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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.18730 of 2019

C.Jeganathan

...Petitioner

Vs.

- 1.Tamilnadu Electricity Ombudsman,
Tamilnadu Electricity Regulatory Commission,
19-A, Rukmini Lakshmipathy Salai,
Egmore, Chennai-8.
- 2.The Chairman/The Superintending Engineer,
Electricity Consumer Disputes Redressal Forum,
Erode Electricity Distribution Circle,
948, E.V.N. Road, Erode.
- 3.The Assistant Electricity Engineer,
O&M, TANGEDCO,
Nasiyanoor,
Erode Electricity Distribution Circle,
Erode District.

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in respect of the impugned order passed by the 3rd respondent vide his Letter No. KA.No.UMi PO/EPe/Na/Ko.1/No.386/18-19 dated 09.10.2018, rejecting the claim of the petitioner to return the Excess amount collected from the petitioner by way of changing the Tariff From Tariff LA3A2 TO Tariff LN3B to the Service Connections bearing No 007 001 1391 and 007 001 1207 given to the petitioner's factory in R.S.No.283/10 of Sembampalayam, Villarasampatti Village, Nasiyanur, Erode District is concerned and quash the same and consequently direct the 3rd respondent either to adjust the excess amount collected from the petitioner to his credit or to repay the same to the petitioner within the time fixed by this Hon'ble Court.

For Petitioner : Mr.M.Karthik

For Respondents : Mr.Abul Kalam
Standing Counsel



O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari Mandamus to call for the records in respect of the impugned order passed by the 3rd respondent vide his Letter No. KA.No.UMi PO/ EPe/Na/Ko.1/No.386/18-19 dated 09.10.2018 and quash the same and consequently direct the 3rd respondent either to adjust the excess amount collected from the petitioner to his credit or to repay the same to the petitioner within the time fixed by this Court.

2.The case of the petitioner is that he is running a power loom factory and obtained electricity service connection under Tariff III-A2. While so, the 3rd respondent changed the Tariff from III-A2 to III-B . Hence, the petitioner filed an appeal before the 2nd respondent and the same was dismissed on 01.09.2016. Thereafter, the petitioner filed an appeal before the 1st respondent and the same was allowed and the tariff was again changed to III-A2. Hence, the petitioner made a representation dated 14.03.2018 for refund of the excess amount collected under Tariff III-B, which was rejected by the 3rd respondent vide order dated 09.10.2018. Hence, this writ petition.

3.The learned counsel appearing for the petitioner submits that he has installed only twenty motors of 0.5 HP each along with permitted capacity of 1000 Watts for lighting purpose and he was given permitted capacity of 10 H.P. + 1000 Watts and hence there is no excess consumption of electricity, however, the 3rd respondent without issuing any assessment order directly passed the impugned order. He further submitted that the petitioner's factory was given electricity service connection with permitted capacity of 10 H.P. and not on the basis of 10 K.W. He also submitted that the petitioner filed an appeal before the 1st respondent and the same was allowed vide order dated 23.03.2017 and the service connection was changed to Tariff III-A2 on the ground that the petitioner has installed 10 H.P. motors only. He also submitted that petitioner's representation was rejected without even conducting any enquiry which is arbitrary and against law. Hence he prays this Court to quash the impugned order passed by the 3rd respondent and to direct the 3rd respondent to refund the excess amount collected to which the petitioner is legally entitled to and to pass appropriate orders.

4. The learned counsel appearing for the first respondent submitted that the petitioner's factory was given electricity service connection with permitted capacity of 10 K.W. and he has utilized between the range 10.4K.W. to 11.76 K.W. which is more than the permitted capacity, hence the connection was changed



from Tariff III-A2 to III-Band for the same reason, the amount collected cannot be refunded and the prayer sought for by the petitioner is not maintainable. Hence, he prays this Court for dismissal of the present petition.

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5. Heard the arguments advance on either side.

6. Admittedly, the petitioner obtained a service connection under Tariff III-A2 but he has exceeded the permitted capacity and therefore the tariff was changed to III-B by the 3rd respondent vide order dated 05.07.2016 on the ground that the petitioner has exceeded the contracted load of 10.K.W. and used 10.4K.W. to 11.76 K.W. and accordingly the amount was collected based on the changed tariff III-B. The rules to be followed are stated below:

"The power loom industries with a connected load of 10 HP has to be categorized under LT Tariff III-A2 as per Tariff order SMP Order No.9 of 2014 dated 21.12.2014."

"The power loom industries with a connected load exceeding 10 HP has to be categorized under LT Tariff III-B ."

Connected Load means "the aggregate of the manufacturer's rating of all equipments connected to the consumers installation and of all portable equipments and also the capacity of the power source required to test manufactured products and repaired equipment in the installation"

Contracted Load means "the load specified in the agreement between the consumer and the license engaged in the business of supplying electricity to him"

7. On perusal of the impugned order, it is clear that the petitioner exceeded the permitted capacity and used between 10.4K.W. to 11.76 K.W, though the petitioner claims that he has not exceeded the permitted capacity. Further the petitioner claims that he has installed capacity of 10 HP and has not exceeded the 10K.W, which is disputed. The above dispute as to the utilisation of capacity of power being a disputed question of fact, the same cannot be gone in this petition. Hence, the prayer sought for by the petitioner is not sustainable and this Court cannot interfere with the order passed in the impugned order.



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8. Accordingly, this Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

skt

To

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Erode Electricity Distribution Circle,
Erode District.

+1cc to Mr.M.Abulkalam, Advocate SR.No.61654

W.P.No.18730 of 2019

PM(CO)
RVM(03/01/2022)