

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/09/2003

CORAM

THE HON'BLE MR.JUSTICE P.D. DINAKARAN

W.P.No.17118 of 2000 and W.P.No. 7015 of 2003

W.P.No.17118 of 2000

Ramco Industries Limited
rep. by its Authorised Signatory
K. Ramachandran
Auras Corporate Centre
VI Floor, 98-A, Dr.Radhakrishnan Salai
Mylapore, Chennai-4. .. Petitioner

-Vs-

1. The Superintending Engineer
Vellore Electricity Distribution
Circle, Gandhi Nagar, Vellore-6.

2. Executive Engineer/O&M
Tamil Nadu Electricity Board
Arakonam .. Respondents

W.P.No.7015 of 2003

Ramco Industries Limited
rep. by its Authorised Signatory
J. Ramasubramanian
Auras Corporate Centre
VI Floor, 98-A, Dr.Radhakrishnan Salai
Mylapore, Chennai-4. .. Petitioner

Vs.

1. The Tamil Nadu Electricity Board
rep. by its Chairman
Anna Salai, Chennai 600 002.

2. The Superintending Engineer
Vellore Electricity Distribution
Circle, Gandhi Nagar, Vellore-6.

3. Executive Engineer/O&M

Tamil Nadu Electricity Board
Arakonam. .. Respondents

Petitions under Article 226 of the Constitution of India praying for a writ of Certiorari as stated therein.

For Petitioner : Mr. Mohan Parasaran, S.C.
For Mr. Satish Parasaran

For Respondents : Mr.G. Vasudevan

:O R D E R

Both the writ petitions are filed by the same petitioner. Hence, they were heard and disposed of jointly.

2.1. The Superintending Engineer, Vellore, by proceedings dated 19.8.2000 demanded a sum of Rs.3,21,338/- towards the compensation charges, as per Clause 2.04-5.02 of the schedule of the terms and conditions of the supply of electricity and required the petitioner to make the said payment of Rs.3,21,338/- in ten monthly instalments.

2.2. The order of the Superintending Engineer dated 19.8.2000 reads as follows.

" TAMIL NADU ELECTRICITY BOARD
ASSESSMENT ORDER FOR VIOLATION OF THE TERMS AND CONDITIONS OF SUPPLY OF ELECTRICITY AS PER CLAUSE 6.02 UNDER SCHEDULE - PART I OF TERMS AND CONDITIONS OF SUPPLY OF ELECTRICITY.

FROM TO

B.G.DAYALAN, B.E. M/s. RAMCO INDUSTRIES
SUPERINTENDING ENGINEER LIMITED
VELLORE ELEC. DISTN. ht sc no.1177/TF I
CIRCLE, GANDHI NAGAR ARAKKONAM
VELLORE-6

THROUGH: AEE/O&M/SOUTH ARAKKONAM

LETTER No.662/SEV/G1.FHT.SC.1177/2000
Dt. 19/8/2000

Sir,

Sub: ELEC. - VEDC - HT SC no.1177 TF.II/
M/s Ramco Industries Ltd., Arakkonam
Violation. Assessment Order Issued.

Ref: 1. Lr.No.EE/D&M/ARK/PI/F.APTRS/D169/98/
dt. 17/7/1998

2. Your letter dt. 29/7/1998

On 12/5/1998 at 12/00 Hrs. the Electricity Service Connection HT.SC.No.1177/TF.I M/s Ramco Industries Limited, Arakkonam was inspected by the Assistant Executive Engineer APTS/Vellore in the presence of your representatives Thiru V. Veeraraghavan, Junior Engineer of your Company.

During the inspection, the following violations of the Terms and conditions of supply of Electricity have been noticed by the said officers.

1. One 10HP Water motor pumpset is used for pumping the water from the well to the OH Tank. The water thus stored in OH tank is used for industrial and office use and also used for construction of new office building.

2. One No. 24 KVA Welding set is used for welding purpose for erection of new fly ash silo.

2. A Show Cause notice has been issued to you by Executive Engineer/O&M/Arakkonam in the reference (1) above, as to why you should not be held liable for the above violation and as to why compensation charges should not be levied and collected as per the terms and conditions of supply of electricity.

3. A detailed enquiry was conducted at your request on 10.11.98 and 11.11.1998 in the presence of your representative Thiru R. Sundararajan, Gandhi Nagar and on detailed examinations of the connected records the enquiry proceedings as well as evidence adduced during the enquiry, it is confirmed

that there is misuse of consumption on the date of inspection as per Schedule 37 clause 2.04 of the schedule part II (P.No.66) of the Terms and conditions of supply Schedule 37.

