

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2019

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.33517 & 33518 of 2004

M/s. Sri Vigneswara Steels Pvt. Ltd.,
Rep. by the Managing Director,
SF.110/1-A-1, Mavellipalayam Privu Road,
Akkamepet Post, Sankari Taluk,
Salem District - 637 301.Petitioner in both W.Ps

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Department of Energy,
Fort St. George, Chennai-9.

2.Tamil Nadu Electricity Board,
Rep. by the Chairman,
800, Anna Salai, Chennai-2

3.The Superintendent Engineer,
TNEB - Mettur Distribution Circle,
Mettur Dam - 636 401.

4.The Tamil Nadu Electricity Regulatory Commission,
Rep. by the Secretary,
17, Third Main Road,
Seethamall Colony,
Alwarpet, Chennai - 600 018. Respondents in both W.Ps

Prayer in W.P.No.33517/2004: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, forbearing the third respondent from levying and collection of belated payment of surcharge at the rate of 1.5% per month (i.e. 18% per annum) amounting to Rs.5,07,639/- pursuant to Lr.No.SEM/A/Cs.Br./AOR/IIT/A2/BF.135/ PR.407/04, dated 11.10.2004.

Prayer in W.P.No.33518/2004: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of declaration, declaring that clause 20.02 of the terms and conditions of supply of electricity of Tamil Nadu Electricity Board levying surcharge 1.5 per cent per month (18% per annum)

is excessive, arbitrary, unreasonable discriminatory violative of Article 14 and 19(1)(g) of Constitution of India.

For Petitioner in both W.Ps : Mr. S.Sivanandam

For Respondents in both W.Ps: Mr. S.K.Rameshwaran

COMMON ORDER

The petition in W.P.No.33517 of 2004 has been filed for issuance of writ of Mandamus, forbearing the third respondent from levying and collection of belated payment of surcharge at the rate of 1.5% per month (i.e. 18% per annum) amounting to Rs.5,07,639/- pursuant to Lr.No.SEM/A/Cs.Br./AOR/IIT/A2/BF.135/PR.407/04, dated 11.10.2004.

2.The petition in W.P.No.33518 of 2004 has been filed for issuance of declaration, declaring that clause 20.02 of the terms and conditions of supply of electricity of Tamil Nadu Electricity Board levying surcharge 1.5 per cent per month (18% per annum) is excessive, arbitrary, unreasonable discriminatory violative of Article 14 and 19(1)(g) of Constitution of India.

3.In W.P.No.33518 of 2004, the petitioner has challenged clause 20.02 supply of electricity as the Electricity Board levied surcharge 1.5 per cent per month (18% per annum). The said issue has already been decided and reported in 2008 5 MLJ (Sri Krishna Alloys v. TNEB), the relevant paragraph is extracted hereunder:

"13.On a careful perusal of the judgment of the Apex Court, we are of the considered view that the outstanding payments made by the petitioners caused due to the stay order passed by this Court while they were questioning the revised tariff became payable on the disposal of those writ petitions and the court had also granted permission to pay those outstanding payments by installment along with the monthly electricity consumption bills and they were also paid by the petitioners promptly. But, however, those payments made by the petitioners are considered and declared as belated payment by various pronouncement of our Supreme Court as seen by us and, therefore, those payments warrant a surcharge for the belated payments. However, we find that Clause 20.02 of the Terms and Conditions would show that belated payment would come only if there is default of any arrears of payment clubbed with monthly bills were failed to be paid within a period of 8 days. In these peculiar circumstances, Clause 20.02 cannot be strictly applied to the belated payment caused due to the stay order passed by the Court through the filing of the Writ petitions questioning

the enhancement of the tariff. However, following the decision of the Full Bench of the Apex Court reported in Kashyap Zip Industries v. Union of India (supra), the interest rate fixed at 18% i.e. at 1.5% per mensem as per Clause 20.02 of the Terms and Conditions of the Electricity Supply can be reduced to some extent. It is also brought to our knowledge that the said rule claiming surcharge for the belated payment was reduced from 1.5% to 1% per mensem. Therefore, we feel that it is just to order that the said belated payment be directed to be paid along with surcharge at 1% per month, it would exactly be in accordance with the judgment of our Supreme Court, in Kashyap Zip Industries v. Union of India (supra). Therefore, we find no defect in the judgment of the learned single Judge except the quantum of interest at 18% per annum. Therefore, modifying the said interest rate from 18% per annum to 12% annum, the levy of surcharge is sustained. Accordingly, the writ appeals as also the writ petitions stand disposed of with the aforesaid modification in the rate of interest".

4. Though the Division Bench of this Court dismissed the writ petition challenging the Clause 20.02, however, held that collection of 18% p.a. is invalid and directed the Electricity Board to collect 12% p.a.

5. In view of the above decision held by the Division Bench of this Court, the W.P.No.33518 of 2004 stands dismissed. The petition in W.P.No.33517 of 2004 is allowed in part. The respondents are hereby directed to rework the calculation at the rate of 12% p.a. and issue a fresh demand notice to the petitioner within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the petitioner is hereby directed to pay the demanded amount within a period of four weeks. No costs. Consequently, connected miscellaneous petition if any is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To.

1. The Secretary,
The State of Tamil Nadu,
Department of Energy,
Fort St. George, Chennai-9.

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

3.The Superintendent Engineer,
TNEB – Mettur Distribution Circle,
Mettur Dam – 636 401.

4.The Secretary,
The Tamil Nadu Electricity Regulatory Commission,
17, Third Main Road,
Seethamalla Colony,
Alwarpet, Chennai – 600 018.

+2ccs to Mr.S.Rajesh, Advocate, S.R.No.49646
+1cc to the Government Pleader, S.R.No.50123

W.P.Nos.33517
& 33518 of 2004

RRS (12/07/2019)



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