IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.14921 of 2020

M/s.Laxmi Rolling and Strips P.Ltd.,
repd by its Manager H. Ramesh.
HT.Sc No.322, Hosur Thally Road
Kalukondapally Village
Belagondapally
Krishnagiri - 635 114. ... Petitioner

-Vs-

The Superintendent Engineer
Krishnagiri Electricity Distribution Circle
TANGEDCO Krishnagiri. ... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records Calling for the records of respondent's impugned CC Bill dated 08.09.2020 insofar as the levy of Rs.28,66,500/- under serial no.8 'demand charges' alone and the consequential impugned notice bearing Lr.o. SE / KEDC /K. Giri / DFC/ AO /AAO - HT / AS / F. HTSC NO. 322/ D. 457/ 20 dated 21.09.2020 and quash the same as illegal, arbitrary, against the Principles of natural Justice against Tariff Order No. 1 of 2017 dated 11.08.2017 issued by TNERC and Regulation 5(2)(i) of the YN Supply Code, 2004 and consequently direct the Respondent give refund/adjustment of Rs.4,16,500/- illegally collected from the petitioner towards excess demand charges for 1190 KVA at 3 times instead of 2 times as per Regulation 5(2)(i) of the TN Supply Code, 2004.

For Petitioner : Mr.R.S.Pandiyaraj

For Respondent : Mr.L.Jai Venkatesh
Standing Counsel

O R D E R

This writ petition has been filed challenging the impugned current consumption bill dated 08.09.2020, insofar as the levy of the demand at Serial No.8 of the bill, by including the excess demand also along with the permitted maximum demand.

2.The respondent has sanctioned HT supply to the petitioner with a sanctioned demand of 7000 KVA to run the industry. In the present case, the petitioner is said to have exceeded the sanctioned demand and had consumed 8190 KVA during the month of August 2020. Regulation 5(2)(i) of the Tamil Nadu Electricity Supply Code 2004, deals with excess demand charges. For proper appreciation, the Regulation 5(2)(i) is extracted hereunder:

> 5(2) Excess demand charge
>
> Whenever the consumer exceeds the sanctioned excess demand charge shall be:-
>
> (i) In the case of HT supply, the maximum demand charges for any month shall be based on the KVA demand recorded in that month at the point of supply or such percentage of sanctioned demand as may be declared by the Commission from time to time whichever is higher. The exceeded demand shall alone be charged at double the normal rate.

3.The grievance of the petitioner is that for the exceeded demand of 1190 KVA, the respondent should have charged at double the normal rate which was done at Sl.No.13 (a) of the of the CC bill to the tune of Rs.8,33,000/-. According to the petitioner, he is not aggrieved by the said demand since it is in line with the regulations. The grievance of the petitioner seems to be that the respondent has once again added the excess demand along with the sanctioned / permitted demand at Serial No.8 of the CC bill and thereby, the petitioner has been charged thrice for the excess demand of 1190 KVA. Aggrieved by the same, the present writ petition has been filed before this court.

4.The respondent has filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:

"5. I submit that the relevant paragraphs in TNERC Tariff Order T.P.No.1 of 2017 dated 11.08.2017 extracted hereunder xxxx....

6.1.1.7 - Billable Demand : In case of HT Consumers, maximum Demand Charges for any month will be levied on the KVA demand actually recorded in that month or 90% of the contracted demand, whichever is higher.

Provided xxxxx xxxxx

6.1.1.8 - In case of all HT consumers, the integration period for arriving at the maximum demand in a month will be fifteen minutes.

6.1.2 High Tension Tariff I.A :

Tariff Category	Commission Determined Tariff	
	Demand Charge in Rs/KVA/month	Energy Charge in Paise per KWh (Unit)
High Tension Tariff IA	350	635

..............................xxxxx

Hence, from the foregoing paragraph, specifically para 6.1.1.7 contemplates two part tariff system for HT Consumers and specifies that maximum demand Charges are levied on the KVA demand actually recorded in a month or 90% of the sanctioned demand whichever is higher. Therefore if the actually recorded demand exceeds the 90% of the sanctioned demand the maximum demand will be the actually recorded demand since it is higher than the 90% of the sanctioned demand and the actually recorded demand is billed as demand charges under Serial No.8 of the C.C.Bill. Hence, there is no question of limiting the demand charges upto sanctioned demand i.e., 7000 KVA in the present case as projected by the petitioner under Serial No.8 of the demand charges because the petitioner has actually consumed 81909 KVA which exceeds the 90% of the sanctioned demand i.e. 6300 KVA (90% o 7000 KVA) and it is higher than the 90% of the sanctioned demand i.e.6300

KVA (90% of 7000 KVA). Therefore, the petitioner has lost in sight that whichever higher has to be billed under the demand charges i.e., whether it is actually recorded demand charges i.e., 8190 KVA or 90% the sanctioned demand i.e.6300 KVA (90% of 7000 KVA) and limiting the billing upto sanctioned demand i.e., 7000 KVA under Serial No.8 of the CC Bill will go against the Regulation 4 of the Tamil Nadu Electricity Supply Code 2004 under the Chapter 2 "ELECTRICITY CHARGES - BILLING AND RECOVERY" and against the TNERC Tariff Order in T.P.No.1 of 2017 dated 11.08.2017 and becomes illegal.

