



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.03.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

WP (MD) No.4531 of 2018andWMP (MD) No.4631 of 2018

M/s.Ind Barath Energies
(Thoothukudi) Limited,
Eppodunvendran Village,
Ottapidaram Taluk,
Thoothukudi District
Tamil Nadu
rep.by T.S.Das

... Petitioner

Vs.

1.The Superintending Engineer,
Tamil Nadu Generation and
Distribution Corporation Ltd.,
Tuticorin, Electricity Distribution Circle,
Tuticorin - 2.

2.M/s.Trishul Electric and Powergen Ltd.,
No.180, Race Course Road,
Coimbatore - 641 018.

... Respondents

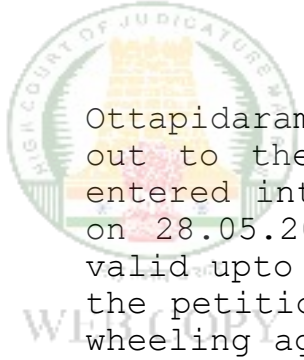
Petition filed under Article 226 Constitution of India to issue a Writ of Certiorari call for the records leading to the impugned notice Lr.No./SE/TEDC/DFC/AO/REV/AS/WM/F.Audit/ D 124/2017-18 dated 17.02.2018 issued by the first respondent and quash the same as unsustainable in law.

For Petitioner	: Mr.Anand Venkatesh for Mr.S.Anand Chandrasekar
For Respondents	: Mr.V.Manishankar Additional Advocate General assisted by Mr.S.M.S.Johny Basha

ORDER

This writ petition has been filed challenging the demand notice issued by the first respondent directing the petitioner to pay a sum of Rs.11,53,28,546/- towards loss of revenue to the first respondent, based on the alleged bogus energy statement given by the petitioner.

<https://hcservices.ecourts.gov.in/hcservices/> 2.According to the petitioner, the petitioner is having a 20 MW coal based power plant at Eppodhumvendran Village,

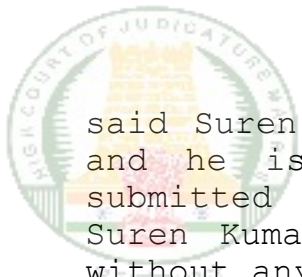


Ottapidaram, Tuticorin District, and the power plant has been leased out to the second respondent herein. Earlier, the petitioner has entered into an Energy Wheeling Agreement with the first respondent on 28.05.2016 for captive use and the above Wheeling Agreement is valid upto 31.03.2019 and in accordance with the Wheeling Agreement, the petitioner is supplying energy to the captive users. As per the wheeling agreement, the Superintending Engineer, TANGEDCO, Tuticorin has taken joint meter reading in the presence of the petitioner. For the month of November, 2016, the meter reading reveals '0' quantity of units and for the month of December, 2016, the meter reading reveals that 8,58,500 units were generated and exported from the power plant and it was adjusted towards the captive users. That being the position, now, the first respondent, has issued the present impugned notice dated 17.02.2018, alleging that the actual adjustment of energy against the captive users namely, M/s.Sakthi Auto Component Ltd., and M/s.Apollo Tyres Ltd., were 63,61,898 units for the month of November, 2016 and 69,29,998 units for the month of December, 2016 was actually adjusted. Hence, the first respondent directed the petitioner to pay a sum of Rs.9,17,73,386/- towards electricity charges and Rs.2,26,77,990/- towards penalty, totalling Rs.11,53,28,546/-. Now, challenging the above demand notice, this writ petition has been filed.

3.The learned counsel appearing for the petitioner would contend that the impugned notice has been issued without conducting any enquiry whatsoever and without giving any particulars regarding the alleged bogus claim made by the petitioner. Apart from that, the joint meter reading taken by the authorities reveals that in the month of November, 2016, it was only '0' quantity of units, whereas in the month of December, 2016 the meter reading reveals 8,58,500 units and a certificate has also been issued to that effect. That being so, now, all of a sudden, without any enquiry whatsoever, the respondents cannot demand exorbitant amount, more than eleven crores. Hence, the impugned notice has been issued totally in violation of principles of natural justice and the same is liable to be set aside.

4.Per contra, the learned Additional Advocate General appearing for the respondents submitted that earlier, the first respondent after coming to know about the bogus claim made by the petitioner, has issued a notice dated 14.02.2018 to the petitioner, directing the petitioner to pay the said amount. On receipt of the said notice, one Mr.Suren Kumar, an authorised signatory of the petitioner company has appeared before the first respondent and has given a letter of undertaking stating that the petitioner is willing to pay the entire amount. Only based on the above undertaking given by the petitioner's authorised signatory, the first respondent, without conducting any enquiry, issued the demand notice.

5.The learned counsel appearing for the petitioner seriously disputed the letter of undertaking said to have given by Mr.Suren Kumar, and he has also filed an affidavit stating that the



said Suren Kumar is not at all working in the petitioner's company and he is not the authorised signatory of the petitioner and submitted that based on the alleged undertaking given by the said Suren Kumar, the first respondent cannot issue the demand notice without any enquiry whatsoever.

WEB COPY

6.I have heard the submissions made on either side and perused the entire materials available on record carefully.

7.Admittedly, the impugned notice has been issued without conducting any enquiry whatsoever. The reason stated by the first respondent is that earlier, for the notice dated 14.02.2018 sent by the first respondent to the petitioner, an authorised signatory of the petitioner company has filed an undertaking letter admitting to pay the entire amount. In the above circumstances, as the petitioner himself accepted to pay the amount, the impugned notice has been issued. However, now, the said letter is disputed by the petitioner. As the alleged letter of undertaking is now disputed by the petitioner, without going into the rival contention with regard to the alleged undertaking letter at this stage, admittedly, the demand has been made without any show cause notice or without any enquiry, I am inclined to set aside, the order of the first respondent, and to remand the matter back to the first respondent to conduct an enquiry after giving an opportunity to him.

8.In fine, this writ petition is allowed. The impugned demand notice issued by the first respondent dated 17.02.2018 is set aside and the matter is remanded back to the first respondent. The first respondent is directed to issue show cause notice to the petitioner within a period of two weeks from today. Thereafter, the petitioner is directed to raise objections, if any, within a period of two weeks thereafter. After receipt of such objections, the first respondent is directed to conduct enquiry and pass orders on merits and in accordance with law. No costs. Consequently, WMP(MD)No.4631 of 2018 is closed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

The Superintending Engineer, Tamil Nadu Generation and
Distribution Corporation Ltd., Tuticorin,
Electricity Distribution Circle, Tuticorin - 2.

+1CC to Mr.S.Anand Chandrasekar, Advocate, SR.No. 53061

+1CC to Mr.S.M.S.Johnny Basha, Advocate, SR.No. 52742

WP(MD)No.4531 of 2018