BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.6230 of 2014
and
M.P(MD) No.1 of 2014

Nagammal Mills (Pvt) Limited HTSC No.2
Vetturnimadam,
Nagercoil – 629003,
Kanyakumari District
Represented by its
Personal Manager
Pon Ravi Mony.T ... 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 Generation and
   Distribution Corporation Limited,
   (TANGEDCO)
   144, Anna Salai,
   Chennai – 600 002.

3. The Superintending Engineer,
Kanyakumari Electricity Distribution Circle,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
Nagercoil. .... Respondents

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.215/14, dated 29.03.2014 towards alleged excess demand and energy charges for the month of April 2011 quash the same as illegal, arbitrary, without the authority of law and against the order of W.P.No. 23166 of 2010 batch cases and also contrary to the memo dated 20.06.2011 issued by the second respondent.

For Petitioner : Mr.S.P.Parthasarathy

For Respondents : Mr.S.Deenadhayalan
Standing Counsel

ORDER

The present Writ Petition has been filed challenging the order passed by the third respondent herein, under which, the writ petitioner was directed to remit the amount of Rs.18,59,944/- (Rupees Eighteen Lakhs Fifty Nine Thousand Nine Hundred and Forty Four only) towards excess for quota charges for the month of April, 2010.

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 applications 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 petitioner's Mills. 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.

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, strangely by an order, dated 28.05.2011, the respondent authorities issued a communication to the writ petitioner that the writ petitioner has to pay a sum of Rs.18,59,944/- (Rupees Eighteen Lakhs

Fifty Nine Thousand Nine Hundred and Forty Four only) as per the working instructions dated 17.09.2010, which was already set aside by this Court and followed by the TNERC. In the said order, the respondent authorities have directed the Writ petitioner Mill to inform them about the change of the base demand and base energy for any other consecutive months of their choice and they have requested the Mill to give an option in writing so as to revise the penalty. Relying upon the said communication of the respondent authorities, the petitioner sent a communication on 29.06.2011 opting to take into account the three months energy consumption, namely, January, February and March 2008.

7. The petitioner's Mill was under the impression that when they have strictly complied with the instructions of the respondent authorities, the demand would be re-worked and the penalty would be revised. Based upon the request made by the writ petitioner Mill, the respondent authorities have recalled their demand of Rs.18,59,944/- (Rupees Eighteen Lakhs Fifty Nine Thousand Nine Hundred and Forty Four only) by an order, dated 18.07.2011.

8. To the shock and surprise, the order recalled by the respondent authorities was objected to by the audit party and based upon the objection the present impugned order has been passed on 29.03.2014, again reiterating the fact that the petitioner has to remit the balance amount of Rs.18,59,944/- (Rupees Eighteen Lakhs Fifty Nine Thousand Nine Hundred and Forty Four only). It is clear from the Impugned demand notice that it is a clear violation of the order of this Court, dated 28.02.2011 made in a batch of writ petitions in W.P.No.23166 of 2010 etc., and also the order of TNERC, dated 25.04.2011. In fact, the TNERC in their order, dated 25.04.2011, has directed the Electricity Board to re-work the Bills with effect from 17.09.2010. Though the petitioner has indicated his option and agreed for re-working the Bill and the authorities have also complied with the said request and recalled the demand, under the guidelines of the audit objection, the present impugned order has been passed refusing to rework the Bill. Only as a result of refusing to rework the bill, the present impugned order has been passed again demanding a sum Rs.18,59,944/- (Rupees Eighteen Lakhs Fifty Nine Thousand Nine Hundred and Forty Four only). It is not known what prompted the audit parties to violate the orders of this Court and the order passed by the TNERC on 25.04.2011. The copy of the

said order has not been furnished to the writ petitioner. It is clear from the impugned order that the audit objection has been raised only based upon the Memo of the Electricity Board, dated 17.09.2010, which was earlier set aside by this Court and by the TNERC. Hence, I find that the order impugned in the Writ Petition is not sustainable in the eye of law.

9. Normally, this Court remits the matter back to the authorities for fresh consideration, whenever orders or demand notices are issued based upon the audit objection without hearing the consumers. However, in the present case the respondent authorities have chosen to accept the option exercise by the petitioner's Mill and they have re-called their demand by their communication, dated 18.07.2011. Hence, it is clear that the authorities have strictly complied with the orders of this Court and the orders of the TNERC and chosen to withdraw the demand. However, just based upon the audit objection, the present impugned order has been passed. Since the impugned order has been passed, based upon the Memo issued by the Electricity Board, dated 17.09.2010 which was set aside by this Court and by the TNERC, I do not find any ground to remit the matter back to the authorities.

10. In view of the above said facts, the order impugned in the Writ Petition is not sustainable in the eye of law. The impugned order is 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

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 Generation and Distribution Corporation Limited,
   (TANGEDCO)
   144, Anna Salai, Chennai – 600 002.

3. The Superintending Engineer,
   Kanyakumari Electricity Distribution Circle,
   Tamil Nadu Generation and Distribution
   Corporation Limited (TANGEDCO)
   Nagercoil.

R.VIJAYAKUMAR,J.

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