IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.25818 of 2018

M/s Aruppukottai Sri Jayavilas Ltd.,
(Cotton Spinning Mills)
H.T.S.No.68
No.3/333, Melakandamangalam
Tamilpadi Post 626 129
Aruppukottai Taluk
Virudhunagar District
rep.by its General Manager
Gopal Dinakaran .. Petitioner

-vs-

1. The Tamil Nadu Electricity
Regulatory Commission
19-A, Rukmani Lakshmipathy Salai
(Marshall Road), Egmore
Chennai 600 008
rep.by its Secretary

2. The Chairman and Managing Director
TANGEDCO
144, Anna Salai
Chennai 600 002

3. The Superintending Engineer
Virudhunagar Electricity Distribution Circle
TANGEDCO, Virudhunagar 626 001

4. The Tamil Nadu Electricity Ombudsman
19-A, Rukmani Lakshmipathy Salai
(Marshall Road), Egmore
Chennai 600 008 .. Respondents

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Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certioraried Mandamus, calling for the records pertaining to the award/orders dated 27.08.2018 in A.P.No.70 of 2017 passed by the fourth respondent and that portion of the amounts in Items 9 and 13 of the Current Consumption Bill dated 30.03.2007 demanded by the third respondent and quash the same as illegal, arbitrary and against

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the Tariff order in para 7.17 (1.0)(i) and (ii) dated 15.03.2003 and the Regulation 5(2)(1) of the Tamil Nadu Electricity Supply Code 2004 and consequently direct the third respondent to refund the excess demand charges collected from the petitioner.

For Petitioner:: Mr.K.Seshadri

For Respondents:: Mr.S.K.Rameshuwar
Standing Counsel for R2 & 3

ORDER

M/s Aruppukottai Sri Jayavilas Limited (Cotton Spinning Mills) represented by its General Manager has once again come to this Court challenging the correctness of the impugned order passed by the Tamil Nadu Electricity Ombudsman, Chennai, the fourth respondent herein in A.P.No.70 of 2017 and that portion of the amounts in Items 9 and 13 of the Current Consumption Bill dated 30.03.2007 demanded by the Superintending Engineer, Virudhunagar Electricity Distribution Circle, the third respondent herein, to quash the same as illegal, arbitrary and against the Tariff order in para 7.17 (1.0)(i) & (ii) dated 15.03.2003 and the Regulation 5(2)(1) of the Tamil Nadu Electricity Supply Code 2004 with a consequential direction to the third respondent to refund the excess demand charges collected from the petitioner.

2. Mr.K.Seshadri, learned counsel for the petitioner submitted that the petitioner industry is a cotton yarn industry with high tension electricity service connection bearing no.68 having a sanctioned demand of 1300 K.V.A., accorded by the Chairman and Managing Director, TANGEDCO and the Superintending Engineer, Virudhunagar Electricity Distribution Circle, the respondents 2 & 3 and enjoying the supply from 31.10.82. Thereafter, to extend the industrial activity, the petitioner requested the second and third respondents to sanction additional demand of 3690 K.V.A., and the second respondent, after satisfying with the technical feasibility, has accorded 11 K.V., supply to 3690 K.V.A., demand on 9.12.2005. Since then, the petitioner has been using 4990 K.V.A., with 11 K.V., supply line. The learned counsel for the petitioner also stated that the petitioner is an exporter of cotton yarn registered with the Cotton Textile Export Promotion Council (TEXPROCIL) and they have been awarded one Star Export House Status by the Ministry of Commerce, Government of India for the export turnover achieved by them over the years. They are also providing employment opportunity to 1700 to 2000 persons living in and around Aruppukkottai vicinity. Since they have been paying the current consumption charges without any default as demanded by the third respondent for the electricity consumed, as per the

