



TAMIL NADU ELECTRICITY OMBUDSMAN

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BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present: Thiru. A. Dharmaraj. Electricity Ombudsman

Appeal Petition No. 47 of 2016

M/s Harihar Alloys Private Ltd.,
1/43, Race Course Road,
Kajamalai,
Trichy .

. Appellant
(Rep by Thiru. K.Narasimhan, Advocate)

Vs

1) The Superintending Engineer,
Trichy Electricity Distribution Circle/Metro,
TANGEDCO,
Mannarpuram,
Trichy 620 020.

2) The Chief Engineer,
Trichy Region,
TANGEDCO,
Mannarpuram, Trichy 620 020.

. Respondents
(Rep by Thiru. P. Virudhachalam, SE/Trichy EDC/Metro,
Thiru. N.V. Rajendran, EE/Elect/Trichy & Thiru. S. Selvanarayanan,
AEE/Annavasal on 30.8.16 & Thiru. V. Balamurugan/AEE/Dev on 26.10.16)

Date of hearing : 30.8.2016 & 26.10.2016

Date of Order : 16.11.2016

1. The Petition dt. 9.6.2016 filed by M/s Harihar Alloys Private Ltd., Trichy was registered as Appeal Petition No.47 of 2016.

2. The Appellant prayed to direct the first Respondent to give effect to the reduction of load from 27.8.2015 (when the reduction of demand was approved) instead of 25.11.2015 and refund the excess claimed in the bills of August 2015, September 2015, October 2015 and November 2015 along with interest at 18% per annum from the date of collection of the amount and pass such other orders as this Hon'ble Ombudsman may deem fit and proper under the circumstances of the case and thus render justice.

3. The Appellant's company is engaged in manufacture of Alloy Steel castings. Their service connection number is HTSC No.171, which is coming under the jurisdiction of the first Respondent.

4. The Appellant applied for reduction of load from 1650 KVA to 1250 KVA and paid the necessary fees of Rs.1,04,940/- and executed an agreement in form-8 on 31.8.2015 and submitted the same to the first Respondent on 1.9.2015.

5. The First Respondent informed that the reduction of demand will be considered after payment of arrears of Rs.3,48,30,690/- pertaining to HTSC No.111 which is in the name of M/s Sabari Industries (P) Ltd., and falls under the jurisdiction of Pudukottai EDC.

6. The Appellant filed a writ petition No.18668 of 2015 against the claim of arrears of Rs.3,48,30,690/- and the Hon'ble High Court Bench at Madurai had granted an interim stay on 13.10.2015. After granting the stay order, the reduction of demand was effected on 17.11.2015.

7. The Appellant filed a petition before the CGRF of Trichy EDC/Metro with a prayer to direct the first Respondent to give effect of reduction of demand from 27.8.2015 (the

date on which the reduction of demand was approved) instead of 17.11.2015 and prayed for refund of the excess demand charges claimed in bills of August 2015, September 2015, October 2015 and November 2015 along with interest at 18% per annum from the date of collection of the amount.

8. The CGRF of Trichy EDC/Metro in its order dt.29.1.2016 refused to register the complaint citing the related case W.P.No.(M.D) 18667 of 2015 & M.P.(M.D) No.1 of 2015 is pending before the Hon'ble High Court .

9. The Appellant requested the CGRF to register the complaint stating the cases covered in W.P.No.(MD) 18667 of 2015 & W.P.No.(MD) 18668 of 2015 are for two separate issues and the prayer sought for in W.P.(MD) No.18667 of 2015 filed before the High Court Madurai Bench is not connected with the petition filed before the CGRF. But, even after a lapse of 3 months, the CGRF has not registered its complaint. Hence, the Appellant filed this appeal petition before the Electricity Ombudsman and the same was registered as Appeal Petition No.47 of 2016.

10. A copy of the above appeal petition was forwarded to the Respondents for furnishing their counter vide letter dt.14.6.2016.

11. The Respondent-1 the Superintending Engineer/Trichy EDC/Metro has furnished his counter dt.27.6.2016 which was received on 14.7.2016.

12. To enable the Appellant and the Respondents to putforth their arguments in person, a hearing was conducted on 29.8.2016.