4. The compensation charges payable by you under clause 2.04 and 5.0 2 of the schedule to the Terms and conditions of supply of Electricity is worked out to Rs.3,21,338/- (Rupees three lakh twenty one thousand three hundred and thirty eight only).

The detailed working sheet is enclosed. You are permitted to pay the amount in instalments as shown below:

- 1.1st instalment 32,141.00 on or before 5/10/2000
- 2.2nd instalment 32,133.00 on or before 5/11/2000
- 3.3rd instalment 32,133.00 on or before 5/12/2000
- 4.4th instalment 32,133.00 on or before 5/1/2001
- 5.5th instalment 32,133.00 on or before 5/2/2001
- 6.6th instalment 32,133.00 on or before 5/3/2001
- 7.7th instalment 32,133.00 on or before 5/4/2001
- 8.8th instalment 32,133.00 on or before 5/5/2001
- 9.9th instalment 32,133.00 on or before 5/6/2001

10.10th instalment 32,133.00 on or before 5/7/2001

The Power supply will be disconnected in case of your failure to pay any of the instalments on or before the dates specified herein.

The failure to pay any of the further instalments will result in disconnection of power supply to your service connection without any further notice.

If you seek for reconnection after the expiry of due dates for payment of respective instalments, you should pay the defaulted instalments along with the interest or belated payment surcharge thereon till the date of payment.

If you choose to prefer an appeal against the order, you may prefer an appeal to the Appellate Authority, Chief Engineer/Distribution/ Vellore within 60 days from the date of receipt of this order and 40% of the total assessed amount should be paid by you before appeal, without prejudice to any other action that may be taken by Tamil Nadu Electricity Board including disconnection of service as stated above.

You are requested to acknowledge the receipt of this assessment order and the working sheet immediately.

Encl: Working Sheet-1 No.

Yours faithfully,

Sd/-

SUPERINTENDING ENGINEER

VEDC: VELLORE-6. "

2.3. Aggrieved by the said order, the petitioner filed W.P.No.17118 of 2000 seeking a writ of Certiorari calling for the records comprised in the proceedings of the first respondent dated 19.8.2000 in Lr. No.662/SEV/GI/FHT SC 1177/2000 and quash the same as ultra vires the provisions of the terms and conditions of supply of electricity.

2.4. When the writ petition came up for admission on 4.10.2000, this Court, while ordering notice of motion, passed the following order.

" Notice of motion returnable in twelve weeks. There shall be an order of interim stay on condition that the petitioner pays Rs.1,50,000 /- (Rupees one lakh and fifty thousand) within two weeks, without prejudice to the rights of either parties in the writ petition. "

Admittedly, the said condition had been duly complied with by the petitioner and thereafter, the writ petition was admitted on 11.12.2001.

3.1. Concededly, a show cause notice dated 11.7.1998 was served on the petitioner, to which the petitioner submitted his explanation dated 29.7.2000 before passing the impugned order dated 19.8.2000. In the explanation dated 29.7.2000, the petitioner has submitted as follows:

" ? We have used water for spraying in the newly constructed office building

within the factory premises. This office is meant only for Arakkonam works and it is part and parcel of the factory activities. Hence, we have used the water which is available within the premises.

We have modified our Fly Ash Handling System and during the erection of the Handling System, we have used the welding transformer. In this connection, we wish to point out that this Fly Ash Handling System is only a modification of the existing Asbestos Sheet manufacturing line and it is neither a part nor full expansion of the company activities.

Ever since the 30% power cut in demand was imposed that is from 20.4.98, we have been using our two Generators of 608 KVA and 860 KVA capacity alternatively all the 24 hours to limit our demand within the quota granted by TNEB. The 10 HP Pumpset for lifting water to the overhead tank as well as the 24 KVA welding set along with other equipments have been used only with the Generator set power. At no time have they been connected to the TNEB supply during the construction of cement unloading system.

This was pointed out to the Assistant Executive Engineer, Anti Power Theft Squad when he visited our factory. But this has been ignored and a Show Cause Notice has been served even though we have not violated any rules of the TNEB. ? "

3.2. However, while passing the impugned assessment order dated 19.8.2000, the first respondent has observed as follows.

" ? 3. A detailed enquiry was conducted at your request on 10.11.98 and 11.11.1998 in the presence of your representative Thiru R. Sundararajan, Gandhi Nagar and on detailed examinations of the connected records the enquiry proceedings as well as evidence adduced during the enquiry, it is confirmed that there is misuse of consumption on the date of inspection as per Schedule 37 clause 2.04 of the schedule part II (P.No.66) of the Terms and conditions of supply Schedule 37. ? "

3.3. A closer and careful reading of paragraph 3 of the impugned order dated 19.8.2000 obviously makes it clear that except a bald statement that "on a detailed examination of the of the connected records the enquiry proceedings as well as evidence adduced during the enquiry, it is confirmed that there is misuse of consumption on the date of inspection as per Schedule 37 clause 2.04 of the schedule part II (P.No.66) of the Terms and conditions of supply Schedule 37", no reason was assigned.

