

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.01.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.33733 of 2018

and

W.M.P.Nos.39150, 39155 & 39158 of 2018

M/s.Sri Vinayaga Alloys Pvt.Ltd.,
H.T.Sc.No.119
28/2A-1, Salem Main Road,
Akkamapet Post, Sankari Taluk
Salem District - 637 301
Rep.by its Managing Director
T.Suthanthirarajan.Petitioner

vs

- 1.The Tamil Nadu Electricity Regulatory
Commission, Rep.by its Secretary,
No.19A, Rukmani Lakshmipathy Salai
Egmore, Chennai - 600 008
- 2.The Chairman and Managing Director
Tamil Nadu Generation and Distribution
Corporation Ltd.,
No.144, Anna Salai, Chennai - 600 002.
- 3.The Chief Financial Controller/Revenue
TANGEDCO,
No.144, Anna Salai, Chennai - 600 002.
- 4.The Superintending Engineer
Mettur Electricity Distribution Circle,
TANGEDCO,
Mettur Dam - 636 401.

... Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
calling for the records of the impugned memo
No.CFC/REV/FC/REV/DFC/AO/HT/D207/18 dated 02.04.2018 issued by
the 3rd Respondent and consequential order in
Lr.No.SE/M/DFC/AO/R/AS/F/T&D/D.No.624/18 dated 22.11.2018,
issued by the 4th Respondent, demanding Rs.5,41,173/- and

threatening to include in the ensuing C.C.Bill and quash the same as illegal, arbitrary and against the provisions of Electricity Act 2003 and the Tariff order in No.T.P.No.1 of 2017 dated 11.08.2017.

For Petitioner : Mr.K.Seshadri

For Respondents: Mr.S.K.Raameshwar, standing counsel
for Electricity Board for R2 to R4

O R D E R

The relief sought for in this writ petition is to call for the records of the impugned memo No.CFC/REV/FC/REV/DFC/AAO/HT/D207/18 dated 02.04.2018 issued by the 3rd Respondent and consequential order in Lr.No.SE/M/DFC/AO/R/AS/F/T&D/D.No.624/18 dated 22.11.2018, issued by the 4th Respondent, demanding Rs.5,41,173/- and threatening to include in the ensuing C.C.Bill and quash the same as illegal, arbitrary and against the provisions of Electricity Act 2003 and the Tariff order in No.T.P.No.1 of 2017 dated 11.08.2017.

2.The petitioner is involved in the manufacture of Ingots etc., having High Tension Electricity Supply in H.T.Sc.No.119. The 2nd and 4th respondents have sanctioned the said H.T.Supply with a maximum demand of 3175 K.V.A to run the said industry. The petitioner industry has been providing employment to about two hundred persons and they are promptly paying the charges as per the regulations of the Board.

3.In respect of the levy of T & D Loss components, this Court had adjudicated the issues in a batch of Writ Petitions in W.P.Nos.20954 & etc., of 2018 and an order was passed on 03.01.2019 and the paragraphs 21 & 22 are extracted hereunder:-

"21.Para 5.8.4.86(4) of the order in T.P.No.1 of 2017 issued by the Regulatory Commission for Determination of Tariff for Generation and Distribution relating to Wheeling Charges for Open Access Customers, states that the normative distribution system loss at the voltage on which open access transmission is undertaken, shall be borne by the consumer in kind. It is also seen that the Regulatory Commission in the review application in R.A.No.4 of 2017, has only

accepted the loss component but not revised or amended the said para to enable TANGEDCO to convert kind into cash. Such rectification of loss components by the Regulatory Commission in R.P.No.4 of 2017 dated 13.03.2018 on the voltage drawn and injection voltage, cannot be treated as an authorisation to encash loss components. The fact remains that the appeal filed by the Tamil Nadu Spinning Mills Association before the Appellate Tribunal for Electricity, New Delhi in Appeal No.356 of 2017 is pending. Further, even in the review petition filed by TANGEDCO, the Regulatory Commission has passed the order on 13.03.2018 rendering the revision subject to the outcome of the appeal filed by the Tamil Nadu Spinning Mills Association in Appeal No.356 of 2017 before the Appellate Tribunal for Electricity, New Delhi. Therefore, the matter has not been concluded and only upon the outcome of the appeal in Appeal No.356 of 2017, the things would be settled and only thereafter, a proper decision could be taken by the Electricity Board. This Court finds force in the submission made by the learned senior counsel for the petitioners that before passing the impugned orders, TANGEDCO ought to have waited till the disposal of the appeal in Appeal No.356 of 2017. In these circumstances, the respondents are not permitted to raise bills from 11.08.2017 to compensate the loss instead of unit to unit adjustment from 13.03.2018, on which date the revision is permitted by the Regulatory Commission. The claim of excess payment shall be considered for adjustment towards future liabilities. However, it is made clear that the respondents shall proceed with the matter on the basis of the outcome of the decision of the Appellate Tribunal for Electricity, New Delhi in Appeal No.356 of 2017, in accordance with law.

22. With the above observations, the orders impugned in these writ petitions are set aside and the writ petitions are allowed. No costs. Consequently, the connected miscellaneous petitions are closed."

4. The issues raised in the present writ petitions are akin to that of the issues decided by this Court in the batch of writ petitions in W.P.Nos.20954 & etc., of 2018 dated 03.01.2019.

5. Thus, the impugned order passed by the 3rd respondent in No.CFC/REV/FC/REV/DFC/AAO/HT/D207/18 dated 02.04.2018 and consequential order in Lr.No.SE/M/DFC/AO/R/AS/F/T&D/D.No.624/18

dated 22.11.2018, issued by the 4th Respondent are quashed and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary, Tamil Nadu Electricity Regulatory Commission,
No.19A, Rukmani Lakshmipathy Salai
Egmore, Chennai - 600 008
- 2.The Chairman and Managing Director
Tamil Nadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai, Chennai - 600 002.
- 3.The Chief Financial Controller/Revenue
TANGEDCO,
No.144, Anna Salai, Chennai - 600 002.
- 4.The Superintending Engineer
Mettur Electricity Distribution Circle,
TANGEDCO,
Mettur Dam - 636 401.

+1cc to M/S.K.Seshadri, Advocate Sr.5784

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