

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2018

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THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.23761 of 2010

and

M.P.No.1 of 2010

M/s.J.R.Smelters Pvt. Ltd.,
H.T.Sc. No.1778,
No.3, Manali Express Road,
T.K.P.Nagar,
Chennai 600 019
Rep. by its Director,
Pramod Singh

.... Petitioner

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, praying to issue a Writ of Certiorari, calling for the impugned Bill No.1778, dated 30.09.2010, in which a sum of Rs.2,64,532.80/- has been claimed as item No.13(b) extra levy for exceeding quota demand on the file of 3rd respondent and quash the same as illegal, arbitrary and against the orders in M.P.Nos.6, 9 and 17 of 2010 in D.R.P.No.9 of 2010 dated 7.09.2010 of the first Respondent.

For Petitioners : Mr.K.Seshadri

For Respondents : Mr.P.R.Dilipkumar

O R D E R

The petitioner is a private company involved in the manufacturing of Steel ingots. The industry has High Tension Service connection in H.T.Sc.No.1778 with maximum demand of 2750 K.V.A. to run the said industry. The company has been providing employment to nearly 300 workmen.

2.The 3rd respondent by proceeding dated 30.09.2010, had demanded a sum of Rs.2,64,532.80/- towards extra levy for exceeding quota demand at Rs.600/- per K.V.A. under item No.13 (b). The said demand dated 30.09.2010 is put to challenge before this Court in the present Writ Petition.

2.The petitioner raised several grounds in assailing the impugned order of demand dated 30.09.2010.

3.When the Writ Petition has been taken up for hearing, the learned counsel appearing for the petitioner would submit that the entire issue is covered by the orders passed by this Court on 29.06.2011 in W.P.No.12423 of 2011. The learned Judge of this Court has followed the decision of this Court dated 28.02.2011 in W.P.No.23116 of 2010 batch, wherein orders were passed covering the present issue raised in this Writ Petition.

4.At this stage, the learned counsel appearing for the respondent would admit that the issue is squarely covered by the orders passed in the above said Writ Petitions and both the learned counsels would submit that similar orders may be passed in this Writ Petition as well.

5.In view of the above submissions made by both the learned counsels and the orders passed by the learned single Judge in the aforesaid judgment, which reads as follows:

"12. In view of the above, following orders are passed:-

(1) Respondents are directed to issue suitable amended memo/circular to the field formation to amend the Memo dated 17.9.2010 to read as follows:-

Para I(ii) contained in Memo dated 17.9.2010 shall be deleted. In that place the following shall be inserted (i.e.) para 2(i) of the Memo dated 11.2.2011:-

"(i) The base energy will be the average of any three consecutive months during the base period, as per the choice of the consumer and to the advantage to the HT consumers."

Further Para I(v)(ii) of Memo dated 17.9.2010 shall be deleted and in that place the following shall be inserted (i.e.) para 2(ii) of the Memo dated 11.2.2011:-

"(ii) The base demand will be the demand recorded in any month during the base period, as opted by the consumer, limited to the sanctioned demand."

The revised memo/circular should be issued forthwith on receipt of a copy of this order.

(2) The Electricity Board shall also keep in mind the direction issued by the first respondent in Suo-moto Proceedings No.1 of 2009, more particularly para 16(13) and (16), which reads as follows:-

"16. After taking into account the submissions made by both the parties, the Commission directs as follows:-

(1) to (12) xxx

(13) From 1.11.2008, all captive users, whether thermal or wind, shall declare on the first day of every month, the energy proposed for captive use for the following month, which shall be considered as B and F for the purpose of energy quota and demand quota respectively in terms of the memo of TNEB dated 17.11.2008; the energy so declared shall roughly be the monthly average generation;"

(14) and (15) xxx

(16) If a consumer opts out of wheeling agreement and becomes an ordinary consumer, A and E referred in the memo dated 17.11.2008 shall be deemed to be the base energy and base demand."

and it will be implemented as may be applicable to the individual HT consumers as amended in para 4.4 of the order dated 7.9.2010 issued by Tamil Nadu Electricity Regulatory Commission.

(3) Insofar as the implementation of the memo/circular dated 17.9.2010 is concerned, each one of the petitioners have filed individual petitions challenging the same. In W.P.No.23166 of 2010 the Memo dated 17.9.2010 was stayed on 8.10.2010. In another W.P.No.22392 of 2010 the consequential fixation of base energy and base demand was challenged and it was stayed by this court on 30.9.2010. In effect the respondent authorities were restrained from proceedings in terms of Memo dated 17.9.2010 and that was clarified after the Minutes of the Meeting consequent to the meeting with the Hon'ble Deputy Chief Minister of State and the revised Memo/Circular has been issued on 11.2.2011. This clarification will enure to the benefit of the petitioners.

In view of the above, the respondent authorities are not entitled to demand the penalty insofar as the base energy and base demand is concerned on the basis of the memo/circular dated 17.9.2010 as the same is modified and clarified by the subsequent memo dated 11.2.2011. The meeting of the two consumer association with the Hon'ble Deputy Chief Minister of the State was to settle all issues relating to fixation of base energy and base demand which has been bothering both the department and HT Consumers for quite sometime. Hence, the effect of the revised memo dated 17.9.2010 (i.e.) to say the amended version, the levy of penalty based on old memo dated 17.9.2010 will have to be set aside.

(4) The Tamil Nadu Generation & Distribution Corporation Ltd., Technical Branch, represented by the Chief Engineer/Commercial or the third respondent as the case may be are directed to issue the revised memo/circular in accordance with the order passed by this Court to the field formation for the implementation as ordered by this Court.

(5) In view of the direction issued by this Court with regard to clarification to be issued, all demands raised with regard to base demand and base energy which is challenged in the individual writ petitions on and after 17.9.2010 are set aside. The penalty for exceeding base energy and base demand which is demanded in the bills are set aside and the respondents are directed to work out the claim, if any, in accordance

with the revised circular to be issued.

(6) All the 50 writ petitions stands ordered as above.
No costs. Consequently, connected miscellaneous
petitions are closed. "

this present Writ Petition is also ordered on the above terms
and the impugned order of demand No.1778, dated 30.09.2010, in
which a sum of Rs.2,64,532.80/- has been claimed as item No.13
(b) towards extra levy for exceeding quota by 3rd respondent is
hereby set aside. Consequently, connected miscellaneous
petition is closed. No costs.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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To

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+1 CC to Mr. K. Seshadri, Advocate sr 22470

W.P.No.23761 of 2010

SP(09/04/2018)