



WEB COPY



WP.Nos.16074 & 16075 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

WP.Nos.16074 & 16075 of 2012

&

MP.Nos.1, 1, 2 & 2 of 2012

M/s.Sree Rengaraaj Steel and Alloys Limited,
H.T.Sc.No.136, 36/3-4 Trichy By Pass Road,
Ammani Kondalampatty, Salem – 636 010
Represented by its Director P.Srinivasan

... Petitioner in W.P.No.
16074 of 2012

M/s.Sri Venkateswara Steel Industries,
H.T.Sc.No.84, PB.No.272, 50-A,
Sankagiri Main Road, Nethimedu,
Salem – 636 002,
Rep. by its Partner P.Sivakumar

... Petitioner in W.P.No.
16075 of 2012

Vs

1. The Superintending Engineer,
TANGEDCOD, Erode Electricity Distribution Circle,
Tamil Nadu Electricity Board, Erode – 9.
2. The Superintending Engineer,
TANGEDCOD, Salem Electricity Distribution Circle,
Tamil Nadu Electricity Board, Salem – 14.



WP.Nos.16074 & 16075 of 2012

WEB COPY

3. Sree Rengaraaj Power India [P] Ltd.,
Presently known as Sree Rengaraj Ispat Industries [P] Ltd.,
Plot No.MM-1, Part – 1, SIPCOT Industrial Growth Centre,
Perundurai – 638 052, Erode District. ... Respondents in
WPs.

Prayer:- These Writ Petitions filed, under the Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in Letter No.SE/EEDC/DFC/AO[Rev]/HT/A4/F.HT.Sc.249/2011 dated 04.08.2011 and subsequent demand made by the second respondent in his letter No.SE/SEDC/AOR/HT/A.1/F.HTSC.247/D 199/11 dated 24.09.2011 and 26.09.2011 respectively and quash the same as illegal, arbitrary and against the principles of natural justice and consequently direct the second respondent to refund or adjust the amounts collected illegally from the petitioner in W.P.No.16074 of 2012 M/s.Sree Rengaraj Steel and Alloys Limited, H.T.Sc.No.136, having industry at 36/3-4 Trichy By Pass Road, Ammani Kondalampatty, Salem – 636 010 and the petitioner in W.P.No.16075 of 2012 M/s.Sri Venkateswara Steel Industries, H.T.Sc.No.84, PB.No.272, 50-A, Sankagiri Main Road, Nethimedu, Salem – 636 002.

For Petitioner : Mr.S.P.Parthasarathy
in both WPs for Mr.K.Seshadri

For Respondents : Mr.Abul Kalam – R1 & R2
in both WPs.

No appearance – R3



WP.Nos.16074 & 16075 of 2012

WEB COPY

COMMON ORDER

These Writ Petitions have been filed to quash the proceedings of the first respondent dated 04.08.2011 and subsequent demand made by the second respondent in his dated 24.09.2011 and 26.09.2011 respectively as illegal, arbitrary and against the principles of natural justice and consequently direct the second respondent to refund or adjust the amounts collected illegally from the petitioners.

2. It is the case of the petitioners that the petitioners industry is involved in the manufacture of Steel Rods having high Tension Service Connection in H.T. Sc.No.136, 84 respectively with sanctioned maximum demand of 4750 K.V.A. and 1000 K.V.A. respectively. The third respondent is a company which had set up a Captive Power Plant to cater the power requirements of industrial consumers. The third respondent has set up the Captive Power Plant and has entered into an agreement with the first respondent for wheeling of power generated by it. As per the wheeling agreement the third respondent can supply power on a monthly basis from



WP.Nos.16074 & 16075 of 2012

WEB COPY

the time of commissioning and synchronizing with the grid, to group captive consumers like petitioners. As per the agreement, the third respondent is liable to pay wheeling charges and other charges as determined by the Tamil Nadu Electricity Regulatory Commission, from time to time. The petitioners being a captive consumer had also entered into a power supply agreement with the third respondent and respondents have also given an approval for open access and to wheel energy to the third party consumers.

3. When the matter stood thus, on 04.08.2011, the first respondent sent a communication to the second respondent to revise the allotment made by the third respondent to the third party consumers to whom energy was being supplied during the period from 04/2009 to 09/2010. The second respondent unilaterally revised the allotment energy consumed by reducing the allotment made to the petitioners as if they had exceeded their quota and directed the petitioner in W.P.No.16074 of 2012 to pay a sum of Rs.83,08,751/- and the petitioner in W.P.No.16075 of 2012 to pay a sum of Rs.73,565/- towards short levy of CC charges as informed by the first respondent on 04.08.2011 and there is a threat of disconnection if the



WP.Nos.16074 & 16075 of 2012

WEB COPY

amount is not paid. Hence, the Order has been challenged on the ground that it is arbitrary and against the principles of natural justice and also against the agreement entered by the third respondent with the first respondent.