13. Thiru. Narasimhan, Advocate has attended the hearing on behalf of the Appellant and Thiru. Virudhachalam, Superintending Engineer/Trichy EDC/Metro the Respondent-1 herein and Thiru. N.V. Rajendran, Executive Engineer/Electrical,

Thiru.Selvanarayanan, Asst. Exe. Engineer/Annavasal have attended the hearing on behalf of the Respondent-II.

14. The learned advocate appeared for the Appellant argued that the prayer in the writ petition No.18667 of 2015 pending in the High Court of Judicature at Madras at Madurai Bench and the prayer of the Appellant in the appeal petition filed before the Electricity Ombudsman are different and sought time to produce the copy of the affidavit furnished in W.P.No.18667 of 2015.

15. The Respondent argued that on the same issue a case is pending in Madurai Bench of the Madras High Court in W.P.No.18667 of 2015 and hence argued that the matter is sub-judice.

16. The next hearing was conducted on 26.10.2016. Thiru. K. Narashimhan, Advocate attended the hearing on behalf of the Appellant. The learned advocate has not produced the copy of affidavit in support of his argument that the prayer in W.P.No.18667 of 2015 and the prayer in the present appeal petition are different.

17. The Respondent has furnished a copy of the Affidavit filed by M/s Harihar Alloys Ltd., in support of his arguments that the same subject matter is pending at High Court. The prayers of the petitioner (Harihar Alloys (P) Ltd.,) in W.P.No.18667 of 2015 as furnished in the above copy of affidavit is extracted below :

“15. In the Circumstances it is prayed that this Hon’ble Court be pleased to stay the operation of Lr.No.SE/TEDC/Try/AEE/AE/DEV/F.HT.SC/ No.171/D.224/15, dated 15.9.2015 of the second respondent pending disposal of the writ and thus render justice.

16. *In the circumstances it is prayed that this Hon'ble Court may be pleased to issue a writ of Certiorari or any other appropriate writ, order or direction in the nature of a writ of certiorari calling for the records of the second respondent culminating in Lr.No.SE/TEDC/Tr'y/AEE/DEV/AE/DEV/F.HTSC/ SCNo.171/ D.No.224/15, dated 15.9.2015 and to Quash the same and to pass any order or orders in light of the circumstances of the case and thus render justice.*

17. *In the circumstances, it is prayed that this Hon'ble Court may be pleased to issue a writ of Mandamus or any other writ, order or direction in the nature of a writ of mandamus directing the first respondent to dispose forthwith the representation from the petitioner dated 9.9.2015 requesting the second respondent to reduce the sanctioned demand from 1650 KVA to 1250 KVA in respect of its service connection bearing HT SC No.171 situated at SF No.421 & 671 Trichy Thuriyur Main Road, Musiri Taluk, Trichy District and to pass any order or orders as this Hon'ble Court deems fit considering the circumstances of the case and thus render justice.*

18. *In the circumstances, it is prayed that the Hon'ble Court may be pleased to issue and order of Interim Direction directing the second Respondent to charge the petitioner for the HTSC No.171 located at the petitioners Manufacturing unit at SF No.421 & 671, Trichy Thuraiyur Main Road, Musiri Taluk, Trichy District on the basis of 1250 KVA Demand from 15.8.2015, pending disposal of the writ petition and thus render justice.*

19. *In these circumstances, it is prayed that this Hon'ble Court may be pleased to order refund of Rs.50,400/- paid in excess by the petitioner for the*

month of August 2015 with reference to the bill dated 28.8.2015 and also it is prayed that the Hon'ble Court may be pleased to issue an order of Interim direction directing the second Respondent to withdraw the bill already raised for the month of September 2015 vide their bill no.171 dated 30.9.2015 and raise a bill with demand charges for the reduced demand only.

20. It is further prayed that the Hon'ble Court may be pleased to issue an order of Interim Injunction restraining the respondent from taking any conceive steps or disconnection of supply till the revised bill is raised."

18. On a careful reading of the prayers above, it is noted that one of the prayer furnished in para 18 is "to charge the petitioner for the HTSC No.171 located at Petitioner manufacturing unit at SF No.421 & 671 Trichy, Thuraiyur Main Road, Musiri Taluk, Trichy Dist on the basis of 1250 KVA demand from 15.8.2015.

