

Solaibaba Sami Modern Rice Mills Vs The Superintending Engineer, The Assistant Executive Engineer and The Assistant Executive Engineer

Court: Madras High Court

Date of Decision: Sept. 8, 2006

Acts Referred: Electricity (Supply) Act, 1948 " Section 49

Electricity Act, 1910 " Section 23, 23(3), 23(4)

Tamil Nadu Revision of Tariff rates on Supply of Electrical Energy Act. 1978 " Section 2, 3, 4

Citation: (2007) 1 MLJ 878

Hon'ble Judges: P.K. Misra, J

Bench: Single Bench

Advocate: Ravi and P. Arumugarajan, in W.P. Nos. 11384 to 1386, 11505 to 11514, 11678 to 11690, 12260 to 12262, 12267 to 12269, 12561, 12544, 14576, 14600, 14607, 14807, 14813, 14827, 15038, 15449 of 2003, Jayesh Dolia, for Aiyar and Dolia, in WP. No. 7988 and 7989 of 2003, Vaidyanathan, in WP. No. 1499, S. Parthasarathy for Sarvabhauman Associates in WP. No. 4939 and 4940 of 2001, Mc Gan Law Firm in WP. No. 5600/2001, C. Prakasam, in W.P. No. 10777 of 2005 and T.S. Sivagnanam and S. Ravichandran, in WP. No. 13461 of 2005, for the Appellant; G. Vasudevan, for the Respondent

Judgement

P.K. Misra, J.

In this batch of writ petitions, the petitioners have challenged the right of the respondents to levy penalty for low power factor. Prayer in most of the writ petitions is for issuing mandamus forbearing respondents from levying such penalty. However, in W.P. Nos.

4939, 4940 and 1499 of 2001 a prayer has been made for quashing G.O.Ms. No. 3 Energy (A2) Department dated 7.1.2000. In W.P. Nos.

13461 and 10777 of 2005 prayer has been made for issuing a declaration that low power factor penalty may be declared as ultra vires.

2. The petitioners, who have obtained service connection, have contended that levy of such penalty is illegal as such levy is not contemplated under

the provisions of the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948. It is submitted that under these Acts, penalty is

contemplated for violation of some order but there is nothing in these Acts which authorises levy of penalty for low power factor. It is also

contended that imposition of such penalty is also not contemplated in the Terms and Conditions of Supply of Electricity. The other contention

raised in the writ petitions is to the effect that no opportunity has been given to the petitioners regarding the electronic meter which purports to

indicate about the low power factor and there is no guidelines for gauging the maintenance of power factor.

3. It is contended by the respondents that levy of such amount for low power factor has been fixed as per Section 4 of the Tamil Nadu Revision of

Tariff of Supply of Electrical Energy Act, 1978 (Act 1/1979) and the penalty for maintaining low power factor has been levied as per G.O.3 in the

year 2000 and such levy is legally authorised. It is further contended that such levy had been fixed as per the said G.O. and subsequently the Tamil

Nadu Electricity Regulatory commission became functional and such levy was made as per Tariff Order TRP No. 1 of 2002, which came into

force with effect from 16.03.2003. The basis for calculation of such amount is fixed and the consumers are aware as it is reflected in the Bill. The

consumers are also given incentive if the power factor exceeds the stipulation and a rebate of 0.05% of the current consumption charges is

allowed. Since the meter reading is done in the presence of consumers, there is no further scope for compliance with any other principle of natural

justice and in the absence of any complaint that the meter installed is defective, there is no scope for raising any dispute on that aspect.

4. Before considering the contentions, it is necessary to briefly refer to the concepts relating to power factor. It is well accepted that power factor

is the ratio for active power and apparent power. Power factor is related to active power/energy, reactive power/energy, voltage profile and

transmission and distribution losses of the Transmission and Distribution network and power factor changes in voltage profile of the network. If, in

a network, a consumer maintains a lower power factor, the voltage of distribution licensee network and other consumers of the network are

affected, thereby affecting the equipments and because of the above penalty of low power factor is levied by the Electricity Board as per the

Government orders issued earlier relating to tariff and as per Tamil Nadu Energy Regulatory Commission's Tariff Order subsequently.

