

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.07.2019
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI
W.P.Nos.9821, 11145 & 11683 of 2009

M/s.Biometal Bearings Ltd.,
Huzur Gardens,
Sembium,
Chennai-600 011. ...Petitioner in
WP.No.9821/2009

M/s.Simpson & Company Ltd.,
Huzur Gardens,
Sembium,
Chennai-600 011. ...Petitioner in
WP.No.11145/2009

M/s.Bimetal Bearings Ltd.,
5/186, Old Mahabalipuram Road,
Oggiyam Thoraipakkam,
Chennai-600 097. ...Petitioner in
Rep. By N.P.Mani WP No.11683/2009
Vs.

1. The Superintending Engineer
TNEB Chennai EDC/North,
No.141, Anna Nagar, Chennai 2
2. The Accounts Officer,
TNEB Chennai North
141, Anna Salai,
Chennai-600 002. ...Respondents 1 & 2
in WP Nos.9821
&11145/2009 सत्यमेव जयते

1. The Superintending Engineer,
TNEB Chennai EDC /South
SS Complex,
K.K.Nagar,
Chennai-600 078.
2. The Deputy Finance Controller,
SS Complex,
K.K.Nagar,
Chennai-600 078. .. Respondents 1 & 2
in WP.No.11683/2009

Prayer in W.P.No.9821 of 2009: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari calling for the records of the respondents with respect to the letter dated 17.04.2009 bearing Lr.No.SE/CEDC/N/HT/DFC/F.1175/D.156/09 relating to the HT A/c.No.1175 of the petitioner and quash the same.

Prayer in W.P.No.11145 of 2009: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari calling for the records of the respondents with respect to the letter dated 17.04.2009 bearing Lr.No.SE/CEDC/N/HT/DFC/F.1074/D.157/09 relating to the HT A/c.No.1074 of the petitioner Company and quash the same.

Prayer in W.P.No.11683 of 2009: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari and Mandamus calling for the records of the respondent Board with respect to the High Tension Bill for A/c 384 belonging to the petitioner Company for the month of May, 2009 dated 01.06.2009 and quash the same in so far as it relates to the alleged revised quota of 124.2 KVA and 29690 units and penalty levied by the respondent Board based on the alleged revised quota and forbear the respondent Board, their men, agents and representatives from levying penalty based on the alleged revised quota.

For Petitioner : Mr.Krishna Srinivasan for
[in all Wps] M/s.Rama Subramaniam Associates

For Respondents : Mr.P.R.Dilipkumar
[in all Wps]

COMMON ORDER

The relief sought for in these writ petitions is one and the same and all these writ petitions are taken up for final disposal by way of this common order.

2.The petitioners have approached this Court, seeking the following reliefs:-

"To issue a writ of Certiorari calling for the records of the respondents with respect to the letter dated 17.04.2009 bearing Lr.No.SE/CEDC/N/HT/DFC/F.1175/D.156/09 relating to the HT A/c.No.1175 of the petitioner and quash the same.

To issue a writ of Certiorari calling for the records of the respondents with respect to the letter dated 17.04.2009 bearing Lr.No.SE/

CEDC/N/HT/DFC/F.1074/D.157/09 relating to the HT A/c.No.1074 of the petitioner Company and quash the same and

To issue a writ of writ of Certiorarified Mandamus calling for the records of the respondent Board with respect to the High Tension Bill for A/c 384 belonging to the petitioner Company for the month of May, 2009 dated 01.06.2009 and quash the same in so far as it relates to the alleged revised quota of 124.2 KVA and 29690 units and penalty levied by the respondent Board based on the alleged revised quota and forbear the respondent Board, their men, agents and representatives from levying penalty based on the alleged revised quota. "

3.The learned counsel for the petitioner(s) as well as the learned Standing Counsel appearing for the respondent Board would submit that the issue involved in these matters is directly covered by a decision of this Court, in the case of SRI GOMATHY MILLS PRIVATE LIMITED V. TAMIL NADU ELECTRICITY REGULATORY COMMISSION AND OTHERS in W.P.No.23166 of 2010 batch cases, wherein in the said case, paragraphs 4 and 12 are read as follows:-

"4.The petitioners are the HT Consumers challenging the impugned order dated 17.09.2010 issued by the Tamil Nadu Electricity Board signed by the Chairman of the Board. According to the Petitioners, they purchase energy from the third party sources. The Electricity Board, therefore, should not impose restrictions contrary to the order passed by the Tamil Nadu Electricity Regulatory Commission in its order passed in M.P.Nos.6 of 2010, 9 of 2010 and 17 of 2010 dated 7.9.2010. According to the petitioners, the Memo dated 17.09.2010, which is impugned in these writ petitions, is contrary to the direction of the first respondent. In the mean while, a meeting was arranged between the HT Consumers Association, represented by its members with the Hon'ble Deputy Chief Minister of the State to resolve the issue with regard to the implementation of the Regulatory

Commission's order and for modification of the impugned proceedings. A copy of the Minutes of the Meeting of the HT Consumers Association and the Hon'ble Deputy Chief Minister dated 27.1.2011 is produced before this Court and it reads as follows:

Minutes of the Meeting convened by Hon'ble Deputy Chief Minister of Tamil Nadu with the Confederation of Indian Industries (CII)/SIMA etc.

