

(2010) 05 MAD CK 0026

In the Madras High Court

Case No : Writ Petition No. 10910 of 2010

International Bakery Products Limited

APPELLANT

Vs

The Tamil Nadu Electricity Board

RESPONDENT

Date of Decision : 20-05-2010

Acts Referred:

Electricity Act, 2003 — Section 142, 146, 56, 56(1)

Citation : (2010) 05 MAD CK 0026

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : R. Saravana Kumar, for the Appellant; A. Selvendran, for the Respondent

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—The petitioner has come up with the present writ petition challenging the proceeding of the third respondent dated 12.05.2010,

2.1. The case of the petitioner is that it is engaged in the manufacture of bakery products within the area jurisdiction of the second respondent. Violating the order made in M.P. No. 42 of 2008 dated 28.11.2008, the third respondent issued a demand for payment of penal charges for exceeding the evening peak hour quota. The petitioner filed a writ petition before this Court in W.P. No. 26473 of 2009, challenging the said demand. By its order, this Court had set aside the said notice and directed the second respondent to give opportunity to the petitioner to put forth their objections against such levy and pass orders after hearing the petitioner.

2.2. While so, the petitioner received the impugned demand notice from the third respondent directing the petitioner to pay a sum of Rs. 10,58,312/- towards evening peak hour quota excess consumption for the period 11/2008 to 07/2009. Therefore, the petitioner has to approach this Court by filing the present writ petition challenging the said impugned order.

3. The learned Counsel appearing for the petitioner mainly contended that,

(i) the third respondent failed to give opportunity to the petitioner inspite of this Court directing the third respondent to do so and

(ii) the impugned demand is in violation of the order made in M.P. No. 42 of 2008 dated 28.11.2008 of the first respondent.

4. On the other hand, the learned Counsel appearing for the respondents submitted that,

(i) in view of the order passed by the first respondent dated 04.05.2010, the petitioner has to exhaust its remedy by filing an appeal before the Appellate Tribunal for Electricity; and

(ii) in view of the order passed by the first respondent on 04.05.2010 holding that the Electricity Board has got the power to levy penalty for exceeding the evening peak hour quota, the petitioner cannot still harbour that the third respondent has no power to impose penalty.

5. I have heard the learned Counsel appearing for the petitioner as well as the learned Counsel appearing for the respondents.

6. The first and foremost contention that was raised by the learned Counsel appearing for the petitioner is that the penalty cannot be imposed by the third respondent which is violative of the order made in M.P. No. 42 of 2008 dated 28.11.2008. However, I am unable to accept the said contention raised by the learned Counsel appearing for the petitioner, since the first respondent had clarified its order dated 04.05.2010, clarifying that the penalty could be imposed for exceeding the evening peak hour quota.

7.1. The Tamil Nadu Electricity Consumers Association filed M.P. No. 4 of 2010 before the Tamil Nadu Electricity Regulatory Commission (hereinafter called the Commission) to punish the Tamil Nadu Electricity Board by imposing a maximum punishment by passing appropriate orders in exercise of powers conferred in Sections 142 and 146 of the Electricity Act, 2003.

7.2. Further, the Tamil Nadu Spinning Mills Association filed M.P. No. 7 of 2010, contending that the Electricity Board has no power or authority to levy penalty in terms of money for the alleged excess use of demand and energy during evening peak hours except for the reduction of demand to the level of 5% for the following 48 hours as specifically stated in Para 33 of the order passed in M.P. No. 42 of 2008 dated 28.11.2008.

