

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.02.2016

Coram :

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P.No.31641 OF 2012

M/S.Accurate Products Corporation Pvt. Ltd.
Chennai.

.. Petitioner

vs.

1.The Electricity Ombudsman
19-A, Rukmini Lakshmipathy street
Egmore, Chennai 600 008.

2.TANGEDCO rep. by its
Chairman,
Anna Salai, Chennai.

3.The Superintending Engineer
Chennai EDC/South
TANGEDCO (formerlyTNEB)
K.K.Nagar, Chennai 600 078.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records of the first respondent culminating in his impugned order in Appeal Petition No.263 of 2011 dated 14.08.2012, quash the same and direct the respondents to refund the differential tariff amounting to Rs.20,50,682/- (Rupees Twenty Lakhs Fifty Thousand Six Hundred and Eighty Two only) with interest at 18% from the date of payment or adjust the same towards future bill amounts.

For Petitioner : Mr.N.L.Rajah

For Respondents : Mr.S.K.Rameshuwar
Standing Counsel

O R D E R

The petitioner, a Private Limited Company, applied for High Tension service connection before the third respondent and the same was favourably considered and by proceedings dated 30.06.2006, the petitioner was given the benefit of the High Tension Service connection. The petitioner was informed by the said communication that the electricity current consumption bill for Rs.1,06,400/- for their H.T.Supply S.C.No.610 under H.T.Tariff-I, Billed III (Commercial) provisionally pertaining to the month of June 2006, is enclosed for arranging payment on or before 06.07.2006. The petitioner was further informed that re-change of tariff will be done after commencement of regular production and also receipt of the field inspection report from the Executive Engineer O & M concerned.

2.The petitioner's case is that they have commenced commercial production immediately thereafter, but, they were continued to be charged under commercial tariff. Therefore, they submitted a representation to the third respondent on 25.10.2010, requesting for change of tariff as per their entitlement in the communication dated 30.06.2006. Though the said communication was accepted by the third respondent, the benefit of change of tariff to tariff I(A) (Industrial) was effected only from August 2010 and for the earlier period i.e. from June 2006, the request was not accepted. Therefore, the petitioner filed an Appeal before the Tamil Nadu Electricity Ombudsman, the first respondent. The learned Ombudsman, framed four questions for consideration on the following lines:

"i)Whether, the case pending on the same subject at the Division Bench of Madras High Court is a bar on the Electricity Ombudsman to take the case on file.

ii)Whether the Petitioner industry has started its industrial production from the date of effecting HT service ?

iii)Whether law of limitation applies to the case on hand ?

iv)Whether the respondent is deemed to have waived his right to claim after a lapse of 4 years."

3.It is not in dispute that question Nos. 1, 2 and 3 (referred above) were held in favour of the petitioner. So far as question No.4, the Ombudsman held that the petitioner has lost his right to claim the differential tariff due to his prolonged silence, rather the finding was based on doctrine of acquiescence. This findings of the learned Ombudsman is challenged in this Writ Petition.

4. Heard Mr.N.L.Rajah, learned counsel for the petitioner and Mr.S.K.Rameshuwar, learned Standing Counsel appearing for the respondents and perused the materials placed on record.

5. The short issue which falls for consideration is as to whether the claim made by the petitioner could have been thrown out on the ground of acquiescence/estoppel.

6. As noticed above, by proceedings dated 30.06.2006, while granting HT supply to the petitioner, provisionally they were billed under Tariff-I Billed (Commercial) and the said communication states that the re-change of tariff i.e. Industrial Tariff will be done after commencement of regular production and on receipt of the field inspection report from the Executive Engineer/O&M concerned. It cannot be denied that the petitioner has commenced commercial production since June 2006. This is evident not only from the monthly current consumption bill, but from the proceedings of the second respondent dated 11.11.2008, in which the petitioner has been informed that the monthly demand and energy quota has been fixed for petitioner's High Tension Service Connection and the petitioner was also informed that the base demand was 140 KVA; base energy was 39617 units; demand quota was 84 KVA and energy quota was 23770 units. Therefore, it would be too late for the third respondent to contend that they were unaware about the fact that the petitioner has commenced regular production. Though proceedings were issued fixing monthly demand and energy quota, the Executive Engineer/O&M has failed to conduct any inspection. If that be the case, the question would be as to whether the second respondent is justified in taking a stand that merely because the petitioner applied for change of tariff only during May 2010, they will not consider the back period.

