

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	29.03.2021
Pronounced On	27.05.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.8314 of 2011

and

M.P.No.1 of 2011

(Through Video Conferencing)

M/s.A.R.S.Metals Ltd.,
H.T.SC.No.1902, D-109,
2nd Floor, L.B.R. Complex,
Anna Nagar East,
Chennai - 600 102,
Rep. by its Deputy Director,
N.Prabhu. ... Petitioner

Vs.

- 1.The Tamil Nadu Electricity Regulatory
Commission,
19-A, Rukmini Lakshmipathy Salai,
Egmore, Chennai - 600 008.
Rep. by its Secretary.
- 2.The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Ltd.
Chennai / North Circle,
144, Anna Salai, Chennai - 600 002. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of second respondent in Lr.No.SE/CEDC/N/HT1902/D1173/11 dated 22.03.2011 and quash same as illegal, arbitrary and against the orders of the first respondent.

For Petitioner : Mr.A.R.L.Sundaresan,
Senior Counsel for Mr.K.Seshadri.

For Respondents: Mr.P.R.Dhilip Kumar
Standing Counsel.

O R D E R

The petitioner has challenged the impugned demand notice dated 22.03.2011 seeking to demand an amount of Rs.14,45,760/-

on the excess demand reached on 09.02.2011 between 10 p.m. to 12 p.m. as detailed below:-

Timings	Demand Recorded
10.00 pm to 10.15 pm	.4336
10.15 pm to 10.30 pm	.8608
10.30 pm to 10.45 pm	.9032
10.45 pm to 11.00 pm	.8648
11.00 pm to 11.15 pm	.9056
11.15 pm to 11.30 pm	.8772
11.30 pm to 11.45 pm	.9088
11.45 pm to 12.00 pm	.5316

Maximum

Demand Recorded = $0.9088 \times 12000 = 10905.60$ KVA

2. The above demand has been worked out on the highest demand recorded between 11.30 p.m. and 11.45 p.m. on 09.02.2011 by the petitioner. The petitioner being an industrial consumer was sanctioned 11860 K.V.A (11.80 MW).

3. However, due to acute shortage of power, the petitioner was allowed to utilise only 68% of the sanctioned load equivalent to 8496 K.V.A at any given point of time during the period in dispute. The petitioner was however entitled to purchase power from third-party.

4. However, on 09.02.2011, the petitioner had not purchased power from a third party. It exceeded reduced load of 8496 KVA between 10.15 p.m. and 11.45 p.m.

5. Thus, a sum of Rs.14,45,760/- has been demanded from the Petitioner in the impugned demand notice. It has been on the highest demand recorded between 11.30 p.m. and 11.45 p.m. on 09.02.2011 at 9088 units by multiplying it with 12,000 = 10905.60 [9088 units x 12,000] and by subtracting it with the reduced load of 8496 K.V.A permitted to arrive at the excess unit consumed by the petitioner. The demand has been calculated at Rs.6/- per unit as detailed below:-

As per TNERC Supply Code 5(13) "In case the maximum recorded demand is in excess of the quota fixed, the demand in excess of the quota fixed shall be charged at rates specified by the commission from time to time"

Demand Recorded on 09.02.2011 = 10905.60

From 10.00 pm to 12.00 pm

quota permitted = 8496.00
Excess Demand = 2409.60 x Rs.600
Excess Demand Charges = Rs.14,45,760/-

6. The above demand has been challenged by the petitioner on the ground that the first respondent was not justified in demanding amounts for the whole day and if at all, it has to be proportionate to the period when the petitioner exceeded the sanctioned reduced load and consumed excess. It is submitted that it cannot be applied for the whole of 24 hours on 09.02.2011.

7. The second respondent has filed a counter and it is submitted that the present writ petition was misconceived and is liable to be dismissed. It is submitted that the petitioner exceeded consumption by 2409.60 KVA and as per the undertaking executed by the petitioner vide Clause 15, the petitioner was liable to pay excess demand charges.

8. It is further submitted that as per Regulation 5(13) of the Tamil Nadu Electricity Regulatory Commission's Codes and Regulations, "excess demand charge and excess energy charge during restriction and control of supply (1), the maximum demand charges for HT supply shall be based on the actual record demand at the point of supply or at 90% of the demand quota as fixed from time to time through restriction and control measures whichever is higher.

9. It is submitted that the sanctioned load of the petitioner was 11800.00 KVA. It was however re-fixed due to power shortage to 849.60 KVA. Therefore, the petitioner was allowed to purchase additional power from outside was 9.7 MW = 10549.60 KVA (849.60 KVA + 9700 KVA).

10. I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned counsel for the respondents. I have perused the order of the Tamil Nadu Electricity Regulatory Commission's order and the relevant provisions from the Act and the Regulations. Regulation 5(13) of the Tamil Nadu Electricity Regulatory Commission's Codes and Regulations reads as under:-

(13) Excess demand charge and excess energy charge during Restriction and Control of supply :

(i) The maximum demand charges for HT supply shall be based on the actual recorded demand at the point of supply or at 90% of the demand quota as fixed from time to time through restriction and control measures whichever is

higher. In case the maximum recorded demand is in excess of the quota fixed, the demand in excess of the quota fixed shall be charged at rates specified by the Commission from time to time.

(ii) The energy consumption over and above the energy quota fixed shall be charged at the rates specified by the Commission from time to time in respect of such class of consumers upon whom the restriction and control measures apply.

(iii) The services which draw electricity from TNEB Grid for using welding sets during the restricted hours shall be charged at the rates specified by the Commission from time to time.

