

(2001) 08 MAD CK 0027

In the Madras High Court

Case No : Writ Petition No. 15218 of 2001 and W.M.P. No. 22574 of 2001

Leeds Spinning Mill Private Ltd.

APPELLANT

Vs

Superintending Engineer, Tamilnadu Electricity Board and
Tamilnadu Electricity Board

RESPONDENT

Date of Decision : 23-08-2001

Acts Referred:

Citation : (2001) 08 MAD CK 0027

Hon'ble Judges : P. Shanmugam, J

Bench : Single Bench

Advocate : S. Silambanan, for the Appellant;

Final Decision : Dismissed

Judgement

P. Shanmugam, J.—The Petitioner prays for a writ of certiorari to quash the order of the Electricity Board withdrawing the concessional

tariff and directing the Petitioner to refund the amount of concession enjoyed by the Petitioner.

2. The admitted facts are as follows:

The Petitioner has energized the unit on 10.4.1997. The Petitioner had made an additional demand on 16.5.1997. The question whether the

Petitioner is entitled for the concessional tariff for his electricity consumption as well as for additional load, came up for consideration in his Writ

Petition and in batch of writ petitions, W.P. 12540 of 1997 etc. dated 23.4.1999. This Court disposed of the same by passing the following order,

which is summarised in paragraph 37:

1. The Petitioners who had informed about their readiness for getting power connection or made applications to the 2nd Respondent - Electricity

Board on or before 14.2.1997, are entitled to enjoy the said tariff concession for the full period of three years, from the date of giving connection

as stipulated in G.O.Ms. No. 29, Energy (A-2) dated 31.1.1995, and the Respondents are directed to extend such concession to those Petitioners

in accordance with the said Government Order.

2. The writ petitions in which the G.O.Ms. No. 17, Energy dated 14.2.1997 is challenged are dismissed.

3. The writ petitions in which the Petitioners who have not made applications or sent intimation, regarding their readiness to the 2nd Respondent -

Electricity Board to get power connections on or before 14.2.1997, filed claiming that they have altered their position by establishing the industry

on or before 14.2.1997 only to get advantage of the said Government Order dated 31.1.1995, in which tariff concession was given, are also

entitled for such tariff concession as stipulated in G.O.Ms. No. 29, Energy dated 31.1.1995, provided if they are able to establish the same before

the 2nd Respondent - Electricity Board.

3. As per this, the applicants who showed their readiness for getting power connection on or before 14.2.1997 are entitled to enjoy the tariff

connection. A reading of the affidavit and the records reveal the following dates and events:

31.01.1995: G.O.Ms. No. 29 Energy (A.2) Department notifying the amendment to the schedule to the Tamil Nadu Revision of Tariff Rules.

14.12.1995: Petitioner's application for High Tension Electricity Service Connection for a maximum demand of 450 KVA for their industry.

13.5.1996: Superintending Engineer sanctions the H.T. power supply for 450 KVA subject to certain conditions.

16.5.1996: Petitioner is said to have informed his readiness for energizing .

9.9.1986: Petitioner pays the development charges.

3.1.1997: Petitioner executes an agreement with the T.N.E.B. for the supply of 450 KVA.

15.2.1997: Notification by the Government G.O.Ms. No. 17, Energy dated 14.2.1997 stating that industries set up on or after 15.2.1997 shall not

be eligible for any tariff concession.

10.4.1997: Petitioner's unit was energized .

20.10.1997: Request of the Petitioner for tariff concession was rejected.

16.5.1997: Petitioner's request to the Superintending Engineer for an Additional Demand of 500 KVA.

12.6.1997: Sanction for the additional demand.

27.12.1997: Petitioner reports of his readiness for energising the additional load of 500 KVA.

February 1998: Agreement executed including for the additional supply.

11.03.1998: Additional load energized .

4. By the impugned communication of the Superintending Engineer dated 13.8.2001, it is stated that the service connection of the Petitioner was

effected on 10.4.1997 for a sectional demand of 450 KVA and his additional demand of 500 KVA dated 12.4.1997 effected on 10.3.1998. As

per the Respondents, Petitioner is not eligible for the tariff concession even for the original demand of 450 KVA. However, the Petitioner was

permitted to enjoy the concession as per the interim order obtained in W.P. No. 4328 of 1998. In so far as the additional demand is concerned, it

is clearly stated that even his application was dated 16.5.1997, i.e. after the crucial cut-off date namely 14.2.1997. Hence, the Petitioner cannot

have tariff concession for the additional load and the amount demanded is the amount of concession inadvertently allowed in favour of the

Petitioner.

5. In the light of the admitted facts, the claim of the Petitioner for tariff concession for the additional load cannot be sustained. The order in the writ

petition will not enure to the benefit of the Petitioner in reference to the additional load.. That can be only in reference to the application made to

the Board for supply of a load on or before 14.2.1997. It cannot be stated that they have altered the position for getting the advantage even before

making the application for the additional load, which was admittedly made only on 16.5.1997. The Government Order G.O.Ms. No. 29 dated

31.1.1997 has clearly stated that further concession for expansion of industry shall not be applicable to the existing industry availing concession for

the additional load. Therefore the Petitioner was an existing industry availing a concession and he cannot seek for the additional load at all. In any

event, the application itself was made after the cut-off date and therefore, he is not entitled for the concession. The mere fact that he made a prayer

in the earlier writ petition for the additional load does not mean that the same was granted by this Court. The operative portion of the order in the writ petition is extracted above. The Petitioner does not come within the parameters of the said order. When the Petitioner has no legal right to claim the tariff concession for additional load, it is open to the Board to withdraw the concession given inadvertently and restricting the concession to the original demand.

6. The Petitioner has prayed for issue of a writ of certiorarified mandamus, to quash the orders of the second Respondent dated 6.8.1997 and quash the letters of the Respondent dated 6.8.1997 and 28.7.1997. The letter dated 18.7.1997 was sought to be quashed by the Petitioner in his earlier writ petition W.P. 4328 of 1998. The writ petition was disposed of along with other batch of writ petitions. The subsequent letter dated 13.8.2001 additionally challenged in this writ petition is a consequential intimation. Therefore, this writ petition is also liable to be dismissed on the principle of constructive res judicata. The Petitioner cannot be allowed to re-agitate the issue in reference to the letter dated 28.7.1997 once over in this second writ petition. The relief of the Petitioner seeking for tariff concession regarding his additional load should be deemed to have been rejected by the order of this Court in the earlier writ petition. It cannot be stated that they have altered the position by establishing the industry with the additional load before 14-2-1997. Thus both on fact as well as law the Petitioner's claim in the writ petition cannot be sustained.

7. For all these reasons, no grounds are made out to interfere with the order impugned in the writ petition. The writ petition therefore fails and it is accordingly dismissed. No costs. Consequently, W.M.P. No. 22574 of 2001 is closed.