With regard to the representations submitted by CII, SIMA etc., in connection with certain operational issues, Hon'ble Deputy Chief Minister took up a meeting on 27.01.2011 at 11.00 a.m. in his Conference Hall at New Secretariat, Chennai.

Para-12 of the order reads as follows:

12. In view of the above, following orders are passed:

(1) Respondents are directed to issue suitable amended memo/circular to the field information to amend the Memo dated 17.9.2010 to read as follows:

Para 1(ii) contained in Memo dated 17.9.2010 shall be deleted. In that place the following shall be inserted (i.e.) para 2(i) of the Mem dated 11.2.2011:

(i) The base energy will be the average of any three consecutive months during the base period, as per the choice of the consumer and to the advantage to the HT consumers.

Further Para 1(v)(ii) of Memo dated 17.9.2010 shall be deleted and in that place the following shall be inserted (ie.) para 2(ii) of the Memo dated 11.2.2011:

(ii) The base demand will be the demand recorded in any month during the base period, as opted by the consumer, limited to the sanctioned demand.

The revised memo/circular should be issued forthwith on receipt of a copy of this order.

(2) The Electricity Board shall also keep in mind the direction issued by

the first Respondent in Suo-moto Proceedings No.1 of 2009, more particularly para 16(13) and (16), which reads as follows:

16. After taking into account the submissions made by both the parties, the Commission directs as follows:

(1) to (12) xxx

(13) From 1.11.2008, all captive users, whether thermal or wind, shall declare on the first day of every month, the energy proposed for captive use for the following month, which shall be considered as B and F for the purpose of energy quota and demand quota respectively in terms of the memo of TNEB dated 17.11.2008; the energy so declared shall roughly be the monthly average generation;

(14) and (15) xxx

(16) If a consumer opts out of wheeling agreement and becomes an ordinary consumer, A and E referred in the memo dated 17.11.2008 shall be deemed to be the base energy and base demand.

And it will be implemented as may be applicable to the individual petitions challenging the same. In W.P.No.23166 of 2010 the Memo dated 17.9.2010 was stayed on 8.10.2010. In another W.P.No.22392 of 2010 the consequential fixation of base energy and base demand was challenged and it was stayed by this Court on 30.09.2010. In effect the respondent authorities were restrained from proceedings in terms of Memo dated 17.9.2010 and that was clarified after the Minutes of the Meeting consequent to the meeting with the Hon'ble Deputy Chief Minister of State and the revised Memo/Circular has been issued on 11.02.2011. This clarification will enure to the benefit of the petitioners.

In view of the above, the respondent authorities are not entitled to demand the penalty insofar as the base energy and base demand is

concerned on the basis of the memo/circular dated 17.9.2010 as the same is modified and clarified by the subsequent memo dated 11.2.2011. The meeting of the two consumer association with the Hon'ble Deputy Chief Minister of the State was to settle all issues relating to fixation of base energy and base demand which has been bothering both the department and HT Consumers for quite some time. Hence, the effect of the revised memo dated 17.09.2010 (i.e.) to say the amended version, the levy of penalty based on old memo dated 17.9.2010 will have to be set aside.

(4) The Tamil Nadu Generation and Distribution Corporation Ltd., Technical Branch, represented by the Chief Engineer/Commercial or the third Respondent as the case may be are directed to issue the revised memo/circular in accordance with the order passed by this Court to the field formation for the implementation as ordered by this Court.

5. In view of the direction issued by this Court with regard to clarification to be issued, all demands raised with regard to base demand and base energy which is challenged in the individual writ petitions on and after 17.9.2010 are set aside. The penalty for exceeding base energy and base demand which is demanded in the bills are set aside and the respondents are directed to work out the claim, if any, in accordance with the revised circular to be issued.

6. All the 50 writ petitions stands ordered as above. No costs. Consequently, connected miscellaneous petitions are closed."

4.Following the above decision, this Court is inclined to extend the benefit to the petitioners herein also.

5. Accordingly, these writ petitions are also disposed of, with the above terms. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Superintending Engineer
TNEB Chennai EDC/North,
No.141, Anna Salai,
Chennai-600 002.

2. The Accounts Officer,
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3. The Superintending Engineer,
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4. The Deputy Finance Controller,
SS Complex,
K.K.Nagar,
Chennai-600 078.

+3ccs to Mr.S.Ramasubramaniam , Advocate SR.No.
62665, 62664, 62663

+1cc to Mr.P.R.Dilipkumar , Advocate SR.No. 62299

W.P.Nos.9821, 11145 & 11683 of 2009

ss (CO)
A.SK(21/08/2019)