

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2018

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.3381 of 2010
and M.P.Nos.1 & 2 of 2010

M/s R.B.A.Exporters (P) Ltd.,
H.T.Sc.No.1824
56-61, EPIP, SIPCOT Industries Estate,
Gummidipoondi,
Thiruvallur District,
Rep. by its Director,
Navneet AgarwalPetitioner

Vs

1.Tamil Nadu Electricity Regulatory
Commission
19-A, Rukmini Lakshmipathy Salai,
(Marshall's Road)
Egmore, Chennai-600 008.
Rep. by its Secretary.

2.The Chairman
Tamil Nadu Electricity Board,
144, Anna Salai,
Chennai- 600 002.

3.The Superintending Engineer,
Chennai Electricity Distribution Circle/North,
Tamil Nadu Electricity Board,
144, Anna Salai,
Chennai-600 002.

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the Third Respondent in Bill No.1824 dated 31.01.2010 and quash that portion of the amount as illegal, arbitrary and without authority of law.

For Petitioner
For Respondents

: Mr.K.Seshadri
: Mr.P.R.Dilipkumar (TNEB)

ORDER

The Petitioner has filed the present Writ Petition praying for issuance of Writ of Certiorari calling for the records of the 3rd Respondent in Bill No.1824 dated 31.01.2010 and quash the same.

2.In nutshell, the case of the petitioner is as follows:

2.1 The petitioner Industry is involved in the manufacture of Steel Castings and Manhole Covers etc., having High Tension Electricity Supply vide Service Connection No.1824. The respondents 2 and 3 sanctioned the said High Tension Electricity Supply with a maximum demand of 1400 K.V.A. to run the said Industry.

2.2 Whiles, the Government of Tamil Nadu, Energy Department on 22.10.2008 issued restrictions on the consumption of power by placing reliance on Regulation 38 [Restrictions on use of Electricity] of the Tamil Nadu Electricity Distribution Code, 2004 and directed the 2nd respondent to impose 40% power cut to H.T. Industrial and Commercial Consumers.

2.3 The Petitioner's Industry because of its requirement in regard to the quantum of energy, has been purchasing power from the third party generating company viz., M/s.Auro Mira Bio Energy (P) Limited to an extent of 6000 Units per day to achieve the targeted production.

2.4 While so, the 3rd Respondent issued the impugned bill dated 31.01.2010 directing the petitioner to pay Rs.11,67,551/- towards extra energy charges together with Rs.7,64,680/-.

2.5 According to the Petitioner, as per Quota Order dated 15.06.2009, the energy Quota was 253136 units and the third party purchase in the month of January 2010 was 217255 units. As such, the petitioner was entitled to utilise 4,70,391 units during the month of January, 2010 (i.e. 253136 + 217255 Units). However, the consumption of the Petitioner in the month of January 2010 was 463380 units only and no excess consumption was availed by it.

2.6 Aggrieved against the bill raised by the third respondent, the petitioner is before this Court with the present writ petition.

3.The primordial submission of the learned counsel for the petitioner is that the 3rd respondent has raised the demand dated 31.01.2010 without putting the Petitioner on notice and also without adding the units purchased from the third party with the Quota, which is arbitrary, illegal and against the principles of natural justice. As such, the impugned notice is liable to be quashed.

4.Per contra, the learned counsel for the respondents submitted that the impugned demand raised by the third

respondent is perfectly in accordance with law and the same warrants no interference by this Court.

5. Heard both sides and perused the records.

6. Before going into the issue involved herein, it is to be borne in mind that the principles of natural justice are not the edicts of a statue. There is no strait-jacket cast iron formula for observing the principles of natural justice. The main aspect to be seen in an administrative action is that when an Executive Authority passes an order raising a demand on a particular person, the affected or aggrieved must be provided with a reasonable or adequate opportunity to defend his case and further, the said person also must be put on prior notice as to the claim made in the subject matter in issue. Only the aggrieved/affected party will have an opportunity to repudiate the demand made by the other side. If only a Demand Notice is given to a party, then, there is a possibility for the affected party to repel the claim made by the party, who has raised the demand. After providing with the Demand Notice to the affected party and within the time specified if the affected submits his/her written explanation or representation, then, it is open to the concerned authority to pass a reasoned, speaking final order based on merits [of course, by taking into account the explanation submitted by the aggrieved party if any]. It cannot be gainsaid that if such an order is passed by the appropriate authority, then, that order should be a speaking one and also based on outline of process of reasoning.

7. It is the specific case of the petitioner herein that as per Quota Order dated 15.06.2009, energy Quota was 253136 units and the third party purchase in the month of January 2010 was 217255 units and the Petitioner was to utilise 4,70,391 units during the month of January 2010 and the consumption of the Petitioner/Industry was only 463380 units. To put it succinctly, the plea of the Petitioner was that no excess consumption was availed by it.

8. When such being the ground reality, then, this Court is of the view that the petitioner ought to have been provided with a Demand Notice at the earliest point of time requiring it to submit its explanation if any. As a matter of fact, only after perusing /considering the explanation submitted by the Petitioner, if any order has been passed by the 3rd Respondent on merits, then only, it should have raised the demand in question in a proper and correct manner. However, on going through the contents of the impugned bill dated 31.01.2010 issued by the 3rd Respondent, it is patently and latently evident that the Petitioner has not been provided with an opportunity to contest the claim made by it as regards the excess charges, etc. In this regard, it can be aptly stated that

there has been a negation of principles of natural justice. Viewed in that perspective, the said bill raised by the 3rd respondent bristles with legal infirmity. Therefore, this Court is left with no option, but to interfere with the same and set aside the same, to prevent an aberration of Justice. Consequently, the Writ Petition succeeds.

9. In the result, the impugned bill raised by the third respondent dated 31.01.2010 is set aside and the writ petition is allowed. However, it is open to the 3rd Respondent to issue a fresh Demand Notice to the Petitioner within a period of two weeks from the date of receipt of copy of this order, by specifying the relevant period and also furnishing the necessary Break-up details in regard to the purported excess penalty charges etc. claimed by it. Thereupon, the Petitioner shall submit its explanation/representation in regard to the claim made by the Electricity Department, within a period of two weeks. Further, the 3rd Respondent, after receipt of explanation from the Petitioner, is directed to pass a reasoned speaking order, on merits and in accordance with law, within a period of four weeks. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

vsi2/rst
To

1. The Superintending Engineer,
Chennai Electricity Distribution Circle/North,
Tamil Nadu Electricity Board,
144, Anna Salai, Chennai-600 002.

+1 CC to Mr. P. R. Dilipkumar, Advocate sr 84748.

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W.P.No.3381 of 2010

JP (CO)
SP (09/05/2019)