

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.22 of 2017
and CMP Nos.381 & 2818 of 2017

1. TANGEDCO rep. by its
Chairman,
Anna Salai, Chennai.
2. The Superintending Engineer,
Chennai EDC/South
TANGEDCO (formerly TNEB)
K.K.Nagar, Chennai 600 078. Appellants

versus

1. M/s.Accurate Products Corporation Pvt Ltd.,
No.AC 25A, SIDCO Industrial Estates,
Thirumudivakkam, Chennai 600 044.
(HTSC No.610)
2. The Electricity Ombudsman
19A, Rukmini Lakshmipathy Street,
Egmore, Chennai 600 008. Respondents

Appeal filed against the order passed by this Court dated
10.02.2016 passed in W.P.No. 31641 of 2012.

WP.No.31641/2012:Writ petition praying to writ of certiorarified
mandamus to call for the records of the respondent culminating
in his impugned order in Appeal Petition No.263 of 2011 dt
14.8.2012 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 bills amount.

For appellants : Mr.S.K.Rameshuwar

For Respondents : Mr.N.L.Rajah
for Mr.E.Jayasankar for R1
No appearance for R2

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

This Intra Court Appeal has been filed by the respondents in

W.P.No.31641 of 2012, challenging the order of the learned Single Judge dated 10.02.2016, in and by which, the Writ Petition filed by the 1st respondent, seeking issuance of Writ of Certiorarified Mandamus calling for the records for the 2nd respondent, viz. The Electricity Ombudsman, culminating in the impugned order made in the Appeal Petition No.263 of 2011 dated 14.08.2012, to quash the same and direct the respondents to refund the differential tariff amount to the tune of Rs.20,50,682/- with interest at 18% from the date of payment or adjust the same towards future bill amounts.

2. The facts that led to the filing of the Writ Petition are as follows:

The 1st respondent Company applied for High Tension service connection and the same was provided to the 1st respondent in June 2006. The Superintendent Engineer, CEDC/South, 110 KV S.S.Complex, K.K.Nagar, Chennai 78, by his letter dated 30.06.2006, informed t2he 1st respondent that the H.T.Supply is billed under H.T.Tariff - I, (Commercial) provisionally for the month of June 2006, and a bill was enclosed for arranging payment on or before 06.07.2006. The said letter also indicated that re-change of tariff will be done, after the commencement of regular production and also receipt of the field inspection report, from the Executive Engineer/O&M concerned. The copy of the said letter was also marked to the Executive Engineer/O&M/Guindy and he was requested to furnish the following details urgently.

- 1.Whether the H.T.Supply is being used for construction purposes from the date of Supply.
- 2.Whether the H.T.Supply is used for supply to residential quarters attached to the factory.
- 3.Date of commencement of trial production.
- 4.Date of commencement of regular production .
- 5.Test Report with full details of connected load under
 - i) Indl. and ii) Lighting and Non-industrial.
- 6.Whether the H.T.Supply is used for supply to any other party other than the Consumer.
- 7.Details of self-generating set installed by the consumer if any.
- 8.Whether the consumer was availing L.T.Supply before availing H.T.Supply and if so the A/c No. and date of effecting and disconnecting of the L.T.Supply with L.T.Tariff.
- 9.Copy of factory Licensee and CEIG Certificate.
- 10.Line of Activity (along with particulars such as are furnace, induction furnace and steel rolling

activities)

11.H.T.Tariff

3. It is the case of the 1st respondent that production commenced even in June 2006, despite such production having been commenced, the appellants continued to levy electricity charges at commercial rates, without effecting the change in tariff, in accordance with the letter dated 30.06.2006. By its letter dated 25.10.2010, the 1st respondent had brought to the notice of the Superintendent Engineer, CEDC/South, the fact that they have commenced production in June 2006 itself and the revision of tariff has been allowed, only from the month of August 2010, despite the fact that the production has been commenced even in June 2006.

4. Pointing out that they are entitled to change of tariff, with effect from the date of commencement of production, i.e. June 2006, the 1st respondent required the appellants to effect the change of tariff, with effect from June 2006. A remainder was also sent on 21.09.2010. Since, the said request was not complied with, the 1st respondent approached the Ombudsman, the 2nd respondent herein, seeking a direction to the appellants to revise the tariff, from commercial to industrial with effect from June 2006 to August 2010 and to refund the excess amount collected under the commercial tariff rates. The Ombudsman, by its order dated 14.08.2012, rejected the claim of the 1st respondent, on the ground that the 1st respondent has accepted the levy of commercial tariff and has continued to pay the same for over a period of 3 years and therefore, applying the principle of acquiescence, the 1st respondent was found not entitled to the claim made in the appeal before the ombudsman, this order of the Ombudsman, was challenged in the Writ Petition.

