

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.25747 of 2003
and
W.P.M.P.No.31608 of 2003 &
W.M.P.No.22631 of 2017

BMR Industries Ltd.,
(Formerly known as
Classwin Industries Ltd.)
having Registered Office at
Flat No.S.10-TNHB Complex
180 Luz Church Road, Chennai-4
...Petitioner

Vs.

1.Tamil Nadu Electricity Board
rep. by its Chairman
800 Anna Salai, Chennai-2

2.The Superintending Engineer
Chinglepattu Electricity
Distribution Circle
Tamilnadu Electricity Board
Chingalpattu

3.The Executive Engineer / O & M
Maraimalai Nagar
Chingalpattu District
... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call the records relating to the proceedings of the 2nd respondent herein in No.Me.Po/CheMiPaVa/U.Se.Po/U.Po/U.Po/Ko.KE-375/A.No.2003 dated 25.08.2003 confirming the proceedings of the third respondent herein issued under Lr.No.EE/O&M/MMN/AE.PI/F.APTS.TOE/D 293/2001 dated 28.05.2001 quash the order dated 25.08.2003 in so far as the application of Industrial Tariff III.B to the petitioner's Service Connection No.455 provided to its Unit at No.2/154 East Coast Road,

Muttukkadu Chinglepattu District instead of Commercial Tariff V is concerned.

For Petitioner : Mr.P.Subha Reddy
For Respondents : Mr.S.K.Rameshwar (TNEB)

O R D E R

The Writ Petition has been filed by the petitioner for issuance of a writ of Certiorari, to call the records relating to the proceedings of the 2nd respondent herein in No.Me.Po/CheMiPaVa/U.Se.Po/U.Po/U.Po/ Ko.KE-375/A.No.2003 dated 25.08.2003 confirming the proceedings of the third respondent herein issued under Lr.No.EE/O&M/MMN/AE.PI/F. APTS.TOE/D 293/2001 dated 28.05.2001 quash the order dated 25.08.2003 in so far as the application of Industrial Tariff III.B to the petitioner's Service Connection No.455 provided to its Unit at No.2/154 East Coast Road, Muttukkadu Chinglepattu District instead of Commercial Tariff V is concerned.

2.The learned counsel appearing for the petitioner would submit that the matter related to the theft of energy. The petitioner has already deposited 80% of the demanded amount in the impugned order. Subsequently, the Division Bench of this court has passed an order in similar writ petitions to proceed with the civil liability. The learned counsel would further submit on instructions that the petitioner is ready to deposit the remaining amount due as per the impugned order without BPSC and penal interest and the petitioner may be permitted to deposit the same within a reasonable time.

4.The learned counsel appearing for the respondent Board did not dispute the fact that the petitioner had paid some portion of the amount demanded in the impugned order and this court may pass appropriate orders.

5.This issue has been squarely covered by the decision of the Division Bench of this Court in batch of cases in W.A.Nos.1808, 1811 of 2009, W.P.Nos.29882 of 2004 and 3013 of 2014 and W.P.No.(MD) Nos.2360 and 2361 of 2008, as follows:

28.It was also stated that Section 185 of the Act, 2003 cannot come to the rescue of the Electricity Board, as the action has been initiated only after the Act, 2003 came into existence and no proceedings initiated under the Old provisions / Repealed Act cannot be continued. Further, the Board cannot initiate proceedings under Clause 8.01 and 8.02 of the Terms and Conditions of Supply of Electricity (Electricity Supply Act 1948) with regard to theft of energy, as those clauses are no longer in vague as on

the date of initiation of proceedings, the Old Act got repealed and the Act 2003 had come into force. Clause 8.01 and 8.02 of the Terms and Conditions of Supply of Electricity (Electricity Supply Act 1948) in the repealed Act reads as follows:

8.00 Theft of Energy and Extra Levy:

8.01 Any consumer who dishonestly abstracts or uses energy shall be deemed to have committed theft within the meaning of Indian Electricity Act, 1910 as amended by the Tamil Nadu Government and the Indian Penal Code and the existence of artificial means for such abstractions shall be prima facie evidence of such dishonest abstraction. Illegal restoration of supply to a disconnected service connection will fail under this category.

8.02 Extra levy for theft of energy by tampering of meters / meter seals will be made at the rates given below:

- (a) for a period of twelve months; or
- (b) for a period from the date of prior inspection if any by the APTS or MRT wing to the date of detection; or
- (c) for a period from the date of replacement of meter to the date of detection; or
- (d) for a period from the date of service connection to the date of detection whichever period of the above is less.

