IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. No.22168 of 2010
and
M.P. No.1 of 2010

M/s.Sabari Textiles (P) Ltd.,
rep. by its Business Executive
Malathy .. Petitioner

-vs-

1.The Chairman,
Tamil Nadu Electricity Board,
144, Anna Salai,
Chennai 600 002.

2.The Superintending Engineer,
Coimbatore Electricity Distribution Circle/South,
Tamil Nadu Electricity Board,
Tatabad, Coimbatore-12,
Coimbatore District. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari calling for the records of the second respondent in Lr.No.SE/CEDC/S/Cbe/DFC/REV/HT/A1/F, BOAB, Audit/D. No.394/2010 dated 31.08.2010 and quash the same as illegal, arbitrary and against the instructions dated 03.01.2009 of the first respondent.

For Petitioner : Mr.K.Seshadri

For Respondents : Mr.S.K.Raameshuwar,
Standing Counsel

ORDER

The writ petition has been filed challenging the impugned Letter in Lr.No.SE/CEDC/S/Cbe/DFC/REV/HT/A1/F, BOAB, Audit/D. No.394/2010 dated 31.08.2010 issued by the second respondent.

2.Learned counsel appearing for the petitioner would submit that the petitioner Industry has been involved in the manufacture of cotton yarn etc. having High Tension Service

Connection in H.T. Sc. No.525. While so, due to acute power shortage in the State of Tamil Nadu, on 22.10.2008, the Government of Tamil Nadu have issued restrictions on consumption of power relying on Regulation 38 of the Tamil Nadu Electricity Distribution Code 2004 and directed the first respondent to impose 40% cut to H.T. Industrial and Commercial Consumers. Based on the directions of the Government dated 22.10.2008, the second respondent imposed 40% demand and energy cut on and from 01.11.2008. According to the learned counsel appearing for the petitioner, the petitioner Industry was effected H.T. Service Connection on and from 13.06.2008 with maximum demand of 500 K.V.A. with H.T. Sc. No.525. However, the first respondent has issued certain guidelines to fix an energy and demand quota to those industries which have been effected after 01.10.2007 and as per the said guidelines, the petitioner industry has been fixed demand quota of 270 K.V.A. and energy quota for three shifts at the rate of 300 units per K.V.A which comes totally 1,50,000 units (500 K.V.A. X 300 units). When the petitioner industry has been consuming the electricity as per the quota permitted to the petitioner and remitting the charges as claimed in the bills and the same has not exceeded the quota at any point of time, the second respondent has claimed a sum of Rs.10,80,780/- towards audit short levy as if the petitioner has exceeded the energy quota from December 2008 to June 2009 and requested the petitioner to pay the said amount within 7 days from the date of receipt of the said notice and it was made clear that if the petitioner was not come forward to pay the short levy amount, either in lump sum or in instalments, the service connection will be disconnected without further notice.

3.Learned counsel appearing for the petitioner would further submit that as the demand made by the second respondent is against the quota fixed in Letter dated 04.12.2008 and against the instructions of the second respondent in Memo dated 03.01.2009 wherein it has been stated that 200 units/KVA months for 2 shift-services and 225 units/KVA/month for 3 shift services as energy quota on the sanctioned demand or the energy quota already fixed whichever is higher, the impugned letter dated 31.08.2010 issued by the second respondent is liable to be quashed. When the petitioner industry had been permitted to use 1,50,000 units per month as energy quota, claiming excess charges by rectifying the energy quota at 1,12,500 units per months is against law.

4.Learned Standing Counsel appearing for the respondents would submit that when the energy quota has been wrongly fixed by taking 300 units per KVA for the sanctioned demand of 500 KVA from 12/2008 to 05/2009, the audit wing has pointed out the above and issued audit objection in Slip No.52 dated 30.11.2009. Therefore, based on the audit objection, the petitioner was requested to pay the audit short levy amount of Rs.10,80,780/-.

5.But this Court is unable to find any substance or merit on the submission made by the learned Standing Counsel appearing for the respondents for the following reasons:

Firstly, by Letter dated 04.12.2008, the Superintending Engineer, Coimbatore Electricity Distribution Circle/South, the second respondent herein has fixed the energy quota for the petitioner's H.T.Sc.No.525 as 300 units for three shifts specifically mentioning that the petitioner is entitled to get the energy quota of 1,50,000 units. Secondly, as per Memo dated 03.01.2009 issued by the Chief Engineer/ Commercial, the HT Industrial and Commercial services for which the service connection has been effected after 01.10.2007, the demand and energy to run the industry has to be sanctioned 54% of the sanctioned demand or the demand quota fixed whichever is higher as demand quota. It is necessary to extract the said Memo as under:

> 'The HT Industrial and Commercial services for which service has been effected after 01.10.2007 and not yet reached the full production and represented TNEB to revise the demand and energy fixed to run the industry may be sanctioned 54% of the sanctioned demand or the demand quota fixed whichever is higher as demand quota and 100 units/KVA/month for one shift services, 200 units/KVA/month for 2 shift services and 225 units/ KVA/month for 3 shift services as energy quota on the sanctioned demand or the energy quota already fixed whichever is higher.'

6.A mere reading of the above Memo would show that 100, 200 and 225 units per K.V.A./per month have been fixed for one, two and three shift services respectively as energy quota on the sanctioned demand or the energy quota already fixed whichever is higher. As the petitioner industry has been fixed demand quota of 270 K.V.A. and energy quota of 1,50,000 units per month, the impugned letter requesting the petitioner to pay a sum of Rs.10,80,780/- towards audit short levy without giving any opportunity of personal hearing to the petitioner is liable to be set aside and the same is set aside. Accordingly, the writ petition stands allowed. Consequently, connected M.P. is closed. No costs.

7.In view of allowing the writ petition, finding no merit in the impugned order, the interim order passed by this Court on 28.09.2010, directing the petitioner to pay 50% of the impugned demand dated 31.08.2010 is vacated, as a result, the deposit of

50% of the impugned demand made already by the petitioner shall be adjusted with the current consumption charges.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

vga

To

1.The Chairman,
Tamil Nadu Electricity Board,
144, Anna Salai,
Chennai 600 002.

2.The Superintending Engineer,
Coimbatore Electricity Distribution Circle/South,
Tamil Nadu Electricity Board,
Tatabad, Coimbatore-12,
Coimbatore District.

+1cc to Mr.K.Seshadri, Advocate, S.R.No. 82586

W.P. No.22168 of 2010 and M.P. No.1 of 2010

PA(CO)
GN(06/11/2019)