

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.06.2019

CORAM
THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P. 38076 of 2004
and
W.P. M.P. 45602 of 2004

K.Rajinikanth,
Proprietor,
Rajinikanth Foundation,
603-"C" Block,
Pioneer Complex,
1075, Avanashi Road,
Coimbatore-641 018.

... Petitioner

Vs

1. The Chairman,
Tamil Nadu Electricity Board,
No.800, Anna Salai,
Chennai-2.

2. The Tamil Nadu Electricity
Regulatory Commission,
17, III Main Road,
Seethammal Colony,
Alwarpet, Chennai-600 018.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration, declaring that the levy, demand and collection of peak hour charges by the respondents at the rate of Rs.0.70 paise extra (20% extra) from the petitioner on the total consumption of electricity in the factory/industry/mill of the petitioner without adjusting to set off the electricity generated or produced through the petitioner wind mill against consumption during the peak hour is unconstitutional, illegal and null and void in so far as the petitioner industry is concerned and direct the respondents to refund to the petitioner the total amount collected illegally as peak hour charges from the petitioner for its own generated electricity through its wind mill during peak hours till date.

For Petitioner : Mr.K.Kamalanathan

For Respondents : Mr.S.K.Rameshuwar
Standing Counsel

O R D E R

The petitioner has filed this Writ Petition challenging the impugned order of levying and demanding peak hour charges by the respondents at the rate of 0.70 paise (extra 20% extra) from the petitioner on the total consumption of electricity without adjusting to set off the electricity generated or produced through the petitioner wind mill against consumption during the peak hour as unconstitutional, illegal and null and also to direct the respondents to refund the total amount collected illegally as peak hour charges from the petitioner for its own generated electricity through its wind mill during peak hours till date.

2. Mr.M.Kamalanathan, learned counsel appearing for the petitioner and the learned standing counsel would submit that the present Writ Petition is covered by the decision of the Division Bench reported in CDJ 2007 MHC 321 in the case of BMF Beltings Limited Vs. The Chairman, Tamil Nadu Electricity Board and others and the relevant portion in paragraphs 9, 10 and 14 are extracted hereunder :-

"9. In view of the rival submissions, the issue largely revolves around the common order dated 06.11.2003 passed by a learned Judge of this Court in the earlier batch of Writ Petitions. The relevant portions in paragraphs 25 to 27 from the said order are extracted below :-

"Para 25 :... It is obvious that for the extent of electricity generated by such wind mill owners account is maintained by such wind mill owners. If it is found that such wind mill owners generate electricity during non-peak hours only, obviously the State Government and the Board would be justified in collecting higher charges for the use of such industry during peak hours. However, if such wind mill owners are also producing energy during peak hours, there cannot be any justification to deny them of the use of such energy during that period.

Para 26 : Learned Additional Advocate General has, however, raised a valid objection to the effect that since the G.O. had been issued in 1997 and it had not been challenged earlier, there is no method to find out now how much electricity had been generated by such wind mill owners in the past during peak hours. In this context, he has pointed out that when the wind mill owners had kept quiet for more than 5 years and paid the amount without demur, their grievance cannot be looked into in view of the principles of waiver and acquiescence. This contention of the learned Additional Advocate General cannot be lightly brushed

aside. Therefore, while it is not possible to grant any relief of refund to such wind mill owners install any device through which the amount of electricity generated during peak hours can be measured and accounted for, such persons should not be called upon to pay the additional duty for use of such electricity during peak hours.

Para 27. Subject to the aforesaid clarification relating to the wind mill owners, which would become effective only as and when such devices are installed by the wind mill owners themselves, there is no scope to interfere with the order passed by the Government and to issue any direction regarding refund."

Therefore, this Court while guaranteeing the right of the Wind Mill owners to claim to set off the charges against the energy consumed and energy generated from the levy of 20% peak hour charges, clearly stated that the order of the Government levying peak hour charges was passed as early as 1997 and the same was not challenged earlier and therefore, there was no method to find out how much electricity had been generated by such Wind Mill owners. If the Wind Mill owners can keep quiet for more than five years and paid the amount without demur, their grievance cannot be looked into in view of the principles of waiver and acquiescence. This Court also made it clear that it is not possible to grant any relief of refund to such Wind Mill owners for the electricity already generated and consumed. What was guaranteed was that if the wind mill owners install any device through which the amount of electricity generated during the peak hours can be measured and accounted for, such persons should not be called upon to pay the additional duty for use of such electricity during peak hours. The batch of Writ Petitioners were dismissed only subject to this clarification and it was made clear that the order will become effective only as and when such devices are installed by the Wind Mill owners themselves and until such installation is made, it was made clear that there was no scope to interfere with the order passed by the Government and to issue any direction regarding refund will not arise.

10. The order passed by this Court applies even for the present grievance raised by the Wind Mill owners. We do not find as to how all these writ petitions are filed despite the order passed by the learned single Judge of this Court, which had become final. For this question, Mr. Palani Selvaraj, learned counsel appearing for the petitioner association submitted that even as per the order of the learned single Judge, the Board has not come forward to install meter

or program the existing TOD meter and they are taking advantage of the directions made by the learned single Judge and even though the Wind Mill owners have succeeded in establishing their right, they have been penalised by the Board for not installing any meter. We, then, pointed out that the installation of the meter was to be done only by the Wind Mill owners and not by the Board and only the calibration is done by the Board, for which the learned counsel appearing for the association has no answer.

14. We do not see any substance in the argument advanced by the learned counsel appearing for the association. Accordingly, the writ petitions are dismissed. In view of the same, connected W.P.M.P.s are also dismissed."

3. In view of the above decision cited supra passed by this Court, the writ petition stands dismissed. No costs. Consequently, the connected Writ Petition Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rpp

To

1. The Chairman,
Tamil Nadu Electricity Board,
No.800, Anna Salai,
Chennai-2.

2. The Tamil Nadu Electricity
Regulatory Commission,
17, III Main Road,
Seethammal Colony,
Alwarpet, Chennai-600 018.

+1cc to Mr.M.Kamalanathan, Advocate, S.R.No.52682

W.P. 38076 of 2004

and

W.P.M.P. 45602 of 2004

PPA (CO)

RRS (23/07/2019)