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tariff fixed by the Government of Tamil Nadu under Section 4 of the Tamil Nadu Revision of Tariff Rates on Supply of Electricity Act 1978, till 15.3.2003, after the Tamil Nadu Electricity Regulatory Commission, the first respondent has come into existence, the tariff is being fixed by them and the first respondent also has notified the tariff on consumption of electricity payable by various consumers on 15.3.2003. As per the tariff notification referred to above, the petitioner industry falls under high tension tariff IA (Industrial Tariff) and the tariff payable by the petitioner would be of two part, namely, demand charges and energy charges. As per the tariff, the petitioner mill has to pay Rs.300/- per K.V.A., of maximum demand sanctioned and paise 350 per unit as energy charge. In view of clause 7.17(1.0)(i) of tariff order applicable to high tension supply involving a sanctioned demand above 5000 K.V.A., plus 2 percent marginal adjustment shall be given supply at 33 K.V., if available in the area or at EHT voltage. Whereas under clause 7.17 (1.0)(ii), in the case of existing high tension consumer whose sanctioned demand exceeds 5000 K.V.A., and who do not avail supply at 33 K.V., or EHT voltage, they shall be charged an extra levy of ten paise per KWH over and above the normal tariff for the entire energy consumed in a month. The learned counsel submitted, in other words, that a high tension consumer who requires sanctioned demand for 5000 K.V.A., and above, such consumer shall avail the high tension supply at 33 K.V., or extra high voltage supply, but not at 11 K.V., supply. This is for the reason that if the high tension consumer, after getting sanction for 5000 K.V.A., or more, fails to avail the high tension supply at 33 K.V., line or EHT voltage line and if they exceed the 5000 K.V.A., demand, then such consumer is liable to pay 10 paise per unit over and above the normal tariff for the entire energy consumed. Therefore, the above provision is applicable to those high tension consumers whose sanctioned demand is 5000 K.V.A., and who failed to avail the supply at 33 K.V., line or EHT supply, then such consumer is liable to pay extra levy of 10 paise per unit over and above the normal tariff for the entire energy consumed.

3. Continuing his arguments, the learned counsel submitted that whenever the consumer exceeds the sanctioned demand, the excess demand recorded alone shall be charged at double the normal rate. Hence, under the tariff order dated 15.3.2003, a high tension consumer has to pay Rs.300/- per K.V.A., towards demand charges and if he exceeds the permitted sanctioned demand, he will have to pay Rs.600/- per K.V.A., of the demand so exceeded being the double of the normal rate as prescribed under the Supply Code. Ignoring the provisions of the tariff order dated 15.3.2003 and the Tamil Nadu Electricity Supply Code as notified by the Tamil Nadu Electricity Regulatory Commission, the first respondent herein on 1.9.2004, the third respondent

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has issued the proceedings dated 1.3.2007 in letter No.SE/VDR/AO/R/RCS/A2/F.HT. SC.68/D 2944/2007 stating that necessary penalty clause will be imposed for exceeding the demand over and above the sanctioned demand on demand factor and energy factor as per the Tamil Nadu Electricity Regulatory Commission directives, namely, penalty of three times demand charges for the excess maximum demand and 10 paise per unit over and above the normal tariff for the entire consumption, in case the consumer exceeds 5000 K.V.A., and failed to avail 33 K.V., supply. Aggrieved by the same, the petitioner sent a detailed reply to the third respondent explaining how the petitioner is not liable the penalty of 10 paise per KWH, as their sanctioned demand is 4990 K.V.A., and the penalty clause is applicable only to those consumers whose sanctioned demand is 5000 K.V.A., and above and who do not avail the high tension supply at 33 K.V., or EHT voltage line, therefore, the same cannot be applied to the petitioner. In the representation, it has been further stated that for exceeding the sanctioned demand of 4990 K.V.A., the petitioner has been paying the demand charges at three times of the normal rate, namely, Rs.600/- per K.V.A., of the exceeded demand and Rs.300/- per K.V.A., of the recorded demand. Therefore, the petitioner requested the third respondent not to impose any penalty of 10 paise per KWH, as the third respondent had not pressed the petitioner to avail the 33 K.V., supply at any point of time before issuing the letter dated 1.3.2007 invoking penalty clauses. While so, to their shock and surprise, in the bill dated 30.3.2007, the third respondent has included the extra levy amounts in items 9 and 13 at three times of the normal tariff for exceeding the sanctioned demand and extra levy of 10 paise per unit over and above the normal tariff for the entire consumption for exceeding the sanctioned demand of 4990 K.V.A. Hence, W.P.No.12236 of 2007 was filed before this Court challenging the same. This Court, after perusing the documents filed by the petitioner and the respondents and after hearing both parties, allowed the writ petition quashing the proceedings dated 1.3.2007 and also the consequential demand in items 9 and 13 of the consumption bill dated 30.3.2007 in its order dated 6.10.2014. Aggrieved thereby, W.A.No.181 of 2015 was filed and the Hon'ble Division Bench in its order dated 7.11.2017 directed the petitioner to move the Ombudsman. Accordingly, an appeal in A.P.No.70 of 2017 was filed before the Ombudsman on 21.11.2017 with the relevant documents and the Ombudsman, without considering the provisions in the tariff order and Regulation 5(2)(1) of the Supply Code 2004, has passed the impugned order dated 27.8.2018.

