

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. NOS.709 TO 711 OF 2015

AND

M.P. NOS.1, 1 AND 1 OF 2015

Scotts Garments Ltd.,
HTSC No.29,
S.F.No.536/5, Veerapandy,
Veerapandy post, Tirupur-641 605.
Rep. by its General Manager,
A.Murali Krishnamoorthy ...Petitioner in W.P.No.709 of 2015

P.K.P.Processors,
HTSC No.116,S.F.No.415/2, Angeripalayam,
Tirupur-641 603.
Rep. by its Authorised signatory,
S.Paramasivam ...Petitioner in W.P.No.710 of 2015

Thangamman Process,
HTSC No.126,Vadugan Thottam,
Kasipalayam, Vijayapuram post,
Tirupur-641 60r.
Rep. by its Authorised signatory,
S.Paramasivam ...Petitioner in W.P.No.711 of 2015

Vs.

1.Tamil Nadu Electricity Regulatory Commission,
Rep. by its Secretary, 19-A,
Rukmini Lakshmipathy Salai,
(Marshall's Road), Egmore, Chennai-600 008.

2.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
DistributionCircle, Tirupur. ...Respondents in all W.Ps

PRAYER in W.P.No.709 of 2015 : Writ Petition filed under Article
226 of the Constitution of India, praying to issue a Writ of

Certiorari calling for the records of the 3rd respondent in his impugned demand notice Lr.No.SE/TEDC/TPR/AAO/DFC/F.HT/BOAB/D./14 dated 23.12.2014 along with BOAB Audit slip no.214 both seeking refund of the encashment amount already paid to the petitioner towards unutilised banked wind energy for the periods 2011-12 and 2012-13 respectively, quash the same as illegal, arbitrary, without the authority of law, against the violation of principle of natural justice and against Electricity Act 2003.

PRAYER in W.P.No.710 of 2015 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the 3rd respondent in his impugned demand notice Lr.No.SE/TEDC/TPR/AAO/DFC/F.HT/BOAB/D./14 dated 23.12.2014 along with BOAB Audit slip no.126 both seeking refund of the encashment amount already paid to the petitioner towards unutilised banked wind energy for the periods 2011-12, quash the same as illegal, arbitrary, without the authority of law, against the violation of principle of natural justice and against Electricity Act 2003.

PRAYER in W.P.No.711 of 2015 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the 3rd respondent in his 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.126 both seeking refund of the encashment amount already paid to the petitioner towards unutilised banked wind energy for the periods 2011-12, quash the same as illegal, arbitrary, without the authority of law, against the violation of principle of natural justice and against Electricity Act 2003.

For Petitioner : Mr.S.Parthasarathy
in all W.Ps.

For Respondent 1 : No appearance
in all W.Ps.

For Respondents 2 &3 : Mr.Abul Kalam
in all W.Ps. Standing Counsel
for TANGEDCO

COMMON ORDER

The issue involved in all these writ petitions are one and the same and therefore a common order is passed.

2. The petitioners in all these writ petitions are a continuous process industry having High Tension Electricity Supply in H.T.Sc.Nos.29, 116 and 126 respectively, 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 petitioners having not complied with the above requirement, consequently, impugned notices were issued seeking refund of the amount already paid to the petitioners towards unutilised banked energy.

5. It is submitted by the learned counsel for the petitioners 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, these writ petitions stand allowed and the impugned demand notices are quashed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

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To:

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

3.The Superintending Engineer,
TANGEDCO, Tirupur Electricity
DistributionCircle, Tirupur.

+3ccs to Mr.S.Pandiyaraj, Advocate Sr.No.37512

W.P.Nos.709 to 711 of 2015
and M.P.Nos.1, 1 and 1 of 2015

SR(CO)
RVM(18/07/2022)