For other cases of theft of energy, the extra levy will be made for a period of twelve months or from the date of service connection to the date of detection whichever period is less at the same rates given below:

- (i) For Energy:
 - (a) Low Tension Service Connection : Highest Low Tension tariff rate x3: The charges arrived at will be rounded off to the next higher rupees.
 - (b) High Tension Service Connection:
Highest High Tension Tariff rate x 4 the charges arrived at will be rounded off to the next higher rupee
- (ii) For maximum demand: (In High Tension Service Connection):
Highest High Tension tariff rate for maximum demand x 4. Extra levy for illegal restoration of supply to a disconnected service connection will be made for a period of twelve months, immediately preceding the date of detection of the violation or for the period from the date of disconnection of the service connection to the date of detection of the illegal

restoration, whichever period is less, at the rates given above..”

29.The above submission made by the learned Senior Counsel for the petitioners cannot be accepted, because once there is a saving clause provided under the New Act, then there is no impediment or bar for the Department to proceed under the Old Act in the absence of proof that it is inconsistent with the provisions of the Act, 2003. More so, quoting a wrong provision of the Act will not entitle a wrong doer to escape from the clutches of law, especially when Section 126 of the Act, 2003 extends power to the Department / Board / Authorities to ensure that the electricity consumed unauthorisedly is calculated and necessary charges are paid by the defaulter. In the decision, Hitech Mineral Industries (P) Ltd., Salem V.TNERC, Chennai, reported in 2010 (3) MLJ 697, it is inter alia, observed that the persons who steal energy or use energy unauthorisedly have to be punished.

6.In view of the decision held by the Division Bench of this Court and also considering the request that the petitioner is ready to deposit the remaining amount as per the impugned order without BPSC and penal interest within the time stipulated by this Court, this Court is inclined to direct the petitioner to deposit the entire due after adjusting the amount already paid by him within a period of 12 weeks from the date of receipt of a copy of this order.

7.With the above direction, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

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To

1.The Chairman
Tamil Nadu Electricity Board
800 Anna Salai, Chennai-2

2.The Superintending Engineer
Chinglepattu Electricity
Distribution Circle
Tamilnadu Electricity Board
Chingalpattur

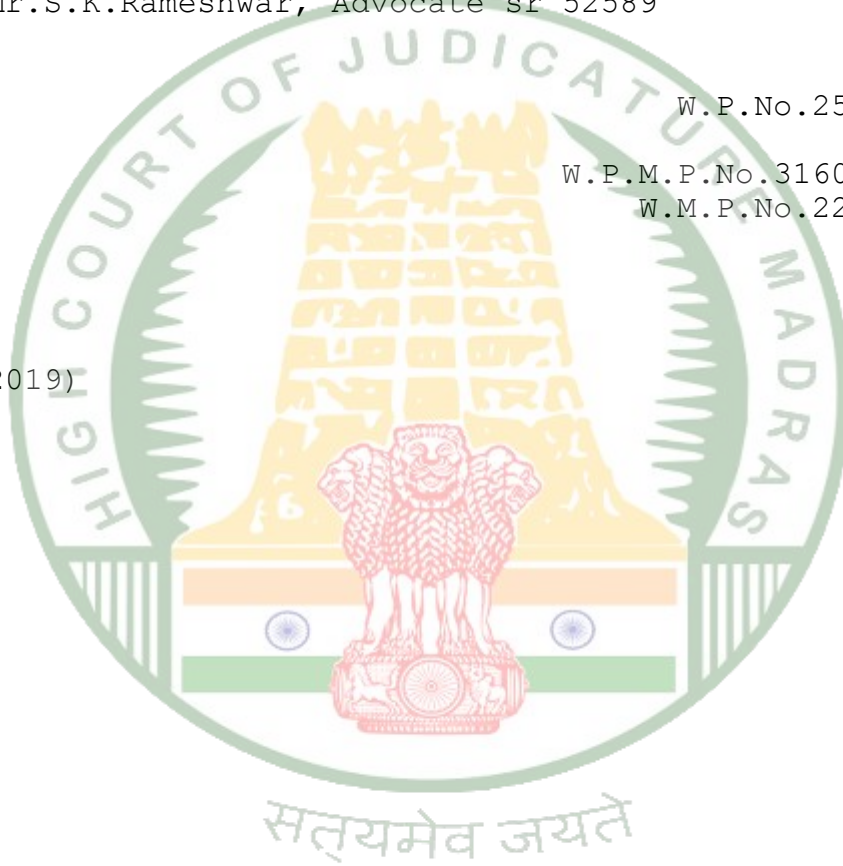
3.The Executive Engineer / O & M
Maraimalai Nagar
Chingalpattu District

+1 CC to Mr.P.Subha Reddy, Advocate sr 52166.

+1 CC to Mr.S.K.Rameshwar, Advocate sr 52589

W.P.No.25747 of 2003
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PA(CO)
SP(30/07/2019)



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