



W.P(MD).No.11436 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.11436 of 2013

and

M.P(MD) No.1 of 2013

Derik Monofile (P) Limited
HTSC No.50 and 55
No.181-A, A.K.P. Road,
Derik Junction,
Nagercoil – 629 001,
Kanyakumari District.
Represented by its Manager
S.Rajavel.

... Petitioner

-VS-

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

2. The Chairman,
Tamil Nadu Electricity Board,
144, Anna Salai,
Chennai – 600 002.

3. The Superintending Engineer,
Kanyakumari Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Nagercoil.

.... Respondents



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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the third respondent in his impugned letter No.SE/KKEDC/AO/Rev/RCS/A1/D.418/13, dated 05.06.2013 towards alleged excess demand and energy charges for the period from 12/2010 to 11/2011 quash the same as illegal, arbitrary without the authority of law and against the order of W.P.No.23166 of 2010, dated 28.02.2011, batch cases and also contrary to the memo dated 20.06.2011 issued by the second respondent and consequently direct the third respondent to adjust/ refund illegally collected from the petitioner.

For Petitioner : Mr.S.P.Parthasarathy

For Respondents : Mr.S.Deenadhayalan
Standing Counsel

ORDER

The present Writ Petition has been filed challenging an order passed by the third respondent herein, under which, the writ petitioner was directed to remit, the amount of Rs.25,18,412/- (Rupees Twenty Five Lakhs Eighteen Thousand Four Hundred and Twelve only) towards excess for quota charges for the month of April, 2010.



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2. According to the learned counsel for the petitioner, due to acute shortage of the Electricity working instructions were issued by the Tamil Nadu Electricity Board with effect from 01.11.2008. The petitioner being HTSC consumer, was instructed to avail only 60% on the base demand and energy for HT Industrial and Commercial Industrial Services. According to the learned Counsel for the petitioner, though they were entitled to utilize 60% of the base demand and energy, the Electricity Board misinterpreted the same and said 60% also included the captive power generated by the petitioner and the power purchased from the third parties. Being aggrieved over such interpretation, the petitioner through their Association had approached the first respondent (TNERC) by way of application in M.P. Nos. 6, 9 and 17 of 2010 and DRP No.9 of 2010.

3. The first respondent (TNERC) by an order, dated 07.09.2010, had clarified that the 60% of quota allotted to the industries would not include the captive power generated by them and the power sourced by the petitioner from third parties. However, again the Electricity Board had misinterpreted the order and tried to restrict the captive power of the



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petitioner's Company. The said order was challenged before the first respondent (TNERC) in I.A.No.1 of 2010 in M.P.No.43 of 2010, wherein, the first respondent (TNERC) passed an interim order, dated 06.12.2010 refusing to stay the Memo of the Electricity Board, on 17.09.2010 and permitted the Electricity Board to raise the demand and energy charges but directed the Electricity Board not to insist upon the payment of the said demand.

4. Thereafter, some of the HTSC consumers have approached this Court in a batch of Writ Petitions, wherein, this Court, by way of common order, dated 28.02.2011 held that the Memo of the Electricity Board, dated 17.09.2010 is replaced by another Memo, dated 11.02.2011, which was entered into by way of an agreement between the consumers and the Electricity Board. This Court, further held that all the demands that were raised with regard to base demand, based upon the old Memo, dated 17.09.2010 are set aside. Hence, it is clear that any demand that was raised based upon the Memo of the Electricity Board, dated 17.09.2010 is not enforceable thereafter. This order of the learned Single Judge has become final.



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5. Thereafter, the first respondent (TNERC) passed a final order, relying upon the order of this Court, dated 28.02.2011, in I.A.No.1 of 2010 in M.P.No.43 of 2010, by an order, dated 25.04.2011. The relevant portion of the order reads as follows:

....“The TNEB has clarified in their Memo dated 11.02.2011 that the amended formula for computation of base energy and base demand would have prospective effect i.e., 11.02.2011. The High Court has directed that the benefit of the revised quota should be given to the consumers from 17.09.2010. The High Court has indicated that the bills will have to be re-worked from 17.09.2010, the date on which the TNEB issued a Memo on the basis of 07.09.2010 order of the Commission”.

6. In view of the above said narration of fact, it is clear that the said Memo of the Tamil Nadu Electricity Board, dated 17.09.2010 has been set aside by this Court and the same was followed by TNERC and all the demands that were raised based upon the said Memo has also been set aside by this Court. However, the respondent Board had made a demand of Rs.25,18,412/- (Rupees Twenty Five Lakhs Eighteen Thousand Four



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Hundred and Twelve only) on 28.05.2011 and directed the writ petitioner Company to give their option by way of written request.

7. The petitioner's Company exercised their option by their communication, dated 19.07.2011. Once the petitioner's company has exercised their option, as per the order of TNERC, dated 25.04.2011, the respondent authorities ought to have reworked the demand. Neither reworking the demand nor dropping the proceedings, suddenly by way of the impugned communication, dated 05.06.2013, a sum of Rs.28,50,295/- (Rupees Twenty Eight Lakhs Fifty Thousand Two Hundred and Ninety Five only) was demanded from the writ petitioner.

8. It is nothing but a clear violation of the orders of TNERC, dated 25.04.2011 and also the order of the High Court dated 28.02.2011 made in W.P.No.23166 of 2011 and others. It is made clear that the order impugned in the Writ Petitions has been passed, based upon a Memo, dated 17.09.2010, which was earlier set aside by the High Court as well as by TNERC.



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9. Hence, I find that the order impugned in the Writ Petition has no leg to stand and the same is liable to be set aside. This Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No

Internet : Yes / No

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To

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(Marshall's Road)
Egmore, Chennai – 600 008.
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R.VIJAYAKUMAR,J.

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