IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.02.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.10887 of 2013

Standard Pencils Pvt. Ltd.,
Su0er A-5 & 6 Industrial Estate,
Guindy, Chennai – 600 032
rep. by Kamal Kishore Falor
Joint Managing Director

... Petitioner

Vs

1. The Assistant Executive Engineer,
   TANGEDCO (O&M) TNEB
   Chennai Electricity Distribution Circle,
   Guindy, Chennai.

2. The Assistant Engineer,
   TANGEDCO, (TNEB)
   Chennai Electricity Distribution Circle,
   Guindy, Chennai.

3. The Executive Engineer,
   State Transmission Utility Wing
   TANGEDCO (O&M) TNEB
   Chennai Electricity Distribution Circle,
   Taramani.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus call for records of the 1st respondent dated 23.01.2013 relating to provisional assessment of the service connection No.211-002-10 quash the same and direct the 1st respondent to refund to the petitioner the compounding charges of Rs.68,000/- with interest.

For Petitioner : Mr.C.S.Krishnamoorthy
For Respondents : Ms.Revathi
for Mr.L.Jai Venkatesh

ORDER

The petitioner is engaged in the manufacture of pencils. It has obtained service connection for carrying out its manufacturing activity under the category '*industry*'. It claims to have leased out a portion of its factory to an entity by name C Cube Sports Services (in short 'lessee'/'sports academy'). The lessee is stated to be involved in training youth in Cricket. Though the petitioner in the affidavit has stated that the lessee is not engaged in commercial activity, there is no material placed to establish the same.

2. There was an inspection in the premises of the petitioner and the authorities have raised a query in regard to the usage of LT service connection Tariff III B No.211-002-10 (in short 'connection in question') by the sports academy. It was noted that the sports academy is drawing electricity provided under the industrial connection falling under Category III B of the applicable tariff order.

3. Prior to the inspection, a communication had been issued to the petitioner by the respondents putting them to notice that on 23.01.2023 at 12.20 hours, the service connection in question was going to be inspected by the TANGEDCO officials.

4. Upon inspection, a Mahazar was issued reading as follows:

Tamilnadu Generation And Distribution Corporation

Inspection Magazar

On 23-1-2-13 at 12.20 Hrs. the LT Service connection No.211-002-10 TF IIIB, holding in the name of M/s Standard Pencils Pvt. Ltd, Super A-6, Guindy Estate, Guindy, Chennai - 600 032 was inspected by the following Officers in the presence of Mr Kamal K Falor Manager M/s Standard Pencils Pvt. Ltd.

1)Er.V.Rajendran, Assistant Executive Engineer/0&M/Guindy
2)Er.R.Babuji, Assistant Executive Engineer/Enforcement/South
3)Er.N.Alagarsamy, Assistant Engineer/0&M/Guindy

At the time of inspection the following meter details were taken Make: L&T, SL NO:03162545, Capacity - 3 50-100A, Check reading - 0190110. During the time of inspection it was found that the above said Industrial Service connection was used for Sports Club activities of M/s C Cube Sports Private Limited. The maximum demand reached in the meter was 16.094 KW.

SD/-	*SD/-*	*SD/-*	*SD/-*	*SD/-*
Assistant	*Assistant*	*Assistant*	*Assistant*	*Consumer*
Ex.Engineer	*Ex.Engineer*	*Ex.Engineer*	*Ex.Engineer*	*Kamal K*
O&M Guindy	*Enforcement*	*Enforcement*	*O&M Guindy*	*Falor*
CEDC/South	*CEDC/South*	*CEDC/South*	*CEDC/South*	

5. The Mahazar contains an allegation to the effect that the industrial service connection was misused by the sports academy. On the basis of the

mahazar drawn by the inspecting team, a provisional assessment has been made upon the petitioner, also indicating the compounding charges. According to the learned counsel appearing for the respondents, the petitioner has remitted the compounding charges to avoid further proceedings for assessment.

6. Under communciation dated 23.01.2013, the petitioner has remitted the compounding charges indicating their intention to go on appeal in regard to the provisional assessment. They have, on 25.01.2023, had a change of mind thereafter bringing to the notice of the authority that the sports academy was, in fact, a Small Indusrial Enterpise providing services for skill development in the sports of Cricket and Soccer.

7. The aforesaid communication refers to a Certificate issued by the Directorate of Industries and Commerce, and a copy of same has been placed at page 14 of the typed set of papers. The present Writ Petition challenges the provisional assesssment made.

8. Mr.C.S.Krishnamoorthi, learned counsel appearing for the petitioner would make the following submissions:

(i) That the sports academy is not a commercial entity and thus the demand raised on the basis that the consumption of electricity is by a commercial concern, is incorrect. He would rely on the certificate issued by the Department of Industries and Commerce, Government of Tamil Nadu, that, according to him, supports the position that the activity carried on by the Sports Academy not be treated as commercial, but granted benefit of concessional rate.

(ii) The dispute is thus, one relating to classification/categorisation of the electricity connection which should be decided by the State Electricity Commission in terms of Section 86 of the Electricity Act, 2003 (in short 'Act').

(iii) He also refers to the Tamil Nadu Electricity Supply Code (in short 'Code'), particularly clause 26(3) to the effect that the Code has to be read along with the Distribution Code, Electricity Act, 2003 and amendments therefor.

