IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2018

CORAM

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.18731 of 2009
and
M.P.No.1 of 2009

Sree Rajeshwari Mills Ltd.
Represented by its Joint Managing Director,
Post Box No.41, R.S.Road,
Gudiyatham,
Vellore District. ..Petitioner

Vs

1.The Superintending Engineer,
Thirupathur Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Thirupathur-607 609
Vellore District.

2. The Assistant Executive Engineer,
Operation and Maintenance,
Urban/Gudiyatham,
Tirupathur Electricity Distribution Circle,
Gudiyattam-632 602
Vellore District. ..Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records relating to 2nd respondent's letter No.AEE/O & M/Gym/R.HT/D.Comp/2009 dated 17.08.2009 and 26.08.2009 and the consequent levy of penalty made in High Tension Bill dated 03.09.2009 and quash the same in so far as it relates to extra levy for exceeding peak hour limits.

For Petitioner : Mr. K.A.Ravindran

For Respondents : Mr.M.Varunkumar

O R D E R

The petitioner has filed the writ petition seeking for issuance of writ of certiorari, calling for the records relating to 2nd respondent's letter No.AEE/O & M/Gym/R.HT/D.Comp/2009 dated 17.08.2009 and 26.08.2009 and the consequent levy of penalty made in High Tension Bill dated 03.09.2009 and quash the same in so far as it relates to extra levy for exceeding peak hour limits.

2.The learned counsel for the petitioner would submit that the company was registered under the Companies Act, 1956 and manufacturing yarn. The petitioner company is unable to run the Industry Profitably. That apart in view of severe competition and liberalization of economic policies announced by the Union Government the Industry has suffered an irreparable loss which resulted shrinking of working capital and scarcity of liquidity resources. Hence this industry on account of this external problems suffered huge losses which has resulted even to the extent of closing the unit itself. In order the save the workers at large the company is at present doing job works. Further due to the shortage of Electricity Supply the company is working for two shifts only instead of three shifts per day and the petitioner Mill is under BIFR.

3.It is further submitted by the petitioner that the respondent electricity board, agreed to supply the petitioner company, the electrical energy at H.T. S.C. No.3 for the purpose of light and power by way of letter dated 28.06.2004 under sec.49 of the Electricity (Supply) Act,1948 and the petitioner and the respondent board executed a deed of agreement dated 28th June,2004 to supply the electrical energy thereby it has been agreed among other things that the petitioner company shall take electrical energy for a maximum demand not exceeding 500 KVA. The petitioner company complying with all the requirements under the Indian Electricity Act and the Electricity Supply Act and also Rules, Regulations and orders made thereunder from time to time and in case of any load sanctioned is found causing such voltage problems due to harmonies in the transmission network, the supply shall be disconnected till the industry carryout necessary corrective measures to avoid such problems.

4.The learned counsel for the petitioner further submitted that the respondent electricity board imposed 40% power cut from 26.05.2009 onwards and later on, the same was reduced to 30% from 04.06.2009 and thereafter the (further reduction of) power cut was further reduced to 20% from 13.06.2009 and a monthly demand and energy quota was fixed by way of the respondent letter dated 14.06.2009 and thereby the monthly demand and energy quota fixed for the petitioner company's H.T.S.C.No.3 is as follows:-

Base Demand	:471.20 KVA
Base Energy	: 249533 Kwth (Units)
Demand Quota	: 376.96 KVA

Energy Quota : 199626 Units

It was further clarified in the same communication that it is a restriction in the drawing of power during peak hours i.e.18 hours to 22 hours with permission to avail minimum power supply for lighting and security purposes during peak hour period not exceeding 5% of the quota fixed. Thus the minimum power supply for lighting and security purposes permitted to the petitioner company is 28.848 KVA during peak hours.

5.In view of restrictions imposed during evening peak hours, the respondent electricity board changed the then existing. T.O.D. Meter in the petitioner company's H.T.S.CX.T.O.D. meter with revised time slots, so as to record separately the demand and energy consumption during evening peak hours. Thereafter the respondent by way of communication dated 12.08.2009 informed that any peak hour violation would be penalized and the quota will be re-fixed for the next 48 hours and further the levy of excess demand and energy charge would be as per the TNERC order dated 28.11.2008.

