

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.10649 of 2007

M.Duraisamy Chettiar

..Petitioner

vs

1. The Superintending Engineer
TEDC/Tuticorin

2. The Chairman
Tamil Nadu Electricity Board
K.R.R.Maligai, 800 Anna Salai
Madras-2.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in Proceedings No.Lr.No.4667/SE/TEDC/TTN/AO/REV/HT SEC/A.1/F.KASA /2007-1 dated 05.03.2007 and quash the same as illegal, incompetent and to direct the respondents to refund the amounts of Rs.1,85,000/- together with interest at 18% p.a. On and from the date of its deposit.

For Petitioner : Mr.V.Lakshminarayan

For Respondents : Mr.S.K.Rameshwar

O R D E R

The petitioner has filed the present Writ Petition for issuance of a Writ of Certiorari, to call for the records on the file of the respondent in Proceedings No.Lr.No.4667/SE/TEDC/TTN/AO/REV/HT SEC/A.1/F.KASA/2007-1, dated 05.03.2007 and quash the same as illegal, incompetent and to direct the respondents to refund the amounts of Rs.1,85,000/- together with interest at 18% p.a. on and from the date of its deposit.

2. The case of the petitioner is that he is engaged in manufacture of tiles, wire cut bricks etc. The petitioner has obtained high tension service connection from the Tamil Nadu Electricity Board in the year 1972. In terms of the agreement,

energy was made available to the factory. The payment in respect of HT supply comprised of two parts. The 1st part relates to the recorded demand and the other relates to consumption based on the unit of energy consumed. Subsequently, the tariff notification in G.O.3042 dated 23.12.1986 did not provide for minimum charges payable by the HT consumers. No minimum charge was fixed under the tariff and no such valid demand could be made in the event of consumer not consuming any energy. However, B.P.Ms.No.1890 dated 27.11.1986 had fixed Rs.10/- per KVA for purpose of working the minimum charges in case of "Nil" consumption. For disconnecting period, the charges were fixed at Rs.55/- per KVA and 0.75 paise per unit by the respondent board. However, the respondent board arrived at a wrong calculation in the impugned order dated 22.06.1990, demanding at Rs.93,074.25. As against the order, the petitioner had filed a writ petition in W.P.No.4206 of 1991. This Court, by its order dated 07.06.2001, set aside the impugned proceedings and remanded the matter back to the authorities for issuing a fresh calculation.

3. On 21.06.2001, the impugned order was passed by the respondent board and the petitioner was called upon to pay Rs.2,53,221.96. Credit was given to the amounts paid in pursuance of orders of Court amounting to Rs.1,80,000/- and then the petitioner was called upon to pay Rs.1,47,036.17, which includes the demand made by the Chief Engineer on 01.02.1991 amounting to Rs.90,194.25.

4. On 20.07.2001, the petitioner had sent a letter to the Superintending Engineer, wherein it was stated that as per the order of the High Court, Chennai, the impugned order No.932/E2/F29/90/5 dated 01.02.91 of the Chief Engineer Distn Madurai has been quashed and direction was issued a fresh notice of demand, calculating the liability for Nil consumption and disconnected period, as per the rate that existed prior to 01.02.1989.

5. On 29.08.2001, the 1st respondent had passed an order calling upon the petitioner to pay Rs.1,22,370/-. The approach of the respondent appears to be oblivious of accounting and had failed to take into consideration, the material facts before placing a demand on the petitioner. The petitioner had challenged the order of the respondent by filing a writ petition in W.P.No.40448 of 2002. This Court, by its order dated 16.12.2006, directed the respondent board to issue a fresh order within one month from the date of receipt of a copy of the Order. Therefore, the present impugned order is passed. Challenging the same, the present writ petition is filed.

6. The learned counsel for the petitioner would submit that the provisions contained in B.P.Ms.No.1890, dated 27.11.1976

providing for the payment of minimum charges of Rs.10/- per KVA would apply both in relation to the period when the service was alive, when there was "nil" consumption and when it was under disconnection. The learned counsel would further submit that the earlier direction was issued in W.P.No.4206 of 1991, makes it clear that the authority was directed to issue a fresh notice of demand calculating the liability of the petitioner with respect to the minimum charges or Nil consumption or for the disconnected period as per the rates that existed prior to 01.02.1989. However, without considering the directions issued by this Court, the respondent has mechanically arrived at a wrong calculation that the petitioner has to pay a sum of Rs.1,27,573/- to the respondent board, at the rate of Rs.55/- per KVA and 75 paise per unit as per G.O.Ms.3042 dated 23.12.1986, which is an unsustainable one. The electricity board has not applied its mind to while calculating the amount, as the petitioner has already paid a sum of Rs.2,14,848/- to the electricity board. Therefore, the present writ petition is filed to quash the impugned order.

7. The learned counsel for the respondent would submit that the petitioner has also been informed that the revised tariff rates which came to be amended with effect from 01.02.1989 do not apply for the billing from 11/1986 to 04/1988. The disputed period prior to 01.02.1989 and the revised tariff rates came to be amended with effect from 01.01.1987 and the same has been applied for the billing of the above period. As per the revised Tariff rate, which came to be amended with effect from 01.01.1987, the rate of Rs.55/- per KVA and 0.75 paise per unit have been applied for billing for the live period and Nil consumption @ Rs.10/- for D.C. Period for full month has been applied for the periods during which the petitioner HT service was under disconnection. Accordingly, the petitioner was requested to make payment of Rs.1,27,537/- (Rupees One Lakh Twenty Seven Thousand Five Hundred and Thirty Seven only) being the arrears of current consumption charges and belated payment surcharge for the period upto 05/2001 on or before 24.03.2007.

8. A perusal of the records clearly shows that the original impugned order was passed in the year 1990 and the said order was challenged before this Court, by way of filing in W.P.No.4206 of 1991. This Court, by its order dated 07.06.2001, has remanded the matter back to the authority and directed the authority to issue a fresh calculation with respect to the minimum charges or NIL consumption or for the disconnected period as per the existed prior to 01.02.89. The undisputed facts are that the petitioner has already paid a sum of Rs.19,848 as per letter F-63/D436/89 dated 26.07.89 and another sum of Rs.15,000/-. As per order in W.M.P.No.6469 of 1991 in W.P.No.4201 of 1991 and Rs.1,80,000/- for payment made through

Court on 15.03.01 and 12.04.01. The petitioner has already paid a total sum of Rs.2,14,848/- to the respondent board. Therefore, the respondent board has not applied its mind while passing the impugned order and they have arrived at a wrong calculation for BPSC. The impugned order clearly shows that BPSC for the period 5/90 to 1/2000 at 2% per month for Rs.2,10,844/- and BPSC for the period from 2/2000 to 5/2001 at the rate of 1.5% per month for Rs.21,625 is unsustainable one. Therefore, the order of the respondent board dated 05.03.2007 is liable to be set aside. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

ssb

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Superintending Engineer
TEDC/Tuticorin
2. The Chairman
Tamil Nadu Electricity Board
K.R.R.Maligai, 800 Anna Salai
Madras-2.

+lcc to Mr.S.K.Rameshuwar, Advocate, SR.No.55547
+lcc to Mr.V.Raghavachari, Advocate, SR.No.55366

W.P.No.10649 of 2007

Kak(16/09/2019)

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