4. Firstly, the Ombudsman, it is contended, has failed to adhere to the mandatory provisions contained in Regulation 22 (3) of the Regulations for Consumer Grievance Redressal Forum and Electricity Ombudsman 2004, in disposing of the appeal

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within three months time. Secondly, by taking nine months to pass the order, the Ombudsman has exceeded the statutory limit without assigning any reason. When Regulation 5(2)(1) of the Supply Code 2004 demands that the petitioner has to pay thrice the normal rate for the exceeded sanctioned demand, levying and demanding another 10 paise per unit for the entire consumption of energy under tariff order 7.17 (1.0)(i) and (ii) from 3/2006 is illegal, arbitrary and the same amounts to unjust enrichment. Thirdly, the Ombudsman also failed to note that as per the tariff order, the petitioner should have availed 5000 K.V.A., as sanctioned demand and subsequently failed to avail 33 K.V., supply or extra high voltage supply and only then, the petitioner is liable to pay extra levy of 10 paise per unit for the entire consumption. When the petitioner had the sanctioned demand of 4990 K.V.A., with 11 K.V., supply as accorded by the second respondent, the petitioner is not liable to pay penalty. This has been ignored in the impugned order, hence, the impugned order is liable to be set aside. Further, the Ombudsman, in paragraphs 12.1 and 12.2, reached a conclusion against the tariff order dated 15.3.2003 and the Supply Code 2004, since he has ordered to pay two penalties for a single violation under paragraph 7.17(1.0)(i) and (ii) and Regulation 5(2)(1) of the Supply Code, 2004. The Ombudsman also failed to note that the third respondent is entitled to collect excess demand charges twice the normal rate on the exceeded demand only, instead of thrice the normal rate collected. For these reasons, the impugned order is liable to be set aside, he pleaded.

5. Mr.S.K.Raameshuwar, learned standing counsel for the respondents 2 & 3, supporting the impugned order passed by the fourth respondent, submitted that as per clause 7.17(1.0)(ii) of the Tariff Schedule relating to high tension supply, in the case of existing high tension consumers whose sanctioned demand exceeds 5000 KVA and who do not avail supply at the voltage indicated in item (1), they shall be charged an extra levy of ten paise per KWH over and above the normal tariff for the entire energy consumed and this extra levy is applicable to all categories of HT consumers till they avail supply at the specified voltage. As per the said clause, the petitioner is liable to pay the maximum demand charges for any month based on the KVA demand recorded in that month at the point of supply or such percentage of sanctioned demand as may be decided by the commission from time to time whichever is higher. The exceeded demand alone shall be charged double the normal rate as per Regulation 5(2)(1) of the Supply Code vide notification No.TNERC/SC/7/1 dated 21.7.2004. Adding further, the learned standing counsel also contended that when the petitioner has not only exceeded 5000 KVA, but also not availed the supply at the required voltage level of 33 K.V., their challenge to the impugned proceedings that they are not liable to pay ten paise

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per KWH over and above the normal tariff for the entire energy consumed, is liable to go. The learned standing counsel, explaining how the petitioner's billable demand and excess demand are billed, stated that when the actual recorded demand was 5448 K.V.A., consequent to the sanctioned demand of 4990 K.V.A., the actual recorded demand or 90% of the sanctioned demand whichever is higher is billed as the billable demand i.e., 5448 K.V.A. Therefore, the petitioner is liable to pay the demand charges for the actual recorded demand of 5448 K.V.A., multiplied by Rs.300/- equivalent to Rs.16,34,000/- and the demand charges for the exceeded demand shall be charged double the normal rate, namely, 548 x 600 = Rs.2,74,800/-. The levy of extra 10 paise per KWH over and above the normal tariff for the entire energy consumed for exceeding 5000 K.V.A., when the consumer who do not avail the supply at the required voltage of 33 K.V.A., is in accordance with the commission's tariff order dated 15.3.2003.

