
(2009) 09 MAD CK 0129

In the Madras High Court

Case No : Writ Petition (MD) No. 7808 of 2009 and M.P. No's. 2 and 2 of 2009

L. Jeyam and Others

APPELLANT

Vs

The Superintending Engineer, Tamil Nadu Electricity Board, K.
Pudur and The Assistant Engineer, Distribution, Tamil Nadu
Electricity Board

RESPONDENT

Date of Decision : 08-09-2009

Acts Referred:

Tamil Nadu Electricity Supply Code, 2004 — Section 18

Citation : (2009) 09 MAD CK 0129

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : T.R. Subramanian, for the Appellant; M. Sureshkumar, for the Respondent

Final Decision : Allowed

Judgement

T.S. Sivagnanam, J.—The Writ Petitions have been filed to quash the demand issued by the second respondent dated 15.07.2009 and 16.07.2009 by which the second respondent has changed the electricity tariff from demand III A(2) to that of III A(1) demanded for short fall assessment with effect from September 2007 to May 2009. According to the petitioners in both the Writ Petitions, they are engaged in doing yarn winding-braiding work on labour basis in their premises and that the winding is only an ancillary to the power loom industry and the Government of Tamil Nadu has given concession rate of electricity for winding and braiding works and they have been enjoying the electricity supply by paying the consumption charges as per the rates stipulated in tariff III A(2). The respondent Board by memo dated 23.03.2003 stated that LT industries in Tariff IIIA(2) are power looms and ancillary industries of power looms, which are engaged in warping, twisting and winding have been brought under the said tariff and there is no change in electricity charges, which is fixed at Rs. 30 per month with a minimum of Rs. 60/- per month and Rs. 120/- for two months.

2. According to the petitioners, they have been enjoying the rates under the said tariff IIIA(2) for several years. While that being so, by the impugned order, dated 16.07.2009, the respondents have stated that the petitioners ought to have been classified as a Cottage and Tiny Industries and the appropriate tariff would be IIIA(1), which has now resulted in the demand of short fall assessment. The correctness of the impugned order is assailed by firstly, on the ground of violation of principles of natural justice. Secondly, the learned Counsel for the petitioner would submit that the activity carried on by them squarely falls within the ambit of IIIA(2) since, they are ancillary to the power looms industry.

3. The learned Counsel would further submit that the second respondent failed to consider the representation of the petitioners dated 20.07.2009 and 21.07.2009. The learned Counsel for the petitioners would further submit that they cannot be classified as industrial units and the appropriate tariff applicable to them shall be only III A(2).

4. Per contra, the learned Standing Counsel for the respondent Board would submit that the representation submitted by the petitioners would clearly establish that they are tiny industries and they are braiding the thread for commercial purposes and therefore, they shall pay the consumption charges as per tariff principle III A(1). The learned Counsel by relying upon the counter affidavit would further submit that in terms of tariff IIIA(2), there is free power supply of energy for the 500 units every month and such concession cannot be granted to the industries like that of petitioners, especially, when they are doing processing in their industrial unit. It is further stated that if at all the petitioner is aggrieved, they could approach the Consumer Grievance Redressal Forum for appropriate relief u/s 18 of the Tamil Nadu Electricity Supply Code 2004 and since the petitioners are not availed the alternative remedy, these Writ Petitions are liable to be dismissed.

5. I have heard the submissions of the learned Counsel for the petitioner and the learned Standing Counsel appearing for the Electricity Board and perused the materials available on record.

6. It is not in dispute that prior to passing of the impugned order, no show cause notices were issued to the petitioners and they were not afforded an opportunity to submit their contentions. The impugned orders are a result of change of tariff. The consequences of change of tariff is a waiving in the amount payable as consumption charges and denial of every benefits, which a consumer shall be enjoyed under a particular tariff. Therefore, the change of tariff is bound to result in civil consequences for a person or an industry, which has been enjoying a concession. As rightly pointed out by the learned Counsel for the petitioners that the notification dated 14.09.2007 came to be issued in 2007 itself, but is now sought to be implemented on the petitioners during 2009 and therefore, he would submit that the question of payment of arrears from 2007 onwards does not arise. A perusal of the notification would show that it has been brought to the notice of the Board that tariff IIIA(2) is being adopted for grant of the industrial

units engaged in the process of braiding instead of adopting the tariff IIIA(1). the braiding process has been defined in the said notification which reads as follows:

In "Braiding Process" that viscose filament Rayon yarn with higher denier or Cotton Yarn (wound on cones) or both is wound on small bobbies in a machine frame. The Bobbins are put together with another machine frame and yarns are braided to get decorate bands such as waist strings, wrist bands, hair bands, radial turning cords, shoe laces, neck laces, file strings, file tags, decorative tags for gift packages and Mangala Sutra Strings etc.

Therefore the notification proceeds to state that the products mentioned above are not related to activities of power looms and hence these categories of activities should be categorized under Tariff IIIA only subject to a maximum contracted/connected load of 10 HP.

6. Under the very same notification of the Superintending Engineer and the electricity distribution circle were requested to identify "Braiding Process" industrial units in their circle and ascertain the tariff being adopted and if so required necessary tariff revision may be immediately duly revising the bills already rendered under LT Tariff III A(2). The short fall in assessment was directed to ascertain and collected from the consumer. Thus, the applicability of this notification to a particular consumer is a question of fact. The consumer should carry on the activity of braiding process as defined under the notification and this question of fact is liable of being rebutted by the consumer. Therefore, there cannot be a summary decision in this matter without a proper opportunity being afforded to the consumer to put forth his contentions.

7. Admittedly, such a procedure has not been followed in the instant case and the second respondent Department has proceeded to issue the demand. The learned Counsel for the respondent Board would submit that the petitioners themselves have admitted in the representation about the nature of activity. Such an alleged admission said to have been made by the petitioners in the representations that too made after the impugned demand, cannot be a basis for revision of tariff conditions. The valuable right of the petitioners is sought to be infringed on account of the change in tariff, that apart the respondent Board has resorted to implement the memorandum with retrospective effect from 2007 onwards i.e. from the date when the tariff instruction was issued, 16.09.2007. Therefore, the question, whether such a revision of tariff should be retrospective is also to be ascertained and the petitioners have to be afforded an opportunity to put forth their grievances. Hence, I am of the view that the impugned proceedings are not sustainable in view of the violation of principles of natural justice and since the petitioners were not afforded any opportunity before passing of the impugned orders. For these reasons, even if there is an alternative remedy available under the Distribution, the petitioners need not availed the remedy as held by the Hon''ble Supreme Court and this Court from time to time in several decisions.

8. In view of the foregoing reasons, the impugned orders are set aside and the Writ Petitions are allowed. However, liberty is granted to the respondent Board to issue appropriate notice to the petitioners calling upon them to establish their process would not fall within the ambit of the notification dated 16.09.2007 and produce all materials in support of their claim. Thereafter, there shall be a hearing granted to the petitioners and they shall be permitted to raise all objections including the objections, where such memorandum could be given effect with retrospective effect. Until a final decision is arrived at, the petitioners are entitled to pay consumption charges under tariff IIIA(2) and the same shall be subject to the outcome of the final orders to be passed by the second respondent. No costs. Consequently connected Miscellaneous Petitions are also closed.