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W.P.Nos.24367, 24368 & 24369 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2023

CORAM :

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.24367, 24368 & 24369 of 2017
and W.M.P.Nos.25782, 25783, 25784,
25786 & 25781 of 2017

Karthikeya Paper & Mills (P) Ltd.
HTSCNO.98
No.14, Kalingaram Street
Ram Nagar, Coimbatore
Rep. by its Authorized Signatory
D.Udhaya Kumar

.. Petitioner in
all W.Ps

vs

1. Tamil Nadu Electricity Regulatory
Commission Rep. by its Secretary
19-A, Rukmini Lakshmipathy Salai
(Marshall's Road)
Egmore, Chennai – 600 008.
2. The Tamil Nadu Generation and Distribution
Corporation Ltd. (TANGEDCO)
144, Anna Salai, Chennai – 600 002
Rep. by its Chairman.
3. Director Finance
Tamil Nadu Generation and Distribution
Corporation Limited, 144, Anna Salai
Chennai – 600 002.



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4. The Superintending Engineer
Gobi Electricity Distribution Circle
No.132 – D Cutchery Street
TANGEDCO
Gobicherripalayam.

Respondents in
all W.Ps
..

Prayer in W.P.No.24367 of 2017: Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorari, calling for the records of the fourth respondent's impugned demand notice LR.No:SE/GEDC/DFC/F.HT 108/F.DKT/D031No/2017 dated 22.08.2017 and quash the same as illegal, arbitrary and without authority of law and contrary to the orders passed by the first respondent and against Section 56(2) of the Electricity Act, 2003;

Prayer in W.P.No.24368 of 2017: Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorari, calling for the records of the fourth respondent's impugned demand notice LR.No:SE/GEDC/DFC/F.HT 108/F.DKT/D030No/2017 dated 22.08.2017 and quash the same as illegal, arbitrary and without authority of law and contrary to the orders passed by the first respondent and against Section 56(2) of the Electricity Act, 2003;

Prayer in W.P.No.24369 of 2017: Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorari, calling for the records of the fourth respondent's impugned demand notice LR.No:SE/GEDC/DFC/F.HT 108/F.DKT/D032No/2017 dated 22.08.2017 and quash the same as illegal, arbitrary and without authority of law and contrary to the orders passed by the first respondent and against Section 56(2) of the Electricity Act, 2003.

For the Petitioner in : Mr.S.P.Parthasarathy
all W.Ps



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For the Respondents in
all W.Ps

: No Appearance
for respondent 1

Mr.I.Syed Sibghatulla
Standing Counsel for
TANGEDCO
for respondents 2 to 4

COMMON ORDER

The final order of demand dated 22.08.2017 issued by the fourth respondent is sought to be quashed merely on the ground for non-compliance of the Rules of natural justice.

2. The petitioner is Karthikeya Paper & Mills (P) Ltd. and a consumer of Tamil Nadu Electricity Board. The learned counsel for the petitioner in his opening arguments contended that the Rules of natural justice has not been followed in the present case and therefore, the impugned order is to be set aside and the matter should be remitted back.

3. No doubt, the writ Court cannot adjudicate the disputed issues on merits, which requires arbitrary adjudication with regard to the documents



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and evidences in original. Thus, the petitioners have contended that the circular issued regarding the procedures to be followed had been violated in the present case.

4. The third respondent issued a circular in circular memo dated 03.02.2016 relating to the earlier assessments and issuance of show cause notice and to pass final orders. The said procedure contemplates that whenever any claim is made against the service connection relating to the earlier assessment period which are raised based on the reports of BOAD, AG Audit, Inspection, etc., then, such claim has to be scrutinized by the officials concerned for its correctness before being billed / claimed from the consumer.

5. Accordingly, the claim raised are to be communicated to the consumer so as to enable him to make arrangements for payment. Clause (iv) of the circular states that, in such communication to the consumer, he may be requested to show cause within a time limit (say 15 days) as to why



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such demand shall not be levied against him. Clause (v) provides that, the consumer may be given an opportunity to represent, in each occasion, whenever the claim is made relating to earlier assessment period in both H.T and L.T services. Clause (vi) states that, the final claim should be in a speaking manner, duly addressing the contentions of the consumer in the reply to the show cause notice and mentioning the Regulations / Orders / Instructions etc., in force.

6. The learned counsel for the petitioner states that the guidelines issued in this regard had not been followed in the case of the petitioner and thus, the order impugned is liable to be set aside.

7. The learned Standing Counsel appearing on behalf of the respondents stated that the contention of stating that the show cause notice was issued to the writ petitioner and the writ petitioner have submitted their reply and even an opportunity was provided for personal hearing and two days were granted to the writ petitioner but the petitioner failed to avail the



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opportunity of personal hearing and thus, the authorities competent passed the final orders.

8. That apart, on behalf of the H.T consumers, Paper Industries, Sathiyamangalam, a representation was given to the Superintending Engineer and the petitioner also participated in the said process and signed. Therefore, the final order was passed by following the procedures / guidelines issued by the third respondent and there is no violation as such.

9. The learned Standing Counsel states that the petitioner has to approach the Consumer Redressal Commission or the Electricity Regulatory Commission, as the case may be, for the purpose of redressal of the grievances. Without availing the statutory remedy contemplated, the petitioner has chosen to file the present writ petition and thus, the writ petition is liable to be rejected.