6. I submit that the Regulation 5(2)(i) of the Tamilnadu Electricity Supply Code 2004 under Chapter 2 "ELECTRICITY CHARGES - BILLING AND RECOVERY" is extracted hereunder.

5. Miscellaneous charges

(1) xxxxxxxx..........

(2) Excess demand charge: Whenever the consumer exceeds the sanctioned demand, excess demand charge shall be :

(i) in the case of HT supply, the maximum demand charges for any month shall be based on the KVA demandn recorded in that month at the point of supply or such percentage of sanctioned demand as may be declared by the Commission, from time to time, whichever is higher. The exceeded demand shall alone be charged at double the normal rate;

(ii)xxxxx................

The above regulation deals with the excess demand charges and it is clearly states as to how the maximum demand charges are to be arrived at by taking highest value between the actually recorded demand charges i.e., 8190 KVA or 90% of the sanctioned demand i.e.6300 KVA (90% of 7000 KVA) and finally concludes saying double the normal tariff rate is applicable to the exceeded demand charges alone i.e Actual recorded demand (8190 KVA) - Sanctioned demand (7000 KVA) = Exceeded Demand (1190 KVA). Hence the Exceeded Demand (1190 KVA) x [2xRs.350 per KVA =

Rs.700 per KVA] = Rs.8,33,000/- [Rupees Eight Lakhs Thirty Three Thousand only] which comes under Serial No.13 of the CC Bill and it is in accordance with the above stated regulation.

5.Heard Mr.R.S.Pandiyaraj, learned counsel for the petitioner and Mr.L.Jaivenkatesh, learned Standing Counsel appearing on behalf of the respondent.

6.The learned counsel for the petitioner brought to the notice of this court Tariff Order No.1 of 2017, dated 11.08.2017 and specifically relied upon Clause [6.1.1.7], which deals with Billable Demand and for easy understanding, the same is extracted under:

> "6.1.1.7. Billable Demand: In case of HT Consumers, maximum Demand Charges for any month will be levied on the KVA demand actually recorded in that month or 90% of the contracted demand, whichever is higher".

7.The learned counsel by relying upon the above Clause and reading it along with Regulation 5(2)(i) of the Electricity Supply Code submitted that the respondent ought to have collected the demand charges only based on the permitted maximum demand of 7000 KVA and insofar as the excess demand of 1190 KVA, it should have been separately levied and which was actually done in Serial No.13(a) of the CC bill. The respondent by once again adding the excess demand of 1190 KVA along with the demand charges, has virtually levied three times for the excess demand which runs contrary to the Electricity Supply Code and Tariff Order passed by the Regulatory Commission. Therefore, the learned counsel sought for the interference of the current consumption bill insofar as the levy made for the third time for the excess demand of 1190 KVA.

8.Per contra, the learned Standing Counsel appearing on behalf of the respondent submitted that the regulation only deals with the manner in which the excess demand must be billed and accordingly, the same was done in Serial No.13(a) of the CC bill. However, insofar as the demand charges are concerned, the petitioner has to necessarily pay the actual recorded demand which is 8190 KVA and therefore, the learned counsel submitted that there is absolutely no ground to interfere with the demand raised by the respondent.

9.A careful reading of the relevant regulation in the Electricity Supply Code as well as the relevant Clause in the Tariff Order shows that the term "will be levied on the KVA demand actually recorded in that month" has to be taken note of. Similarly, the term "KVA demand recorded in that month at the point of supply" must also be taken into consideration by this court. A combined reading of the Electricity Supply Code and the Tariff Order does not really give a clarity as to whether once the excess demand is charged double the normal rate, it should not be added in the demand charges along with the permitted maximum demand. If the interpretation given by the petitioner is taken into account, it will become difficult to assign a meaning to the terms found in the Supply Code and the Tariff Order which has been extracted supra.

10.In view of the above, it will be more appropriate for the petitioner to approach the Regulatory Commission and seek for a clarification in this regard. Such a clarification will be required in order to deal with all such cases more effectively. It is brought to the notice of this court that the petitioner has already paid the entire amount that was demanded by the respondent in the current consumption bill. Therefore, if ultimately the commission gives an interpretation in favour of the petitioner, the petitioner will be entitled for the refund of the excess amount paid by him or for adjustment in the future current consumption bills. If the commission interprets against the petitioner, that will be taken into consideration for all the future demands and nothing will remain due since the petitioner has already paid the amount.

11.In view of the above discussion, liberty is granted to the petitioner to file a miscellaneous petition before the Tamil Nadu Electricity Regulatory Commission and seek for a clarification with regard to the interpretation of Regulation 5(2)(i) of the Tamil Nadu Electricity Supply Code 2004, r/w Clause [6.1.1.7] of the Tariff Order in T.P.No.1/2017, dated 11.08.2017. The Regulatory Commission shall entertain the miscellaneous petition and give its finding, within a period of four weeks from the date of the filing of the miscellaneous petition by the petitioner. Depending upon the interpretation given by the commission, the petitioner can workout their remedy accordingly.

12.This writ petition is disposed of with the above directions. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

KP

To

The Superintendent Engineer
Krishnagiri Electricity Distribution Circle
TANGEDCO Krishnagiri.

+1cc to Mr.L.Jaivenkatesh, Advocate, S.R.No.48121

W.P.No.14921 of 2020

SRA(CO)
SB(06/10/2021)