakshmipathy Salai,

(Marshall's Road), Egmore,

Chennai - 600 008.

... Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records of the third respondent's impugned CC Bill No.209, dated 31.03.2016, insofar as it relates to the levy of Energy Consumption Charges as Rs.11 per unit for 6308 Units in Serial No.1, quash the same as illegal, arbitrary, without the

authority of law and against the Tariff Order issued by the fourth respondent and consequently, forbearing first respondent from in any manner levying, demanding and/or collecting demand and energy charges from the petitioner's Water Pump House bearing HTSC No.209, under HT Tariff V instead of HT Tariff III and also direct the respondent to give refund/adjustment of the amounts illegally collected from the petitioner under HT Tariff V instead of HT Tariff III in the CC bills for the months 12/2015 to 02/2016.

For Petitioner .. Mr.S.P.Parthasarthy

For Respondents .. Mr.S.K.Raameshwar

O R D E R

Heard Mr.S.P.Parthasarthy learned counsel appearing for the petitioner and Mr.S.K.Raameshwar, learned counsel appearing for the respondents and with consent on either side, the Writ Petition itself is taken up for disposal.

2. The petitioner is a Paper industry and they have challenged the current consumption bill, dated 31.03.2016, insofar as it relates to demand of Energy charges from the petitioner's Water Pump House in respect of High Tension Service Connection No.209 under HT Tariff V instead of HT Tariff III. First time such a demand was raised on 01.12.2014, which was based upon an audit slip, dated 08.01.2014, for the period from 01.04.2012 to March 2013.

3. The allegation being that the HT service connection No.209, has been used for power plant purpose and therefore, HT Tariff V would be applicable and the petitioner has to pay the amount under the said Tariff. It is not clear as to whether any inspection was conducted to come to such a conclusion or what was the basis of such conclusion.

4. Be that as it may, the petitioner had raised an objection on 06.03.2014, stating that they cannot be called upon to pay consumption charges under HT Tariff V. Thereafter, nothing happened for quite some time i.e., upto November 2015, the petitioner was continued to be charged at Tariff III in respect of HT service connection No.209. Subsequently, another notice was issued on 27.01.2016, calling upon the petitioner to pay the current consumption bill as per the revised demand for the period from April 2012 to November 2015, by calculating the amount payable in terms of HT Tariff V. In the said

communication, though a demand was made, if there was any objection, the petitioner was directed to place the same before the authority. Promptly, the petitioner has submitted his objection to the second respondent on 03.02.2016 and the said objection is still pending consideration of the second respondent. Along with the objection, the petitioner had enclosed the copy of the petition filed by TANGEDCO before TNERC in M.P.No.10 of 2015, wherein they have sought for clarification from TNERC on collection of grid support charges for back up power during the outage of generator, payable by the open access customer as per the tariff order T.P.No.1 of 2013, dated 20.06.2013 and also as per Intra State Open Access Regulation, 2014. These representations have not been considered and now the petitioner has been served with the impugned bill demanding payment of current consumption charges under Tariff V. This demand is impugned in this Writ Petition.

5. The learned standing counsel, who accepted notice on behalf of the respondents was directed to get instructions from the respondents and accordingly, the second respondent has given written instructions dated 20.04.2016, to the learned Standing counsel. It is stated that the HT service No.209, common pumping station is situated 5kms from the power plant service HT SC.No.222, and water pumped is mainly used for power plant operation. It is further stated that Executive Engineer/D/Rural inspected the HT SC.No.209 and confirmed the same. Referring to the National Tariff Policy, it is stated that as per para 8.5.6 and as per para (d) of the memo, dated 31.10.2005, TNERC has also clarified that Tariff should be adopted based on the bonafide purpose of usage therein. Further, it is stated that new temporary supply HT Tariff V is introduced by the TNERC Tariff Order No.1 of 2012, dated 30.03.2012, with effect from 01.04.2012. Therefore, it appears that the basis of the revised demand is in terms of the said order of TNERC Tariff Order, dated 30.03.2012. In the written instructions, it has been stated that the petitioner has been intimated that the revised demand has to be complied with by them by communication dated 27.01.2016. Further, it is stated that from December 2015 onwards in respect of HT SC No.209, the petitioner has been billed under Tariff V and the consumer has also admitted and paid the CC charges of December 2015, alone without any objection and subsequently, they are paying the CC charges under Tariff V. Further, it is stated that the water pumped through the HT SC No.209, is fully utilised for generating power in HT SC.No.222, hence, the Tariff applicable to HT SC No.222, is also applicable to HT SC.No.209. Hence, it is stated that there is no defect in adopting the Tariff V for HT SC No.209.

6. Though elaborate written instructions have been given, the impugned communication does not reflect any of the averments set out in the written instructions, nor does the audit

objection pointed out in the proceedings dated 01.02.2014, disclose the same. Therefore, when an order is tested, it should sustain itself for the reasons assigned therein, and it can neither be improved nor sub planted with the reasons in the form of counter affidavit or written instructions, as done herein. Therefore, before making a demand and charging the petitioner under Tariff V, the petitioner's objection should have been considered and a reasoned order should have been passed, merely because the petitioner had paid the consumption charges under Tariff V for December 2015, cannot be treated as an estoppel, as the petitioner is entitled to his representation being considered. It is clear that the amount has been paid by the petitioner under protest and therefore, the respondents are bound to consider the petitioner's representations.

7. Considering the above facts and circumstances, the petitioner is directed to remit the entire charges as demanded in the impugned demand under protest and simultaneously, there will be a direction to the second respondent to consider the representations/objections and pass orders on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner, on or before 04.05.2016.

In the result, the Writ Petition is disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Tamilnadu Generation and Distribution,
Corporation Ltd., (TANGEDCO),
Rep., by its Chairman,
No.800, Anna Salai,
Chennai - 600 002.
- 2.The Superintending Engineer,
TANGEDCO,
Tirunelveli Electricity Distribution Circle,
Tirunelveli.
- 3.The Accounts Officer/Revenue,
TANGEDCO,
Tirunelveli Electricity Distribution Circle,
Tirunelveli.
- 4.Tamil Nadu Electricity Regulatory Commission,
Rep., by its Secretary,
19-A, Rukmini Lakshmipathy Salai,
(Marshall's Road), Egmore,
Chennai - 600 008.

+1cc to Mr.Pandiyaraj, Advocate, S.R.No.24608
+1cc to Mr.S.K. Rameshuwar, Advocate, S.R.No.24459

MG(CO)
EU(22/04/2016)

W.P. No.14408 of 2016

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