4.1. When the above writ petition is pending, another show cause notice dated 10.10.2002 was served on the petitioner alleging that the petitioner company again violated the terms and conditions of the supply of electricity. The charges of the respondent Board are similar and identical to the charges mentioned in the impugned order dated 19.8.2000, which is challenged in W.P.No.17118 of 2000.

4.2. The charges made in the show cause notice dated 10.10.2002 reads as follows.

" 1. On 20.8.2002 at 11.00 Hrs. the electricity HT Service connection No.1177, Arakkonam at Ramco Industries Arakkonam which stands in your name was inspected by Asst. Exe. Engineer/O&M/Mambakkam and Asst. Engineers/Junior Engineers of Vellore circle in the presence of your representative Thiru K.Kesavan, Junior Engineer, Ramco Industries.

a)The first time violation was committed by you on 12.5.98. The penal levy was also levied for the said violation.

b)During the inspection, the following second violations of the terms and conditions of supply of electricity has been found in the above said HT Service connection by the said officers.

2. A load of 3x11 KVA = 33 KVA welding set + HP drilling and 10 HP Rolling Pressure machine for fabrication of Tank. ? "

4.3. On receipt of the show cause notice dated 10.10.2002, the petitioner submitted its explanation on 24.10.2002, wherein it is stated as follows.

" ? In your letter cited above, mention has been made about the APTS inspection on 12/05/1998. Aggrieved by the order of assessment made in respect of the above inspection, we filed a Writ Petition No.171 18/2000 before the Honourable High Court at Madras. The Honourable High Court was pleased to grant interim stay of the operation of the order on 04/10/2000. Since the matter is sub-judice, mentioning of the same in your letter/show cause notice, will be prejudicial to our stand in the present matter.

The welding set and other equipments noted in the report were used to fabricate process water tank to replace the existing one. The works were carried out only for the existing asbestos sheet manufacturing line and it is not the expansion of the existing company activities.

Further we were experiencing frequent shut down of E.B. supply. As our process is a continuous one we have been using our two generators of 860 KVA and 608 KVA capacity alternatively. On the day of inspection ie. On 20/08/2002 the welding sets and other equipments were connected to the generator set power only. At no point of time have they been connected to EB supply during their use for the works of process water tank.

Even at the time of preparing Mahazar this fact was explained to the Asst. Executive Engineer/O&M/Mambakkam and Asst. Engineer/Junior Engineer of Vellore circle who conducted the inspection. But this fact had been ignored by them and a show cause notice has been served even though we have not violated any terms and conditions of supply of electricity.

There has been no violation of rules since the equipments had drawn power only from our captive generators at the time of inspection. Therefore we request you to withdraw the show cause notice issued to us. We may also be given a personal hearing to represent our case, before passing final orders.

"

4.4. In spite of the above explanation, the first respondent passed another assessment order dated 14.2.2003 which is again challenged by the petitioner in W.P.No.7015 of 2003, wherein the petitioner was required to pay a sum of Rs.24,19,665/- towards the compensation charges as per Schedule 37 Clause 2.04 II Schedule.

4.5. It is pertinent to note that in the assessment order dated 14.2.2003, while dealing with the explanation of the petitioner dated 24.10.2002 referred to above, the first respondent has again held as follows.

" ? A detailed inquiry was conducted on 3.1.2003 in the presence of your representatives Thiru T.K. Ganesan, General Manager and Thiru Balasubramanian, Personnel Manager and on detailed examination of the connected records, the enquiry proceedings as well as evidence submitted it is confirmed that there is misuse of consumption on the date of inspection as per clause 2.04 of the schedule part II of the Terms and conditions of supply. ?
"

It is, therefore, clear that paragraph 3 of the impugned order dated 19.8.2000 and paragraph 3 of the impugned order dated 14.2.2003 are almost read as same.

5.1. In both the proceedings, the respondent dealt with the explanation of the petitioner only by giving a bald reason, viz. on a detailed examination of the of the connected records the enquiry proceedings as well as evidence adduced during the enquiry, it is confirmed that there is

misuse of consumption on the date of inspection as per Schedule 37 clause 2.04 of the schedule part II (P.No.66) of the Terms and conditions of supply Schedule 37.

