



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.867 of 2009

M/s.Talent Alloys Private Limited
Rep. by the Managing Director
Reg. Off.43, Vivekananda Road
Ramnagar, Coimbatore 641 009

...Petitioner

Vs.

1.The State of Tamil Nadu
Rep. by the Secretary
Dept. of Energy, Fort St. George, Chennai 600 009

2.The Chairman
Tamil Nadu Electricity Board
800, Anna Salai, Chennai 600 002

3.The Additional Chief Engineer
Coimbatore Electricity Distribution Circle
Coimbatore 641 012

4.The Superintending Engineer
Coimbatore Electricity Board
Coimbatore Electricity Distribution Circle
(North), Coimbatore 641 012

5.The Talent Steel Industries (P) Ltd.,
Ref:Off:44, Vivekanandan Road
Ram Nagar, Coimbatore 641 009

... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records of the fourth respondent regarding December 2008 monthly electricity bill dated 01.01.2009 for HT SC 180 of the petitioner's and quash the same as illegal to the extent of Rs.4,88,880/- with reference to unjustified extra levy in Sl.No.13(a), without adjustment of unused quota of sister concern.

For Petitioner : Mr.S.Sivanandam

For Respondents : Mrs.K.Bhuvaneswari,
Additional Government Pleader for R1
Mr.S.K.Rameshwar for R2 to R4

ORDER

The petitioner has filed this writ petition, to issue a writ of Certiorari, to call for the records of the fourth respondent regarding December 2008 monthly electricity bill dated 01.01.2009 for HT SC 180 of the petitioner's and quash the same as illegal to the extent of Rs.4,88,880/- with reference to unjustified extra levy in Sl.No.13(a), without adjustment of unused quota of sister concern.



2.The learned counsel for the petitioner would submit that the petitioner is the Managing Director of the petitioner's concern and having their Iron and Steel alloys factory with furnace at S.F.No.475, K.G.Palayam Post, Kariampalayam. Adjacent to the petitioner's factory in the adjacent Survey No.S.F.476 at K.G.Palayam Post, Kariampalayam, Pogalur 641697 Annur, Coimbatore District, "Talent Steel Industries Private Limited" is situated also owned and controlled by the very same directors of the petitioners. Both the petitioner's concern i.e. Talent alloys (P) Limited and Talent Steel Industries (P) Ltd., are sister concern. It is submitted that the 5th respondent i.e. the sister concern of the petitioner is impleaded as formal party who are supporting the writ petitioners. Due to shortage in supply of electricity, the industry had to declare the quota of electricity which they are likely to consume. The industry which exceeded the quota had to pay electricity charges three times of its normal rate. Representations were received from various quarters. Hence, on 17.11.2008, the Chief Engineer (Commercial) issued a circular regarding transfers / bulking of quota between different unit of the same / sister companies having the same management.

3.Therefore, the petitioner sent a letter dated 09.01.2009 to the respondent Board stating that their demand quota is fixed 1022.69 KVA and Energy Quota fixed is 5,36,553 units and the petitioner is unable to run the industry with this demand 1022.69 KVA. The petitioner also requested the Superintending Engineer to permit the petitioner to run the industry by 1600 KVA and declare holiday for 11 days in a month and reduce the demand charge for 11 days. Moreover the petitioner's sister concern H.T. Service Code No.199 unused power may be transferred as per CE/ Commercial Circular dated 17.11.2008. Talent Steel Industries Private Limited H.T.Service Code No.199 unused power for the month of December may be transferred to H.T.Service Code 180 and revised bill be issued. The petitioner's permitted quota of energy is 5,36,553 units upto December 2008 and the 5th respondent's permitted quota is 2,32,720 units. As per the circular of the Chief Engineer (Commercial) dated 17.11.2008, energy quota of one sister concern may be utilised for another sister concern. Based on the representation of the companies, TNEB decided to grant to confer the request for bulk transfer of quota if the group of companies are within the Circle, the Superintending Engineer can give the revised quota and if it is within the Region, the Chief Engineer can fix the revised quota. Bulking of quota may be permitted on application among the services under the same management. In the present case, the petitioner exceeded the unit as against the permitted quota. However, the 5th respondent is the sister concern of the petitioner which has not exceeded the permitted quota. Hence, the petitioner made a request to the Superintending Engineer to adjust the unused units in between this unit for the month of December 2008. The unused power in H.T.S.C.No.199 for the month of December 2008 may be adjusted to H.T.S.C.No.180 and the energy bill may be raised according to that circular of the C.E. (Commercial) dated 29.12.2008. However, the respondent board without adjusting the same imposed penal charges for the



exceeding quota against which the present writ petition has been filed.

