



WA No.708 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B. BALAJI

WA No.708 of 2020

G.K.Alloys Steels (P) Ltd.,
Represented by its Manager K.Venkatesh
Velayuthapalayam, Avanashi,
Coimbatore -641 654

... Appellant

versus

- 1.The Chairman
Tamilnadu Electricity Board,
800, Anna Salai,
Chennai- 600 002.
- 2.The Superintending Engineer,
Tamilnadu Engineering Board,
Coimbatore Electricity Distribution (North)
Coimbatore -641 012.
- 3.The Accounts Officer,
Tamilnadu Electricity Board,
Coimbatore Electricity Distribution (North)
Coimbatore -641 012. ... Respondents



WA No.708 of 2020

WEB COPY

PRAYER: Writ Appeal filed against the order of the learned Single Judge dated 18.01.2019 in WP No.19450 of 2003.

For the Appellant : Mr.G.Vasudevan
For the Respondents : Mr.L.Jaivenkatesh
Standing Counsel
for TNEB

JUDGMENT

(Judgment of the Court was made by *D.KRISHNAKUMAR, J.*)

This appeal has been filed challenging the order passed by the Learned Single Judge dated 18.01.2019 in WP No.19450 of 2003. The said writ petition was filed with a prayer to quash the Bill dated 01.07.2003 towards H.T. Service connection No.137 on the file of the third respondent claiming a sum of Rs.14,49,749/- in respect of audit objection and to direct the respondents to permit the petitioner to pay the sum of Rs.18,64,930/- in respect of arrears of CC charges in instalments to the respondent board.



WA No.708 of 2020

WEB COPY

Brief facts of the case:

2.1. According to the appellant, the appellant company manufactures steel castings and steel products. The appellant company has been provided with high tension electricity service connection bearing HTSC No.137. Due to general recession in the manufacturing sector, when the Respondent board raised the maximum demand charges, the appellant company was unable to pay the electricity charges, and therefore the electricity service was disconnected. Hence, the appellant/petitioner has filed a writ petition before this court in WP No.6577 of 2003 with a prayer to direct the respondents to permit the petitioner to pay the arrears of consumption charges in respect of H.T.S.C.No.137 in monthly instalments and to restore the service connection on payment of first instalment. Pursuant to the interim orders passed by this Court therein, on payment of Rs.1,11,691/-, the electricity service connection was restored on 05.03.2003. However, subsequently as no payment was made by the appellant/petitioner, the electricity service connection was disconnected on 25.04.2003 by the Board. While so, this Court, by order dated, 28.04.2003 in WP No.6577 of



WA No.708 of 2020

2003, has directed the appellant company to apply to the first respondent seeking permission to pay arrears in instalments and on such application being made, the first respondent may consider the application and pass orders. Pursuant to the said order, the appellant, by letter dated 09.05.2003 made an application to the first respondent requesting the first respondent to permit the appellant to pay the arrears of current consumption charges of Rs.18,64,930/- in 12 equal monthly instalments and further offered to pay initial payment of Rs.2 lakhs, however, no orders were passed on the said application. However, the second respondent by letter dated 28.06.2003 informed the appellant that the appellant company is liable to pay a sum of Rs.35,25,394/-.

2.2. According to the appellant company, the claim made by the second respondent for the payment of a sum of Rs.35,25,394/- includes a sum of Rs.12,33,749/- claimed under the Head 'Audit Short Levy for having Arc Furnace' and yet another sum of Rs.2,16,000/- under the Head 'Short Levy of Demand Charges as per the audit slip'. Subsequently, they had followed it up by making a demand of Rs.15,04,949/- for the month of June,



WA No.708 of 2020

2003 by raising the impugned bill dated 01.07.2003. According to the appellant company, they are not liable to pay the sum of Rs.12,33,749/- levied for having Arc furnace, since the appellant company had removed the Arc furnace even prior to 04.07.2000, when appellant company had applied to the respondent board to reduce the maximum demand. Since the respondent board, failed and neglected to discharge its duties to effect the reduction of maximum demand, the appellant company filed a writ petition before this Court in WP No.16538 of 2001. This Court, by order dated 03.12.2001, allowed the writ petition directing the respondent Board to reduce the maximum demand load from 1990 KVA to 900 KVA within one week from the date of the production of that order. Since the Board failed to implement the order of this Court, the appellant company filed a contempt petition before this Court and only thereafter, the respondent board implemented the order.

