IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.12.2019
CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.20540 of 2013

TIDEL Park Limited,
Regd Office at
No.4, Rajiv Gandhi Salai,
Taramani, Chennai - 600 113.
(Rep. by its Managing Director) .. Petitioner

-vs-

Tamil Nadu Generation and Distribution,
Corporation Limited (TANGEDCO),
Rep. by its Chairman,
NPKR Maligai, 144, Anna Salai,
Chennai - 600 002. .. Respondent

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the entire records pertaining to the demand of the respondent for additional current consumption deposit and current consumption charges for April 2012 in letter No. SE/CEDC/S/DFC/AAO/HT/AS4/F.459/D.778/13 dated 17.07.2013 and letter No.CEDC/S/DFC/AAO/AS/A4/HT.SC.No.459/D.779/2013 dated 17.07.2013 and quash the same.

For Petitioner : Mr.Jose John
for M/s.KIng Partridge
For Respondents : Mr.P.Gunaraj

ORDER

Heard Mr.Jose John, learned counsel for the petitioner and Mr.P.Gunaraj, learned counsel for the respondent.

2. With consent of learned counsel on either side, this writ petition itself is taken up for final disposal.

3. The petitioner is a Government company operating an Information Technology Park at Taramani, Chennai. They are aggrieved by a proceedings dated 17.07.2013, by which, the petitioner has been directed to pay a sum of Rs.4,78,64,977/-. The break up details of the amount demanded is as follows:

"Revised Already paid Balance
to be remitted
C.C.Chargesfor 04/2012=Rs.3,86,84,244/- Rs.2,00,37,380/-
Rs.1,86,46,864/-
ACCD Already raised Revised
Requirement for Rs.3,78,81,883/- Rs.2,92,18,113/-
Rs.2,92,18,113/-
the year 2012-13 -------------------
Working sheet enclosed Total Rs.4,78,64,977/-
--------------------"

4. Followed by the impugned communication dated 17.07.2013, a demand was issued on the same day i.e., on 17.07.2013 for Rs.2,92,18,113/- being the revised demand for additional current consumption deposit. Both the communication and the demand are impugned in this writ petition.

5. Challenge to the demand for additional current consumption deposit has become academic on account of subsequent development, which has been placed before this Court by the respondent in the form of a typed set of papers. By proceedings dated 20.04.2013, the respondent Board has informed the petitioner that on review of adequacy of the current consumption deposit to the credit of the petitioner for HT supply with reference to the Section 5(5) (iia) of the Tamil Nadu Electricity supply Code, it is seen that the amount of Rs. Zero is payable by the petitioner towards current consumption deposit, over and above the existing current consumption deposit of Rs.28,70,612/-, which is paid to the credit of the petitioner for the review year 2018-19.

6. In the light of the subsequent development, namely the proceedings dated 20.04.2013, the demand in respect of the additional current consumption deposit of Rs.2,92,18,113/- has to be set aside. Accordingly, the writ petition is allowed and the revised demand of additional current consumption deposit of Rs.2,92,18,113/- is set aside on account of proceedings of the respondent dated 20.04.2013, which clearly states that the petitioner need not pay any additional current consumption deposit.

7. The next issue with regard to the consumption charges, which has been demanded along with power holiday/peak hour penalty charges, the question is whether this could have been done. Admittedly, the petitioner was treated on a different pedestal when compared to the other industries including the Government industries. This is so because, the Government namely the Industries Department and Electricity Board by communication dated 20.07.2000 informed the petitioner that the Government exempts the petitioner Information Technology Park from power cut whenever request is made. This would be that even there is a power cut being imposed by the Electricity Board, the same would not apply to the petitioner and this waives the importance given to the type of industries

the petitioner promotes. The problem arose on account of a failure of potential transformer (hereinafter referred to as 'PT') in HT service No.450 PT is stated in common parlance as a meter. On account of failure of the PT, the petitioner made a request to the respondent on 26.02.2012 that they are unable to secure a accurate PT due to non-availability and therefore they requested the respondent to normalise the power to the HT service connection by direct connectivity and they accepted for the conditions imposed by the TNEB with regard to the power reading, till the new PT is installed and the connectivity is normalised. Further, in the said letter, the petitioner accepted the supply PT in a week's time.