4. Counter has been filed by the first and second respondents stating that in the month of February 2010, the third respondent/generator has approval for 2.75 MW as against the total third party approval of 6 MW and for February, 2010 the generator has sought for approval to supply energy to third party consumers. According to them, as against allocationable quantity of 862000 units the third respondent had allocated only 770500 units for the month of February 2010, which has to be treated as lapsed as per the provision of regulations and agreement conditions and the petitioners deceitfully allotted the aforesaid lapsed units to the captive users. It is their further contention that the third respondent has not made any objection to the revision of allotment in letter dated 04.08.2011 either immediately or at any point of time, thereby accepted the revision as it was based on the provisions of regulations and agreement. It is further contended that any agreement for wheeling energy either to captive users or



WP.Nos.16074 & 16075 of 2012

WEB COPY

for third party customers will be made between the official respondent / licensee and the generator. According to them there is no brevity of agreement between the captive third respondent and the official respondent. It is only for the third respondent generator to set right/compensate such damages/losses, if any in terms of the power purchase agreement entered into between them without claiming anything from the official respondents. Hence, opposed the Writ Petition.

4. The learned counsel appearing for the petitioners would submit that admittedly the petitioners, as a captive power consumers, have entered into an agreement with the third respondent and same was approved by the concerned officials. Such being the position, the impugned Order has been passed mainly based on the communication sent by the Superintending Engineer dated 04.08.2011 wherein the third party captive use had been allotted from 04/2009 to 09/2010, without even granting any opportunity to the petitioners.

5. Whereas the learned counsel appearing for the respondents would submit that there is no agreement between the petitioners and the first



WP.Nos.16074 & 16075 of 2012

WEB COPY

respondent. If at all any challenge is made to the Order of the first respondent, only the third respondent has to make and not by the petitioners. Therefore, submitted that the Writ Petitions are not maintainable.

6. I have perused entire materials. It is not in dispute that the petitioners are captive consumers. It is also not in dispute that there is an agreement between the petitioners and the third respondent. Besides, there is an agreement between the third respondent and the first respondent for supply of power generated by the third respondent. Be that as it may.

7. The impugned demand notice has been issued to the petitioner in W.P.No.16074 of 2012 for a sum of Rs.83,08,751/- and to the petitioner in W.P.No.16075 of 2012 for a sum of Rs.73,564/- mainly on the ground that the assessment has been revised by the Superintending Engineer, Erode Division. The communication sent by the Superintending Engineer, Erode indicate that as per the approval of the Director/Power Purchaser under references the third party sale units through intra state, open access for captive use has been allotted from 04/2009 to 09/2010. Therefore, it is



WP.Nos.16074 & 16075 of 2012

WEB COPY

their contention that the third party consumer for their active use has been wrongly allotted instead of hourly basis. Based on the above communication, the impugned Order has been passed. Though the agreement is between the third respondent and the first respondent, it is relevant to note that the demand notice has been issued to the petitioners. It is also relevant to note that no opportunity whatsoever has been given to the petitioners before giving such an Order demanding revised amount for allotment and the allotment was made in the year 2010. The impugned Order is of the year 2011. It is also relevant to note that the communication dated 03.02.2016 issued by the Tamilnadu Generation & Distribution Corporation Limited makes it clear that guidelines have been issued to provide the LT/HT Consumer to show cause as to why the claim relating to earlier assessment periods should not be levied against him, thereby providing an opportunity of being heard, keeping in mind the principles of natural justice and then raise claim/demand. In the said communication, para 3.0 [iii to vi] reads as follows :

[iii] In such communication to the consumer, it need not be stated that the demand has been raised by BOAB, etc. Rather, it should be a communication from the officer-in-charge/Competent Authority to levy such demand.



WP.Nos.16074 & 16075 of 2012

WEB COPY

[iv] In such communication to the consumer, he may be requested to show cause within a time limit [say 15 days] as to why such demand shall not be levied against him.

[v] The consumer may be given an opportunity to represent, in each occasion, whenever the claim is made relating to earlier assessment period in both H.T. And L.T. Services.

[vi] The final claim should be in a speaking manner duly addressing the contentions of the consumer in the reply to the show cause notice and mentioning the Regulations/Orders/Instructions etc., in force.”

8. The instructions in the above communication makes it clear that before making any assessment to the earlier period, proper opportunity to be given to the parties, which has not been done in this case. The impugned Orders have been passed merely on the basis of the internal communication between the first respondent and the Superintending Engineer, Erode and no opportunity whatsoever is given to the petitioners and the same is a clear violation of natural justice.



WP.Nos.16074 & 16075 of 2012

WEB COPY

9. Accordingly, the impugned demand made by the second respondent dated 24.09.2011 and 26.09.2011 stand quashed and the matter is remanded to the first respondent to once again decide the issue after hearing the petitioners as well as the third respondent and pass Orders on merits and in accordance with law.

10. With the above directions, these Writ Petitions are disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

18.10.2022

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
vrc

To,

1. The Superintending Engineer,
TANGEDCOD, Erode Electricity Distribution Circle,
Tamil Nadu Electricity Board, Erode – 9.
2. The Superintending Engineer,
TANGEDCOD, Salem Electricity Distribution Circle,
Tamil Nadu Electricity Board, Salem – 14.



WEB COPY



WP.Nos.16074 & 16075 of 2012

N.SATHISH KUMAR, J.

VTC

WP.Nos.16074 & 16075 of 2012

18.10.2022