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W.P.Nos.19646 & 19647 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.19646 & 19647 of 2009

and

M.P.Nos.1 & 1 of 2009

W.P.No.19646 of 2009

and

M.P.No.1 of 2009

Indus Steels And Alloys Ltd., HTSC No.225,
Thally Road, Uliveeranapalli Village,
Denkanikottai Taluk, Belagondapalli-635114
Krishnagiri District, rep.by its Manager,
S.Srikanth.

...Petitioner

Vs

1. Tamil Nadu Electricity Regulatory Commission,
Repd. by its Secretary,
19-A, Rukmini Lakshmipathy Salai,
(Marshall's Road) Egmore, Chennai-8.

2. The Chairman,
Tamil Nadu Electricity Board,
144 Anna Salai, Chennai-2.

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

...Respondents



W.P.Nos.19646 & 19647 of 2009

Prayer in WP.WP.19646/2009:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, calling for the records of the 3rd Respondent in Bill No.225 dated 03.09.2009 and quash the same in so far as it relates to levy of penalty for exceeding quota during evening peak hour as illegal, arbitrary, without authority of law and against the orders of the 1st Respondent made in Miscellaneous Petition No.42 of 2008 dated 28.11.2008 and consequently direct the 2nd and 3rd Respondents to give adjustments in their subsequent month bills for the amount of Rs.61,711.00/- collected illegally from the Petitioner.

W.P.No.19647 of 2009

and

M.P.No.1 of 2009

Sri DhandayuthapanI Spinners (P) Ltd.
HTSC No.189, RSF No.493/2,
Punjaikalamangalam Village,
Ganapathipalayam, Erode,
Repd. by its Manager S.Siddheswaran.

...Petitioner

Vs

1. Tamil Nadu Electricity Regulatory Commission,
Repd. by its Secretary,
19-A, Rukmini Lakshmipathy Salai,
(Marshall's Road) Egmore, Chennai-8.

2. The Chairman,



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Tamil Nadu Electricity Board,
144 Anna Salai, Chennai-2.

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

...Respondents

Prayer in WP.WP.19646/2009:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, calling for the records of the 3rd Respondent in Letter No.SE/EEDC/DFC/AO/HT/A HTSC No.189/09 dated 10.08.2009 and Bill No.189 Dated 30.08.2009 and quash the same in so far as it relates to levy of penalty for exceeding quota during evening peak hour as illegal, arbitrary, without authority of law and against the orders of the 1st Respondent made in Miscellaneous Petition No.42 of 2008 dated 28.11.2008 and consequently direct the 2nd and 3rd Respondent to give adjustments in their subsequent month bills for the amount of Rs.4,19,601.81/- collected illegally from the Petitioner.

For Petitioners
in both WPs.

: Mr.M.Saravana Kumar for
Mr.R.S.Pandiya Raj

For Respondents
in both WPs

: Mr.S.Madhusudanam



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COMMON ORDER

The respondent / Electricity Board imposed excess charges on the excess consumption during peak hour period on the consumers like the petitioners. The imposition of the peak hour charges has been challenged before this Court, which was later transferred to the Electricity Regulatory Commission. The Electricity Regulatory Commission has upheld the collection of excess charges on excess consumption during peak hour. The relevant portion of the order dated 04.05.2010 passed by the Electricity Regulatory Commission, which reads as follows:-

"Para 11.7 para 3.9 of the order of the commission in RPNo.2 of 2008 explicitly states as follows;

It must be borne in mind that excess demand charges and excess energy charges are liable in addition to the penalty of drastic reduction of electricity supply to 5% (or 10%) during the following 48 hrs as the case may be for violation of restriction and control measures."



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2. Upon an appeal, the Appellate Tribunal for Electricity (APTEL) has quashed the order of the Electricity Regulatory Commission and restricted the respondent/Electricity Board from collecting excess charges and held that the levy of excess charges prior to 04.05.2010 is not sustainable, against which, the respondent/Electricity Board has preferred an appeal before the Hon'ble Supreme Court in Civil Appeal Nos.1090 1099 of 2011 and the Hon'ble Supreme Court vide order dated 04.02.2011 granted an interim order, on condition that the Electricity Board furnish a bank guarantee to the tune of Rs.75,00,00,000/- within two weeks. The said order of the Hon'ble Supreme Court, reads as follows:-

"The appellant is hereby directed to furnish Bank Guarantee of a Nationalised Bank in favour of the Registrar (Judicial) of the Supreme Court in the sum of Rupees seventy five crores within two weeks. On furnishing such Bank Guarantee, impugned judgment is stayed."

3. Since the issues involved in the present writ petition is subjudiced before the Hon'ble Supreme Court of India, the present writ petitions stand **disposed of** subject to the outcome of the civil appeals pending before the Hon'ble Supreme Court of India. The order, if any passed by the Apex



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court, is to be complied in case of the petitioners also. No costs.

Consequently, connected miscellaneous petitions are closed.

(sha)

24.03.2023

Index : Yes

Speaking Order

Neutral Citation : Yes

To

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S.M.SUBRAMANIAM. J.,

(sha)

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