8. Admittedly, the petitioner is not the manufacturer of the PT nor they could not procure the PT directly, because, unless and until the PT tested and certified by the respondent, the same can be installed. Nevertheless, such a letter was given/obtained from the petitioner. Based on such letter, the respondent in his reply dated 27.04.2012 stated that the petitioner had agreed to supply PT within a week's time and accordingly, the supply was restored to the petitioner by giving direct connection on the same day as a special case. However, the petitioner has not arranged for a healthy PT till the end of April, 2012 and hence, it has been decided to bill the petitioner for their consumption based on the CMRI DATA maintained by the respondent Board. Further, the petitioner was informed that if normal meter arrangement is not restored within seven(7) days from the date of receipt of the letter, further action deemed fit will be taken. The petitioner sent a reply on 30.04.2012 stating that they obtained information from the respondent as to the supply of PT and issued a letter of award to measure Asia Electricals on 15.03.2012 for Supply, Erection Testing and commissioning of 3 Nos. of 33 KV PT and co-ordination with the TNEB officials and informed that they will complete the same as early as possible. However, there was delay on the part of the supplier to the effect of supply. Consequently, new PT could be put into effect only 22.05.2012.

9. In the background of these facts, the respondent Board has issued a demand not only demanding the consumption charges as per CMRI data, which data not furnished to the petitioner, but have also now levied the power holiday/peak hour penalty charges.

10. In the considered opinion of this Court, as long as the petitioner has been treated as a special case, given a dedicated supply from a transformer till normalcy is restored, it is deemed that the said arrangement should continue. The condition imposed for not extending special consumption was on account of non-installation of the new PT. However, this is beyond the control of the petitioner, which should be well within the knowledge of the respondent Board because the supplier of the PT was, in fact, the person, who is notified by the respondent board.

11. Apart from that, the petitioner company being one of the prestigious Government company and a pioneer in the field was extended special privilege including exemption from power cut. Therefore, the respondent Board cannot make an observation as if they have treated the petitioner as special case by giving direct connectivity. In fact, the endeavour of the State and the Electricity Board is to ensure that the mis-interrupted power supply is given to the petitioner because the industry, which they support earned value and also generate employment opportunity. Therefore, there should be a positive approach by the respondent Board with regard to demand made by them.

12. The affairs of the petitioner company is also administered and managed by Government officials and the Directors, are all IAS officers. As pointed out earlier, if the CMRI data is available with the respondent, nothing prevented the respondent from furnishing the data from the petitioner so that actual current consumption could have been worked out. However, that approach has not been made whereas a demand has been issued for a sum of Rs.7,02,32,656/-, which includes the peak hour penalty charges.

13. The respondent Board has considered the petitioner as a special case with consideration should prevail and enure in favour of the petitioner till the new PT was installed and to be put into operation on 22.05.2012.

14. For the above reasons, the revised demand of current consumption charges for April 2012 as demanded in the impugned proceedings dated 17.07.2013 is set aside and matter is remanded to respondent with a direction to furnish a copy of the CMRI data for the relevant period and on receipt of the same, the petitioner is entitled to file their objections, if any, after which, the final bill shall be drawn. It is made clear that no peak our penalty charges or any additional levies can be imposed because the petitioner was treated as a special case. On account of a situation, which arose not attributable to the petitioner and non-availability of a new PT cannot be sole ground for the respondent to levy penalty charges especially when those restriction and control measures were informed on 20.07.2012 i.e., after the petitioner's letter dated 26.02.2012, agreeing to the conditions imposed by the TNEB. In fact the circumstances under which the letter dated 26.02.2012 was written by the General Manager (Operations) to the Superintending Engineer, CEDC/South is that if the company is to go without power, the resultant severe consequences would be unimaginable. Therefore, in all probabilities, the General Manager would have been left with no other option except to write in a language, which should be acceptable by the Respondent Board.

15. For the above reasons, the writ petition is allowed with the above direction. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mp
To

Tamil Nadu Generation and Distribution,
Corporation Limited (TANGEDCO),
Rep. by its Chairman,
NPKR Maligai, 144, Anna Salai,
Chennai - 600 002.

+2ccs to M/s.King and partridge , Advocate SR.No. 103839
+1cc to Mr.P.Gunaraj , Advocate SR.No. 103755

W.P.No.20540 of 2013

A.SK(31/01/2020)