

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-02-2010

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

W.P.No.4052 of 2010 and
M.P.No.1 of 2010

M/s.Rayalseema Concrete Sleepers Private Limited
Thirumangalam Railway Yard,
Madurai-625 706

.. Petitioner.

Versus

1.The chairman,
Tamil Nadu Electricity Board,
144, Anna Salai, Chennai-600 002.

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

3.The Superintending Engineer,
Madurai Electricity Distribution Circle
Madurai

.. 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 3rd respondent culminating in Lr.No.SE/MEDC/DFC/MDU/HY/AS/A1&A2/F.Peak Hour/D.No.146/10 Dt.10.02.2010 for H.T.S.C.No.177 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 2nd respondent made in Miscellaneous Petition No.42 of 2008 dated 28.11.2008 and consequently direct the 1st and 3rd respondent to desist from imposing any demand not expressly sanctioned by the 2nd respondent in respect of peak hour consumption.

For Petitioner : Mr.Arun Anbumani
For Respondents : Mr.A.Selvendran (R1)
No Appearance (R2)
Mr.J.Ravindran (R3)

O R D E R

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.A.Selvendran, the learned counsel appearing on behalf of the first respondent and Mr.J.Ravindran, the learned counsel appearing on behalf of the third respondent, have not refuted the claims made by the learned counsel appearing on behalf of the petitioner. However, they 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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Sd/-

Asst. Registrar

//True Copy//

Sub Asst. Registrar

To

1.The Chairman,
Tamil Nadu Electricity Board,
144, Anna Salai, Chennai-600 002.

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

3.The Superintending Engineer,
Madurai Electricity Distribution Circle
Madurai 7.

PKB(CO)
SR/1.3.2010

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