

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2019

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.18803 of 2008

Tamilnadu Spinning Mills Association
D.No.24, 11th Cross Street
Thiruvalluvar Nagar, Spencer Compound
Dindigul 624 003 repd. By its Chief Advisor
K.Venkatachalam

...Petitioner

Vs.

1.Tamilnadu Electricity Board
repd. By its Chairman
800 Anna Salai
Chennai 600 002

2.Tamilnadu Electricity Ombudsman
No.17, Third Main Road
Seethammal Colony
Alwarpet, Chennai 600 018

... Respondents

Prayer:- The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for records of the Tamil Nadu Electricity Ombudsman, Chennai connected with the Order passed in O.P.No.18 of 2007 dated 17.04.2008 on the file of the 2nd respondent, quash the same and consequently direct the 1st respondent to assess the "Minimum Charges" payable by the members of the petitioner in terms of the proviso to Clause 6(b) of the Tamil Nadu Electricity Supply Code, 2004 and grant rebate of 80% after adjusting the Minimum charges of 20% from out of the Maximum Demand Charges already levied and collected from the members of the petitioner during the period of disputed months in the year 2007 and during all subsequent periods when supply of electricity was not made according to the contracted demand.

For Petitioner : Mr.R.S.Pandiyaraj

For Respondents : Mr.P.R.Dilip Kumar

O R D E R

The writ petition has been filed under Article 226 of the Constitution of India, to call for records of the Tamil Nadu Electricity Ombudsman, Chennai connected with the Order passed in O.P.No.18 of 2007 dated 17.04.2008 on the file of the 2nd respondent, quash the same and consequently direct the 1st respondent to assess the "Minimum Charges" payable by the members of the petitioner in terms of the proviso to Clause 6(b) of the Tamil Nadu Electricity Supply Code, 2004 and grant rebate of 80% after adjusting the Minimum charges of 20% from out of the Maximum Demand Charges already levied and collected from the members of the petitioner during the period of disputed months in the year 2007 and during all subsequent periods when supply of electricity was not made according to the contracted demand.

2.The learned counsel appearing for the petitioner would submit that the petitioner is a member of State level Association of Spinning Mills and functioning in almost all the districts in Tamilnadu. It is a consumer with the Tamil Nadu Electricity Board (hereinafter referred to as the Board). Accordingly, the Tamilnadu State Electricity Regulatory Commission in exercise of powers conferred on it under Section 181 of the Act, has framed and issued the "Regulations for Consumer Grievance Redressal Forum and Electricity Ombudsman 2004" and established within the jurisdiction of every distribution licensee to entertain the complaints of unfair or restrictive trade practices of licensees and also charging of excess price for consumption of electricity and allied services either through conciliation or mediation or by rendering awards if and when the complaints could not be settled by mutual agreements.

3.The learned counsel would further submit that the petitioner Yarn spinning industry is a power intensive industry, working throughout all the 365 days in a year and it is in a continuous process industry depending upon the continuous supply of power. All the machinery installed are state of the art machines and are very sensitive and would get damaged due to frequent power failures interruptions. Due to frequent failure in the power supply, there was a huge loss. When the Respondent Board was unable to provide full supply of electricity to the members of the petitioner association as per the contracted demand or sanctioned demand, in terms of the proviso to Clause 6 (b) of the Tamilnadu Electricity Supply Code, 2004, the petitioner association approached Ombudsman by filing O.P.No.18 of 2007, seeking for an award in favour of the members of the petitioner and against the respondent Board award ordering to a rebate of 80% on the maximum demand charges already levied and collected from the members of the petitioner after adjusting 20%

of billable demand or recorded demand whichever is higher towards the Minimum Charges in terms of the proviso to Clause 6 (b) of the Supply code. However, the grievance of the petitioner was rejected by the Ombudsman, against which the present petition has been filed.

4. The learned counsel for the petitioner would further submit that in the similar type of writ petitions dealt by this Court in W.P.No.8519 of 2009, this Court observed that the Electricity Board will consider the Maximum demand charges subject to a maximum of $1/6^{\text{th}}$ and prayed to rely upon the relevant observation as follows:

"3. Due to the short fall in availability of power in the State of Tamil Nadu, the Government directed the Tamil Nadu Electricity Board to restrict the supply of electricity. Accordingly, the TNEB directed to go off the TNEB grid during evening peak hours of 18.00 hrs to 22.00 hrs every day with effect from 08.10.2008. On account of the same, it was assured that the Board will consider proportionate reduction in maximum demand charges subject to a maximum of $1/6^{\text{th}}$. The Superintending Engineer, UEDC, Udumalpet passed an order by his proceeding in Lr. No. SE/UEDC/AEE-GI/SDM/Peak hour/D.720/08 dated 08.10.2008 to almost all the members of the first petitioner Association.

5. In this regard, the learned standing counsel appearing for the respondents would submit that as far as the first petitioner is concerned, as assured earlier, the Board will consider proportionate reduction in maximum demand charges subject to a maximum of $1/6^{\text{th}}$. Therefore, in so far as the prayer made by the first petitioner is concerned, there cannot be any difficulty to grant relief.

6. So far as the second petitioner is concerned, a demand has been made by the respondents Board to pay a sum of Rs.1,28,100/-. Regarding this, the prayer made in this writ petition is to forbear the respondents from collecting the said amount without giving $1/6^{\text{th}}$ deduction. In my considered opinion, the second petitioner's remedy as against the said demand lies elsewhere and not in this writ petition. If the second petitioner has got any dispute regarding the said demand, he can very well work his remedies in the manner known to law. The second petitioner in this writ petition is not entitled for any relief. Therefore, in respect of the second petitioner, the writ petition is liable to be dismissed.

7.In view of all the above, in so far as the first petitioner is concerned, the writ petition is allowed with a direction to the respondents Board to consider and to give proportionate reduction in maximum demand charges subject to a maximum of 1/6th as assured earlier. Further, the respondents are directed to pass appropriate order within a period of two months from the date of receipt of a copy of this order in this regard. In so far as the second petitioner is concerned, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

5.The learned Standing Counsel appearing for the Electricity Board did not dispute the above said facts submitted by the learned counsel for the petitioner.

6.In view of the above submissions made by the learned counsel for the petitioner, this Court is inclined to extend the benefit which has been granted by this Court in W.P.No.8519 of 2009. The Electricity Board is hereby directed to consider the same and extend the said benefit to the petitioner Association and pass appropriate orders within a period of two months from the date of receipt of a copy of this order.

7.This writ petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To.

1. The Chairman,
Tamilnadu Electricity Board
800 Anna Salai, Chennai 600 002

2. Tamilnadu Electricity Ombudsman
No.17, Third Main Road
Seethammal Colony, Alwarpet, Chennai 600 018

+1cc to Mr.P.R.Dilip Kumar, Advocate, S.R.No.46696
+1cc to Mr.R.S.Pandiyaraj, Advocate, S.R.No.46752

W.P.No.18803 of 2008

PVS (CO)
CS/29/07/2019