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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.24117 of 2014

and

M.P.No.1 & 2 of 2014

M/s.RMC Readymic (India),
(A Division of Prism Cement Ltd.)
AC-26, SIDCO Industrial Estate,
Thirumudivakkam, Chennai - 600 044.
Rep. by its Commercial Officer,
Mr.M.Meenakshi Sundaram.

...Petitioner

Vs

1. The Assistant Engineer,
TANGEDCO,
Near Agni Mutham Kalyama Mandapam
Avadi Road, Senneerkuppam,
Chennai - 600 056.

2. Asst. Audit Officer,
Audit Branch, TANGEDCO,
NPKRR Maaligai,
144, Anna Salai, Chennai - 600 002.

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 17.12.2013 Ref.A.S.No.36 issued by the second respondent and the consequential proceedings of the 1st respondent collecting a huge sum of Rs.3,28,919/- pertaining to the petitioner's electricity service connection No.232-014-2323 at Plot No.49, Survey No.293/C1/3C2, Senneekuppam-Avadi Road, Senneerkuppam, Poonamallee Taluk, Chennai and quash the same and consequently direct the respondents either to refund the said sum or adjust the same in the future consumption charges collected by the respondents under Tariff V and also direct the respondents to collect the electricity consumption charges under Industrial Tariff viz. Tariff III-B.



For Petitioner : Mr.S.Thanka Sivan
For Respondents : Mr.L.Jaivenkatesh
Standing Counsel

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O R D E R

The impugned demand notice issued on the ground of tariff change by invoking Regulation 4 of the Tamil Nadu Electricity Supply Code, is under challenge in the present writ petition.

2.The petitioner is a Company and provided with the electricity service connection.

3.The learned counsel for the petitioner made a submission that the petitioner is regularly paying the consumption charges to the Electricity Board. However, the demand notice has been issued by the first respondent stating that the petitioner has to pay a sum of Rs.3,28,919/-. The charges are demanded under various Heads, more specifically, the learned counsel for the petitioner pointed out the audit shortfall mentioned in the impugned demand notice. It is contended that the audit shortfall is baseless and no opportunity was provided to the petitioner to defend the objections raised on the head of audit shortfall.

4.The learned Standing Counsel appearing on behalf of the TANGEDCO/Electricity Board, objected the contentions of the petitioner by stating that the demand notice was issued based on the calculation done by the Competent Authorities and if at all the petitioner is aggrieved, they have to prefer an appeal before the Consumer Grievance Redressal Forum constituted under Regulation 18 of the Tamil Nadu Electricity Supply Code.

5.This Court is of the considered opinion that audit shortfall was identified based on the Audit Report. No doubt, the order impugned is the demand notice. Demand notice is the notice, which is issued by invoking the provisions of the Act and Rules or Regulations. Such a demand notice cannot be construed as an order passed after adjudication.

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.



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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, the petitioner has deposited 30% of the amount demanded. If at all the petitioner has deposited any amount pursuant to the interim order, the said amount is to be adjusted by the respondent Board and if no deposit is made, then all appropriate steps are to be taken.

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

s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

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To

1. The Assistant Engineer,
TANGEDCO,
Near Agni Mutham Kalyama Mandapam
Avadi Road, Senneerkuppam,
Chennai - 600 056.



2. The Asst. Audit Officer,
Audit Branch,
TANGEDCO,
NPKRR Maaligai,
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PA (CO)
SP (17/12/2021)