2.3. According to the appellant company, along with the application dated 04.07.2000 for the reduction of the maximum demand, the appellant company has also furnished a test report enclosing the list of machineries



WA No.708 of 2020

which did not contain the Arc furnace and the same was also inspected, verified, approved and duly acknowledged by the respondent Board. In the list of machineries furnished to the Board there is no mention of Arc furnace and therefore the respondent board had clearly erred in levying a sum of Rs.12,33,749/- on the alleged ground of having an Arc furnace subsequent to 04.07.2000. Further, the levy of Rs.2,16,000/- under the heading 'short levy of the demand charges as per the 'audit slip' is also erroneous as this amount appears to have been levied for the period 26.04.2002 to 27.05.2002. The respondent board had given the reconnection of power supply only on 27.05.2002 and therefore only thereafter the respondent board would be entitled to collect 100 % demand charges. During the disconnected period, the respondent board would be entitled to collect only 20% of the charges as minimum charges, which amount they have already levied and collected and therefore they would not be entitled to claim a sum of Rs.2,16,000/- towards short levy of demand charges.

2.4. The appellant company filed a writ petition in WP No.19450 of 2023, for a certiorarified mandamus, calling for the records relating to the



WA No.708 of 2020

Bill dated 01.07.2003 and to quash the same insofar as levy of a sum of Rs.12,33,749/- towards short levy on the alleged ground of having Arc furnace and yet another sum of Rs.2,16,000/- towards short levy of demand charges as per the audit slip and to direct the respondent board to permit the petitioner to pay the arrears of Rs.18,64,930/- in 12 monthly instalments.

2.5. According to the appellant company, Government has issued a Government Order in G.O.Ms.No.30/energy (G3) Department dated 11.04.2001, wherein the Board was permitted to charge 25% extra from the high tension tariff-1 industries having Arc furnace. But as the said Government Order would be applicable only prospectively, the respondent board would not be entitled to levy 25 % extra towards Arc furnace, since the appellant company had removed the Arc furnace even prior to 04.07.2000 when the appellant/petitioner had applied for reduction of maximum demand. The Writ Court, by order dated 18.01.2019, disposed of the writ petition in WP No.19450 of 2003, with liberty to the appellant company to approach the Consumer Grievances Redressal Forum, constituted under Clause 18 of the Tamil Nadu Electricity Supply Code for



WA No.708 of 2020

adjudication as the Commissioning or otherwise of the Arc furnace based on facts and other details which have to be decided on merits and the Forum, in the event of receiving any such appeal or application from the writ petitioner, shall adjudicate the same by affording opportunity to all the parties concerned and by verifying the original records. Aggrieved by the said order passed by the learned Single Judge, the appellant has filed the intra court appeal before this Court.

3. Learned counsel for the appellant/petitioner submits that the Government has passed G.O.Ms.No.30/Energy (G3) Department dated 11.04.2001 permitting the Board to Charge 25 % extra from the high tension tariff-1 industries having Arc furnace, however, the aforesaid Government Order, which is dated 11.04.2001 is applicable only prospectively and therefore the respondent Board is not entitled for recovering 25% extra from the petitioner, for the reason that the Arc furnace was removed by the appellant/petitioner even prior to 04.07.2000, when the appellant/petitioner had applied for reduction of maximum demand. He further submitted that the petitioner also made a representation on



WA No.708 of 2020

04.07.2000 for reduction of maximum demand load from 1990 KVA to 1200 KVA and again on 27.09.2000 from 1200 KVA to 900 KVA. If that being so, the aforesaid communications sent by the appellant/petitioner have not been considered by the respondent board, before issuing the demand notice to the petitioner to pay the said amount of Rs.14,49,749/- to the respondent board.

4. Heard the learned counsel for the parties and perused the materials available on record.

5. We find that the appellant has clearly stated in the affidavit filed in support of the petition in WP No.19450 of 2003 filed before this Court that sofaras the amount of Rs.18,64,930/- which is due for payment towards CC charges, the appellant/petitioner is willing to pay the said amount to the respondent Board. Sofaras the request made by the appellant to settle the said amount in 12 monthly installments to the respondent board, that request does not arise at this point of time. Hence, we are not inclined to interfere with the said demand of Rs.18,64,930/- made by the respondent board. Therefore, to that extent, the prayer of the appellant/petitioner is



WA No.708 of 2020

liable to be rejected.