5. The Writ Petition was resisted by the appellants by filing a counter affidavit contending that it was for the 1st respondent, to have brought to the notice of the authorities that the commercial production has started and seek re-change immediately. According to the appellants, the failure on the part of the 1st respondent to have intimated the commencement of commercial production and seek re-change of tariff immediately would dis-entitle them from claiming re-change of tariff with retrospective effect, the counter affidavit proceeds from the footing that the application for re-change of tariff itself, it was made by the 1st respondent only on 25.05.2010.

6. The learned Single Judge by his order dated 10.02.2016, rejected the contentions of the appellants and found that it is the duty of the appellants to have taken note of the commercial production and to have effected the change of tariff, without

waiting for an application to that effect from the 1st respondent. The learned Single Judge also rejected the claim of the appellants on the ground of acquiescence. After having referred to the file and concluding that the appellants were aware of the fact that the 1st respondent had commenced commercial production, from the proceedings of the appellants dated nil.11.2008, wherein the appellants have chosen to fix the monthly quota of the 1st respondent herein, after taking note of the average consumption. The learned Single Judge had concluded that, it will be too late for the appellants to contend that they were not aware of the fact that the 1st respondent has commenced commercial production. While holding that the 1st respondent would be entitled to change of tariff, with effect from June 2006 and the appellant will be liable to refund the excess tariff collected, the learned Single Judge had directed the appellants to adjust the excess amount collected in the future bills, over a period of time to be decided by the 2nd appellant.

7. We have heard Mr.S.K.Rameshuwar, learned counsel appearing for the appellants and Mr.N.L.Rajah, learned Senior Counsel appearing for Mr.E.Jayasankar, learned counsel for the 1st respondent.

8. Mr.S.K.Rameshuwar, learned counsel appearing for the appellants would contend that in all cases High Tension connection is sought for Industrial purposes, the first monthly bill is always made on commercial tariff and depending on the satisfaction of the Board as to the commencement of the production, the tariff change is effected from commercial tariff to industrial tariff. It is the further contention of Mr.S.K.Rameshuwar, learned counsel appearing for the appellants that unless the Board is informed by the consumer as to the exact date of commencement of commercial production, there is no obligation caused upon the Board to effect the change of tariff on its own.

9. Per contra Mr.N.L.Rajah, learned Senior Counsel appearing for the 1st respondent would contend that the fact that the 1st respondent had commenced commercial production was within the knowledge of the appellants. In order to impute knowledge on the appellants, Mr.N.L.Rajah, would rely upon the factual findings rendered by the learned Single Judge, particularly, with reference to the proceedings of the 2nd appellant dated nil.11.2008, wherein the 2nd appellant had fixed the monthly quota for the 1st respondent's High Tension Service Connection. He would also draw our attention to the very proceedings of the

2nd appellant dated 30.06.2006. While marking the copy of the said proceeding to Executive Engineer/O&M/Guindy, the 2nd appellant had required the Executive Engineer to furnish certain details urgently. The Executive Engineer is directed to furnish a report on the following material facts.

"2. Whether the H.T. Supply is used for supply to residential quarters attached to the factory.

3. Date of commencement of trial production.

4. Date of commencement of regular production .

5. Test Report with full details of connected load under

i) Indl. and ii) Lighting and Non-industrial."

10. According to Mr.N.L.Rajah, the learned Senior counsel appearing for the 1st respondent, the very purpose of calling for a report from the Executive Engineer/O&M/Guindy, on the above facts is to find out as to whether, the 1st respondent had commenced commercial production or not. The failure or otherwise on the part of the Executive Engineer/O&M/Guindy, to furnish such report cannot be put against the 1st respondent.

11. Drawing our attention to the Electricity consumption bills for over the period, Mr.N.L.Rajah, would submit that the fact that the 1st respondent had commenced the commercial production even during June 2006 stood established. From the records produced, particularly the letter dated 30.06.2006, it is clear that the duty was cast upon the appellants to cause an inspection of the unit and find out the date of commencement of trial production as well as the date of commencement of regular production. It is not known as to whether such report was furnished by the Executive Engineer/O&M/Guindy, as required of him by letter dated 30.06.2006.

