

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

WP.No. 102 of 2011
MP.Nos.2 and 3 of 2011

M/s.Madras Cements Limited
Chennai-4

Petitioner

Vs

1.The Tamil Nadu Electricity Regulatory Commission
represented by its Secretary, Chennai-8

2.The Tamil Nadu Electricity Board by its
Chairman, Chennai-2

3.The Superintending Engineer
Perambalur Distribution Circle
Perambalur

Respondents

Prayer:- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue a Writ of Certiorari to call for the records of the 3rd Respondent in Lr.No.SE/PEDC/PBLP/AO/Rev/RCS/A1/F. HT SC 69-A/D.No.454/10, dated 13.12.2010 for the period from 04/2010 to 06/2010 in respect of the Petitioner's HT SC No.69 and to quash the same in so far it relates to the levy of compensation charges for allegedly exceeding quota during evening peak hours from 04/2010 to 06/2010 as illegal, arbitrary, without the authority of law and against the orders of the 1st Respondent made in Miscellaneous Petition No.42 of 2008, dated 28.11.2008.

For Petitioner : Mr.Rahul Balaji

For Respondents 1 to 3 : Mr.P.Gunaraj,
Standing Counsel (TNEB)

ORDER

The prayer in this Writ Petition is to quash the proceedings of the 3rd Respondent, dated 13.12.2010, in and by which, a sum of Rs.12,25,393/- towards penal charges for the excess usage for the period from 04/2010 to 06/2010.

2. This Court heard the learned counsel for the Petitioner and the Respondents and also perused the materials placed on record.

3. The learned counsel for the Petitioner would submit that the issue involved in this Writ Petition is squarely covered by the order of the Appellate Tribunal for Electricity made in Appeal Nos.177 of 2013, etc. dated 29.05.2014, which had become final, in view of the order of dismissal, dated 25.10.2018 of the Civil Appeal No.8215 of 2015, etc. filed against the said order of the Appellate Tribunal, before the Honourable Supreme Court. The learned counsel would further submit that in paragraphs 15 and 16 of the said order of the Appellate Tribunal, dated 29.05.2014, it was observed as under:-

"15. Summary of our findings:-

(i) According to the judgement of this Tribunal in Appeal Nos.51 and 56 of 2012, the demand and energy quota as communicated by the Electricity Board in advance based on the advance declaration of energy proposed to be made available from captive generation will be used for calculation of excess demand and excess energy charges till the new procedure as decided by the State Commission dispensing the need for advance declaration by the captive consumer by order dated 7.9.2010 has been implemented. The period in question is April and May 2010 and hence, the total demand and energy quota communicated by the Electricity Board/TANGEDCO on the basis advance declaration of energy proposed to be made available from captive generation will be the basis for calculation of excess demand/energy as per the above judgement of the Tribunal.

(ii) The State Commission has correctly interpreted the findings of this Tribunal in Appeal Nos.51 and 56 of 2012 and drawn the correct conclusion in the impugned order, dated 17.4.2012 which is in consonance with the findings of this Tribunal.

16. In view of the above, the Appeals are dismissed and the State Commission's impugned order is upheld. No order as to costs."

The learned counsel for the Petitioner would submit that in the light of the above said order of the Appellate Tribunal, made in similar facts and circumstances, the impugned order in this Writ Petition is to be quashed.

4. On the other hand, the learned standing counsel for

the Respondents would submit that pursuant to the filing of this Writ Petition, both the orders of the Appellate Tribunal as well as the Honourable Supreme Court had come into existence and that though the impugned order is to be quashed in the light of the aforesaid orders, liberty may be given to the Respondents to proceed afresh, in accordance with law, if necessary.

5. Considering the facts and circumstances of the case and the submissions of the learned counsel on either side and in the light of the aforesaid order of the Appellate Tribunal, which had reached finality, the impugned order is quashed. It is also made clear that the Respondents are at liberty to proceed afresh, in accordance with law, if necessary.

6. With the above directions, this Writ Petition is allowed. No costs. Consequently, the connected MPs are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Srcm

To

- 1.The Secretary,
The Tamil Nadu Electricity Regulatory Commission
19-A, Rukmini Lakshmipathy Salai,
Marshall's Road,
Egmore, Chennai.
- 2.The Tamil Nadu Electricity Board by its
Chairman, 144, Anna Salai,
Chennai 600 002.
- 3.The Superintending Engineer
Perambalur Distribution Circle
Perambalur

+1cc to Mr.P.Gunaraj, Advocate, S.R.No. 82122
+1cc to Mr.R.Parthasarathy, Advocate, S.R.No. 82732

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SPD(CO)
GN(02/01/2019)