

Madras High Court

K.K.P.Textile Ltd. vs Tamil Nadu Electricity ... on 15 December, 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15/12/2009

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THE HONOURABLE MR.JUSTICE M.JAICHANDREN

W.P.(MD)No.9353 of 2009

and

M.P.No.1 of 2009

K.K.P.Textile Ltd., HT SC.No.92,
Viralimalai,
Thanneerpantahl Pattai,
Boothakudi, Pudukkottai,
Repd. By its Manager, T.Ramar

.. Petitioner.

Versus

1.Tamil Nadu Electricity Regulatory
Commission repd. By its Secretary,
19-A, Rukmini Lakshmipathy Salai,
(Marshall's Road)
Egmore, Chennai-600 008.

2. The Chairman,
Tamilnadu Electricity Board,
144, Anna Salai, Chennai-600 002.

3.The Superintending Engineer,
Pudukkottai Electricity
Distribution Circle,
Tamilnadu Electricity Board,
Pudukkottai.

.. Respondents.

PRAYER

Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the records of the third respondent in Letter No.SE/PEDC/PDKT/A0/Rev/F.BCAB 2008-09/RCS-2/D.470/09, dated 8.9.2009, and quash the same in so far as it relates to the levy of penalty for exceeding quota during evening peak hours as illegal, arbitrary, without the 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 refund or give adjustments in their subsequent month bills for the amount of Rs.2886132/- collected illegally from the petitioner.

!For Petitioner ... Mr.R.S.Pandiyaraj

^For Respondents... No Appearance (R1)

Mr.M.Suresh Kumar (TNEB) (R2 & R3)

:ORDER

Heard the learned counsels appearing on behalf of the parties concerned.

2. Even though various averments have been made and many grounds had been raised in the affidavit filed in support of the writ petition, the main grievance of the petitioner is that the impugned demand notice/bill in respect of the peak hour penalty has been issued by the third respondent, without due notice being given to the petitioner and without affording sufficient opportunity of hearing to the petitioner.

3. The learned counsel appearing on behalf of the petitioner has stated that the third respondent has no authority, under the relevant provisions of the law, to levy the penalty, without the prior approval of the Tamil Nadu Electricity Regulatory Commission, which is the competent statutory authority, established in accordance with the Electricity Act, 2003.

4. It has been further stated that the third respondent had failed to follow the procedures laid down, under paragraph No.33 of the order, made in M.P.No.42 of 2008, dated 28.11.2008, issued by the Tamil Nadu Electricity Regulatory Commission. Therefore, the impugned demand notice/bill issued by the third respondent is liable to be set aside.

5. Mr.M.Suresh Kumar the learned counsel, appearing on behalf of the second and the third respondents, had not refuted the claims made by the learned counsel appearing on behalf of the petitioner. However, he had submitted that if this Court deems it fit to set aside the impugned demand notice/bill of the third respondent, liberty may be granted to the third respondent to pass appropriate orders, afresh, after due notice is issued to the petitioner.

6. In view of the submissions made by the learned counsels appearing for the petitioner, as well as the respondents, and in view of the orders passed by this Court, in a number of writ petitions, wherein similar issues have been raised, the impugned demand notice/bill, issued by the third respondent, is set aside. However, it would be open to the third respondent to pass appropriate orders, afresh, including the issuing of the appropriate demand notice/bill, after giving due notice and after affording sufficient opportunity of hearing to the petitioner.

7. After due notice is issued by the third respondent, the petitioner would be at liberty to challenge the same, if it is found necessary to do so, by raising all the grounds available to the petitioner, including those which have been raised in this writ petition. It would also be open to the petitioner to raise the ground that the third respondent has no authority to levy the penalty, on the ground that it is against the dictum laid down by the Tamil Nadu Regulatory Commission, in M.P.No.42 of

2008, dated 28.11.2008.

8. In case the petitioner had already paid the bill amount it would be adjusted to the amounts that may be claimed by the Tamilnadu Electricity Board, in the future bills relating to the petitioner, in case the final decision is in favour of the petitioner. The petitioner shall fully cooperate by participating in the inquiry or hearing that may be held by the concerned authorities of the respondent Electricity Board.

The writ petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

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1.The Secretary Tamil Nadu Electricity Regulatory Commission 19-A, Rukmini Lakshmipathy Salai, (Marshall's Road) Egmore, Chennai-600 008.

2. The Chairman, Tamilnadu Electricity Board, 144, Anna Salai, Chennai-600 002.

3.The Superintending Engineer, Pudukkottai Electricity Distribution Circle, Tamilnadu Electricity Board, Pudukkottai.