BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)Nos.11099, 11100 of 2010
and
MP(MD)Nos.1 (2), 2 (2) of 2010

M/s.Sree Kaderi Ambal Mills Ltd.,
Perattu Kottai Village,
Shanmuganathapuram – 630 014,
Sivagangai District.
Rep. by its Manager,
A.Seetharaman : Petitioner in both WPs

Vs.

1.The Tamil Nadu Electricity Regulatory Commission,
No.19-A, Rukmini Lakshmipathy Salai,
Marshall's Road,
Egmore, Chennai – 600 008.
Rep. by its Secretary.

2.The Superintending Engineer /
Deputy Financial Controller,
Sivagangai Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Sivagangai.

3.M/s.Kaveri Gas Power Limited,
No.5/3, Ranganathan Gardens,
Anna Nagar,
Chennai – 600 040. : Respondents in both WPs

COMMON PRAYER: Petitions filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari to call for the records of the second respondent in Bill Nos.46 & 75, respectively, dated 30.07.2010 and quash the same.

For Petitioner	:	Mr.S.Sethuraman
For Respondents	:	Mr.S.Deenadhayalan for R.1, R.2
		No appearance for R.3
		[In both WPs]

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COMMON ORDER

These writ petitions are filed by the petitioner challenging the impugned bills, dated 30.07.2010, for the month of July, 2010, in and by which, the petitioner was directed to pay a sum of Rs.31,53,665/- and Rs.37,48,348/-.

2.The petitioner before this Court is a consumer of electricity under two H.T. service connection nos.46 & 75 at Parattukottai Village, Sivagangai District. The petitioner entered into a joint venture with the third respondent to establish a generation plant by investing some amount. By virtue of the said joint venture, as per Rule 3 of the Electricity Rules, 2005, the petitioner had become a captive consumer of electricity. An agreement was also entered into between the petitioner and the third respondent, in and by which, the third respondent has to supply 15 million units on firm basis and 3 million units on non-firm basis per month through the Tamil Nadu Electricity Board. Some disputes arose between the petitioner and the third respondent and the same resulted in civil litigations. The matter went upto the stage of appeals before this Court in OSA.Nos.57, 58 of 2008, in which, the Tamil Nadu Electricity Board was also a party. A Division Bench of this Court, by judgment dated 14.07.2009, dismissed the appeals with certain directions, as follows:-

> *"24.In respect of the appeal arising out of the order made in injunction petition, in view of the discussion made, the following order is passed:-*
>
> > *1.The plaintiff is entitled to supply of energy at 12.5 lakh units per month on firm basis and 2.5 lakh units per month on non-firm basis and the first defendant is directed to restore the above supply.*
> >
> > *2.The first defendant is also restrained from effecting any supply of energy to defendants no.4 to 7 without exhausting the aforesaid supply of energy to the plaintiff.*
> >
> > *3.The peak hour charges and demand charges have to be shared by the plaintiff and the first defendant at the rate of 60 : 40 as per the agreement.*

4.The letter of credit given by the respondent must be in conformity with Article IV.2. Now the dispute about the payment is resolved, the original letter of Credit for Rs.60 lakhs would revive, however, as pointed out in earlier paragraph."

3.According to the Tamil Nadu Electricity Board, the third respondent did not comply with the aforesaid judgment of the Division Bench and the Board continued to supply electricity to the petitioner and have raised the impugned bills.

4.On similar set of facts, the petitioner has filed WP(MD)Nos.8787, 8788 of 2010 challenging the bills issued for the month of June, 2010 and this Court, by common order dated 04.08.2010, has quashed the bills holding that they are illegal and arbitrary. The relevant portion from the order is extracted as under:-

"17.The second respondent is bound to respect not only the orders of this Court in O.A.No.1103 of 2008 and Application No.5331 of 2008 in C.S.No.906 of 2008 but also the directions flowed from the Chief Engineer. Further inasmuch as the order passed as against the third respondent in the Civil Suit cannot be implemented without the co-operation of the Tamil Nadu Electricity Board, who has got monopoly in the matter of distribution of Energy, the Tamil Nadu Electricity Board should have refused to transmit the energy to the other persons without exhausting the supply of energy quota to the petitioner. Having now co-

operated with the third respondent for distribution of energy to the other defendants in the suit against the spirit of the orders passed by this Court, the Tamil Nadu Electricity Board has now chosen to issue bills demanding whopping electricity charges from the petitioner without deducting the supply of energy the petitioner is entitled to consume from the third respondent as per the orders of this Court.

18.In view of the above, the illegal and arbitrary Bill Nos.46 & 75 dated 30.06.2010 issued by the second respondent are quashed and the writ petitions stand allowed. ...”

5.The Department has challenged this order by way of appeal and the Division Bench of this Court in WA(MD)Nos.504, 505 of 2010, by judgment dated 16.09.2010, has disposed of the appeals as follows:-

“9.For all these reasons, the demand for peak hour charges and penalty is set aside, however, with liberty to the Tamil Nadu Electricity Board to work out its remedy in the manner known to law. We would further clarify that for the present, the first respondent is liable to pay the actual consumption charges for the electricity consumed in terms of sub-para (1) of Paragraph 24 of the said judgment.”

6.In view of the above position, these writ petitions stand allowed in terms of the decision of the Division Bench in WA(MD).Nos.504, 505 of 2010, dated

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16.09.2010. The demand for peak hour charges and penalty is set aside, however, with liberty to the Board to work out its remedy in the manner known to law. The petitioner is liable to pay the actual consumption charges for the electricity consumed in terms of Paragraph No.24(1) of the judgment dated 14.07.2009 in OSA.Nos.57, 58 of 2008. There shall be no order as to costs. Consequently, connected miscellaneous petitions stand closed.

Index : Yes / No

Internet : Yes

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