BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.11.2022

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.23797 of 2022
and
W.M.P(MD)No.17867 of 2022

V.V.Iron & Steel Company Private Ltd.,
Rep. by its General Manager,
James Paulraj ... Petitioner

Vs

1.Tamil Nadu Generation and Distribution Corporation Ltd.,
Rep. by its Managing Director,
Technical Branch,
No.144, Anna Salai,
Chennai – 2.

2.The Chief Engineer Distribution,
Appellate Authority,
Tamil Nadu Generation and Distribution Corporation Ltd.,
Tirunelveli.

3.The Superintending Engineer,
Tuticorin Electricity Distribution Circle,
Tuticorin.

4.The Accounts Officer (Revenue),
Tamil Nadu Generation and Distribution Corporation Ltd.,
Tuticorin Circle,
Tuticorin. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to Lr.No.008449/ 996/ CE/ D/ Tin/ DFC/Rgl./F.HT/22-5, dated 14.09.2022 and quash the same and consequently direct the Chief Engineer Distribution, Appellate Authority, Tamil Nadu Generation and Distribution Corporation Ltd., Tirunelveli, the 2nd respondent herein to take the appeal filed by the petitioner on file under section 127 of EA 2003 against the communication in Lr.No.SE TED/ TTN/ DFC/ AO/ REV/ AAO/ HT/ F.HT-262. Audit/ d/ 426/ 22 dated 11.07.2022 on the file of the 3rd respondent for HT service connection No.262 of the petitioner company.

For Petitioner	: Mr.S.Siva Thilakar
For R1 to R4	: Mr.Deenadhayalan

ORDER

The petitioner has prayed for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to Lr.No.008449/ 996/ CE/ D/ Tin/ DFC/Rgl./F.HT/22-5, dated 14.09.2022 and quash the same and consequently direct the Chief Engineer Distribution, Appellate Authority, Tamil Nadu Generation and Distribution Corporation Ltd., Tirunelveli, the 2nd respondent herein to take the appeal filed by the petitioner on file under section 127 of EA 2003 against the communication in Lr.No.SE TED/ TTN/ DFC/ AO/ REV/ AAO/ HT/ F.HT-262. Audit/ d/ 426/ 22 dated 11.07.2022 on the file of the 3rd respondent for HT service connection No.262 of the petitioner company.

2.Heard Mr.S.Siva Thilakar, learned counsel appearing for the petitioner and Mr.S.Deenadhayalan, learned counsel appearing for the respondents.

3. The learned counsel appearing for the petitioner would submit that the petitioner has their factory at Visco Industrial Estate, Thanoothu Village, Aniabaranallur post, Srivaikundam Taluk, Tuticorin District - 628 851. They produce ingots from its inception. The petitioner obtained a High Tension Service (HTSC No.262) from the respondent corporation and they have installed induction furnace in our plant. The 3rd respondent instructed them to install harmonic filters without giving any specification of harmonics level generated from their system that exceeded the accepted limit by TNEB. The expert engaged by them informed that the emissions of harmonics do not affect the BSNL lines which are placed below the TNEB grid lines. Despite the fact that, it is the duty of the respondent corporation to conduct the measurements with appropriate measuring meter in their presence and inform them about the parameter and that which exceeds the limits, he had in the interest of the environment engaged two experts to verify the harmonic emission and paid significant amounts as consulting fee from our company for securing the reports. The experts gave different opinions causing great confusion as to

whether the filter was even required. The 3rd respondent instead of conducting the measurement and advising the petitioner by specifying which harmonic frequency affected their grid and the quantity of emission which is exceeding the permissible limit. But the respondent straight away without authority, issued proceedings dated 26.4.2013 directed them to install an harmonic suppression equipment on or before 27.4.2013 failing which, threatened to levy compensation charges of 15% on the demand and energy charges.

4. The learned counsel for the petitioner further submitted that the case of the respondent is that the harmonic emission is affecting the grids. Literally, no time was given to the petitioner to make enquiry as to the type of emission and the type of filter to be installed. The harmonic filter equipment is not a standard machine to go and buy and install immediately. It is designed to suit the frequency level and made accordingly and then installed. The third respondent also never indicated the parameters of harmonic frequency to be observed and the quantum of emission which is exceeding the limits. They had infact been requesting the third respondent to specify the frequency level that affects the grid, etc., so as to enable them to install the right filter if required. The third respondent neither furnished a copy of the minutes of the meeting nor did he specify the harmonic level to select the type of filter / equipment to be installed.