7. Admittedly, the tariff rates are fixed based on statutory provisions. Therefore, if it is a fact that the petitioner has commenced production and if an inspection had been conducted by the Executive Engineer/O&M, things would have come to light and the entitlement of the petitioner from such date viz. June 2006 could not have been disputed. Though the meter reading was taken every month from the petitioner's HT service connection, the Department did not come forward to change over the connection to that of industrial tariff, though their communication dated 30.06.2006 states that it pertains to June 2006 and the commercial tariff is only provisional. Therefore, the learned Ombudsman proceeded on the premise that the petitioner having kept silent for all those years, has waived his right to claim refund from the date of service connection.

8.The view taken by the learned Ombudsman is incorrect, since there can be no estoppel against the statute and the right to a particular tariff being statutory in character, there can be no estoppel. That apart, it is not as if the respondent TANGEDCO were unaware about the consumption pattern and in fact that was taken into consideration in November, 2008, the monthly demand and energy quota were fixed for the petitioner's H.T. Service Connection. This could have been done only after being satisfied that commercial production has already been commenced. Therefore, the decision taken by the learned Ombudsman to not-suit the petitioner on the ground of acquiescence/estoppel is not tenable.

9.The learned counsel for the petitioner placed reliance on the another order passed by the learned Ombudsman in O.P.No.14 of 2006 dated 08.11.2006, which is an appeal filed by the Superintending Engineer, Coimbatore Electricity Distribution Circle/North, Coimbatore and submitted that in somewhat identical circumstances, the learned Ombudsman held that the Consumer Grievance Redressal Forum was justified in holding that the Board's proceedings dated 31.05.1997, envisages the automatic conversion of the commercial tariff into industrial tariff on attaining 15% of the sanctioned demand, even without waiting for the request from the consumers.

10.The learned counsel for the respondents pointed out that as against said order of the learned Ombudsman, an appeal has been preferred before the Hon'ble Division Bench of this Court and the matter is pending.

11.Be that as it may, on facts, this Court is of the considered view that the commencement of production by the petitioner cannot be denied by the third respondent, in the light of the factual position. Therefore, the learned Ombudsman was not justified in throwing out the petitioner's case on the ground of acquiescence or estoppel. At this stage it is worthwhile to refer to the decision of the Calcutta High Court in the case of ABDUL KADER CHAUDHURY v. UPENDRA LAL BARUA AND ORS [AIR 1936 CAL 711], and while explaining the doctrine of acquiescence, it was held that the doctrine of acquiescence is only another phase of estoppel. The foundation of the doctrine of estoppel and acquiescence is that the representations have been made to the other side -- representations which were intended to be acted upon by the other side, and were in fact acted upon by the other side or doing some act which he would not have otherwise done which involved expenditure or a change of position. In the case of estoppel the material representations are active in form, while in the case of acquiescence the representations are to be inferred from silence.

12.The allegations against the petitioner is that they have kept silent over the matter and they have acquiesced themselves of the position and not entitled for change of tariff from the date of connection. However, mere silence is not sufficient to attract the doctrine of acquiescence, as it has been held that doctrine of acquiescence is only another phase of doctrine of estoppel and therefore to hold that a party to have to acquiesced themselves, it has to be done on representations being made to the Superintending Engineer and those representations were accordingly acted upon by the other side and in fact acted upon, which would ultimately result in change of position. It is not the case of the third respondent that they acted upon silence and there was a change of position. Therefore, the findings of the learned Ombudsman that the doctrine of acquiescence would stand attracted to the facts of the case does not merit acceptance and the same calls for interference.

