

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-02-2010

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

W.P.No.4231 of 2010 and
M.P.No.1 of 2009

Ayyappan Textiles Ltd.
HTSC No.006, Achudunthan Vayal,
Ramnad, Rep. by its
Manager S.Sivakumar ... 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,
Ramnad Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Ramanathapuram. ... Respondents.

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, to call for the records of the third respondent in Letter No.SE/REDC/Rmd/DFC/R/AS/Asst/F.R&C/ D.No.1110/10, dated 16.2.2010, and quash the same in so far as it relates to the levy of penalty for allegedly exceeding quota during evening peak hours from 04/2009 to 08/2009, as illegal, arbitrary, without the authority of law and against the orders of the first respondent made in Miscellaneous Petition No.42 of 2008, dated 28.11.2008.

For Petitioner : Mr.R.S.Pandiyaraj
For Respondents : No Appearance (R1)
Mr.A.Selvendran (R2)
Mr.P.Srinivas (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 second respondent and Mr.P.Srinivas, 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.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

csh

To

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

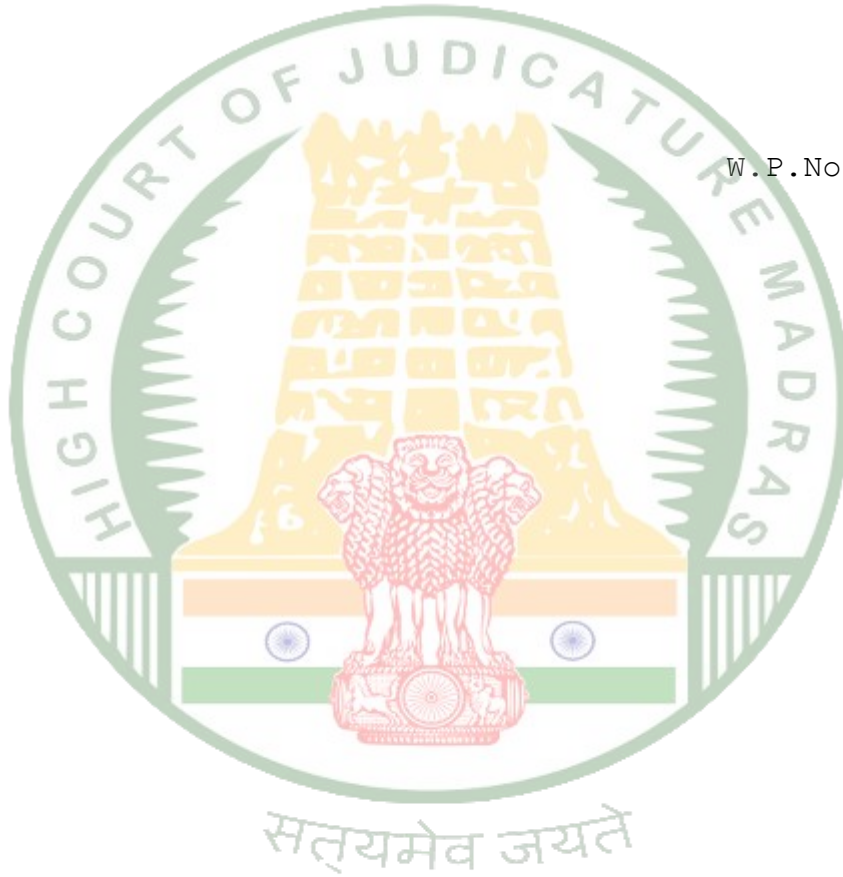
2. The Chairman,
Tamilnadu Electricity Board,
144, Anna Salai, Chennai-600 002.

3.The Superintending Engineer,
Ramnad Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Ramanathapuram.

+1cc to Mr.R.S.Pandiyaraj, Advocate Sr 13277

SSK(CO)
km/3.3.

W.P.No.4231 of 2010



WEB COPY