



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.(MD) No.18622 of 2018

and

W.M.P.(MD) No.16488 of 2018

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M/s.Thiagarajar Mills Pvt Limited
rep.through its Manager (Administration)
G.Sabapathi
Kappalur, HTSC No.10
Madurai

... Petitioner

vs.

1.The Superintending Engineer
The TamilNadu Generation and Distribution
Corporation Ltd.
Madurai Electricity Distribution Circle
Madurai-7

2.The TamilNadu Generation and Distribution
Corporation Ltd,
rep.through its Chairman
Anna Salai, Chennai-2

3.The Chief Engineer/PPP
6th Floor Easter Wing
144, Anna Saai, Chennai-600 002

4.The Chief Engineer
Grid Operation
TANTRANSCO
144, Anna Salai
Chennai-600 002

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records pertaining to the impugned demand notice issued by first respondent in Lr.No.SE/MEDC/MDU/DFC/HT/AS/F.HT.SC.No.10/D.No.268/18, dated 09.08.2018, as revised vide notice in Lr.No.SE/MEDC/MDU/DFC/HT/AS/F.HT.SC.No.10/D.No.268-I/18, dated 18.08.2018 and quash the same.



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For Petitioner : Mr.T.Mohan
for Mr.AL.Kannan

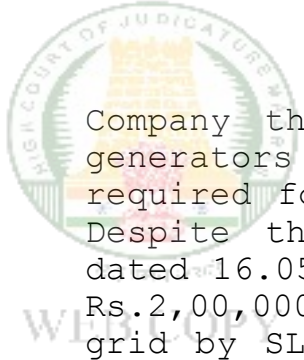
For Respondents : Mrs.S.Srimathy
for Mr.S.M.S.Johnny Basha

O R D E R

The petitioner - Company is a Private Limited Company established in 1936 and it was involved in manufacturing of cotton yarn. It had obtained approval for parallel operation with the Tamil Nadu Electricity Board's grid operation of captive Generator set with 3.08 Mega Watts and the approval was granted by the Government of Tamil Nadu vide G.O.Ms.No.135, Energy (B1) Department, dated 28.06.1999. According to the said Government Order, the power generated by usage of parallel operation shall be metered separately for both energy and demand. Based on the same, a Bi-Directional Meter was fixed to calculate the import and export of energy. According to the petitioner - Company, the said facility was used by them only occasionally. From 2008 onwards, the petitioner - Company was using their own generator and the power being generated was by using furnace oil and the same was not connected to the grid attached to TANGEDCO.

2. In 2014, Intra State Open Access Regulations were introduced by the Tamil Nadu Electricity Regulatory Commission (TNERC) providing for Captive Generating Plants (CGPs) and Option for parallel operation and for availing such facility, operation charges of Rs.30,000/- per month was made as a condition. The said charge was made applicable only to the generators availing parallel operation with grid, without availing open access. Although the Intra State Open Access Regulations were introduced in 2014, no charge was levied on the part of the petitioner - Company, since it was not made applicable to them. According to the petitioner - Company, they had orally informed the Authority concerned that the Company was not operating parallel operation and requested them to remove the Bi-Directional Meter, which was erected in the year 1999. On the basis of their request, it appears that the Bi-Directional Meter was also removed and in that place, an Uni-Directional Meter was fixed on 10.09.2015, for the purpose of calculating the power used by the petitioner - Company.

3. While the matter stood thus, on 06.09.2017, the petitioner - Company received a communication from the third respondent to confirm the availability of ABT Meter with AMR facility at the petitioner's plant and take appropriate action for transmission of data through State Load Dispatch Centre (SLDC) in terms of the directions of the Tamil Nadu Electricity Regulatory Commission. At this juncture, the third respondent informed the petitioner -



Company that the above said facility was necessary only if the generators were connected with the grid and the same was not required for the generators, which were not connected to the grid. Despite the reply, the fourth respondent issued a communication dated 16.05.2018 directing the petitioner - Company to pay a sum of Rs.2,00,000/- to TANGEDCO for monitoring the generators connected to grid by SLDC, failing which, such amount would be included in the next HTCC Bill without further intimation.

4. According to the petitioner - Company, their reply was not properly considered by the first respondent and in the said circumstances, the petitioner - Company was constrained to approach this Court by filing W.P.(MD) No.11645 of 2018 challenging the order, dated 16.05.2018. However, this Court, without considering the larger relief prayed in the writ petition, disposed of the writ petition on 31.05.2018 by directing the third respondent to consider the reply of the petitioner dated 20.05.2018 and pass appropriate orders on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner - Company, within a time stipulated therein.

5. In pursuance of the above direction, an enquiry was conducted and the petitioner - Company was directed to appear for enquiry on 29.06.2018 and it appears that the petitioner - Company had also submitted a written explanation stating that they were not required to have ABT Meters with AMR facility, since their generators were not connected to the grid of TANGEDCO.

6. On conclusion of the enquiry, the first respondent has passed an order, dated 09.08.2018, directing the petitioner - Company to pay a sum of Rs.46,20,000/- towards parallel operation charges for the period from 07.05.2014 to 13.06.2018, which proceedings stated to be revised by the subsequent proceedings dated 18.08.2018 directing the petitioner - Company to pay a sum of Rs.60,00,000/- for the same period and for the same reason. The said proceedings, dated 09.08.2018 and 18.08.2018, are put to challenge in this writ petition.