6.The learned counsel for the petitioner further submitted that from April, 2009 a normal unit consumption of the petitioner company seems to be high when compared to the production of the petitioner company and that the meter was defective. Thereafter the petitioner company brought to the notice of the respondent and also the EE about the defective meter but the respondent and other officers have not done anything positively.

7.It is submitted that as stated supra, the meter was a defective one but the respondent simply ignored to rectify the problem inspite of bringing to the notice of the field officials of the respondent. In fact even after pointing out that in view of the peak hour restrictions, unless the respondent rectifies the defective meter system, the petitioner company would be put into great hardship and such a thing happened as envisaged by when one inspection was made on 17.08.2009 by the respondent officials that the maximum demand recorded in the metering was 32.7.2 KVA during the peak hour over and above the permitted minimum power supply of 28.848.KVA. Thus, the respondent issued letter dated 17.08.2009 to the petitioner company pointing out the excess demand recorded in the metering and ordered that the quota for the petitioner company for the next 48 hours was fixed at 28.848 KVA and also informed that the excess demand above the quota would be charged at a rate thrice the normal rate. As the quota refixed for the next 48 hours on both occasions at 28.84 KVA the petitioner company could not be operated with the refixed quota resulting in closure of the petitioner company for four days.

8.The learned counsel for the petitioner also contended that on 02.09.2009, during the weekly periodical inspection by the Electricity Board Officials, it was observed that the KWH consumption upto 4700 units recorded in C3 without using any load from 28.08.2009 to 02.09.2007 but whereas during the same period the D3 readings are recorded only 0.80 KVA. Hence the petitioner company was astonished by seeing this abnormal unit consumption without using any load during that period and the same has happened only because of the defective meter. This has happened for the last five months inspite of the same being pointed out by the E.B. Department officials for inspection but they simply ignored to rectify the problem. Thus, the petitioner company lost four days of production and loss up to 1.50 lakhs. Therefore, the petitioner company sent a representation dated 03.09.2009 to the respondent requesting the respondent to compensate the loss. Thereafter, the respondent fixed a new meter on 4th September, 2009 but the respondent has not produced a test record of the new meter which is mandatory as per Indian Electricity Rules,1956. It is mandatory that the metering cubical and Trivector meter and Peak hour meter have to be tested at a time. But on the other hand the respondent without conducting a complete test, fixed the meter.

9.The learned counsel for the petitioner contended that the respondent sent a demand dated 05.09.2009 whereby, the respondent added extra levy for exceeding limits during the evening peak hours of a sum of Rs.1,95,795/-. Aggrieved against the same the petitioner company has preferred this writ petition challenging the action of the respondent for the impugned extra levy contrary to the Electricity Rules and Principles of nature justice, stating that he has not other effective, speedy and alternative remedy other than invoking extra ordinary jurisdiction of this Hon'ble Court Under Article 226 of the Constitution of India for issue of Writ of Certiorari, calling for the records relating to the respondents letter communication dated 17.08.2009 and consequent bill dated 03.09.2009 and quash the same for the following among other grounds.

a). The action of the respondent is contrary to Rules 54 of the Indian Electricity Rules, 1956. Thereby no meter shall register at no load. Whereas the meter installed by the respondent had registered when there was no load.

b). The respondent is not maintaining a register of meters contemplated under Rule 57(5) of the Indian Electrics Rules showing the date of the last test, the error recorded at the time of the test, the limit of accuracy after adjustment and final test, the date of installation withdrawal, reinstallation etc., for the examination of the Inspector of his authorized representatives.

c). The respondent failed to take steps to repair or replace the defective meter for more than six months and the demand made on the strength of the defective meter is liable to be quashed.

d) The impugned demand is contrary to Section 26 of the Indian Electricity Act, as the amount of energy has to be ascertained by means of a correct meter. The respondent having changed the meter replacing the default meter, the respondent cannot make a demand on the strength of the amount of energy ascertained from a default meter.

e). When the petitioner company has raised a dispute that a meter is not correct, the respondent ought to have referred to decide the dispute to an Electrical Inspector as per Sec.26(6) of the Indian Electricity Act,

f). The levy of Penalty for exceeding quota is contrary to section 62 of Indian Electrical Act.2003

g). The Respondents have not given any opportunity to the Petitioner before levying the penalty.

h). The levy of penalty based on the T.N..E.R.C. Tariff is contrary to the Rulings made by this Hon'ble Court. This Hon'ble Court has held that imposing penalty charges on the violation of peak hour restriction is against the provisions of the T.N.E.R.C. Order and there is no provision for levy of penalty.

