IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2021

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.7498 of 2017
and
W.M.P.Nos.8188 & 8189 of 2017

Sri Jayajothi & Co. Ltd., HTSC No.9,
70, Alagai Nagar, Rajapalayam -17,
Rep. by its Authorized Signatory
B.Seenivasagam ...Petitioner

Versus

1. Tamil Nadu Electricity Regulatory Commission,
Rep. by its Secretary.
No.19-A, Rukmani Lakshmipathy Salai,
(Marshall's Road),
Egmore, Chennai - 600 008.

2. The Tamilnadu Generation and Distribution,
Corporation Ltd., (TANGEDCO)
Rep. by its Chairman
No.144, Anna Salai,
Chennai 600 002.

3. Director of Finance,
Tamilnadu Generation and Distribution,
Corporation Ltd.,
No.144, Anna Salai,
Chennai 600 002.

4. The Superintending Engineer,
Virudhunagar Electricity Distributing Circle,
TANGEDCO,
Virudhunagar. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, to call for the records of the third respondent's impugned Circular Memo CFC/R/FC/R/DFC-R1/F.HTLT-RTI/D.30/2015, dated 03.02.2016 in so far as the para 3(iii) is concern and the consequential impugned demand notice bearing Lr.No.SE/VREDC/DFC/AO/Rev/AAO/HT/AS.6/F.HTAudit(BOAB).D.No./2017 dated 28.01.2017 issued by the fourth respondent and quash the same as illegal, arbitrary and without authority of law and against the Clause 33 of the TNERC - Grid Connectivity and Intra State Open Access Regulation 2014 and Tariff orders of the first respondent made in T.P.No.1 of 2013 dated 20.06.2013 and SMT No.9 of 2014 dated 11.12.2014 and the Electricity Act, 2003.

For Petitioner : Mr.S.P.Parthasarathy

For Respondents: Mr.L.Jai Venkatesh
Standing Counsel

O R D E R

This Writ Petition has been filed seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records of the third respondent's impugned Circular Memo CFC/R/FC/R/DFC-R1/F.HTLT-RTI/D.30/2015, dated 03.02.2016 in so far as the para 3(iii) is concern and the consequential impugned demand notice bearing Lr.No. SE/ VREDC/ DFC/AO/Rev/ AAO/HT/AS.6/F.HT Audit (BOAB). D.No./2017 dated 28.01.2017 issued by the fourth respondent and quash the same as illegal, arbitrary and without authority of law and against the Clause 33 of the TNERC - Grid Connectivity and Intra State Open Access Regulation 2014 and Tariff orders of the first respondent made in T.P.No.1 of 2013 dated 20.06.2013 and SMT No.9 of 2014 dated 11.12.2014 and the Electricity Act, 2003.

2.It is the case of the petitioner that the petitioner industry is a Textile manufacturing industry and is producing cotton fabric mostly for exports. Since the respondents board was not able to provide sufficient power, the petitioner was compelled to purchase power from third party sources to achieve the production target. Accordingly, the petitioner made use of such power procured after paying the applicable charges to the respondents under the provisions of Electricity Act, 2003. In the months of April/2013 and May/2013, the petitioner has purchased power from third party viz., Cauvery Power Generation Chennai (P) Ltd., and the quantum of power purchased from such third party sources was deducted from the petitioner's total industrial consumption and the balance energy and demand consumed from the respondent alone was billed in the respective monthly CC bills and the petitioner has paid the same without any default. While so, the fourth respondent issued a demand notice dated 14.12.2016 and 28.01.2017 for a sum of Rs.30,04,382/- towards outage units for the period from 04/2013 to 5/2013. Aggrieved over the same, the present Writ Petition has been filed.

3.The learned counsel for the petitioner submits that the fourth respondent claimed audit short fall for the consumption of outage units for the period between 04/2013 to 05/2013 belatedly, that too after a lapse of 3 years, in the year 2017. The learned counsel would further submit that, in terms of Section 56(2) of the Electricity Act, 2003, the period of limitation prescribed for collecting the arrears was prescribed as two years from the date when such sum becomes first due. In the present case, since the demand was made beyond the period of limitation and therefore, the impugned demand cannot be sustained and the same is liable to be quashed.