7. Mr.T.Mohan, learned counsel appearing for the petitioner - Company would, at the outset, submit that this Court has disposed the earlier writ petition in W.P.(MD) No.11645 of 2018 on 31.05.2018 in respect of the installation of ABT Meters, for which by an earlier proceedings, dated 16.05.2018, the petitioner - Company were directed to pay a sum of Rs.2,00,000/- and the subject matter of enquiry was only in respect of the said issue before the first respondent. Therefore, the petitioner - Company had confined their explanation only in respect of the said issue and not with regard to the so-called usage of parallel operation for the period in question. Strangely, while holding an enquiry in respect of the other issue, the first respondent has passed the impugned proceedings imposing a huge amount of Rs.60,00,000/- towards parallel operation charges for the period from 07.05.2014 to



13.06.2018.

8. The learned counsel for the petitioner would submit that admittedly, the petitioner - Company was not using parallel operation from 2008 onwards and precisely for that reason no charges were levied for such operation. After coming into force of Intra State Open Access Regulations in 2014, the petitioner had informed the official concerned about the non-usage of parallel operation and the information given to the official concerned was also acknowledged for the removal of Bi-Directional Meters. That being the case, without giving any opportunity to the petitioner - Company to explain their stand with regard to the present issue raised in this writ petition, the impugned proceedings came to be issued by the first respondent in violation of the principles of natural justice and in arbitrary and unreasonable manner.

9. Mrs.S.Srimathy, learned counsel, representing Mr.S.M.S.Johnny Basha, learned Standing Counsel, who takes notice for the respondents, on instructions, would submit that the petitioner - Company was given an opportunity of personal hearing in pursuance of the directions issued by this Court in the earlier proceedings in W.P.(MD) No.11645 of 2018. In any event, the representation given by the petitioner - Company in regard to the cancellation of parallel operation of captive generator set was only dated 12.06.2018, which was received by the Head Quarters only on 14.06.2018. Therefore, the respondents have calculated the charges for the usage of parallel operation from 07.05.2014 to 13.06.2018 and originally it was calculated at the rate of Rs.92,400/- X 50 months and thereafter, it was revised to Rs.1,20,000/- X 50 months and arrived at the total figure of Rs.60,00,000/-. Therefore, there is nothing wrong in the demand made by the respondents and no intervention of this Court was called for in the said circumstances.

10. At this juncture, the learned counsel for the petitioner - Company would submit that the petitioner - Company would be satisfied if the matter is remitted back to the first respondent for fresh consideration, after giving due opportunity of personal hearing to them in regard to the issues projected in this writ petition i.e. usage of parallel operation by the petitioner - Company. The learned counsel for the petitioner - Company would once again emphasis the fact that opportunity of personal hearing was given to the petitioner - Company only in respect of the other issue and unfortunately, without giving any opportunity to the petitioner - Company to submit their legitimate explanation, the impugned proceedings came to be issued demanding a huge amount towards parallel operation charges. Therefore, the learned counsel for the petitioner - Company would submit that the principles of natural justice demand that the petitioner - Company be provided reasonable and adequate opportunity to putforth their case, before such demand is crystallized in the form of formal proceedings by the first respondent.



11. Considering the submissions made by the learned counsel for the petitioner - Company, this Court is of the view that from the facts and materials as disclosed and made available, there is force in the contentions put forth by the learned counsel for the petitioner - Company that no due opportunity was given to the petitioner - Company before passing the impugned orders. All the petitioner - Company wants in the present case is that they must be given reasonable opportunity to put forth their case before the first respondent by granting an opportunity of personal hearing and also by giving an opportunity of submitting written explanation and on such opportunity being provided, it is always open to the first respondent to take a reasoned decision on the basis of the materials and explanation to be made available before him. No prejudice would be caused to the respondents, if the petitioner - Company is afforded an opportunity to come up with their explanation before any decision is taken in this regard.

12. For the above said reasons, this Court, in the fitness of things, disposes of the writ petition at the admission stage itself with the following directions.

- i. The impugned demand notice issued by first respondent in Lr.No.SE/MEDC/MDU/DFC/HT/AS/F.HT.SC.No.10/D.No.268/18, dated 09.08.2018, as revised by the first respondent vide notice in Lr.No.SE/MEDC/MDU/DFC/HT/AS/F.HT.SC.No.10/D.No.268-I/18, dated 18.08.2018, are hereby set aside.
- ii. The matter is remitted back to the first respondent for fresh consideration, after affording due opportunity of personal hearing to the petitioner - Company.
- iii. It is always open to the petitioner - Company to submit a written explanation before the first respondent when an opportunity of personal hearing is granted to them.
- iv. The first respondent is directed to consider the entire issues on the basis of the enquiry to be conducted in this connection, after giving due opportunity to the petitioner - Company as stated above and pass appropriate orders on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order.
- v. The petitioner - Company is also directed to co-operate with the enquiry to be conducted by the first respondent on the issues projected in this writ petition.



13. The writ petition stands allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar(CS-I)

Sub Assistant Registrar(CS-IV)

+1CC TO Ms.S.SRIMATHY, ADVOCATE IN SR.NO.80726.

+1CC TO MR.AL.KANNAN,ADVOCATE IN SR.NO.80236.

KRK

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