

(2011) 02 MAD CK 0307

In the Madras High Court

Case No : Writ Petition No. 23166 of 2010 and M.P. No's. 1 to 3 of 2010, W.P. No. 22392 of 2010 and M.P. No's. 1 to 3 of 2010, W.P. No. 22561 of 2010 and M.P. No. 1 of 2010, W.P. No. 22600 of 2010 and M.P. No's. 1 to 3 of 2010, W.P. No. 22646 of 2010 and M.P. No

Sri. Gomathy Mills Private Limited

APPELLANT

Vs

Tamil Nadu Electricity Regulatory Commission, The Chairman,
Tamil Nadu Electricity Board (TNEB) and The Superintending
Engineer, Tirunelveli Electricity Distribution Circle, Tamil Nadu
Electricity Board (TNEB)

RESPONDENT

Date of Decision : 28-02-2011

Acts Referred:

Citation : (2011) 02 MAD CK 0307

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Advocate : N.L. Rajah, for the Appellant; P. Srinivas, for the Respondent

Final Decision : Dismissed

Judgement

R. Sudhakar, J.—Writ Petition No. 23166 of 2010 is filed praying to issue a Writ of Certiorarified Mandamus, calling for the records of the second Respondent culminating in his impugned Memo.N.CE/Comml/EE/DSM/AEE1/F. Power cut/ D.358/10 dated 17.9.2010, quash the same and direct the Respondents 2 and 3 to treat the energy purchased by the Petitioner for their HTSC No. 4 through Captive Power Plant, Wind and Third Party Sources over and above the quota fixed by the second Respondent upto the sanctioned demand in consonance with the Order dated 07.09.2010 passed by the first Respondent in M.P. No. 6 of 2010, 9 of 2010 and 17 of 2010 and D.R.P. No. 9 of 2010 and pass such other orders as this Court may deem fit and proper in the circumstances of the case.

2. Sri. AR.L. Sundaresan, learned Senior Counsel, Sri. R.S. Pandiyaraj, Sri. P. Saravana Sowmiyan, Sri. Krishna Srinivas, Sri. Rahul Balaji, Sri. K. Seshadri, Sri. N.L. Rajah, Sri. A.R. Ramanathan and Sri. N. Srinivasan, learned advocates

appears for the Petitioners. Sri. J. Ravindran, Sri. P. Srinivas and Sri. A. Selvendran, learned Counsel appears for the Respondents electricity board.

3. The relief sought for in all the 50 Writ Petitions are one and the same. Hence, by consent of both parties, all the writ petitions are taken up together for final disposal.

4. The HT Consumers have filed a batch of writ petitions challenging the Memo.N.CE/Comml/EE/DSM/AEE1/F. Power cut/D.358/10 dated 17.9.2010 issued by the Tamil Nadu Electricity Board signed by the Chairman of the Board. According to the Petitioners, they purchase energy from the third party sources. The Electricity Board, therefore, should not impose restrictions contrary to the order passed by the Tamil Nadu Electricity Regulatory Commission in its order passed in M.P. Nos. 6 of 2010, 9 of 2010 and 17 of 2010 dated 7.9.2010. According to the Petitioners, the Memo dated 17.9.2010, which is impugned in these writ petitions, is contrary to the direction of the first Respondent. In the meanwhile, a meeting was arranged between the HT Consumers Association, represented by its members with the Hon"ble Deputy Chief Minister of the State to resolve the issue with regard to the implementation of the Regulatory Commission's order and for modification of the impugned proceedings. A copy of the Minutes of the Meeting of the HT Consumers Association and the Hon"ble Deputy Chief Minister dated 27.1.2011 is produced before this Court and it reads as follows:

Minutes of the Meeting convened by Hon"ble Deputy Chief Minister of Tamil Nadu with the Confederation of Indian Industries (CII)/SIMA etc.

With regard to the representations submitted by CII, SIMA etc., in connection with the Power Scenario in Tamil Nadu and also in connection with certain operational issues, Hon"ble Deputy Chief Minister took up a meeting on 27.01.2011 at 11.00 A.M. in his Conference Hall at New Secretariat, Chennai.

2.0. A list of participants is enclosed.

3.0. At the outset, Tmt. Nandhini Rangaswamy, Chair-person, CII, Tamil Nadu welcomed the Hon"ble Deputy Chief Minister, Officials and all the participants and initiated the discussion. Upon a review of the current power position as also after a detailed discussion on the issues raised by CII and SIMA, following decisions were taken:

(i) Consumption based demand:

While appreciating the issues raised by CII, TANGEDCO agreed to consider the quantum of "inter-state" and "intra-state" purchases of power received at the consumer's end, taking into consideration for demand calculation on par with the reliability power and make necessary arrangements for giving effect to this from the billing cycle starting 1st Feb. 2011.

