IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2022

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THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.19224 of 2011
and M.P.Nos.1 to 3 of 2011

M/s.A.R.S.Metals Limited,
H.T.SC No.1902,
D.109, 2nd Floor, L.B.R. Complex,
Anna Nagar East, Chennai - 600 102,
Rep. by its Deputy Director,
N.Prabhu ... Petitioner

Vs.

1. The Chairman,
Tamilnadu Electricity Board,
No.144, Anna Salai,
Chennai - 600 002.

2. The Superintending Engineer,
Tamilnadu Generation and Distribution
Corporation Ltd. Chennai / North Circle,
No.144, Anna Salai, Chennai - 600 002. ... Respondents

PRAYER:

The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings pursuant to the impugned Lr.No.SE/CEDC/N/AAO/HR1902/A2/D1352/11, dated 20.07.2011 issued by the second respondent and quash the same and consequently direct the second respondent to adjust the unutilized units of 1,37,929 units in future billing months.

For Petitioner : M/s.A.L.Ganthimathi

For Respondents : M/s.L.Jai Venkatesh
Standing Counsel

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ORDER

The petitioner is an Industry involved in the manufacture of billets with induction melting furnace, which involves continuous process of manufacturing. The second respondent sanctioned the petitioner H.T supply with a maximum demand of 11,800 K.VA to run the said Industry. Due to scarcity of power, the system of giving power holidays for the purpose of continuous running of the industries was introduced by the second respondent. As per which, the industries were permitted to purchase the power generators from outside State and within State of Tamilnadu.

2.The parties entered into an agreement, as per which, during the imposition of 20% power cut, H.T. consumers can avail 80% quota in energy and demand and they can make external purchase over and above the quota. As far as the petitioner is concerned, the sanctioned demand was 11800 KVA and quota on energy by producing 375 units per KVA was worked out to 4,42,500 units. The petitioner on demand sought for 72% quota in energy with 375 units per KVA. 72% of 11800 KVA, which worked out to 8496 KVA. The fixation of the quota is given as follows:-

"5. I respectfully submit that the quota of the petitioner on demand is 72% and on energy is 375 units per KVA and not to run the industry during evening peak hour i.e. 6 pm to 10 pm and these period 10% of quota fixed on demand and energy is permitted for lighting purpose since the petitioner industry is a new H.T. service connection as per the prevailing 20% power cut inforce as per Chief Engineer/ Commercial's Memo No.CE/Comml/EE/ DSM/AEE/F Power cut/D 183/11, dated 10.05.2011. The fixation of the quota for the petitioner is as follows :-

Sanctioned Demand	= 11800 KVA
Quota on Energy - 11800 * 375	= 44,25,000 units
Quota on Demand = 11800 * 72%	= 8496 KVA
Peak hour quota on demand (i.e. from 6 pm to 10 pm)	= 8496*10% = 849.6 KVA
Peak hour quota on energy (i.e. from 6 pm to 10 pm)	= 4425000*10% = 442500units

The peak hour quota on energy permitted is inclusive of energy quota permitted and if any excess in a month over the above the 44,25,000 units, the excess energy charges shall be applicable."

3. As per the request of the petitioner to permit him for demand of 10400 KVA as they could not run the industry with 8496 KVA, they have been granted Optimum Demand required to run the industry. Accordingly, it was permitted to purchase of power of 9.7 MW from 18.00 hours to 22.00 hours (peak hours) and 2.97 MW for remaining hours. As per Clause 20 of the agreement entered between the parties, the consumption of power shall be accounted and intimated to Superintending Engineer/Chennai EDC/ North on monthly basis and the same shall be adjusted in respective slots on first charge basis in the consumed units downloaded through the five slot times of the day meters (TOD). It appears that the petitioner though sought for permission to purchase more energy, it could not utilise the same towards full capacity and therefore, he sought for adjustment of the time slot for the next month as per Clause 20 of the agreement, which reads as under:-

"20. Hence the scheduled units from power exchange shall be accounted and intimated to SE/CEDC/North on monthly basis and the same shall be adjusted in respective slots on first charge basis in the consumed units down loaded through the 5 slot TOD meters as being done for third party sales as per instructions issued from CFC/Revenue towards the purchased power."

Since this was negatived by the respondents, the petitioner has come before this Court for a direction to the respondents to adjust the consumption of power in billing cycle for the next month.

4. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

5. Clause 8 of the Agreement reads as under:-

"8. At any time the HT Consumers are permitted to avail power from any one source as approved during the monthly transactions. One monthly transaction of the HT Consumer stands valid for one billing cycle i.e. from the Meter downloading date upto the day prior to the next down loading date. With one standing clearance power purchase from only one exchange is valid for the entire month. In between change over to the other power exchange utilizing the above standing clearance is not permitted."

As per Clause 8, one monthly transaction of the HT Consumer stands valid for one billing cycle i.e. from the Meter downloading date upto the day prior to the next downloading date, as per which, a Consumer can avail power supply and pay consumption charges to the permitted limit and it will be valid for only one billing cycle and there is no indication that it can be carried forward for the billing cycle for the next month.

6. As per Clause 20, adjustment can be made in respective slots of time of the day meter and it cannot be adjusted in other time slot. It is relevant to note Clauses 26 and 27 of the very same agreement which read as under:-

> "26. If the Scheduled power is injected into the grid and if M/s.ARS Metals Ltd, is not able to draw the same due to some reasons M/s.ARS Metals Ltd., could not be compensated.
>
> 27. Load shedding in view of grid security is inevitable and hence lesser (non) drawl due to load shedding of feeder tripping on protection shall not be compensated."

As per Clause 26, if the scheduled power is injected into the grid and if HT Consumer is not able to draw the same for some reasons, it could not be compensated. In other words, HT Consumer, who is permitted to purchase power from generators from outside State and within State of Tamilnadu, cannot avail the power requested by them that cannot be compensated. Clause 27 makes it clear that load shedding in view of grid security is inevitable and non drawl or lesser drawl of the power due to load shedding shall not be compensated.

7. Therefore, it is very clear that once HT Consumer makes demand for purchasing of power and he is unable to utilise the same to the maximum extent, the same shall be reported to the authorities concerned. Once the power demanded by him is injected into the grid, it is for the Consumer to effectively utilise the same. If he cannot avail consumption of that energy, it cannot be compensated as agreed between the parties. This agreement is binding between the parties and therefore, rejection of the request to adjust the unavailing power in a particular slot adjusted in the next billing cycle in the same slot is not feasible and it is rightly rejected by the respondents and unused energy is liable to be lapsed as per Clause 20 of the Agreement entered between the parties.

I do not find any discrepancy in the impugned order passed by the respondents. The Writ Petition merits no consideration and accordingly, the same is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman,
Tamilnadu Electricity Board,
No.144, Anna Salai,
Chennai - 600 002.

2. The Superintending Engineer,
Tamilnadu Generation and Distribution
Corporation Ltd. Chennai / North Circle,
No.144, Anna Salai, Chennai - 600 002.

+1cc to Mr.A.L.Gandhimathi, Advocate, S.R.No.21174
+1cc to Mr.L.Jai Venkatesh, Advocate, S.R.No.21130

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and M.P.Nos.1 to 3 of 2011

SSI(CO)
AJ(08/06/2022)