12. The learned Single Judge has on facts found that the 1st respondent has commenced commercial production even in June 2006 and as such it would be entitled to change of tariff from that date onwards. We do not see any factual material, which would enable us to differ from the said conclusion of the learned Single Judge. Therefore, we do not see any merit in the appeal deserving interference at our hands. However, the learned Single Judge had left it to the discretion of the second appellant as to how the sum of Rs.20,50,682/-, which is the excess payment made by the 1st respondent, as per commercial tariff is to be adjusted in future bills.

13. Mr.N.L.Rajah, learned Senior Counsel appearing for the 1st respondent would contend that the learned Single Judge should also have indicated the time within which the excess amount should be adjusted in future bills by the appellants. Mr.S.K.Rameshuwar, learned counsel appearing for the Board would contend that the 2nd appellant, who has been given the discretion to determine the number of installments would take a suitable decision in this regard.

14. Now that we have confirmed the entitlement of the 1st respondent to adjustment of the excess amount paid, we also deem it fit to fix the number of installments in which the excess amount, i.e., sum of Rs.20,50,682/- is to be adjusted by the Board in the future bills. Considering the facts and circumstances of the case, the appellants will adjust the excess amount, viz. a sum of Rs.20,50,682/- in twenty (20) equal installments commencing from the bill for June 2018, which is to be paid in July 2018.

15. In fine, the Intra Court Appeal is disposed of, confirming the directions issued by the learned Single Judge, but with a modification on the number of installments alone. There will be a direction to the appellants to adjust the excess amount of Rs.20,50,682/- in twenty (20) equal installments commencing from the bill for June 2018 payable in July 2018.

16. The Writ Appeal is disposed of with the above direction. Consequently, connected Miscellaneous Petitions are closed. There will be no order as to costs.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

jv

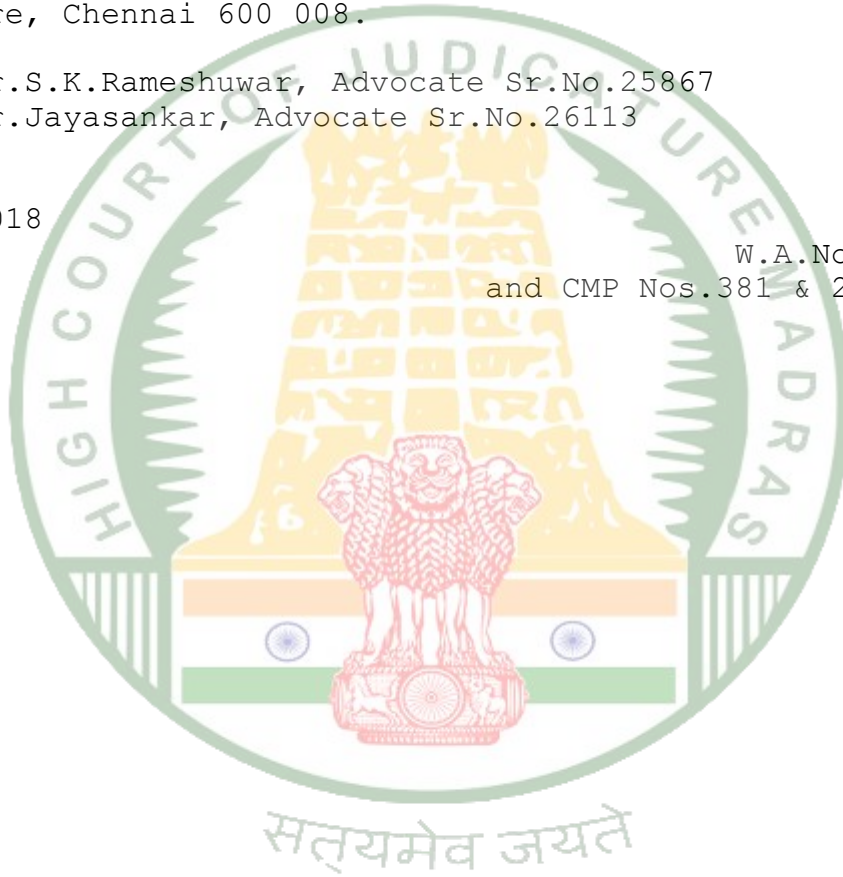
To

1. The Chairman
TANGEDCO,
Anna Salai, Chennai.
2. The Superintending Engineer,
Chennai EDC/South
TANGEDCO (formerly TNEB)
K.K.Nagar, Chennai 600 078.
3. The Electricity Ombudsman
19A, Rukmini Lakshmipathy Street,
Egmore, Chennai 600 008.

+1cc to Mr.S.K.Rameshuwar, Advocate Sr.No.25867
+1cc to Mr.Jayasankar, Advocate Sr.No.26113

MG(CO)
sm:20.4.2018

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