5. It is submitted that all over the world, a penalty is incorporated in the energy bill against power factor lower than a set limit. It is also pointed out

by the counsel for respondents that power factor penalty is incorporated in the energy bills of other States such as Andhra Pradesh, Bihar, Gujarat,

Maharashtra, Punjab, etc. and such low power factor penalty is incorporated to discourage erring consumers as otherwise other consumers are

likely to be affected without any fault on their part.

6. With the above background, the two main contentions of the petitioners are required to be considered.

7. It is not disputed that for the purpose of finding out and calculating the low power factor, a Circular was issued informing the various consumers

that electronic meter to record such power factor was installed and the consumers were advised to ensure that the power factor should be

maintained over 0.85 lag. To maintain such power factor at the stipulated level, a capacitor can be installed and in fact most of the petitioners had

done so. The omnibus contention that such low power factor is being calculated unilaterally without any opportunity does not appear to be

acceptable as a circular had been issued for installing such an electronic meter and it cannot be said that the consumers did not have any notice.

8. Coming to the question of the authority to impose any penalty for low power factor, it is necessary to refer the provisions contained in the Tamil

Nadu Revision of Tariff on supply of Electrical Energy Act, 1979 (Act No. 1 of 1979)(hereinafter referred to as "the Act").

The Tamil Nadu Revision of Tariff on supply of Electrical Energy Act, 1979 (Act No. 1 of 1979), is an Act to provide for revision of tariff rates

leviable on electric energy supplied in this State by the Tamil Nadu Electricity Board. u/s 2(b) "Tariff" means

the rate of tariff leviable upon the consumption of any electrical energy in this State supplied by the Tamil Nadu Electricity Board and as specified

in the Schedule to this Act.

Section 3 reads as follows:

Tariff rates for consumption of electrical energy.-- Notwithstanding anything contained in the Tamil Nadu Essential Articles Control and

Requisitioning (Temporary Powers) Act 1949 (Tamil Nadu Act XXIV of 1949), the tariff rates payable to the Tamil Nadu Electricity Board by

any consumer on the electrical energy supplied by the Board shall be as specified in the Schedule to this Act.

Under Section 4, the State Government is empowered to amend the Schedule by notification. By virtue of G.O.Ms. No. 3, Energy (A2), dated

07.01.2000, such schedule has been amended. In the general provisions applicable to consumers covered under High Tension Tariff I to V,

Clause (iv) relates to power factor/low factor surcharge, which is extracted hereunder:

(iv)Power Factor/Low Factor surcharge.-- In respect of High Tension service connections, the average power factor of the consumers installation

shall not be less than 0.90 lag. Where the average power factor of High Tension service connection is less than the stipulated limit of 0.90 lag, the

following compensation charges will be levied:

Below 0.90 lag and upto 0.85

One per cent of the current consumption charges for every reduction of 0.01 in power factor

Below 0.85 to 0.75

One and half per cent of the current consumption charges for every reduction of 0.01 in power factor from 0.90

Below 0.75

Two per cent of the current consumption charges for every reduction of 0.01 in power factor from 0.90.

9. Thus as per Section 4 of the Act 1/1979 the Government can fix the tariff and accordingly it had been done so. Even though the Government

Order had been specifically challenged, the validity of the provisions of the Act 1/1979 is not in question. Since the Government was empowered

to fix the tariff, the levy of penalty for low power factor also can be considered as a part of such tariff. Subsequently, the Regulatory Commission

has fixed such penalty for low power factor and the authority of the Regulatory Commission is also not under challenge.