10.The learned counsel for the respondent submits that the allegations made in para 4 of the affidavit as that the TNEB imposed 40% power cut from 26.05.2009 is not correct. As a matter of fact, the TNEB announced 40% power cut from 01.11.2008 vide its letter dated 01.11.2008. the fact was communicated to all the HT consumers including the petitioner's company vide letter dated 06.12.2008. The power cut was reduced from 40% to 30% with effect from 26.05.2009 instead of 04.06.2009 as alleged by the petitioner. Subsequently, the power cut was reduced from 30% to 20% with effect from 14.06.2009 and the revised quota for demand and energy for the petitioner company was re-fixed as follows from 14.06.2009:-

Base Demand = 471.20 KVA
Base Energy = 249533 Kwth (Units)
Quota demand = 376.96 KVA
Quota Energy = 199626 Kwh (Units)

The periodicity for checking the consumption of demand and energy quota is fixed as weekly and the consumers who exceeds the quota demand/energy below 10% will be condoned two times in a month. If the consumer exceeds the quota fixed above 10% or below 10%, 3rd time in a month will be served with a 48 hours. Notice stating that the consumer has to avail supply for the lighting purpose only at 5% of demand quota fixed i.e., 28.848 KVA for the petitioner and also for the next 48 hours, from the time of issuing the notice. Penalty will be levied for exceeding the quota in addition to the 48 hours notice as per the letter dated 06.12.2008.

11.The learned counsel for the respondent further submits that, in view of the restriction imposed during peak hours, the existing 3 slot software in the existing TOD meters was changed to 5 slot software on 08.08.2009. The time schedule for recording consumption of demand and energy in old 3 slot and new 5 slot are as follows:-

Old 3 slot software

Slot No.1 = from 06.00 to 09.00 and 18.00 to 21.00 hours.

Slot No.2 = from 22.00 to 05.00 hours.

Slot No.3 = from 05.00 to 06.00, 09.00 to 18.00 and 21.00 to 22.00 hours.

New 5 slot software

Slot No.1 = from 06.00 to 09.00 hours.

Slot No.2 = from 18.00 to 21.00 hours.

Slot No.3 = from 21.00 to 22.00 hours.

Slot No.4 = from 05.00 to 06.00 and 09.00 to 18.00 hours.

Slot No.5 = from 22.00 to 05.00 hours.

The peak hour demand quota and energy quota was communicated to the petitioner company as 5% of the demand quota plus 1% of the consumers transformer capacity i.e., 5% of 376.96 + 1% of 1000 KVA DT = 18.848 + 10.00 i.e., 28.848 KVA and peak hour energy = 5% of quota energy + 1% of transformer capacity i.e., 5% of 249533+1% of transformer capacity 1000 KVA i.e., 9981.3+1200=11181.3 kwh (Units) vide letter dated 12.08.2009.

12.The learned counsel for the respondent further submits that the allegations made in para 6 of the affidavit are absolutely false. The petitioner's company has never given any complaint about the meter before 03.09.2009. Also there is no defect in the meter. The petitioner gave a complaint about meter only on 03.09.2009.

13.The learned counsel for the respondent further submits that, it is true that during weekly check reading on 17.08.2009 and 26.08.2009 the petitioner's company exceeded the peak hour demand quota by 13.4% and 19.24% respectively (i.e., more than 10%) and hence the petitioner company was served with a notice stating that the demand of the company will be 5% of quota demand+1% of the transformer capacity i.e., 28.848 KVA for lighting and security purpose only for next 48 hours from the time of issuing the notice as per the TNERC order.

14.The learned counsel for the respondent further submits that during the weekly check reading on 02.09.2009 it was found that the energy recorded in slot no.3 is 4716 units whereas the corresponding demand recorded in demand slot no.3 is only 0.8 KVA. The problem was reported to the MRT wing and they analysed the problem and sent the CMRI downloaded date to the Manufacturer of the meter (SECURE meters Ltd.,) and obtained their report. In the report it was stated that the jumping in the reading of slot no.3 is due to the software corruption and the other parameters recorded in the meter are in order i.e., the demand recorded by the meter is in order.

