

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.25415 of 2009
and MP.Nos.2, 3 & 4 of 2009

M/s.Lotte India Corporation Limited
Nellikuppam
Cuddalore District.

...Petitioner

vs.

1. The Tamil Nadu Electricity Board
Rep.by its Chairman
No.800, Anna Salai
Chennai 600 002.
2. The Superintending Engineer,
Tamil Nadu Electricity Board
Cuddalore Electricity Distribution Circle
Cuddalore.
3. The Accounts Officer
Revenue, CO Cuddalore
Tamil Nadu Electricity Board
Cuddalore.

... 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 of the second respondent in the impugned communication in Ref.No.Lr.SE/CEDC/CUD/DFC/AO/REV/RCF/F.BOAB. AUDIT-2008-2009/2009 dated 16.07.2009 and the consequential demand of a sum of Rs.22,70,736 claimed as Adjustment charge in the CC Bill for the month of November 2009 dated 01.12.2009 in respect of the petitioner's HT Service Connection No.3 and set aside same as being arbitrary, illegal and contrary to the provisions of the Indian Electricity Act and Rules framed therein and direct the respondents to continue to adjust the wind energy generation in respect of the petitioner's HTSC Nos.1019 and 1083 and adjust the same at the consuming end in the petitioner's service connection bearing HTSC No.3 at Nellikuppam.

For Petitioners : Mr.Rahul Balaji
For Respondents : Mr.M.Varun Kumar

O R D E R

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent in the impugned communication in Ref.No. Lr.SE/CEDC/CUD/DFC/AO/REV/RCF/F.BOAB.AUDIT-2008-2009/2009 dated 16.07.2009 and the consequential demand of a sum of Rs.22,70,736 claimed as Adjustment charge in the CC Bill for the month of November 2009 dated 01.12.2009 in respect of the petitioner's HT Service Connection No.3 and set aside same as being arbitrary, illegal and contrary to the provisions of the Indian Electricity Act and Rules framed therein and direct the respondents to continue to adjust the wind energy generation in respect of the petitioner's HTSC Nos.1019 and 1083 and adjust the same at the consuming end in the petitioner's service connection bearing HTSC No.3 at Nellikuppam.

2. The case of the petitioner is that the petitioner company is a part of Korean Based Conglomerate, that is interalia involved in the manufacture of confectionery under the brand name "LOTTE" and has its factory at Nellikuppam. The petitioner, in order to augment its power supply as also considering the advantages of the utilization of power through non-conventional energy resources and encouraged by the policies prevalent within the State of Tamil Nadu, decided to acquire six wind mills on operating lease basis in order to wheel power to its unit at Nellikuppam. In terms of the prevalent practice in that regard, the petitioner applied for and obtained necessary sanction from the respondent Electricity Board. The power generated out of the said wind mills, as has been already stated, is wheeled for utilization as its consumption point at Nellikuppam plant. The petitioner in compliance with the regulations governing captive use of power generated through wind power has been paying necessary charges in that regard from time to time to the Tamil Nadu Electricity Board.

3. While being so, the petitioner was received the impugned communication issued by the second respondent dated 16.07.2009 stating that there had been an audit conducted in respect of the Cuddalore Electricity Distribution Circle and an audit note has been raised for the alleged incorrect adjustment of wind mill generation and a demand for the alleged shortfall amount of Rs.22,69,152/- was made. Aggrieved by the same, the present writ petition is filed.

4. The learned counsel for the petitioner would submit that though the impugned demand was made on the basis of audit shortfall and the respondent board has issued a notice dated 16.07.2009, wherein stated that they have requested to remit the short fall amount for incorrect adjustment of windmill generation units for an amount of Rs.22,69,152/- (Rupees Twenty two lakhs sixty nine thousand one hundred and fifty two only). Immediately, thereafter the petitioner has sent a reply on 07.08.2009 stating that he has installed and commissioned 6 nos.225 kw wind electric generators for captive consumption at his Nellikuppam Factory, vide HTSC No.3. Moreover, the petitioner has obtained NOC, Commissioning Certificate in his name and signed with TNEB for the said wind mills and consuming the entire energy generated by the wind mills for their use. Accordingly, the petitioner has instructed the Superintending Engineer, Cuddalore to drop the demand proposal of incorrect adjustment to the tune of Rs.22,69,152/- vide his communication i.e. Lottle India Corporation Limited. Without considering a reply filed by the petitioner, the respondent board has issued another notice by including the current consumption bill for the month of November 2009 dated 01.12.2009.

5. The learned counsel would further submit that as per the board proceedings dated 03.09.2012, the Chief Financial Controller/Revenue, TANGEDCO, issued a circular to all the Superintending Engineers, Distribution Circles, TANGEDCO, wherein it is clearly stated that the TANGEDCO can recover cross-subsidy surcharge from the captive consumer, who has not fulfilled the requirements of the captive generating plant. However, on implementation of Restriction & Control measures, the Tamil Nadu Government have waived the levy of cross-subsidy surcharge with effect from 27.02.2009 to 10.07.2012. Hence, the Superintending Engineer/Electricity Distribution Circles are instructed to recover the Cross-Subsidy surcharges from the captive consumer, who has not maintained the Captive Generating Plant status for the period from 15.05.2005 to 26.02.2009 and from 11.07.2012 at the rate applicable.

6. However, in the present case, the petitioner has utilized the entire captive consumption for the subject matter of the demand notice dated 27.04.2009 and the petitioner has complied with the norms and procedures as prescribed and he is entitled to get the benefit to the above said notification dated 03.09.2012, by which, this Court may issue a direction to the respondent board for fresh consideration and set aside the impugned order passed in November 2009.

7. The learned counsel for the respondents would submit that on instructions, the respondent board is ready and willing to consider the matter afresh.

8. In view of the above, considering the facts and circumstances of the case, since the petitioner has complied with the norms stated in the circular dated 03.09.2012 passed by the Chief Financial Controller/Revenue, TANGEDCO, however, without considering a reply sent by the petitioner dated 07.08.2009, the respondent board has passed the impugned order in November 2009 is illegal and the same is set aside by this Court. Hence, this Court is directed to remand the matter back to the authority for fresh consideration and pass appropriate orders, after affording an opportunity given to the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

9. With the above directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ssb

To

1. The Tamil Nadu Electricity Board
Rep.by its Chairman
No.800, Anna Salai
Chennai 600 002.
2. The Superintending Engineer,
Tamil Nadu Electricity Board
Cuddalore Electricity Distribution Circle
Cuddalore.
3. The Accounts Officer
Revenue, CO Cuddalore
Tamil Nadu Electricity Board
Cuddalore.

+1cc to Mr.M.Varun Kumar, Advocate, S.R.No.68391

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BS (CO)
CS/24/09/2019