



W.P.No.23838 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.23838 of 2014
and W.M.P.No.1 to 2014

Tirupur Vijayalakshmi Spinning Mills,
HT SC.No.111,
S.F.No.35, 36, Polavapalayam, Gobi (T.K),
Erode (D.T.) Nambiyur-638 458,
Tirupur Rep. by its Director D.Dinesh Kumar

... Petitioner

Vs.

1.Tamil Nadu Electricity Regulatory Commission,
Rep. By its Secretary,
19A, Rukmani lakshmipathy Salai,
Marshalls Road,
Egmore, Chennai-600 008.

2.The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited, 144, Anna Salai,
Chennai 600 002.

3.Director Finance,
Tamil Nadu Generation and Distribution
Corporation Limited, 144, Anna Salai,
Chennai 600 002.



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4.The Chief Financial Controller,
Tamil Nadu Generation and Distribution
Corporation Limited, 144, Anna Salai,
Chennai 600 002.

5.The Superintending Engineer,
TANGEDCO, Gobi Electricity Distribution Circle,
Gobichettipalayam.

6.The Superintending Engineer,
TANGEDCO,
Udumalpet Electricity Distribution Circle,
Udumalpet.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus forbearing the respondent and their men, agents from collecting current consumption charges, demand charges and / or any arrears from the petitioner until the respondent makes payment of the outstanding dues of Rs.33,02,862.75 for the year 2012-13 payable to the petitioner is getting paid or give adjustment in the current consumption charges payable by the petitioner till the entire amount is adjusted.

For Petitioner : Mr.S.P.Parthasarathy

For Respondents : Mr.Abdul Kalam (for R2 to R6)
for TNEB

: No appearance (for R1)



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ORDER

Today, when the matter is taken up for hearing, the learned counsel for the petitioner submitted that the issue raised in the present writ petition is covered by the order passed by this Court in W.P.No.533 of 2015. The relevant portions of the order is extracted hereunder:

“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



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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.”

2. Mr.Abul Kalam, learned Standing Counsel for the respondents would also agree that the issue stands covered.

3. Following the above order passed by this court, this writ petition stands allowed. The respondents are directed to settle the dues, if any, as a result of this order, either by paying the sums due within a period of four months from the date of receipt of a copy of this order or permitting adjustment of the same in the future consumption charges. No costs. Consequently, connected miscellaneous petition is closed.

The Writ Petition is disposed of with the above direction.

28.06.2022

Speaking (or) Non Speaking Order

Index : Yes/ No

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MOHAMMED SHAFFIQ, J.

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