

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.NO.533 OF 2015

AND

M.P.NO.1 OF 2015

Santhosh Textile Process,
HTSC No.56,S.F.No.165,
Santhosh Garden,
Kulathupudur, Andipalayam (P.O),
Tirupur - 641 687.
Rep. by its Authorised Signatory,
M.Maruthupandian

... Petitioner

.Vs.

1. The Tamil Nadu Electricity
Regulatory Commission,
Repd. by its Secretary,
19-A, Rukmini Lakshmipathy Salai,
(Marshall's Road), Egmore,
Chennai - 600 008.
2. The Tamil Nadu Generation and Distribution,
Corporation Limited (TANGEDCO),
Rep. by its Chairman and Managing Director,
144, Anna Salai,
Chennai - 600 002.
3. The Superintending Engineer,
TANGEDCO,
Tirupur Electricity Distribution Circle,
Tirupur.

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent in his impugned demand notice Lr.No.SE/TEDC/TPR/AAO/DFC/F.HT/BOAB/D.4581/14 dated 01.11.2014 along with the BOAB Audit Slip No.52 and the impugned demand notice Lr.No.SE/TEDC/TPR/AAO/DFC/F.HT/BOAB/D.14

dated 22.12.2014 along with BOAB Audit slip no.203 both seeking refund of the encashment amount already paid to the petitioner towards unutilised banked wind energy for the periods 2012-13 and 2011-12 respectively quash the same as illegal, arbitrary, without the authority of law, against the violation of principal of natural justice and against Electricity Act 2003 and consequently direct the 3rd respondent to give refund/ adjustment of Rs.16,60,476/- already illegally collected from the petitioner.

For Petitioner : Mr.S.P.Parthasarathy

For Respondent 1 : No appearance

For Respondents : Mr.Abul Kalam
2 and 3 For TANGEDCO

O R D E R

The writ petition is filed praying for a writ of Certiorarified Mandamus calling for the records of the 3rd respondent in his impugned demand notice Lr.No.SE/TEDC/TPR/AAO/DFC/F.HT/BOAB/D.4581/14 dated 01.11.2014 along with the BOAB Audit Slip No.52 and the impugned demand notice Lr.No.SE/TEDC/TPR/AAO/DFC/F.HT/BOAB/D.14 dated 22.12.2014 along with BOAB Audit slip no.203 both seeking refund of the encashment amount already paid to the petitioner towards unutilised banked wind energy for the periods 2012-13 and 2011-12 respectively quash the same as illegal, arbitrary, without the authority of law, against the violation of principal of natural justice and against Electricity Act 2003 and consequently direct the 3rd respondent to give refund/ adjustment of Rs.16,60,476/- already illegally collected from the petitioner.

2. The petitioner is a continuous process industry having High Tension Electricity Supply in H.T.Sc.No.56 under the 3rd respondent, Tiruppur EDC.

3. The power scenario in State of Tamil Nadu was very bad during the period 2007 onwards. As the respondent/Board was unable to manage the demand, they imposed a number of restrictions and control measures to various categories of consumers with effect from 01.11.2008, insofar as H.T. consumers are concerned, the following restrictions were imposed, namely:

a. There was allocation only to the extent of 60%.

b. There were peak-hour restrictions and scheduled load shedding.

c. There was compulsory power holidays, in the case of petitioner, it is stated to be on Fridays and Sundays.

4. Rule 3(1)(a)(ii) of the Electricity Rules, 2005 requires that to qualify as a "captive generation power plant" under Section 8 read with Clause 8(2), power of not less than 51% of aggregate electricity generated on such plant determined on annual basis, must be consumed for captive use. During the period 2011-12 and 2012-13, the petitioner having not complied with the above requirement, consequently, impugned notices were issued seeking refund of the amount already paid to the petitioner towards unutilised banked energy.

5. It is submitted by the learned counsel for the petitioner that the above issue is no longer res-integra and stands resolved by a judgment of this Court in W.P.No.6112 of 2017 dated 25.01.2002 wherein reference was made to the order passed by the Tamil Nadu Electricity Regulatory Commission in D.R.P.No.18 of 2013 wherein similar demands were set aside on the premise that non-compliance with the requirement of 51% of electricity consumption for captive use under Rule 3(1)(a)(ii) of Electricity Rules, 2005 was only in view of the restrictions and control measures implemented by the respondent/ Board, over which the petitioner had no control nor can be found fault with. Relevant portion of the order of this Court wherein the order of Tamil Nadu Electricity Regulatory Commission was referred to is extracted below:

"5..... At this juncture, it would be appropriate to extract the order passed by the Tamil Nadu Electricity Recovery Commission in D.R.P.No.18 of 2013. The relevant portion of the said order is reproduced hereunder:

"11.15.8. The Commission is of the ell considered view that when the Government of Tamil Nadu, on the one hand, directed all the generating stations to operate at their maximum capacity to receive the power, and at the same time limited the allocation to the extent of 60%/70% level with peak hour restriction and scheduled load shedding vide its letter dated 22.10.2008, we find that a consumer cannot be penalised. When a consumer is not given even 51% of his requirement, as stated supra, the Distribution licensee in our view cannot expect fulfilment of the conditions of 51% of consumption as required under Rule 3(1)(a).

11.15.9. Rule 3(1)(a) stipulates a power plant to satisfy both the conditions stated therein to

qualify as a Captive Generating Plant "it is applicable under normal circumstances when the distribution/transmission grid is open to the captive user without any restriction and not when there is no fault on the part of the captive user in consuming power on its side and at a time when stringent measure was imposed both in the form of restricted Quota as well as grid restrictions. We find no merit in insisting on adherence of conditions under Rule 3 of the Electricity Rules, 2005 for a captive generating plant in such conditions.

In view of the above order, the impugned demand notice is set aside."

6. It is submitted by Mr. Abul Kalam, learned Standing Counsel for the respondents that the issue stands covered.

7. Following the above order passed by this court, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
The Tamil Nadu Electricity Regulatory Commission,
19-A, Rukmini Lakshmipathy Salai,
(Marshall's Road), Egmore,
Chennai- 600 008.
2. The Chairman and Managing Director,
The Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
144, Anna Salai,
Chennai - 600 002.

3. The Superintending Engineer,
TANGEDCO, Tirupur Electricity Distribution Circle,
Tirupur.

+1cc to Mr.R.S.Pandiyaraj, Advocate, S.R.No.37514

W.P.NO.533 OF 2015 AND
M.P.NO.1 OF 2015

SSN(CO)
PBS/11/07/2022