To the shock and surprise of the petitioner, the 4th respondent under the instructions of the 3rd respondent levied compensation charges of Rs.7,15,189/- in the bill generated on 01.06.2013 fixing the due date of payment as on 7.6.2013. It is pertinent to point out that there are many other industries in the near vicinity and no such compensation charges to the knowledge of the petitioner has been levied on them.

5. He would further states that the petitioner submitted a representation dated 2.6.2013 informing that two harmonic filter suppliers who were asked to conduct necessary harmonic test and submit a report so as to enable us to install harmonic filters gave different and contradictory reports and therefore, requested the third respondent to identify the harmonic frequency level which affects their system. The copy of the harmonic test reports were also sent to the third respondent for advice. The petitioner also requested the thid respondent to cancel the decision to levy compensation charges. However, no action was forthcoming and again on the next billing dated (1.7.2013) a sum of Rs. 8,43,255/- without even specifying the nature of harmonic emission and the suppression equipment / filter that is to be installed. The petitioner effected the payments under protest. On 5th July 2013, a detailed representation was sent to

the Hon'ble Minister for Electricity and a copy was also sent separately to the first respondent specifying about the various representations, the discriminatory action taken by the respondents 3 & 4 and requested that the penalties be nullified.

6. The petitioner was again shocked to receive the bill in August 2013 wherein Rs.1,98,384/- was levied. It is pertinent to point out here that the petitioner has been willing to install the filters by their letter dated 2.6.2013 but the 3rd respondent never advised them to buy a suitable harmonic filter to arrest the emission at a particular frequency that affects the TNEB. However, the 3rd respondent has always been interested to levy compensation charges rather than to install the harmonic filter to solve the issue. There is no point in petitioner installing one filter and then being asked by the respondent to change the same would not only be expensive as it costs crores of rupees but also time consuming. After much deliberation and after the orders of the TNERC in T.P.No.1 of 2013, the 1st respondent issued instructions in Memo.No.CE/Comml/EE3/AEE2/F.Harmonics /D.589/13. dated 19.08.2013 directing that whoever exceeds the limits of Harmonic emission set by Central Electricity Authority (CEA) shall be charged 15% as compensation charges. It

was also clearly specified that the first respondent would implement the compensation provision after three months period from the date of measurement done by TNEB in the presence of the petitioner, if it exceeds the permissible limits. A notice was also to be given to the HT consumers like the petitioner company.

7. The petitioner respectfully state that upon careful reading of the memo the following things are clear:

a. That the compensation of 15% was introduced only in August 2013 with certain conditions.

b. That a measurement of the Harmonic Emission is to be carried out and verified whether it exceeds the permitted limits by the Distribution Licensee (TANGEDCO) in the presence of the consumers (Petitioner).

c After the measurement, if it exceeds the limits, three months time is to be given to install harmonic filters.

d- Only if the filters are not installed, the charges @ 15% can be levied.

e. A notice is to be issued to the HT consumers.

8. The counsel for the petitioner further states that the earlier levy of 15% charges in the months of June, July and August 2013 was legal. Following the memo dated 19.8.2013, the 1st respondent again issued another memo No. CE/Comml/EE3/AEE2/F.Harmonics/D.614/13. dated 27.08.2013 reiterating that compensation charges @ 15% is to be levied after three after the date of measurement, if the harmonics are more than permissible limits and also to avoid delay specified that field engineers may use the Power Quality Analysers in TANGEDCO available with Power Stations, R & D etc. No measurement has been made till date to verify whether the emission exceeds the limits. Contrary to the instructions of the 1st respondent and the orders of the TNERC, the 3rd and 4th respondents once again levied compensatory charges of 15% amounting to Rs.2,21,939/- in the month of September, 2013. The petitioner was charged with compensation charges for the month of September consumption in October 2013 to the tune of Rs.2,20,364/-. The actions of the 3rd and 4th respondents were illegal and discriminatory and the petitioner is entitled to refund of Rs.21,99,131/-.

9. In spite of repeated requests from the petitioner to the 3rd respondent, there has been no response. The petitioner has stopped its operation from 1st

July 2013 as they are unable to pay such huge amounts which are demanded illegally. As a result, about 300 employees have been terminated, the machineries are kept idle and are getting rusted. The fact that the petitioner is not running the plant is clearly evident from the bills as only minimum consumption charges for electricity are levied. Even after knowing that there is no production in the plant, the respondent was levying compensation charges without authority every month. When the plant is not functioning, there can be no harmonic emission. The petitioner has been drawing money from the working capital and making payments to the respondent corporation.