(iv) The impugned order has been passed by the Assistant Executive Engineer, OSM/Guindy, CEDC/South/TANGEDCO/Chennai. The aforesaid Officer was part of the inspection team and thus, according to the learned counsel, the impugned order is itself vitiated, since the same person has conducted enquiry, issued the inspection mahazar and will also make the assessment finally. This, according to him, is contrary to the provisions of principles of natural justice.

9. For this purpose, he relies upon a judgment of the Constitutional Bench of the Hon'ble Supreme Court in the case of *Arjun Chaubey V. Union of India and others* ((1984) 2 SCC 578) and a subsequent judgment of the Hon'ble Supreme Court in the case of *State of Uttaranchal and others V. Kharak Singh* ((2008) 8 SCC 236).

10. The aforesaid judgments, rendered in the context of departmental enquiries under service law are to the effect that the Enquiring Authority and the Disciplinary Authority should be different and distinct, such that, there is no spill-over between the roles played and the functions discharged by the two officers.

11. Per contra, Ms.Revathi, learned counsel for the respondents would point out that the arrangement of lease qua the petitioner and the lessee is a private arrangement. In any event, it is inappropriate for the lessee to withdraw and utilise power under the industrial connection. This is for the reason that the rate under industrial tariff is far lower than commercial tariff and the said benefial rate has been given to the petitioner purely and solely for industrial use alone. Thus the drawal of power by a commercial concern at far lower rate has rightly been noted and addressed by the officials.

12. In any event, she would submit that the impugned proceedings are only provisional in nature and thus all other submissions relating to the nature of activities carried on by the sports academy as well as other submissions may well be putforth before the authority in terms of Section 127 of the Act for his consideration.

13. Having heard both learned counsel and having perused the provisions of the Act, Regulations and the Tamil Nadu Supply Code, my conclusion and the reasonings therefor are as follows.

14. The petitioner is admittedly engaged in the manufacture of pencils. It has obtained a Low Tension Service Connection in addition to other connections citing industrial activity and has been granted industrial service connection at a rate lower than other tariffs including commercial tariff. It is thus incumbent upon the petitioner to draw power from these service connections only for the purpose of the industrial activity.

15. The audit, inspection and enquiry conducted by the authorities in the presence of the petitioner are on the basis of suspicion that there was drawal of power for purposes other than industrial. Thus the authorities cannot be faulted for the procedure itself seeing as they have ultimately detected drawal of power for purposes other than industrial purposes.

16. As far as the contention of the petitioner to the effect that the proceedings should be referred to the State Commission for decision on categorisation, I find the same to be misconceived. The State Commsision is constituted under Section 86 for the following purposes:

"86. Functions of State Commission (1) The State Commission shall discharge the following functions, namely:

(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:

Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;

(c) facilitate intra-State transmission and wheeling of electricity;

(d) issue licences to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State;

(e) promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, percentage of the total consumption of electricity in the area of a distribution licensee;

(f) adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration;

(g) levy fee for the purposes of this Act;

(h) specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (1) of section 79

(i) specify or enforce standards with respect to quality, continuity and reliability of service by licensees;

(j) fix the trading margin in the intra-State trading of electricity, if considered, necessary;

(k) discharge such other functions as may be assigned to it under this Act.

17. The question in this case does not fall under any of the categories enumerated under Section 86, as the functions of the Commission relates solely to questions of policy. This submission is rejected.

18. The impugned proceedings constitute solely a provisional assessment and in fact, the procedure set out under Section 126 is itself incomplete in the present case. If at all it is the petitioner's case that the sports academy should also be entitled to draw electricity from an industrial connection, it is for the petitioner to place such an argument before the authorities.

19. Section 126 deals with assessment. Section 126(1) provides for an inspection and passing of a provisional assessment order. This has been done in this case. Section 126(2) states that the order shall be served upon the petitioner. This has also been done. Section 126(3) states that an assessee, the petitioner herein, is entitled to file objections against the provisional assessment order.

20. Thus the proper procedure is for the petitioner to file objections to the impugned provisional assessment including the points that have been set forth in this Writ Petition. Without having exhausted that procedure, the petitioner has straightaway come before this Court contending that the sports academy is also entitled to the benefit of a tariff under the industrial service connection.

21. This Writ Petition is thus just not misconceived but also pre-mature. The judgments relied upon by the learned counsel for the petitioner would have no bearing in the present case, since they have rendered in the context of service law that provide for a distinction between the conduct of enquiry and final orders to be passed by the disciplinary authority.

22. In the present case, it is the officials of the TANGEDCO who would cause inspection and enquiry and thereafter follow the procedure under the Act for framing of provisional assessment and then final assessment. There is nothing untoward that I see in the procedure that has been followed.

23. In light of the aforesaid discussion, the impugned order is confirmed. The petitioner is granted two (2) weeks from date of receipt of a copy of this order to file its objections along with any other materials/evidence in support of its contentions in terms of Section 126(3) of the Act. Let the objections be filed before the Superintending Engineer, South – I, K.K.Nagar, 110 KV SS Avenue, Chennai – 21, who, upon receipt of such objections, will consider the materials, if any, filed, hear the parties and thereafter pass a final order of assessment within a period of four (4) weeks from date of conclusion of personal hearing.

24. This Writ Petition is dismissed, though with liberty as aforesaid. No costs.

06.02.2023

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Index : Yes
Speaking Order
Neutral Citation:Yes

To

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