4.The learned counsel for the petitioner would further submit that though the petitioner made an application for adjusting the exceeding quota with the unused units of its sister concern, the respondent Board prepared a bill dated 01.01.2009 without considering the application, which is unsustainable one. Accordingly, prays for allowing this petition.

5.The learned counsel for the respondent Board would submit that the petitioner made an application only on 29.12.2008. If the application is made in the month of November 2008, the request of the petitioner would have been considered by applying the circular dated 17.11.2008, for transfer / bulking of energy from one service connection to other service connection, the petitioner should have applied for transfer / bulking energy by giving proof of these two different legal entitles being sister concerns. Further, the petitioner had to intimate the requirement of energy to be transferred from one unit to the other by clearly giving details of energy required by the sister concern. In the present case, the petitioner had to apply for transfer of quota in time (before the commencement of meter reading for the month i.e. before 27.11.2008) and the petitioner made an application for transfer of quota has alleged to have been made by letter dated 29.12.2008, after the billing cycle for the month of December 2008. The petitioner had also exceeded the energy quota by 127035 units and the penal charges for exceeding the quota has been levied for Rs.8,95,540/- in December HT Bill as per the TNERC orders in Para 29 and 33 of M.P.No.42 of 2008. Hence, prays for appropriate orders.

6.Heard the learned counsel on either side.

7.It is seen from the records that the petitioner made an application on 29.12.2008 for availing the benefit of the circular dated 17.11.2008, wherein the petitioner was permitted to utilise the allotted quota by itself but prefers to club it with that of its sister concerns under the same management for valid reasons. Admittedly, the petitioner unit and the 5th respondent unit is a sister concern and situated within the jurisdiction of the 4th respondent Circle. Even on a perusal of the said circular dated 17.11.2008, in clause iv, it states "bulking of quota may be permitted on application among the service under the same management and the Chief Engineer can fix the revised quota for both the units within the Region and the Superintending Engineer can give the revised quota for the companies within the Circle.

8.It is seen that the petitioner's permitted energy quota is 536553.6 units. The energy consumed by the petitioner is 664488 units. The petitioner had exceeded the energy quota by 127935 units. The 5th respondent's permitted quota is 232720 units and they have consumed only 162880 units and the balance unused is 69840 units. After deducting the 5th respondent's unused units of 69840 from the exceeded limit of the petitioner concern is 58095 units. Therefore, the petitioner has to pay the penalty charges only for 58095 units which has been used excessively



after adjusting the same with the unused units of its sister concern.

9. On a perusal of the circular dated 17.11.2008, it did not specify, when the application has to be submitted. However, the petitioner after consumption of the energy has rightly made an application dated 29.12.2008 for availing the benefit granted in the said circular dated 17.11.2008. However, the respondent Board prepared a bill on 01.01.2009 without considering the above application and the same is unsustainable one. Hence, the records of the 4th respondent regarding December 2008 monthly electricity bill dated 01.01.2009 for HT SC 180 is quashed and this court is inclined to allow this writ petition.

10. Hence, the respondent Board is hereby directed to collect the penal charges only for 58095 units. The respondent Board is also directed to issue the revised calculation to the petitioner concern within a period of two weeks and thereafter the petitioner is hereby directed to pay the said amount to the Electricity Board within a period of two weeks from the date of receipt of such revised calculation. If any excess amount is paid, the same shall be adjusted in the future bill. If any balance amount is due from the petitioner, the respondent Board is entitled to claim the same.

11. The writ petition is allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To.

1. The Secretary, State of Tamil Nadu
Dept. of Energy, Fort St. George, Chennai 600 009

2. The Chairman
Tamil Nadu Electricity Board, 800, Anna Salai, Chennai 600 002

3. The Additional Chief Engineer
Coimbatore Electricity Distribution Circle, Coimbatore 641 012

4. The Superintending Engineer
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5. The Talent Steel Industries (P) Ltd.,
Ref:Off:44, Vivekanandan Road, Ram Nagar, Coimbatore 641 009

+1 cc to Mr.S.K.Raameshuwar, Advocate Sr.No.56392

+1 cc to Mr.S.Sivanandam, Advocate Sr.No. 56254

+1 cc to The Government Pleader, Sr.No.56553