WEB COPY

6. Insofar as the second demand of Rs.14,49,749/- is concerned, which is the aggregate of Rs.12,33,749/- levied towards audit short levy for having Arc furnace and Rs.2,16,000/- claimed towards short levy of demand charges as per the audit slip, which according to the appellant/petitioner is illegal and demanded without providing any opportunity to the appellant.

7. According to the learned counsel for the appellant, a specific contention has been made in the writ petition that the appellant has requested in the application given to the respondent Board on 04.07.2000 for the reduction of the KV from 1990 to 1200 KV and again has also made an application for reduction of 1200 KVA to 900 KVA. Those applications also are pending before the respondent Board. Thus, the fact remains that the appellant/petitioner had already removed the Arc furnace prior to Government Order dated 11.04.2001, and without taking note of all these facts the respondent has demanded a payment of Rs.14,49,749/-, which is illegal and violative the principles of natural justice.



WA No.708 of 2020

WEB COPY

8. The learned Single Judge in the impugned order dated 18.01.2019, has opined that the dispute relating to the Commissioning of Arc Furnace is to be adjudicated by producing both oral and documentary evidence and accordingly disposed of the writ petition by granting liberty to the parties to approach the Consumer Grievances Redressal Forum constituted under Clause 18 of the Tamil Nadu Electricity Supply Code.

9. According to the learned counsel for the appellant, the appellant had sent communication to the respondent board on 04.07.2000 for reduction of the maximum demand load from 1990 KVA to 1200 KVA and again on 27.09.2000 for further reduction from 1200 KVA to 900 KVA and also removed Arn furnace much prior to the passing of the Government Order dated 11.04.2001 and these aspects have not at all been considered by the authority concerned.

10. Learned Standing Counsel for the respondent board also has not controverted that the respondent Board has not furnished copy of the audit



WA No.708 of 2020

objection to the appellant.

WEB COPY

11. At this point of time, we are of the view that the order of the Writ Court in directing the appellant to approach Consumer Grievances Redressal Forum seeking redressal of its grievance will amount to redoing the entire exercise afresh at this distance point of time. Therefore, we are not inclined to permit the appellant/petitioner to approach the Consumer Grievances Redressal Forum seeking redressal for its grievance. We have carefully perused the demand made by the respondent Board. Nowhere it is mentioned that the objection report has been furnished to the appellant nor an opportunity was given to the appellant before raising the demand, which was based on the audit objection.

12. In the light of the above, we are of the view that the said portion of the demand at Rs.14,49,749/- made by the respondent board is liable to be quashed, on the ground that the respondent Board has neither furnished a copy of the audit objection to the appellant, nor provided an opportunity to the appellant to place all the relevant documents and then make appropriate decision as per law.



WA No.708 of 2020

WEB COPY

13. In view of the above, the prayer of the appellant/petitioner insofar as payment of demand of Rs.18,64,930/- towards arrears of CC Charges, is rejected and insofar as the demand Notice dated 01.07.2003 demanding a sum of Rs. 14,49,749/-, which is the aggregate of Rs.12,33,749/- towards audit short levy for having Arc Furnace in service connection and Rs.2,16,000/- towards 'short levy of the demand charges as per the audit slip issued by the respondent, is quashed with the following directions:

i) The second respondent is directed to issue fresh notice, along with relevant records to the appellant within a period of four weeks from the date of receipt of a copy of this judgment.

ii) On such notice being received, the appellant shall make its objection within a period of four weeks therefrom.

iii) The entire exercise shall be completed by the second respondent within a period of four months from the date of receipt of a copy of this judgment .



WA No.708 of 2020

WEB COPY

14. In view of the above, the impugned order dated 18.01.2019 is partly set aside. Consequently, the writ appeal stands partly allowed. There will be no order as to costs.

[D.K.K., J.] [P.B.B., J.]
07.09.2023

Index : Yes/No
Neutral Citation : Yes/No
mrn



WA No.708 of 2020

WEB COPY

To

- 1.The Chairman
Tamilnadu Electricity Board,
800, Anna Salai,
Chennai- 600 002.
- 2.The Superintending Engineer,
Tamilnadu Engineering Board,
Coimbatore Electricity Distribution (North)
Coimbatore -641 012.
- 3.The Accounts Officer,
Tamilnadu Electricity Board,
Coimbatore Electricity Distribution (North)
Coimbatore -641 012.



WEB COPY



WA No.708 of 2020

D.KRISHNAKUMAR, J.
and
P.B. BALAJI

(mrn)

WA No.708 of 2020

07.09.2023

16/17



WEB COPY



WA No.708 of 2020