(Action:CMD/TANGEDCO)

(ii) Fixation of Demand and Energy quota:

It was explained that under the present circumstances, allowing 1/12th of the average wind energy consumption every month is not possible to accede to. CII also agreed to this. However, with regard to the present instructions for calculation for the fixation of energy by taking average consumption of 3 consecutive months during the base period and subtracting the wind energy/CPP power consumed during that period, it was agreed that base energy consumption of HT services will be based on the average quantum of any 3 (three) months of consecutive metered energy between the billing period from 10/2007 to 10/2008 as per the choice of the consumer and to the advantage to the HT consumers. Fixation of base demand therefore will be made from the demand recorded in any month for the period from 10/2007 to 10/2008. As mentioned earlier, consequently HT consumers may opt for any consecutive 3 (three) month's period for calculation of base energy.

(Action:CMD/TANGEDCO)

The HT Consumers were, therefore, given the choice to determine the base energy and base demand.

5. Based on the meeting held on 11.2.2011 as above, the Tamil Nadu Generation and Distribution Corporation Ltd., Technical Branch, represented by the Chief Engineer/Commercial, for and on behalf of the Chairman-cum-Managing Director issued Memo. No. CE/Comml/EE/ DSM/AEE/F.RandC/D.56/11 dated 11.2.2011. A typed copy of Memo dated 11.2.2011 is filed along with the typed set of papers. The relevant portion of the memo reads as follows:

At the time of implementation of power cut, the base demand and base energy were fixed based on the instructions dated 01.11.2008 as follows:

(i) The base energy consumption for HT service will be the average of any three consecutive months advantageous to the consumer between the billing period from October, 2007 to September, 2008.

(ii) The base demand will be the highest maximum demand registered in any month during the period from October, 2007 to September 2008.

2. Based on the decision taken, in the meeting convened by the Hon'ble Deputy Chief Minister of Tamilnadu with CII/SIMA on 27.01.2011 and the minutes communicated in reference (4), the instructions for fixing the base demand and base energy may be revised as follows:

(i) The base energy will be the average of any three consecutive months during the base period, as per the choice of the consumer and to the advantage to the HT consumers.

(ii) The base demand will be the demand recorded in any month during the base period, as opted by the consumer, limited to the sanctioned demand.

3. The base demand and base energy may be modified only based on the written request of the consumer. However, the instructions issued for fixing of quota in this Office Memo No. CE/Comm/EE/DSM/AEE/Power cut/D.358/10 dated 17.9.2010 remain unaltered.

4. The revised instruction comes into effect from the date of issue of order.

5. An illustration on the revised working instruction citing an example of a CPP/wind consumer is enclosed herewith.

(emphasis supplied)

The Memo while giving effect to the Minutes of the Meeting, incorporated a clause which appears to be inconsistent with the Minutes of the Meeting.

6. In para 3 of the above stated Memo, it is stated that the Office Memo dated 17.9.2010 and the instructions contained therein for fixing the quota will remain unaltered. This according to the Petitioners, is contrary to decision taken in the Meeting with the Hon"ble Deputy Chief Minister which is recorded in the Minutes dated 27.1.2011. In the Memo dated 11.2.2011, the HT Consumers have been given the choice to fix the base energy and the base demand and that is sought to be nullified by inclusion of the office memo dated 17.9.2010. The remedy sought to be removed has come to stay indirectly.

7. In view of the above plea, Sri. A. Selvendran, learned Counsel appearing for the Respondents board was directed to get instruction from the Chief Engineer/ Commercial, Tamil Nadu Generation and Distribution Corporation Ltd., Technical Branch, as to how the Minutes of the Meeting and the Memo dated 11.2.2011 can be implemented in view of para 3 as above.

8. The authority of the Board at request is present in Court and stated that the Memo dated 11.2.2011, more particularly, para 2 gives choice to the consumer to fix the base energy and the base demand and this is as per the terms of the Minutes of Meeting dated 27.1.2011 referred to above.

9. It was stated by the Respondents that the reason for inclusion of the memo dated 17.9.2010 is only for the purpose of deriving the base energy and base demand at the choice of the HT Consumer and not for any other purpose.

