BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2019

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**

W.P.(MD)No.13810 and 13871 of 2019

and

W.M.P.(MD)No.10327 and 10379 of 2019

Malar Paper Mills P Ltd.,
HTSC No.115,
Sri Palaniandi Pillai Industrial Complex,
Kallur – 622 209,
Represented by its Authorised Signatory P.Ramanathan
...Petitioner in W.P.(MD)No.13810 of 2019

Malar Solvent Extraction P Ltd.,
HTSC No.81,
Aranthangi Road, Puduvayul – 630 108,
Sivagangai District -630 108,
Represented by its Authorised Signatory P.Ramanathan
...Petitioner in W.P.(MD)No.13871 of 2019

/Vs./

1.The Tamilnadu Generation and
Distribution Corporation Ltd., (TANGEDCO),
144, Anna Salai, Chennai – 600 002,
Represented by its Chairman.

2.Director Finance,
Tamilnadu Generation and
Distribution Corporation Ltd., (TANGEDCO),
144, Anna Salai, Chennai – 600 002.

3.The Superintending Engineer,
Sivagangai Electricity Distribution Circle,
TANGEDCO, Sivagangai.

4.The Accounts Officer / Revenue,
The Superintending Engineer Office,
Sivaganga Electricity Distribution Circle,
TANGEDCO, Sivagangai.
...Respondents in both petitions

COMMON PRAYER:- Writ Petitions - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent's impugned notice bearing

Lr.No.SE/SEDC/SVGA/DFC/HT/AS/F.Audit/D.167/2019 and Lr.No.SE/SEDC/SVGA/DFC/HT/AS/F.Audit/D.166/2019 both dated 26.04.2019 and consequential impugned CC bill dated 31.05.2019 insofar as it relates to Serial No.20 'Adjustment Charges (not affecting)' alone for a sum of Rs.1,00,61,000/- and Rs.19,63,788/-alone issued by the 4th respondent and quash the same as illegal, arbitrary against principles of natural justice, contrary to the 2nd respondent's own Circular Memo dated 03.02.2016 and consequently direct the 3rd respondent to give an opportunity of personal hearing before passing orders.

For Petitioner : Mr.ARL.Sundaresan, Senior Counsel for Mr.R.S.Pandiyaraj

For Respondents : Mrs.S.Srimathy, Special Government Pleader (in both petitions)

COMMON ORDER

The petitioner industry is a continuous process industry engaged in the manufacture of paper. It has a high tension electricity supply connection. Since the Tamil Nadu Electricity Board is not in a position to effect continuous supply of sufficient quantity of power as required by the petitioner and has also imposed unscheduled power cuts and load shut downs, the petitioner was constrained to approach the respondents seeking permission to purchase power from external suppliers.

2. The concerned Regulations provide for the fixation of demand and energy quota for twenty working days in a month and provide for a power holiday for the remaining ten days. The petitioner has, in the aforesaid circumstances and specifically to ensure continuity of process, sought leave to consume upto the sanctioned demand of power during the holiday period from the Tamil Nadu Electricity Regulatory Commission (in short 'TNERC').

3. The request was granted in M.P.Nos.6, 9 and 17 of 2010 in D.R.P.No.17 of 2010, the operative portion of the order reading as follows:-

> *4.4.the consumer is at present permitted to utilize power from captive sources. The present order would enable a consumer to purchase power from third party sources as well. Procurement of power by a consumer through open Access is protected by the Electricity Act, 2003. The role of the licensee is limited to that of a carrier. Procurement through Open Access will be treated as an additionality. The ceiling, up to which a*

consumer can utilize power including the TNEB quota demand, captive power and third party purchase, would be the sanctioned demand. In such a situation, there would be no need for advance declaration by the consumer of procurement of captive power as stipulated in SMP No.1 of 2009 or procurement of third party power as stipulated in the interim order dated 17.08.2010. As the TNEB has allowed Procurement of power up to the sanctioned demand in their communication dated 17.07.2009 "procedure for allowing third party sale / purchase under intra state open access" there should be no difficulty in allowing the consumer to procure power up to the sanctioned demand."

4. Thus, and in line with the above order, the petitioner is eligible for demand and energy quota upto sanctioned demand during the power holiday period in one month and has been sanctioned the same by the third respondent, the Superintending Engineer.

5. It is in the aforesaid circumstances that the petitioner received a demand notice dated 08.06.2015, wherein an enhanced demand has been fastened upon it for the period 04/2013 to 06/2013 based on certain audit slips. The slips refer to Circular Memos, Current Consumption (CC) bills as well as other material that, admittedly, have not been furnished to the petitioner. The petitioner brought to the notice of the authorities that the computation as well as reconciliation of demand and remittances was incorrect, to no avail.

6. This was followed by yet another demand notice dated 26.04.2019 calling upon the petitioner to pay a demand, again based on audit slips, for the period 10/2015 to 05/2015. This demand refers to an order of the Tamil Nadu Electricity Ombudsman dated 26.09.2014 to which the petitioner is not a party. The petitioner has, pursuant to the aforesaid demands been approaching the respondents pointing out various lacunae that, according to it, have crept into the manner of computation of the demands itself. While there has been no response to the repeated requests, the earlier two demands have been reiterated vide the impugned communication dated 26.04.2019.

7. At this juncture, Mrs.S.Srimathy, learned Special Government Pleader who has accepted notice on behalf of the respondents fairly states that the impugned demand notices are based on materials that have, admittedly, not been supplied to the petitioner as the authorities ought to have done. This has thus, effectively prevented the petitioner from being aware of or responding to the basis of the impugned levies.

8. In the light of the aforesaid discussion, nothing further need be done except to set aside the impugned orders passed by the 3rd respondent dated 26.04.2019. The matters are remanded back to the file of the third respondent, who will furnish all the materials on the basis of which enhanced demands have been made and afford suitable opportunity to the petitioner to make submissions in that regard. Personal hearing shall be afforded, and appropriate orders shall be passed thereafter in accordance with law.

9. In the light of the aforesaid discussion, these Writ Petitions are allowed. No costs. Consequently, connected MPs are closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Tamilnadu Generation and
Distribution Corporation Ltd., (TANGEDCO),
144, Anna Salai, Chennai - 600 002,
Represented by its Chairman.

2.Director Finance,
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3.The Superintending Engineer,
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TANGEDCO, Sivagangai.

4.The Accounts Officer / Revenue,
The Superintending Engineer Office,
Sivaganga Electricity Distribution Circle,
TANGEDCO, Sivagangai.

+2 CC to M/s.R.S.PANDIYARAJ, Advocate (SR-70157,70156[F] dated 20/06/2019)

Common order made in
W.P.(MD)No.13810 and 13871 of 2019
Dated:
20.06.2019

KM/(03.10.2019) 4P 7C