



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.17772 of 2010
M.P.Nos.1, 2 & 3 of 2010

M/s.Sri Vari Papers Pvt. Ltd.,
Nagarpalayam,
Gobichettipalayam - 638 452,
Tamil Nadu,
Erode District.

... Petitioner

Vs.

1.The Chairman,
Tamil Nadu Electricity Board,
Represented by its Chairman,
144, Anna Salai, Chennai - 600 002.

2.The Chief Engineer (Distribution),
Tamil Nadu Electricity Board,
Erode Electricity Distribution Region,
Erode - 9.

3.The Superintending Engineer,
Gobi Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Gobichettipalayam - 638 452.

... Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the third respondent comprised in letter in Lr.No.SE/GEDC/HT/F.QUOTA/20% POWERCUT/D.325/2010 dated 27.05.2010 and quash the same in far as it seeks to apply peak hour restrictions on the petitioner as being arbitrary and illegal and consequently direct the respondents to continue to grant power holidays to the petitioner in as much as it is a continuous process industry by fixing the requisite demand quota and energy quota strictly in terms of the orders passed by this Court.



For Petitioner : Mr.Rahul Balaji

For Respondents : Mr.L.Jai Venkatesh
Standing Counsel

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O R D E R

The issues no longer res integra.

2.In the case of Sanmar Ferrotech Ltd. Vs. Tamil Nadu Electricity Regulatory Commission, in W.P.No.14264 of 2012, dated 29.06.2012, this Court has elaborately discussed the issue and passed a detailed order and the relevant portions of the order are extracted hereunder:

7.The Tamil Nadu Electricity Board by Memo No.CE/Comml/EE/DSM/F.Powercut/D.001/2008, dated 01.11.2008, imposed electricity restriction and control measures by way of power cut for HT industrial, Commercial services and others falling under Tariff I and III. Clause (n) of that Memo refers to the continuous power supply for a specified period. Clause (n) at page 2 reads as follows:-

"n. In the case of continuous process industries and those HT services which cannot operate with the present level of cut, the Chief Engineer/distribution concerned can fix such optimum/minimum demand as may be required to operate the industry, but this will be subject to the power supply being made available only for such restricted specified period depending upon the nature of process of the industry so as to keep with the overall capability of the grid."

8.The petitioners were availing the above said benefit. The petitioners are also utilising the power from wind energy generators which is either self generated or purchased from third party sources. On 31.8.2009, the Tamil Nadu Electricity Board's Technical Branch issued a Memo No. CE/ Comml./EE/DSM/AEE/PMM/F.Powercut/D.394/09, dated 31.08.2009, wherein instructions were issued regarding refixing



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Act, 2003, which provides for Open Access facility without restrictions. Therefore, the interpretation that only 9 HT Consumers as stated in the order will be eligible to the benefit of Optimum Demand Concept under Open Access Facility is a misreading of the order of the Commission. An harmonious reading of the Order of the Commission is that it should apply to all similarly placed HT consumers without discrimination and that is evident from the tenor of the order. The issue canvassed by the 9 HT consumers will be applicable to all similarly placed HT Consumers as there cannot any discrimination among the same group. Further, the Commission does not adjudicate individual disputes in terms of Section 86(1)(f) of Electricity Act 2003. The purpose of the Commission to pass orders as per the Electricity Act, 2003 is to lay down general principle governing generation and distribution of electricity. The Respondent by stating that the order is applicable only to the 9 HT Consumers who had approached the Commission stems on a misconception of law as it will amount to negating the order passed by a statutory authority on discriminatory basis which cannot be permitted. The scope of power of the Commission is defined in Section 86(1) (f) of the Tamil Nadu Electricity Act, 2003 which runs as hereunder:-

"86. Functions of State Commission:

(1) The State Commission shall discharge the following functions, namely:

(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:

Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said



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category of consumers;

(f) adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration;."

(emphasis supplied).

(3) The State Commission shall ensure transparency while exercising its power and discharging its functions.

(4) In discharge of its functions, the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and Tariff Policy published under Section 3."

.....

15. In such view of the matter, the finding of the Commission is very specific in that, it clearly holds that the restriction imposed in Memo dated 31.8.2009 is arbitrary and discriminatory and therefore, the Respondent Board's arguments that Optimum Demand Concept should be given only to industries who opted for power of the Board was found to be erroneous and wrong. The Commission clearly holds that the Optimum Demand Concept should be made available to Open Access consumers who have their own captive power or purchase power from third party. Since the Court had referred the writ petitions pending before it to the Commission, the Commission gave a finding that the 9 consumers covered by the transfer application will be entitled to the said benefit.

16. Since the Commission does not deal with the claims of individual persons but interprets the Circular/Memo issued by the Respondent Board under Section 86(1)(f) of the Act, the question of applicability to the Commission's order to 9 persons covered by the order dated 28.12.2011 is totally based on a misconception of the Commission's



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order and the Electricity Act. The Commission clearly holds that the Circular Memo dated 31.8.2009 is discriminatory as a consequence it applies to all similarly placed. In view of the above finding, utilising the wind energy from captive generation or purchased from third party source cannot be a ground to deny the benefit of Optimum Demand Concept as provided under Memo dated 1.11.2008. The order of the Commission is applicable to all similarly placed HT consumers without discrimination. The reason given by the authority in the impugned proceedings stating that the order will be applicable only to those HT consumers who have approached the Commission is based on a misconception."

3. In view of the above judgment, since the petitioner is a similarly placed person, the relief sought for in the present writ petition is ordered and impugned order passed in letter viz., Lr.No.SE/ GEDC/HT/F.QUOTA/ 20%POWERCUT/D.325/2010 dated 27.05.2010 is set aside. The respondents are directed to pass orders in accordance with the above judgment.

4. Accordingly, this Writ Petition stands ordered. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar

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To

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NRL (CO)
CB(04/04/2022)