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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30-11-2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.7950 OF 2014

AND

M.P.NO.1 OF 2014

M/s.MVR Infrastructure Tollways Pvt. Ltd.,
MVR Toll Plaza,
Near Periyar University,
Kottagoundanpatty,
Salem - 636 011.

... Petitioner

.Vs.

1. The Assistant Engineer,
O&M/TANGEDCO,
Muthukaickenpatty I,
Salem.
2. The Superintending Engineer,
Salem Electricity Distribution Circle,
Salem - 14.

... Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the first respondent in Lr.No.AE/O&M/MNPI/F.Rev.D.No.204-1/2013 -14 dated 04.03.2014 and quash the same.

For Petitioner : Ms.S.Valarmathi
For Mr.J.Franklin

For Respondents : Mr.L.Jaivenkatesh
Standing Counsel
For TANGEDCO

O R D E R

The demand notice issued by the first respondent dated 04.03.2014 asking the petitioner to pay belated payment of surcharge, is under challenge in the present writ petition.



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2. The petitioner-Company is running two different Units namely (1) Crushing Unit and (2) Toll Plaza. Both the Units are in different place at a distance of about 20 kilometers. The petitioner-Company has got two different Electricity Service Connections in respect of their Units.

3. The learned counsel for the petitioner states that the petitioner was paying the electricity consumption charges regularly as per the meter reading. However, impugned demand notice has been issued by the first respondent surprisingly demanding a sum of Rs.43,28,690/- towards belated payment of surcharge.

4. The learned counsel for the petitioner reiterated that the amount demanded is impermissible and based on incorrect facts. Thus the order is to be quashed and further no opportunity was granted to the petitioner before issuing the impugned demand notice.

5. The learned Standing Counsel appearing on behalf of the respondent-TANGEDCO, objected the said contentions of the petitioner by stating that by invoking Regulation 5 sub-clause (4) of the Tamil Nadu Electricity Supply Code, the demand notice was issued. Thus if the petitioner is aggrieved, he has to prefer an appeal before the Consumer Grievance Redressal Forum constituted under Regulation 18 of the Tamil Nadu Electricity Supply Code.

6. The demand notice and show cause notice are similar and in case of show cause notice, the addressee is asked to submit his explanations in respect of the allegations set out in the show cause notice. In the case of demand notice, the Authorities Competent demand certain issues with reference to the provisions of the Act and Rules or Regulations and communicate the determination or decision taken asking the addressee to comply with the decision taken.

7. In such circumstances, the person, who received the demand notice, may accept the demand and comply with the conditions or approach the Appellate Authority or the Forum/Court of Law constituted for the purpose of adjudication of the issues. Thus, mere issuance of demand notice and adjudication of facts and circumstances in the writ proceedings are not desirable, as it requires scrutinisation of original documents and evidences and if necessary oral evidences. Therefore, the demand notice may not provide cause in all circumstances except when such a demand notice is issued by the incompetent Authorities having no jurisdiction by directly hitting the provisions of the Act or Rules.



8. In all other circumstances, the opportunity provided to the person, who received the demand notice either to comply with the demand or to file an appeal or adjudicate the issues before the Competent Forum. Contrarily, such disputed issues cannot be adjudicated in the writ proceedings under Article 226 of the Constitution of India. In the event of venturing into adjudication of such disputes, merely based on the facts and circumstances filed in the writ proceedings, there is a possibility of omission, commission or error in the matter of considering the facts and circumstances based on the documents in original and evidences.

9. Contrarily, the Appellate Authority and the Forum constituted for redressing the grievances are empowered to examine the original documents and evidences and adjudicate the issues on merits and a finding can be provided. The findings of the Appellate Authority and such Redressal Forums would be of greater assistance to the High Court for the purpose of exercise of the powers of the Judicial Review under Article 226 of the Constitution of India.

10. This being the principles to be followed, the petitioner is bound to approach the Consumer Grievance Redressal Forum constituted under Regulation 18 of the Tamil Nadu Electricity Supply Code, the demand notice was issued by invoking the powers under the Regulation 4 of the Tamil Nadu Electricity Supply Code. Therefore, the petitioner has to approach the Grievance Redressal Forum constituted under Regulation 18 of the Tamil Nadu Electricity Supply Code.

11. It is needless to state that the Authorities who decided the issues shall not be permitted to sit as a Member in the Redressal Forum and the independent Authorities must constitute the Forum for the purpose of adjudication of the issues and resolve the same.

12. In the event of filing an application before the Forum by the petitioner, the period in which the writ petition was pending before the High Court is to be taken into consideration for the purpose of condoning the delay if any application is filed by the petitioner to condone the delay. All the issues raised are to be adjudicated and decided on merits and in accordance with law as expeditiously as possible and by affording an opportunity to the parties concerned.

13. The learned counsel for the petitioner made a submission that pursuant to the interim order granted by this Court in the present writ petition, the petitioner has deposited a sum of Rs.7 lakhs and the said amount is to be adjusted by the Competent Forum.



14. With the abovesaid observations, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Assistant Engineer,
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Muthukaickenpatty I,
Salem.
2. The Superintending Engineer,
Salem Electricity Distribution Circle,
Salem - 14.

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SSV(CO)
PBS/13/12/2021