10. The parties have consequent to the meeting with the Deputy Chief Minister arrived at a consensus and that is because of the difficulty expressed in implementing the Memo dated 17.9.2010. Hence, the inclusion of the Memo dated 17.9.2010 in para 3 of the subsequent Memo dated 11.2.2010 will not only confuse the field formation, it will lead to arbitrary and whimsical billing.

11. The Minutes of the Meeting with the Deputy Chief Minister is to clarify and resolve the dispute that arose out of Memo dated 17.9.2010 and therefore, the department cannot rely upon the said Memo for any purpose differently. It has to be read in consonance with the subsequent proceedings dated 11.2.2011. The scope of memo dated 11.2.2011 is to extend the benefit to HT Consumers and

not to deny them the benefit of the third party purchase.

12. In view of the above, following orders are passed:

(1) Respondents are directed to issue suitable amended memo/circular to the field formation to amend the Memo dated 17.9.2010 to read as follows:

Para I(ii) contained in Memo dated 17.9.2010 shall be deleted. In that place the following shall be inserted (i.e.) para 2(i) of the Memo dated 11.2.2011:

(i) The base energy will be the average of any three consecutive months during the base period, as per the choice of the consumer and to the advantage to the HT consumers.

Further Para I(v)(ii) of Memo dated 17.9.2010 shall be deleted and in that place the following shall be inserted (i.e.) para 2(ii) of the Memo dated 11.2.2011:

(ii) The base demand will be the demand recorded in any month during the base period, as opted by the consumer, limited to the sanctioned demand.

The revised memo/circular should be issued forthwith on receipt of a copy of this order.

(2) The Electricity Board shall also keep in mind the direction issued by the first Respondent in Suo-moto Proceedings No. 1 of 2009, more particularly para 16(13) and (16), which reads as follows:

16. After taking into account the submissions made by both the parties, the Commission directs as follows:

(1) to (12) xxx

(13) From 1.11.2008, all captive users, whether thermal or wind, shall declare on the first day of every month, the energy proposed for captive use for the following month, which shall be considered as B and F for the purpose of energy quota and demand quota respectively in terms of the memo of TNEB dated 17.11.2008; the energy so declared shall roughly be the monthly average generation;

(14) and (15) xxx

(16) If a consumer opts out of wheeling agreement and becomes an ordinary consumer, A and E referred in the memo dated 17.11.2008 shall be deemed to be the base energy and base demand.

and it will be implemented as may be applicable to the individual HT consumers as amended in para 4.4 of the order dated 7.9.2010 issued by Tamil Nadu Electricity Regulatory Commission.

(3) Insofar as the implementation of the memo/circular dated 17.9.2010 is concerned, each one of the Petitioners have filed individual petitions challenging the same. In W.P. No. 23166 of 2010 the Memo dated 17.9.2010 was stayed on

8.10.2010. In another W.P. No. 22392 of 2010 the consequential fixation of base energy and base demand was challenged and it was stayed by this Court on 30.9.2010. In effect the Respondent authorities were restrained from proceedings in terms of Memo dated 17.9.2010 and that was clarified after the Minutes of the Meeting consequent to the meeting with the Hon''ble Deputy Chief Minister of State and the revised Memo/Circular has been issued on 11.2.2011. This clarification will enure to the benefit of the Petitioners.

In view of the above, the Respondent authorities are not entitled to demand the penalty insofar as the base energy and base demand is concerned on the basis of the memo/circular dated 17.9.2010 as the same is modified and clarified by the subsequent memo dated 11.2.2011. The meeting of the two consumer association with the Hon''ble Deputy Chief Minister of the State was to settle all issues relating to fixation of base energy and base demand which has been bothering both the department and HT Consumers for quite sometime. Hence, the effect of the revised memo dated 17.9.2010 (i.e.) to say the amended version, the levy of penalty based on old memo dated 17.9.2010 will have to be set aside.

(4) The Tamil Nadu Generation and Distribution Corporation Ltd., Technical Branch, represented by the Chief Engineer/Commercial or the third Respondent as the case may be are directed to issue the revised memo/circular in accordance with the order passed by this Court to the field formation for the implementation as ordered by this Court.

(5) In view of the direction issued by this Court with regard to clarification to be issued, all demands raised with regard to base demand and base energy which is challenged in the individual writ petitions on and after 17.9.2010 are set aside. The penalty for exceeding base energy and base demand which is demanded in the bills are set aside and the Respondents are directed to work out the claim, if any, in accordance with the revised circular to be issued.

(6) All the 50 writ petitions stands ordered as above. No costs. Consequently, connected miscellaneous petitions are closed.