6. I also find merits on the submissions made by the learned standing counsel for the respondents 2 & 3, for the following reasons. When the petitioner has not only exceeded 5000 K.V.A., but also not availed the supply at the required voltage level of 33 K.V., the contention of the petitioner is contrary to clause 7.17(1.0)(i) and (ii) of the Tariff Schedule, which reads as follows:-

> "7.17 Tariff Schedule
> Part-I High Tension Supply
> 1.0 General provisions applicable for High Tension Supply
>
> (i)Any High Tension Supply involving a sanctioned demand above 5000 KVA plus 2 percent marginal adjustment shall be given supply only at 33 KV, if available in the area or at EHT voltage.
>
> (ii)In the case of existing High Tension Consumers whose sanctioned demand exceeds 5000 KVA and who do not avail supply at the voltage indicated in item (i) they shall be charged an extra levy of ten paise per KWH over and above the normal Tariff, for the entire energy consumed. This extra levy is applicable to all categories of HT consumers till they avail supply at the specified voltage."

Consequently, the maximum demand charges for any month will be levied on the KVA demand actually recorded in that month or 90% of the sanctioned demand whichever is higher. Admittedly, when the actual recorded demand of the petitioner was 5448 K.V.A.,

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consequent to the sanctioned demand of 4990 K.V.A., the actual recorded demand or 90% of the sanctioned demand whichever is higher is billed as the billable demand i.e., 5448 K.V.A. Therefore, the petitioner is liable to pay the demand charges for the actual recorded demand of 5448 K.V.A., multiplied by Rs.300/- equivalent to Rs.16,34,000/- and the demand charges for the exceeded demand shall be charged double the normal rate, namely, 548 x 600 = Rs.2,74,800/-. When the petitioner was sanctioned with the demand of 4990 K.V.A., the recorded demand of the petitioner from 03/2006 to 10/2007 reads as follows:-

Sl.No.	Month	Recorded Demand	Recorded Energy Total	Recorded Energy Peak	Rs.0.10/0.02 paise per unit plus E.tax
01	03/2006	5184	1828000	408300	200514
02	04/2006	5232	3292729	836820	363310
03	05/2006	5472	3482160	869160	383879
04	06/2006	5520	2787496	712479	307649
05	07/2006	5472	2323640	584454	256256
06	08/2006	5496	2737650	674549	301619
07	09/2006	5448	3268393	814653	360289
08	10/2006	5232	2574734	624212	283456
09	12/2006	5136	2947557	749756	325238
10	01/2007	5376	2655843	701002	293585
11	02/2007	5400	2282564	564817	251530
12	03/2007	5448	3275623	816255	361082
13	04/2007	5400	3267900	841560	360802
14	05/2007	5352	3257160	811260	359038
15	06/2007	5328	3488040	867120	384454
16	07/2007	5400	3362760	825960	370435
17	08/2007	5016	3214080	798180	354240
18	09/2007	5064	3257280	753480	357837
19	10/2007	5202	2498055	497100	272735
		Grand Total			6147948

7. A reading of the above table clearly shows that when the petitioner has got a sanctioned demand of 4990 K.V.A., only, they have reached 5448 K.V.A., during the month of March 2007. Therefore, as rightly contended by the learned standing counsel for the respondents 2 & 3, the petitioner is liable to pay the billable demand and excess demand charges in accordance with the

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tariff order 7.17(1.0)(ii) and Regulation 5(2)(1) of the Tamil Nadu Electricity Supply Code and this has been rightly appreciated by the respondent Ombudsman. Hence, finding no merits whatsoever, the impugned order is confirmed and the writ petition stands dismissed with costs of Rs.10,000/- payable by the petitioner to the respondent-TANGEDCO within one week. Consequently, W.M.P.Nos.30029 & 30242 of 2018 are also dismissed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

1. The Secretary
   Tamil Nadu Electricity
   Regulatory Commission
   19-A, Rukmani Lakshmipathy Salai
   (Marshall Road), Egmore
   Chennai 600 008

2. The Chairman and Managing Director
   TANGEDCO
   144, Anna Salai
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3. The Superintending Engineer
   Virudhunagar Electricity Distribution Circle
   TANGEDCO, Virudhunagar 626 001

4. The Tamil Nadu Electricity Ombudsman
   19-A, Rukmani Lakshmipathy Salai
   (Marshall Road), Egmore
   Chennai 600 008

+1cc to Mr.K.Seshadri, Advocate sr.75375
+1cc to Mr.S.K.Rameshuwar, Advocate sr.73774

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