11. The Tamil Nadu Electricity Regulatory Commission in its order dated 08.11.2008 in M.P.No.42 of 2008 has concluded that:-

29.If the excess demand is charged at a price the normal rate as present and this excess energy consumption is charged thrice the normal rate the normal rate, the excess consumption is liable to be charged at any value to be 13.20 per unit for HT industrial consumers, is both the demand and energy quota exceeded. We believe that this is fair and just the consumer and the licensee and therefore the Commission directs energy conversion be charged at thrice the normal rate for both HT industrial and commercial consumers.

12. The rates to be charged is as per the rates that may be fixed and specified by the Commission from time to time as is evident from reading of the above Regulation.

13. The question that arises for consideration in this writ petition is whether this excess demand charges and excess energy charge during Restriction and Control of supply is to be limited during the excess consumption as was contended by the learned Senior Counsel for the petitioner when there was a spike in the consumption by the petitioner or whether it has to be charged for the entire day even though there was no recorded spike in consumption for the rest of the day.

14. The reduced load of the petitioner was 8496 KVA due to the load shedding. on 09.02.2011, the petitioner had exceeded quota between 10.15 p.m. to 10.30.p.m. and 11.30.p.m. to 11.45.p.m as detailed above.

15. The petitioner was therefore liable to be penalized as per the above Regulation. However, such penalty in the form of Excess Demand Charges and/or Excess Energy Charges should

be in proportion to the actual consumption and during the period when such consumption was noticed unless the Regulations prescribes otherwise has been done in the impugned order.

16. The demand based on the highest demand recorded between 11.30 p.m. and 11.45 pm cannot be applied for the whole day unless the Regulations provides for the same. The excess demand charges and excess energy charges has to be proportionate with the excess consumed/ reached and not based on the highest demand recorded unless the regulation provides otherwise.

17. Further, basis of the calculation of the excess demand recorded at 2409.60 KVA by multiplying .9088 x 12,000 to arrive at the excess at 10905.60 KVA and subtracting 8496 KVA ought to have been explained in the impugned notice.

18. Similarly, the basis for adoption of highest demand for arriving at the above excess also ought to have been explained. Further, Tamil Nadu Electricity Regulatory Commission by its order dated 08.11.2008 has fixed charges Rs.13.20 per unit whereas the demand has been made at Rs.6/- per unit. There is no clarity in the method adopted the impugned notice while arriving at the excess consumption and the adoption of the charges.

19. Therefore, the impugned order dated 22.03.2011 passed by the first respondent is liable to be quashed and the case deserves to be remitted back to the respondent to pass a speaking order giving proper explanation as to the method in which the above calculation has been arrived in the impugned demand giving the particulars of the regulations.

20. Since the demand pertains to the consumption during February 2011, the first respondent is directed to pass appropriate orders and issue demands notice keeping the above observation in mind within a period of thirty days from the date of receipt of a copy of this order. Needless to emphasize such orders shall be passed after hearing the petitioner.

21. Writ Petition stands disposed of with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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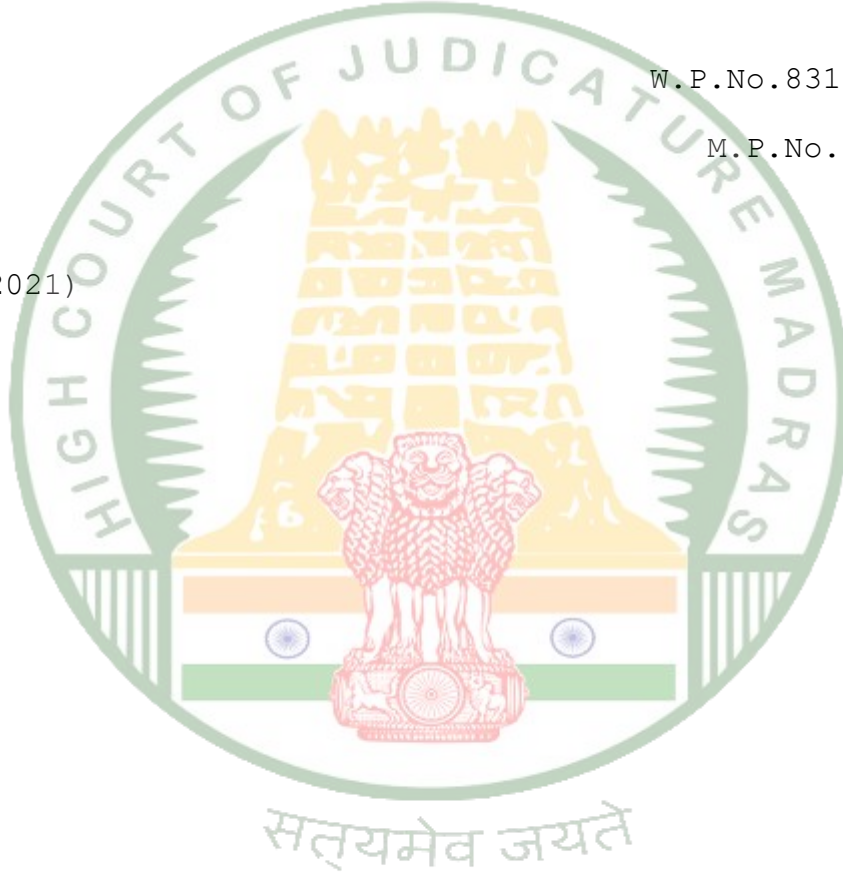
Sub Assistant Registrar

To

- 1.The Tamil Nadu Electricity Regulatory Commission,
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Rep. by its Secretary.
- 2.The Superintending Engineer,
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CP(CO)
GN(13/07/2021)



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