13.In the result, the Writ Petition is allowed and the order passed by the learned Ombudsman, rejecting the petitioner's claim on the ground of acquiescence is set aside and the third respondent is directed to extend the benefit of Industrial Tariff to the petitioner's High Tension Service Connection with effect from June 2006 and while doing so, the excess payment if any paid by the petitioner, shall be adjusted against the monthly Current Consumption Bill over a period of time, as the third respondent may decide. The above direction shall be complied with, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

-s/d-

Assistant Registrar(CSIII)

True Copy

सत्यमेव जयते

Sub-Assistant Registrar

rpa
To

WEB COPY

1.The Electricity Ombudsman
19-A, Rukmini Lakshmipathy street
Egmore, Chennai 600 008.

2. The chairman,
TANGEDCO
Chairman,
Anna Salai, Chennai.

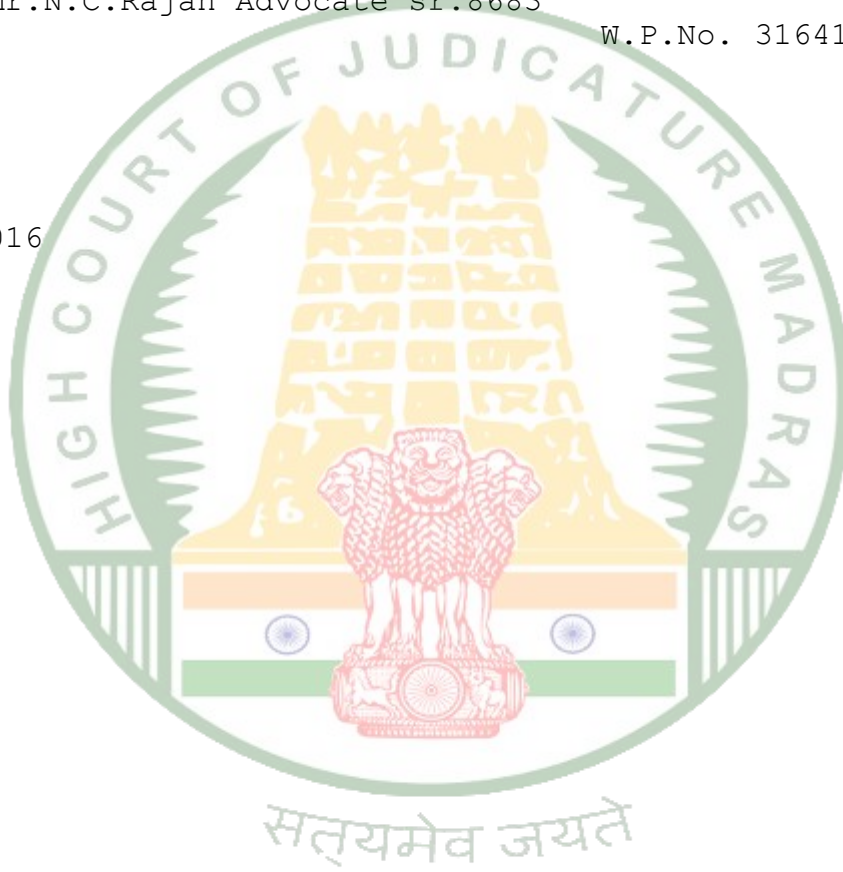
3.The Superintending Engineer
Chennai EDC/South
TANGEDCO (formerlyTNEB)
K.K.Nagar, Chennai 600 078.

+1 cc to Mr.S.K.Rameshuwar Advocate sr.8698

+1 cc to Mr.N.C.Rajan Advocate sr.8683

W.P.No. 31641 OF 2012

sal(co)
aa25/02/2016



WEB COPY