

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.49847 of 2006

S.Kalarajan

... Petitioner

Vs.

1.Superintending Engineer,
T.N.E.B.,
Coimbatore Electricity
Distribution Circle North
Coimbatore 641 012.

2.The Chairperson
Consumer Grievance Redressal Forum,
Coimbatore Electricity
Distribution Circle North
Coimbatore 641 012.

3.R.Rajupandi

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the orders dated 08.11.2006 passed by the third respondent in O.P.No.14 of 06 and to quash the same and directing the first respondent to refund or adjust the amounts in the incoming regular current consumption charges bills the excess amount collected under Tariff III (Commercial) instead of Tariff I (Industrial) from 15.11.2000 the date of effecting of service connection till November, 2005.

For Petitioner : Mr.S.Sairaman
for M/s.A.Rajachandramohan
For Respondents : Mr.S.K.Rameshwar for R1

O R D E R

This writ petition has been filed seeking issuance of Writ of Certiorarified Mandamus to call for the orders dated 08.11.2006 passed by the third respondent in O.P.No.14 of 2006 and to quash the same and directing the first respondent to refund or adjust the amounts in the incoming regular current consumption charges bills, the excess amount collected under

Tariff III (Commercial) instead of Tariff I (Industrial) from 15.11.2000 the date of effecting of service connection till November, 2005.

2.The case of the petitioner is that the petitioner is the Managing Partner of M/s.Sree Vani Corporation. The petitioner applied for electricity service connection for a load of 110 KVA to his Industry and the first respondent sanctioned the demand and entered into an agreement on 27.08.1999 and service connection was effected on 15.11.2000 with a sanctioned demand of 110 KVA plus 15.25 HP (Power) and for lighting. The service connection was given under Tariff III (Commercial) from the date of connection.

3.The petitioner further states that when he came to know that his Company being a manufacturing unit, the service connection has to be treated under Tariff I Industrial connection, made a representation dated 23.11.2005 to the first respondent and requested the first respondent to change the Tariff from Tariff III (Commercial) to Tariff I (Industry) along with copies of the necessary documents. The said request was accepted by the first respondent and the revised bill was issued for the Month of November, 2005 and the excess amount of Tariff revision from Tariff III Commercial to Tariff I for the part 9/05 to 11/05 was deducted accepting that the petitioner's service connection comes under Tariff I and billed under the same Tariff III (Commercial).

4.The petitioner further states that on 13.01.2006, the petitioner made another representation requesting the Authorities that as per the existing Rules, the H.T.Tariff though billed at commercial rate initially has to be changed to Industrial Tariff on attaining 15% of the sanctioned demand without waiting any request from the consumers. The petitioner specifically requested that they have applied for industrial supply and also used the energy for more than 15% of the sanctioned demand from the date of effecting of service connection and to deduct the excess levy in the future current consumption charges and also produced the proof for the production statements abstract from November, 2000 to April, 2001.

5.The petitioner further states that he has preferred a complaint before the Consumer Grievances Redressal Forum, Coimbatore North District Circle, dated 17.02.2006 against the first respondent Board with regard to change of HT Tariff from Tariff III to Tariff I with retrospective effect and also to refund the excess amount billed under Tariff III. The Consumer Grievance Redressal Forum directed the licensee to

refund the amount collected in excess of HT Tariff under commercial Tariff from the date on which 15% of sanctioned demand attained from the date of service effected and further directed to comply the order within 30 days.

6. Aggrieved by the same, the first respondent filed O.P.No.14 of 2006 before the third respondent Ombudsman. The third respondent Ombudsman vide order dated 08.11.2006 allowed O.P.No.14 of 2006. Challenging the said order, the petitioner has filed this writ petition.

7. Heard both sides.

8. Perusal of the impugned order discloses that the third respondent Ombudsman had framed four issues. The third respondent Ombudsman though upheld that the Board Proceedings dated 31.05.1997 envisages automatic conversion of commercial Tariff into industrial Tariff on attaining 15% of the sanctioned demand even without waiting for the request from the consumers, set aside the order of the Forum, in ordering refund of the amount collected in excess of HT Tariff under commercial Tariff from the date on which 15% of the sanctioned demand attained from the date of service effected, on the ground that the said request was made after a lapse of five years, which is not permissible one.

9. The relevant portion of the order dated 08.11.2006 passed by the third respondent reads as follows:

"I deem it fit to observe that though the Forum was correct in holding that the Board Proceedings Dt.31-5-97 envisages automatic conversion of commercial tariff into industrial tariff on attaining 15% of the sanctioned demand even without waiting for the request from the consumers, the question of law with regard to the law of limitation and waiver of right of claim raised by the appellant before the Forum cannot be ignored. The aforesaid BP being an executive instruction only cannot prevail over the law of limitation which is applicable. The judgments of the Hon'ble Supreme Court are very clear on this issue of doctrine of waiver of rights and I have no hesitation in holding that the respondent has lost his right to claim for differential tariff in view of his prolonged silence. Hence, I modify the order of the Lower Forum and hold that the order of the Lower Forum in ordering refund of the amount collected in

excess of HT tariff under commercial tariff from the date on which 15% of the sanctioned demand attained from the date of service effected is set aside. The appeal is allowed. No costs."