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10. Let us consider whether the Rules of natural justice has been complied with or not as alleged by the petitioners.

11. It is not in dispute that the show cause notice was issued to the writ petitioner relating to the earlier assessment in Gobi EDC-HT SC No.98 in proceedings dated 14.03.2016 by the Superintending Engineer. The said show cause notice clearly states that the petitioner was requested to show cause within fifteen days from the date of receipt of this notice as to why the short levy amount of Rs.4,28,929/- should not be levied against the petitioner. The show cause notice contains the details regarding the claims for demand and nineteen sheets were enclosed with the show cause notice and all the enclosures are relating to the electricity consumption details, which were provided to the writ petitioner, enabling the petitioner to submit their representation / objections. The petitioner submitted their objection on 28.03.2016 with regard to the show cause notice. In this issue, another representation was given on 12.04.2016 on behalf of the H.T consumers of Paper Industries at Sathiyamangalam to the Superintending Engineer



wherein, the petitioner signed. Beyond the said two representations, the petitioner has given yet another representation on 05.05.2016 to the Superintending Engineer.

12. The Superintending Engineer further passed order in proceedings dated 27.06.2016. The said order reveals that one more opportunity was requested to verify the working sheet and CMRI data already provided and remit the short levy amount within fifteen days from the date of receipt of this letter. If the petitioner have no objections, they may report the same during personal hearing with the SE/GEDC/Gobi.

13. The petitioner thereafter submitted a representation in their individual capacity and along with all other Paper Industries Companies, a common representation was submitted. Thereafter, the Superintending Engineer allowed to submit their objections, if any, with reference to the work sheets, which was also furnished to the petitioner. Such an opportunity on two occasions is not contemplated. Once the working sheet and the



details are given to the consumer, they are open to raise their objections and their representations. In the present case, the petitioner had submitted their objections in their individual capacity and also along with other Paper Industries Companies. While so, personal hearing is also given to submit their objections, if any.

14. Therefore, two opportunities were granted to the writ petitioner and such opportunity has not been contemplated under the guidelines. However, the petitioner was given an opportunity of personal hearing by the Superintending Engineer, which was communicated to the writ petitioner. The grievance of the petitioner is that the said letter issued by the Superintending Engineer was received by him on 19.08.2016 and on 20.08.2016 no personal hearing was conducted. In this regard, the learned Standing Counsel appearing for the Electricity Board brought to the notice of this Court with regard to the counter filed by the Superintending Engineer, which reads as under:

“c. The objections raised by letter dated 28.03.2016 and 05.05.2016 has been suitably replied



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and the petitioner had also been afforded personal hearing to present his case in any day between 17.08.2016 to 20.08.2016. Even if it has been accepted that the letter requesting to appear for personal hearing was received by the petitioner on 19.08.2016, there was enough time to appear on 20.08.2016. But the petitioner did not come forward to present his case instead cast all sorts of allegations and approached this Hon'ble Court for relief.”

After completing the said process and after affording the opportunity, final order, which is impugned herein dated 22.08.2017 was passed.

15. The learned counsel for the petitioner states that the petitioner has not attended the personal hearing, but it was erroneously recorded as if the petitioner attended the meeting, however, the personal hearing itself was not conducted. A perusal of the circular dated 03.02.2016 reveals that there is no personal hearing as contemplated, but the opportunity to represent is to be granted. The opportunity to represent the case would not include personal hearing and more so, in the present case, the opportunity to represent the case was granted and the petitioner was supplied with all the



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details along with the show cause notice and all the objections were submitted by the petitioner in a written statement made on two occasions.

16. The petitioner had submitted their objections in their individual capacity and also with all other paper industries. They have submitted a common representation to the Superintending Engineer, which was taken into consideration by the competent authority. Thus, it is not the case where there is no opportunity granted to the writ petitioner. The petitioner, admittedly, is a consumer and regarding certain demands made and details provided, there is no further reason to state that the personal hearing was granted to the writ petitioner. However, the learned Standing Counsel states that the opportunity was granted to the petitioner for personal hearing, but they failed to attend the personal hearing and the personal hearing was conducted for three days for all the Paper Industries Companies and many representatives participated and if at all the petitioner has not participated, for which, the respondent cannot be faulted.



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17. In that view of the matter, this Court is of the considered opinion that the personal hearing is not contemplated under the circular dated 03.02.2016. The opportunity to represent alone is contemplated, which were sufficiently granted to the writ petitioner on two occasions and the petitioner availed such opportunity. Regarding the order passed by the respondent, if at all any grievance exist on merits, the petitioner has to approach the competent authority for adjudication on merits, with reference to the documents and evidences available on record. However, this Court is of the considered opinion that the rules of natural justice has been complied with in this case and therefore, the petitioner is not entitled for relief.

18. With these directions, the writ petitions are dismissed. There will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Index : Yes/No
Neutral Order:Yes/No

20.03.2023

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To:

1. The Secretary
Tamil Nadu Electricity Regulatory Commission
19-A, Rukmini Lakshmipathy Salai
(Marshall's Road)
Egmore, Chennai – 600 008.
2. The Chairman
The Tamil Nadu Generation and Distribution
Corporation Ltd. (TANGEDCO)
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S.M.SUBRAMANIAM,J.

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