

HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.14705 & 14734 of 2004

Hindustan Textiles 'B' Unit

Rep.by its Partner

Mrs.Vanitha

30-B, I-Ward,

T.N.Palayam,

Jothipuram (Post)

Coimbatore-641 047. ..Petitioner in W.P.Nos.14705 of 2004

Hindustan Spinners

rep. by its Partner,

D.Selvarajan

223, MTP Road,

NSN Palayam,

Coimbatore 641 031. ..Petitioner in W.P.Nos.14734 of 2004

Vs.

1.The State of Tamil Nadu

Rep. by its Secretary to Government,

Energy Department,

Fort St.George,

Chennai 600 009.

2.Tamil Nadu Electricity Board,

Rep. by its Chairman

800, Anna Salai,

Chennai 600 002.

3.The Superintending Engineer,

Coimbatore Electricity Distribution Circle (North)

Coimbatore District. ..Respondents in both WPs.

Common Prayer : Writ Petitions have been filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration declaring clause 'd' of the High Tension Tariff I to the schedule of the Tamil Nadu Electricity Revision of tariff rates on supply of electrical energy Act 1978 as null and void so far as the petitioners mill is concerned and to direct the respondents to refund to the petitioner the peak-hour charges collected illegally so far from the month of August 1997 or adjust the same in future Bills.

For Petitioner in both WPs. : Mr.M.Kamalanathan
For Respondent No.1 : Mr. A. Zakkir Hussain
Government Advocate
For Respondent Nos.2 & 3 : Mr.Rameshwaran
(TNEB)

COMMON ORDER

Writ Petitions have been filed for issuance of a Writ of Declaration declaring clause 'd' of the High Tension Tariff I to the schedule of the Tamil Nadu Electricity Revision of tariff rates on supply of electrical energy Act 1978 as null and void so far as the petitioners mill is concerned and to direct the respondents to refund to the petitioner the peak-hour charges collected illegally so far from the month of August 1997 or adjust the same in future Bills.

2. Heard both sides.

3. This Court, in a similar type of prayer, has passed an order in Writ Appeal in W.A.No.1513 of 2004 on 23.08.2005. The relevant paragraph Nos.5 and 72 of the said Writ Appeal is extracted as follows:

"5. The petitioner in W.P.No.1763 of 2003 (which we have treated as a leading case), namely, M/s.Magna Electro Castings Limited has prayed for a Writ of declaration to quash clause 'd' of the High Tension Tariff I to the schedule of the Tamil Nadu Electricity Revision of Tariff Rates on supply of Electrical Energy Act, 1978 (hereinafter referred to as the Tamil Nadu Act of 1978) by which peak hour charges have been imposed as null and void and for a mandamus directing the respondents to refund to the petitioner the peak hour charges said to have been illegally collected far from the month of August 1997 or adjust the same in future bills.

36. Apart from the above, it may be stated that on 16.03.2003 the Tamil Nadu State Regulatory Commission fixed the tariff for various consumers under the Electricity Regulatory Commission Act, which came into effect from 16.03.2003. The tariff determined by the Electricity Regulatory Commission also contains peak hour charges for industrial consumers which was challenged in appeal before this Court, but the said challenge was rejected by a Division Bench of this Court in Coimbatore Stock Exchange Ltd., v. Tamil Nadu Electricity Regulatory Commission, 2003 (4) CTC 385. We are in entire

agreement with the aforesaid decision of the Division Bench, and moreover the said decision is binding on us.

37. It was then contended by some of the learned counsels for the appellants/petitioners that the imposition of peak hour tariff is unreasonable, arbitrary and is in violation of Article 14 of the Constitution. We have already repelled this submission in our observations made above. In our opinion, there is reasonable classification between high tension consumers and low tension consumers as has been pointed out by the Supreme Court in *M/s.Hindustan Zinc Limited v. Andhra Pradesh State Electricity Board*, (supra). Hence there is no merit in this submission.

38. As regards High Tension industrial consumers who generate power from their own wind mills and supply electricity generated by them to the Board, the learned single Judge has dealt with this aspect in paragraphs 25 and 26 of his judgment, and we entirely agree with his reasoning. Hence, we are not repeating the same.

39. Before concluding we may mention that G.O.Ms.No.17 dated 14.2.1997 lays down a policy decision and ordinarily this Court cannot interfere with policy decisions of the administration unless they are clearly in violation of some statutory or constitutional provision or is shockingly arbitrary in the *Wednesbury* sense vide *Tata Cellular Vs.Union of India*, AIR 1996 SC 11, *Om Kumar Vs. Union of India*, AIR 2000 SC 3689, *Union of India Vs.S.B.Bohra*, 2004 (2) SCC 150, *Tamil Nadu Electricity Board Vs. Tamil Nadu Electricity Board Engineers' Association*, 2005 LIC 1579=2005 (1) MLJ 507, *S. Ramamirtham Vs. Somesuvarapuram Girama Vivasaya Nala Pathukappu International Trading Company*, JT 2003 Vo;4 SC 549 (para-17) + 2003 AIR SCW 2828 (para-18), *Delhi Development Authority Vs. Vijaya C.Gurshaney (Mrs)*, 2003 (7) SCC 301, *Krishnan Kakkanth Vs. Government of Kerala*, 1997 (9) SCC 495, *O.N.G.C.Madras Port Contract Employees' Union Vs. The management of O.N.G.C.Ltd.*, 2005 (2) MLJ 90, etc.,

40. In our opinion, the G.O.Ms.17 dated 14.2.1997 does not violate any statutory or constitutional provision, nor can it be said to

be shockingly arbitrary."

72. In view of the above, we find no merit in these writ appeals and petitions and they are accordingly dismissed. No costs. Consequently, M.Ps and W.A.M.Ps are also dismissed. "

4. Considering the facts and circumstances of the case and taking note of the reliance placed by the learned counsel for the respondents, this Court is not inclined to grant the relief as prayed for by the petitioners.

In the result, these Writ Petitions are dismissed. No costs.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

gv/gmd

To

1.The State of Tamil Nadu
Rep. by its Secretary to Government,
Energy Department,
Fort St.George,
Chennai 600 009.

2.Tamil Nadu Electricity Board,
Rep. by its Chairman
800, Anna Salai,
Chennai 600 002.

3.The Superintending Engineer,
Coimbatore Electricity Distribution Circle (North)
Coimbatore District.

C.C. to M/S.the Government Pleader high court, madras.
SR.NO. 64102/17

W.P.Nos.14705 & 14734 of 2004

BR(CO)
T.R (06/10/2017)