5.2. It is apparent on the face of the record that the first respondent enquiry officer has not even applied his mind to the explanations offered by the petitioner on 20.7.1998 and 24.10.2002 to the show cause notice dated 17.7.1998 and 10.10.2002 respectively.

5.3. That apart, the respondent has not even given any reason in the impugned order as to why the explanation offered by the petitioner either could not be accepted or to be rejected.

6.1. Even though the learned Standing Counsel for the respondent Board, based on the averments stated in the counter affidavit, contends that the petitioner is liable to pay the impugned compensation charges in view of Clause 31.02, as the petitioner ought to have got the prior approval of the Board before utilising the electricity for the construction purpose or for constructing a tank for the industrial use, absolutely there is no reference in this respect in the impugned order.

6.2. Of course, Clause 31.02 of the Terms and Conditions of Supply of Electricity of Tamil Nadu Electricity Board reads as follows.

" If a consumer is detected to be supplying energy unauthorisedly at any time, he shall be liable to pay compensation charges and supply shall be disconnected within 24 hours. For the purpose of this condition, the unauthorised supply of energy shall mean the supply of energy by consumers to

any other person or for any purpose other than the purpose for which supply was sanctioned from the energy drawn by him from the Board irrespective of whether supply is charged in any form or not.

The supply drawn by Low Tension / High Tension consumers, from the existing service for the purpose of construction and testing of their own expansion / new plant without the approval of the Board is also considered as violation and action will be taken as provided under main Clause 37, Schedule Part I of Terms and Conditions of Supply of Electricity.

However, the supply of energy by the owner of a building to his tenants or by any establishment or person to lessees, employees and / or to the area used for the welfare / amenities of employees shall not be considered as unauthorised supply of energy. "

6.3. Assuming the petitioner is liable to pay the impugned compensation charges as per the second limb of Clause 31.02, the supply drawn by Low Tension / High Tension consumers, from the existing service for the purpose of construction and testing of their own expansion / new plant without the approval of the Board is also considered as violation and action will be taken as provided under main Clause 37, Schedule Part I of Terms and Conditions of Supply of Electricity, when the petitioner had taken a stand that Clause 31.02 of the terms and conditions of the supply of electricity of the respondent Board is applicable only in the case when the petitioner uses the electricity supplied by the Board; but not in a case where the petitioner was using the electricity drawn from its two generators of 860 KVA and 608 KVA respectively, the Superintending Engineer has not given any reason to reject the said explanation offered by the petitioner.

6.4. It is well settled law that when the impugned orders are silent as to the reasons either for not accepting the explanation offered by the petitioner or rejecting the same, the impugned orders could not be sustained merely based on the averments made in the counter affidavit, as the counter affidavit would not improve the case of the respondent Board, as set out in the impugned proceedings which suffers for want of reasons.

6.5. I am, therefore, of the considered opinion that both the impugned orders suffer for want of reasons and non application of mind by the respondent Board, while passing the impugned orders. Hence, both the impugned orders are quashed and the matter is remitted to the respondent Board for a fresh de novo enquiry, on condition the petitioner pays another two instalments as per the proceedings dated 14.2.2003 impugned in W.P.No.7015 of 2003, apart from the instalments already paid as per the order of this Court dated 5.3.2003, as follows.

1st instalment on or before 15.10.2003 Rs.1,61,311/-

2nd instalment on or before 15.11.2003 Rs.1,61,311/-

The deposits already made by the petitioner, viz. Rs.1,50,000/- pursuant to

the order of this Court dated 4.10.2000 made in W.P.No.17118 of 2000 and one instalment, viz. Rs.1,61,311/- as per the order dated 5.3.2003 and the future two instalments to be paid by the petitioner as per the order of this Court dated 30.9.2003 in W.P.No.7015 of 2003 , shall be without prejudice to the rights of either parties in the joint de novo enquiry. The respondent Board is directed to hold a de novo enquiry jointly with reference to both the proceedings and the petitioner is entitled to raise all its legal contentions raised before the respondent Board and thereafter, the respondent Board shall consider the same and pass appropriate final orders, of course, after giving a fair and reasonable opportunity to the petitioner.

The writ petitions are ordered accordingly. No costs. WPMP Nos.9043 and 9044 of 2003 are closed.

Index : Yes

Internet : Yes

Kpl

To

1. The Chairman

Tamil Nadu Electricity Board

Anna Salai, Chennai 600 002.

2. The Superintending Engineer

Vellore Electricity Distribution

Circle, Gandhi Nagar, Vellore-6.

3. Executive Engineer/O&M

Tamil Nadu Electricity Board

Arakonam.

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