10. Admittedly, the representation for change of Tariff from Tariff III (Commercial) to Tariff I (Industry) was made on 23.11.2005 while the claim for refund of the excess amount collected under Tariff III (Commercial) instead of Tariff I (Industrial) or adjusting the same in the incoming regular current consumption charges bills was made

from 15.11.2000 the date of effecting of service connection. There is a delay of five years on the part of the petitioner and there is no reasonable justification given by the petitioner except to state that the relevant Rule was not known to him and immediately after coming to know about the said Rule, he made the representation for change of Tariff.

11. Admittedly, Rule 19.16 imposes condition for the consumer who want revision of bills for low tension service connections, defective meter, defect metering arrangement, incorrect application of tariff wrong billing etc., The petitioner's case is coming under the category of wrong billing and he must have made application within three years from the date of billing. Admittedly, the date of billing was of the year 2000. However, he made the claim only in the year 2005. Hence, the petitioner's case cannot be considered, in view of the above Rule 19.16 of the terms and conditions for supply of electricity.

12. There is no proper or plausible explanation given by the petitioner for the delay of five years in making the representation for change of Tariff, which is not acceptable one. In the absence of any proper explanation for the delay of five years in making the representation, I do not find any error or illegality in the order passed by the third respondent.

13. Hence, this writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-ix)

//True Copy//

Sub Assistant Registrar

msm/pri

To

1.The Superintending Engineer,
T.N.E.B.,
Coimbatore Electricity
Distribution Circle North
Coimbatore 641 012.

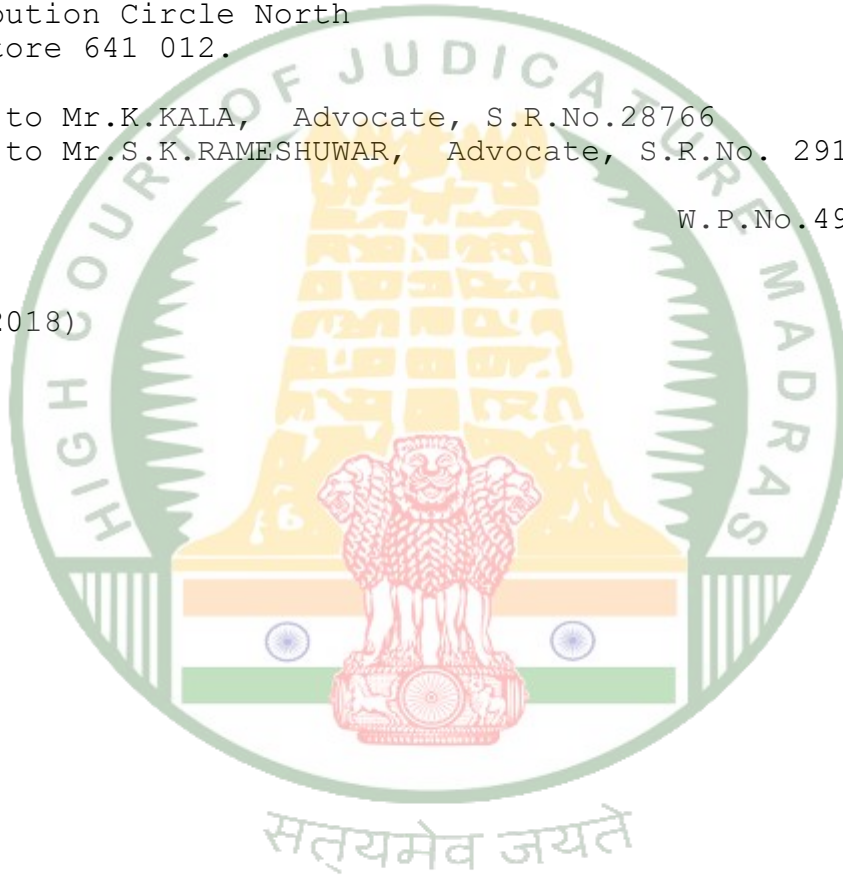
2.The Chairperson
Consumer Grievance Redressal Forum,
Coimbatore Electricity
Distribution Circle North
Coimbatore 641 012.

+1cc to Mr.K.KALA, Advocate, S.R.No.28766

+1cc to Mr.S.K.RAMESHUWAR, Advocate, S.R.No. 29135

W.P.No.49847 of 2006

NM(CO)
TR(22/06/2018)



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