7.3. The above applications came before the Commission and the Commission has passed the following order:

11.5. Para 29 of the Order of the Commission in M.P. No. 42 of 2008 stipulates that excess demand and excess energy shall be charged at thrice the normal rate for HT industrial and HT commercial consumers. This is a general stipulation and

should be deemed to apply to all demand and energy consumption in excess of the quota determined by the licensee. This was designed as a monetary disincentive to discourage HT industrial and commercial consumers from exceeding the demand and energy quota. Para 33 should be read in conjunction with para 29. Para 33 deals with non-monetary measures for the specific period between 6.00 p.m. to 10.00 p.m. to dissuade HT industrial and HT commercial consumers from drawing power in excess of 5% and 10% respectively. In other words, the demand quota for HT industrial consumers would be 5% between 6.00 p.m. and 10.00 p.m. and the demand quota for HT commercial consumers would be 10% between 6.00 p.m. and 10.00 p.m. Consumption of demand and energy in excess over the quota is liable to be charged at the rate mentioned in para 29 irrespective of the fact whether the excess is recorded during non-peak hour or evening peak hour.

11.6. Para 35 of the Order of the Commission in M.P. No. 42 of 2008 talks of a third deterrent, the first being levy of excess demand/energy charges and the second being pruning of the quota for the following 48 hours. Para 30 of the Order in M.P. No. 42 of 2008 envisages similar treatment for LT CT industrial and LT CT commercial consumers.

11.11. Therefore, it is clear that the Order of the Commission in M.P. No. 42 of 2008 prescribed excess demand and excess energy charges for evening peak hour violation also.

7.4. The Commission also discussed and held that a licensee is empowered to claim its demand upto a period of two years from the date when such sum became due, since a plea was taken by the consumers that excess demand charges and excess quota charges have been raised by the Tamil Nadu Electricity Board belatedly. Paras 11.12, 11.13 and 11.14 of the said order is usefully extracted here under:

11.12. A plea has been raised by the Petitioners that excess demand charges and excess energy charges have been raised by the TNEB belatedly as late as one year after the Order. The excess demand charge and excess energy charge being in the nature of penalty, ought to have been levied promptly, in which case the Petitioners would have desisted from consuming excess power. The conduct of the TNEB, according to them, in raising the demand almost a year after the Order of the Commission amounts to waiver of claim for penal charges.

11.13. We wish to refer, in this context, to Section 56 of the Electricity Act 2003 extracted below:

56. Disconnection of supply in default of payment - (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of

supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest,-

- a) an amount equal to the sum claimed from him, or
- b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

11.14. Section 56 makes it clear that a licensee is empowered to claim its demand upto a period of two years from the date when such sum became due. The "charge for electricity" mentioned in Section 56(1) refers to the electricity tariff; "any sum other than a charge for electricity" referred to in Section 56(1) means charges other than tariff charges such as capacitor compensation charge, excess demand charge, belated payment surcharge, additional security deposit, name transfer charge, re-connection charge, meter related charges etc., mentioned in Clause 4 of the Tamil Nadu Electricity Supply Code 2004 notified by the Commission. Therefore, we have to conclude that the TNEB is entitled to recover any sum due to them within a period of two years.

8. Thus, the bone of contention raised by the petitioner is that the levy of penalty for exceeding evening peak hour quota as against the order made by the Commission in M.P. No. 42 of 2008 dated 28.11.2008 has been watered down by the subsequent order of the Commission dated 04.05.2010.

9. The second submission made by the learned Counsel appearing for the petitioner is that, when this Court had directed the third respondent to pass orders afresh, the third respondent without any reference thereto, ought not to have directed the petitioner to pay the penalty for exceeding the quota. This contention of the learned Counsel appearing for the petitioner appears to be well

founded. When this Court had directed the third respondent to pass orders afresh in the above referred writ petitions, the third respondent in violation of the said orders ought not to have issued a demand notice to the petitioner to pay penalty for exceeding the quota.

10. Though an appeal remedy is available to the petitioner to challenge the impugned demand made by the third respondent, I am not inclined to drive the petitioner to file an appeal before the appellate forum on the sole ground that the demand was made without giving due notice to the petitioner and without affording an opportunity to the petitioner as directed by this Court.

11. In result, the impugned order made by the third respondent dated 12.05.2010 is liable to be set aside and is accordingly set aside and the writ petition stands allowed. However, the third respondent is directed to pass orders afresh after due notice to the petitioner and after hearing the petitioner as directed by this Court in the writ petitions referred to above. No costs. Consequently, M.P. No. 1 of 2010 stands closed.