10.The petitioner respectfully state that since the levying of 15% compensation charge contrary to the Memo. No. CE / Comml / EE3/AEE2/F.Harmonics / D.589/ 13. dt 19.08.2013 and Memo. No.CE / Comml / EE3/AEE2/F.Harmonics/D.614/13. dt 27.08.2013 issued by the 1st respondent, the petitioner filed a writ petition in WP.No.29431 of 2013 on the file of the Principal Bench of this Hon'ble court to issue a writ of Mandamus forbearing the 3rd and 4th respondents from levying 15% compensation charge contrary to the instructions in Memo. No. CE/Comml / EE3/AEE2/F.Harmonics/ D.589/ 13. dt 19.08.2013 and Memo. No.CE / Comml

/ EE3/AEE2/F.Harmonics/D.614/13. dt 27.08.2013 issued by the 1st respondent and consequently direct the respondents to refund the sum of Rs.21,99,131/- (Rupees Twenty one lakhs ninety nine thousand one hundred and thirty one only) collected without authority towards compensation charges during June to October 2013 for HT service connection No.262.

11. The petitioner respectfully state that after hearing the case of the petitioner, the Hon'ble Principal Bench of this Hon'ble court was pleased to grant an order of interim injunction in MP.No.1 of 2013 in respect of the demand of compensation charges of 15% for the ensuing month of October 2013, till then. Subsequently, the respondents filed counter and after hearing the arguments of either side, the Learned Judge was pleased to pass an order dated 9.7.2018 to the effect that the interim order granted by the court on 28.11.2013 was made absolute and the MP.No.1 of 2013 was allowed. Consequently, the vacate stay petition in MP.No.1 of 2014 was also dismissed and directed the case to be posted for final disposal.

12. The petitioner further stated that the Hon'ble court heard the writ petition and was pleased to dispose of the writ petition by order dated

19.1.2022 thereby directing the Superintendent Engineer, Tuticorin Electrical Distribution Circle, Tuticorin, the third respondent to consider the representation dated 6.3.2017 and pass orders on merits and in accordance with law as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of the order. Further, the Learned Judge has also observed that thereafter, if the petitioner is aggrieved, they are bound to approach the appellate authority or the forum constituted for the purpose of adjudication of the issues and the petitioner is at liberty to place all the documents and evidences, along with the copy of the representation to the 3rd respondent / Superintending Engineer for considering the merits of the case.

13. The petitioner respectfully state that as per the direction of the Hon'ble court, he appeared for personal enquiry and produced all the relevant documents as directed by the court. However, the third respondent without considering the points for determination was pleased to direct the petitioner to pay a sum of Rs. 1,08,93,877/- (One Crore eight Lakhs ninety three thousand eight hundred and seventy seven only) towards Harmonics compensation charges for the period from October 2013 to December 2016 within 15 days from the date of receipt of the letter failing which the same amount will be included in the upcoming CC bills.

14. The petitioner respectfully state that aggrieved by the order dated 11.7.2022 of the third respondent, he preferred an appeal before the Chief Engineer Distribution, Appellate - Authority, Tamil Nadu Generation and Distribution Corporation Ltd., Tirunelveli, the 2nd respondent herein. The second respondent returned the appeal saying that personal hearing conducted on 3.9.2022 not feasible for appeal under Section 127(EA) 2003. Aggrieved by the order dated 14.9.2022, the petitioner has filed the present writ petition to direct the Chief Engineer Distribution, Appellate authority, Tamil Nadu Generation and Distribution Corporation Ltd., Tirunelveli, the 2nd respondent herein to entertain the appeal and pass appropriate orders as directed by this Hon'ble court in the earlier writ petition. Hence, the petitioner has filed the present writ petition for the above stated relief.

15.The learned Standing counsel appearing for the respondents would submit that the petitioner has filed an appeal before the Chief Engineer/Distribution, Tirunelveli Region, but the competent authority for filing the appeal is the Superintending Engineer (Operation), Tirunelveli under Section 127 of EA 2003. If the petitioner filed an appeal before the Superintending Engineer, Tirunelveli he may pass appropriate orders on the same.

16. Though the petitioner has come forward with a larger prayer, at the time of hearing, the learned counsel for the petitioner would submit that if a direction is given to the respondents to consider the appeal of the petitioner, the petitioner would be satisfied.

17. In view of the limited prayer that has now been sought for, this writ petition is disposed of with a direction to the petitioner to file an appeal before the Superintending Engineer, Tirunelveli, who is the competent authority, as early as possible. Thereafter, the Superintending Engineer, Tirunelveli shall take up the appeal on file and pass appropriate orders after affording an opportunity to the parties within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

01.11.2022

Index : Yes/No
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Note: Issue Order copy on 02.11.2022

V.BHAVANI SUBBAROYAN, J.

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