10. It has been contended by the petitioners in some of the writ petitions filed for declaration that the levy of compensation charges as

recommended by the Tamil Nadu Electricity Board Regulatory Commission is illegal and such levy is not contemplated u/s 23 of the Indian

Electricity Act, 1910. They have invited attention to Section 23(3) of the Indian Electricity Act, which is as follows:

23. Charges for energy to be made without under preference.--

(1) ...

(2) ...

(3) In the absence of an agreement to the contrary, a licensee may charge for energy supplied by him to any consumer--

(a) by the actual amount of energy so supplied, or

(b) by the electrical quantity contained in the supply, or

(c) by such other method as may be approved by the State Government.

(4) Any charges made by a licensee under Clause (c) of Sub-section (3) may be based upon, and vary in accordance with, any one or more of the

following considerations, namely,--

(a) the consumer's load factor, or

(b) the power factors of his load, or

(c) his total consumption of energy during any stated period or

(d) the hours at which the supply of energy is required.

I do not think that the aforesaid provisions in any way prohibit the levy of such compensation. On the other hand, Section 23(3)(c) contemplates

any other method as may be approved by the State Government. It can be said that directing payment of compensation, which has been approved

by the State Government, can be said to be contemplated u/s 23(3)(c). Similarly Section 23(4)(a) and 23(4)(b) take into consideration the

consumers load factor and the power factors. Even though the petitioners have placed reliance on Section 49 of the Electricity (Supply) Act, I do

not think that there is anything in such provision which is contravened by imposition of such levy.

The contention to the effect that the provisions contained in the Electricity Act and the Electricity Supply Act do not contemplate any such

imposition is untenable as the Regulatory Commission is empowered to go into all the relevant factors to fix the tariff. Therefore, the contention to

the effect that there is no authority either to levy low power factor penalty does not appear to be sustainable.

11. It is contended on behalf of some of the petitioners that it is impossible to maintain the power factor as indicated by the

Government/Regulatory Commission. It is obvious that the Government has taken a decision on the basis of the advice of experts. Similarly,

subsequent decision taken by the Regulatory Commission, which includes experts in the field, is also apparently on the basis of the opinion of the

experts. It is difficult for a writ court to come to any conclusion different from the experts, unless specific materials are put-forth before the court.

Since the Regulatory Commission is empowered to consider the matter as an on-going process, it would be always open to the petitioners to bring

these aspects to the notice of the Regulatory Commission during its future deliberations and it goes without saying that all the relevant aspects

should be taken into consideration by the Regulatory Commission in future and if necessary instructions can be issued modifying the paramete Rs.

12. A contention was raised that no penalty can be levied as there is no wilful violation by the consumer. According to the learned Counsel for the

Tamil Nadu Electricity Board the maintaining of the power factor at higher levels is itself an incentive as it benefits the consumers in terms of a

stable voltage operation and reduces the chances of damage to consumers" equipment due to fluctuations and moreover it also leads to cost

savings to the consumers through a lower energy charge. On the other hand, the Tamil Nadu Electricity Board is required to put up capacitor

banks and other infrastructure services to correct the low power factor in the system. Hence, there is justification to charge suitable amount from

the consumer, which is more or less compensatory in nature, though described at times as power factor penalty.

In my considered opinion, such submission made by the learned Counsel for the Board is acceptable and even though at times such imposition is

described as "penalty", it is apparent that the amount demanded by the authorities is only "compensatory" and should not be considered as penalty

in the normal sense such penalty is understood.

13. For the aforesaid reasons, the general contentions in the writ petitions cannot be accepted. However, it is clarified that if there has been any

specific complaint / representation by any of the consumer regarding defect in the electronic meter, at any point of time, obviously, such complaint

is required to be considered by the appropriate authority. But, assuming that there has been some defect in some meters, for that reason the power

to levy low power factor penalty cannot be denied. An individual grievance if any can be considered by the appropriate authority in accordance

with law by raising appropriate dispute.

14. Therefore, while upholding the right to levy low power factor penalty, the writ petitions are disposed of with the observation that if there has

been or is any individual grievance, such individual grievance is required to be considered, in accordance with law. No order as to costs.