IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.12494 of 2014
and
M.P.No.1 of 2014

TCS Textiles (P) Ltd., HTSC N.242,
S.F.No.39, N.G.Palayam,
Pudur Pirivu, Tekkalur,
Avinashi – 641 654
Rep. by its Authorised Signatory
T.Thangamani ...Petitioner

Vs

1.Tamil Nadu Electricity Regulatory
Commission repd. by it Secretary,
19-A, Rukmini Lakshmipathy Salai,
(Marshall's Road),
Egmore, Chennai-600 008.

2.The Chairman,
Tamil Nadu Electricity Board,
144, Anna Salai, Chennai 600 002.

3.The Superintending Engineer,
Coimbatore Elec. Distribution Circle(S),
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Coimbatore. ...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records of the 3rd respondent in his impugned demand notice Lr.No.SE/CEDC/S/CBE/DFC/AO/REV/AS/F.BOAB/14/D/14 dated 17.03.2014 and quash the same towards alleged short levy of Excess charges for the period from 01/2009 to 03/2013 as illegal, arbitrary, without the authority of law and against the provisions of Electricity Act, 2003 and orders of the 1st respondent made in D.R.P.No.14 of 2010 dated 14.03.2011.

For Petitioner : Mr.S.P.Parthasarathy

For Respondents: Mr.L.Jaivenkatesh
Standing Counsel [For R2 & R3]

No appearance for R1

O R D E R

The issue involved in the present writ petition has already been decided by the Tamil Nadu Electricity Regulatory Commission in D.R.P.No.13 of 2010 dated 14.03.2011 and the findings as well as the directions of the Regulatory commission reads as under:

> "5.Findings of the Commission:
>
> The TNEB, in their letter dated 27.06.2010 communicated to the petitioner that the demand quota for the month of July 2010 would be 1182KVA and the energy quota 6,29,499 units. The bill of the TNEB for the month of July 2010 indicates that the maximum recorded demand is 1159 KVA and the energy consumed is 6,38,624 units, excess being 925 units. The bill of TNEB for July 2010 indicated an excess demand charges of Rs.67,381/- and excess energy charges of Rs.3,11,772/-. The excess energy charges have been levied fro 35,700 units as against 9125 units. The TNEB is estopped from going back on the demand and energy quota communicated in advance. We have no hesitation in setting aside the excess demand charges and excess energy charges other than the actual excess of 9125 units. The balance may be refunded by the TNEB to the consumer/generator. The learned counsel for TNEB states that it has refunded to the consumer the excess amount in respect of excess energy consumption.
>
> 6.Direction:
>
> In view of the findings in para 5 above, the impugned Letter No.SE/TEDC/TNI/DFC/AS/HT/Asst/F.PC/D.No.395/10 dated 06.09.2010 of the Second Respondent is set aside. The Respondents are directed to refund the amount of excess charges collected from the Petitioner for the month of July 2010 after recalculating the excess charges as per para 5 of this order and adjusting the amount already refunded by way of adjustment."

2.The Board preferred R.P.No.3 of 2011 in D.R.P.No.13 of 2010 which was also dismissed on 15.11.2011 and the conclusion in the review petition reads as under:

"9. Conclusion

9.1. The TANGEDCO has sought review of the Order passed by the Commission in D.R.P. No.13 of 2010 and D.R.P. No.14 of 2010. The learned counsel for TANGEDCO stated that the Commission in its order dated 14-3-2011 estopped the TNEB from going back on the demand and energy quota communicated in advance to the Petitioner. He sought a review on this question. This is a matter for appeal and has to be adjudicated in the appellate forum.

9.2. The learned counsel for TANGEDO further stated that the total demand quota communicated by the Superintending Engineer, Theni, which is 1182 KVA should be split up into TANGEDCO component and demand supplied by the captive generator. This is eventually reopening an issue which has already been settled. When the TANGEDCO prescribed a total demand quota of 1182 KVA we presume that this is the total demand quota and there is no scope to further read into the breakup of this quota. We understand from the arguments of the learned counsel for the Respondent that for the subsequent months the bills of Superintending Engineer, Theni show correct demand quota and energy quota. Clause 43(1) of the Conduct of Business Regulations of 2004 reads as follows:-

> "The Commission may on its own or on the application of any of the persons or parties concerned within 30 days of the making of any decision, direction or order, review such decisions, directions or orders on the ground that such decision, direction or order was made under a mistake of fact, ignorance of any material fact or any error apparent on the face of the record."

9.3. The Petitioners have failed to demonstrate any mistake of fact, ignorance of any material fact or any error apparent on the face of the record. Therefore the Review Petitions are dismissed."

3.In an identical situation, Indian Wind Power Association filed an appeal in Appeal No.51 of 2012 before the Appellate Tribunal for Electricity and the Appellate Tribunal also decided the issue which is in favour of the petitioner and the summary of the findings by the Appellate Tribunal in paragraph Nos.39 and 40 reads as under:

"39. Summary of findings:

i) On going through the State Commission's order dated 28.11.2008, State Electricity Board's memo dated 17.11.2008 and wind energy tariff order dated 20.3.2009, we hold that the equivalent demand has to be based on the energy from wind energy generator actually consumed by the captive user or energy adjusted in a month.

ii) However, the memo dated 17.11.2008 was modified by the State Commission order dated 28.10.2009 to the extent that the demand and energy quota was fixed on the basis of advance declaration of captive energy by the consumer. This created an ambiguous situation. Once the quota has been fixed by the Electricity Board on the basis of the advance declaration and communicated to the consumer and the consumer abided by it, the same can not be changed subsequently.

iii) However, once the system of advance declaration was dispensed with by the order dated 7.9.2010, the memo dated 17.11.2008 in original form as interpreted in this judgment as read with the order dated 7.9.2010 shall take effect.

iv) Thus, it has to be held that the State Commission was not correct in holding that the clarification will take effect from 25.6.2010 because the procedure of advance declaration of energy by the consumer and communication of demand and energy quota as per the order dated 28.10.2009 was still in vogue and the same was modified only by the order dated 7.9.2010. Thus till September, 2010, the demand and energy quota as communicated to the consumers by the Electricity Board based on the advance declaration of energy by the consumers will have effect for calculation of excess demand and energy charges. Thereafter, from 1.10.2010, the method of calculating the equivalent demand on the basis of energy from wind energy generator actually consumed or adjusted in consonance with the order dated 7.9.2010 read with memo dated 17.11.2008 shall take effect.

40. In view of the above we allow the Appeals and set aside the impugned order to the extent indicated above. The State Commission is directed to pass the consequential order within 30 days from the date of communication of this judgment. No order as to Costs.”

In view of the fact that the issues raised are no more res integra and reached finality as far as the Tamil Nadu Electricity Board is concerned, the present writ petition is to be considered. Thus the impugned demand notice issued by the

3rd respondent in Lr.No.SE/CEDC/S/CBE/DFC/AO/REV/AS/F.BOAB/D/14 dated 17.3.2014 is quashed and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

cse

To

1.Tamil Nadu Electricity Regulatory
Commission repd. by it Secretary,
19-A, Rukmini Lakshmipathy Salai,
(Marshall's Road),
Egmore, Chennai-600 008.

2.The Chairman,
Tamil Nadu Electricity Board,
144, Anna Salai, Chennai 600 002.

3.The Superintending Engineer,
Coimbatore Elec. Distribution Circle(S),
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Coimbatore.

+1cc to Mr.R.S.Pandiyaraj, Advocate, S.R.No.62748

W.P.No.12494 of 2014
and
M.P.No.1 of 2014

VBM(CO)
RGA(10/12/2021)