15.The learned counsel for the respondents further submits that the meter of the petitioner company was replaced with new L & T make TOD meter with 5 slot recording facility on 04.09.2009. The MRT wing of TNEB issued the copy of test record of the meter to the consumer (Manager of the petitioner company who was present at the time of meter replacement) and asked him to acknowledge the same. But the consumer refused to acknowledge the receipt of the meter test record and want to write some remarks in the test record of the MRT/TNEB. But there is no provision in the test record to write the consumer remarks and hence the consumer was asked to give a separate complaint. But the Manager of the petitioner company wantonly refused to sign in the meter test record and the same was sent to the consumer by post.

16.The learned counsel for the respondents further submits that the demand dated 05.09.2009 (CC charges for the month of 08/2009 and the penalty levied for exceeding the peak hour demand quota on 17.08.2009 and 26.08.2009) was prepared as per the rules and as per the order of TNERC dated 28.11.2008 and as per the notice sent to the consumer on 06.12.2008, 14.06.2009 and 12.08.2009 and it is legally valid. Hence the petitioner company is bound to pay the penalty as levied by the Board.

17.The learned counsel for the respondents further submits that the writ petition filed by the petitioner has to be summarily dismissed on the following grounds:-

A) The penalty levied was as per the TNERC order dated 28.11.2008 based on provision of Electricity Act 2003 and the based on the agreement made by the TNEB with the consumer.

B) The MRT Wing of TNEB maintaining the registers of meters having the date of last test, the % error recorded at the time of last test, the limit of accuracy etc. as per rules and periodical tests were carried out as per the rules.

C) The TNEB replaced the meter as soon as the energy reading jump in slot no.3 was found (reading taken on 02.09.2009 and meter replaced on 04.09.2009). The old meter was in order up to 28.08.2009 and TNEB is ready for third party test (Test by Central Government Lab as per TNERC supply code.)

D) As the meter was in order up to 28.08.2009 and no complaint has been received from the consumer till 03.09.2009 the demand recorded in the meter on 17.08.2009 and 26.08.2009 are correct and penalty levied is in order.

E) When the petitioner company has raised a dispute that the meter was not correct it was tested and replaced by TNEB immediately.

F) The levy of penalty is as per the order of TNERC dated 28.11.2008.

G) The petitioner company has not availed the remedies available in TNEB i.e., the petitioner has not preferred any appeal before the appellate authority of the Consumer Grievance Redressal Forum as per the Electricity Act, 2003.

H) The levy of penalty is not contrary to the rulings of the Hon'ble High Court of Judicature at Madras. The penalty was levied as per the Board proceedings, TNERC orders and the Agreement entered between the petitioner's company.

18.It is seen from the records and the materials perused by this Court that the fact remains unanswered as that there was a defect in the meter. This Court is not in a position to reevaluate whether the said defect was correct or not. Since there is different report issued by the respondents and those records were not produced before this Court, from the endorsement, it could be found that the defective meter has been rectified and new meter has been brought it into the petitioner's company and this Court to remand back the matter to permit the petitioner to approach the authorities by giving fresh representation or application, so that the respondents can consider the same and pass an order after perusing the records. Since the disputed facts regarding the capacity of the meter cannot be evaluated by this Court, it is for the authorities to consider the same.

19.The petitioner is at liberty to give representation or petition before the authorities concerned and the authorities are directed to give an opportunity to the petitioner as per the law and as per the rules existing in Tamilnadu Electricity Board and the respondents are directed to pass an order after affording an opportunity to the petitioner within a period of six months from the date of receipt of such representation from the petitioner. The representation should be filed before the authorities within four weeks from the date of receipt of a copy of this order.

20.Accordingly, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

AT

To

1.The Superintending Engineer,
   Thirupathur Electricity Distribution Circle,
   Tamil Nadu Electricity Board,
   Thirupathur-607 609
   Vellore District.

2. The Assistant Executive Engineer,
   Operation and Maintenane,
   Urban/Gudiyatham,
   Tirupathur Electricity Distribution Circle,
   Gudiyattam-632 602
   Vellore District.

+1cc to Mr.M.Varunkumar, Advocate SR.No.53346

W.P.No.18731 of 2009

GJ II(CO)
GMY(27/02/2019)