4.Per contra, the learned Standing Counsel appearing for the respondents would submit that admittedly, the petitioner has not paid the shortfall for the period between 04/2013 and 05/13 and therefore, the fourth respondent has rightly issued the demand notice by furnishing all the details. He would also submit that during audit inspection, it was found that the petitioner was due to pay the arrears and as per audit report, the demand has been made and without making the payment, the petitioner has approached this Court and hence, he prayed to dismiss the Writ Petition.

5.Heard the learned counsel for the petitioner as well as the learned Standing Counsel appearing for the respondents and perused the materials available on records.

6.It is relevant to extract Section 56(2) of the Electricity Act, 2003, which reads as under:

> "56 (2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

7.A perusal of the above, it is clear that no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied. Therefore, the provision of Section 56 of the Electricity Act, 2003, (hereinafter referred to as 'the Act'), does not empower the second respondent to recover any amount, if the period of two years has elapsed no electricity supply be cut off for non-payment of those dues. In other words, what is sought to be contended is that if the demand or part of the demand is time barred the provisions of Section 56 of the Act would be attracted.

8.In the present case, admittedly, the impugned demand has been made after the prescribed period of two years. Therefore, it is clearly barred by limitation by virtue of Section 56(2) of the Act. Further, it is not the case of the respondents that such sum has been shown continuously as recoverable as arrear of charges for electricity supplied in the books of account. In this regard, it is also worthwhile to refer a decision of the Hon'ble Supreme Court in C.A.No.1672 of 2020 dated 18.02.2020, wherein, it was made it clear that no claim can be made beyond the period of two years. The relevant portion of the judgment is extracted hereunder:

> "9. Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September, 2011.
>
> The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired.
>
> Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.
>
> As per Section 17(1)(c) of the Limitation Act, 1963, in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time.
>
> In Mahabir Kishore and Ors. v. State of Madhya Pradesh,5 this Court held that :-
>
> > Section 17(1)(c) of the Limitation Act, 1963, provides that in the case of a suit for

relief on the ground of mistake, the period of limitation does not begin to run until the plaintiff had discovered the mistake or could with reasonable diligence, have discovered it. In a case where payment has been made under a mistake of law as contrasted with a mistake of fact, generally the mistake become known to the party only when a court makes a declaration as to the invalidity of the law. Though a party could, with reasonable diligence, discover a mistake of fact even before a court makes a pronouncement, it is seldom that a person can, even with reasonable diligence, discover a mistake of law before a judgment adjudging the validity of the law."

(emphasis supplied)

In the present case, the period of limitation would commence from the date of discovery of the mistake i.e. 18.03.2014. The licensee company may take recourse to any remedy available in law for recovery of the additional demand, but is barred from taking recourse to disconnection of supply of electricity under sub-section (2) of Section 56 of the Act. "

9.In the light of the above discussion, the impugned demand made by the fourth respondent cannot be sustained and hence, the same is liable to be set aside.

10.In view of the above, this Writ Petition is allowed and the impugned demand notice bearing Lr.No. SE/ VREDC/ DFC/AO/ Rev/AAO /HT/AS.6/ F.HTAudit(BOAB). D.No./2017 dated 28.01.2017, issued by the fourth respondent, insofar as the audit amount of Rs.30,04,382/- is quashed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To:

1. Tamil Nadu Electricity Regulatory
 Commission,
   Rep. by its Secretary.
   No.19-A, Rukmani Lakshmipathy Salai,
   (Marshall's Road),
   Egmore, Chennai - 600 008.

2. The Tamilnadu Generation and Distribution,
   Corporation Ltd., (TANGEDCO)
   Rep. by its Chairman
   No.144, Anna Salai, Chennai 600 002.

3. Director of Finance,
   Tamilnadu Generation and Distribution,
   Corporation Ltd.,
   No.144, Anna Salai, Chennai 600 002.

4. The Superintending Engineer,
   Virudhunagar Electricity Distributing Circle,
   TANGEDCO,
   Virudhunagar.

+1cc to Mr.R.S.Pandiyaraj, Advocate, S.R.No.63389

W.P.No.7498 of 2017
and
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PL(CO)
RGA(23/12/2021)