19. The same prayer to effect reduction of load from 27.8.2015(instead of 15.8.2015 as prayed in W.P.No.18667 of 2015) is raised before the Electricity Ombudsman (ie) there is only change in the date of giving effect of the reduction of load in between the prayer in W.P.No.18667 of 2015 and the prayer in A.P.No.47 of 2016 filed before the Electricity Ombudsman.

20. Further, in para 19, it has been prayed to order refund of Rs.50,400/- paid in excess by the petitioner for the month of August 2015 and to withdraw bill already made for September 2015 and to raise a bill with demand charges for the reduced demand only.

21. In the appeal petition filed before the Electricity Ombudsman, the Appellant has requested for refund of the excess claimed in August 2015, September 2015, Oct 2015

and November 2015 along with interest at 18%.

22. It is noted that in the writ petition only refund for two months, (viz) August 2015 and September 2015 were prayed whereas in the appeal petition before the Electricity Ombudsman, the Appellant prayed for refund of the excess demand charges collected not only for August 2015 & September 2015 but also for the month of October 2015 and November 2015 for which bills were raised subsequent to the filing of the writ petition.

23. Though there is a change in the date of seeking the load reduction and the number of months for which refund of demand charges collected without taking into account of reduction of load, the basic prayer is to effect reduction of load and to refund the excess demand charges collected without taking into account of the reduction of load. Therefore, I am of the view that the prayer in A.P.No. 47 of 2016 are covered in the prayer raised in W.P.No.18667 of 2015.

24. As the prayers filed before the Electricity Ombudsman in appeal petition No.47 of 2016 have find place in the writ petition no.18667 of 2015 filed before the Hon'ble High Court of Madras at Madurai Bench. I would like to refer regulation 17(4)(d) of the Regulations for CGRF and Electricity Ombudsman which is extracted below :

“xxxx xxxx xxxx

17(4) no complaint to Electricity Ombudsman shall lie unless ;

(a) the complainant before making a complaint to the Electricity Ombudsman shall made a written representation to the forum of the licensee named in the complaint and either the forum has rejected the complaint or the complainant had not received any reply within a period of fifty days from date of filing of the grievance or the complainant is not satisfied with the reply given by the forum.

(b) The complaint is made within three months after cause of action has arisen.

(c) The complaint, which is not settled, is not in respect of the same subject, which was settled through the office of the Electricity Ombudsman in any previous proceedings whether received from the same complainant or along with one or more complainants or anyone or more of the parties concerned with the subject matter;

(d) The complaint does not pertain to the same subject matter for which any proceedings before any court is pending or a decree or award or a final order has already been passed by any competent court; and

(e) The complaint is not frivolous or vexatious in nature.

25. On a careful reading of the said regulation 17(4)(d), it is noted that Electricity Ombudsman cannot entertain a petition if any proceeding before any court is pending or a decree or award or final order has already been passed by any competent court on the same subject matter.

26. As the same prayer to effect reduction of demand and to refund the excess demand charges collected but with variation in seeking the date of effecting of reduction of demand and period of refund is pending in the Hon'ble Madurai Bench of High Court of Judicature at Madras in W.P.No.18667 of 2015, the matter is sub-judice and the Electricity Ombudsman cannot entertain the above petition for passing an order as per regulation 17(4)(d) of the Regulations for CGRF and Electricity Ombudsman. Hence, the above appeal petition No.47 of 2016 is treated as closed. No Costs.

(A. Dharmaraj)
Electricity Ombudsman

To
1) M/s Harihar Alloys Private Ltd.,
1/43, Race Course Road,
Kajamalai,
Trichy .

2) The Superintending Engineer,
Trichy Electricity Distribution Circle/Metro,
TANGEDCO,
Mannarpuram, Trichy 620 020.

3) The Chief Engineer,
Trichy Region,
TANGEDCO,
Mannarpuram,
Trichy 620 020.

4) The Chairman & Managing Director,
TANGEDCO,
NPKRR Maaligai,
144, Anna Salai,
Chennai – 600 002.

5) The Secretary,
Tamil Nadu Electricity Regulatory Commission,
19A, Rukmini Lakshmi pathy Salai,
Egmore,
Chennai – 600 008.

6) The Assistant Director(Computer) - For Hosting in the TNEO website please
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