



W.P.No.1839 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.04.2024

PRONOUNCED ON : 23.05.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.1839 of 2021
and W.M.P.No.2075 of 2021

Infosys Limited,
#44, Infosys Avenue,
Electronic City, Hosur Road,
Bangalore – 560 100, India.
Also at Techno Park SEZ,
Mahindra World City,
Chengalpattu,
Kancheepuram District – 603 004,
India.

...Petitioner

-Vs-

The Superintending Engineer,
TANGEDCO,
Chengalpattu.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records resulting in the Respondent's proceedings in Lr.No.SE/TANGEDCO/CGL/DFC/AO/REV/AAO-HT/AS2/F.BOAB Audit/D/1226/20, dated 07.11.2020 and HT Bill dated 08.01.2021 for the month of December 2020 demanding of the petitioner to pay Rs.6,76,09,540.12 (Rupees six crore seventy six lakh nine thousand five hundred and forty and paise twelve only) as Shortfall Amount/Adjustment charges and



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consequently quash the same for being arbitrary and illegal and in gross violation of the Electricity Act, 2003 and to direct the Respondent to charge only Industrial Tariff(HT-IA).

For Petitioner : Mr.Jose John
For M/s.King & Partridge

For Respondent : Mr.P.Wilson, Senior Counsel
For Mr.L.Jaivenkatesh,
Standing Counsel

ORDER

This writ petition has been filed challenging the order passed by the respondent dated 08.01.2021, thereby demanding the petitioner to pay a sum of Rs.6,72,95,384/- as shortfall amount and also ordered to bill under the commercial tariff (HT-TF III).

2. The case of the petitioner is that the petitioner has software development facility across the globe and in India. One such facility situated at Mahindra World City, Chengalpattu. The operation of the petitioner involves only software development. It provides facilities like food courts, gymnasiums, shopping outlets, banking facilities etc., as welfare service to its 16,000 employees working out of its campus. These facilities are not open to public and outsourced service providers offer



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services only to the employees on behalf of the petitioner. No rent is collected from any of the service providers. Further, the petitioner does not even charge electricity or water expenses from the service providers who provide those facilities for the welfare of its employees. Therefore, there is no commercial operation in the facility. The petitioner was granted high tension service on 08.08.2005 in service connection No.447. The tariff was fixed for the petitioner under HR tariff I-Industry. Accordingly the petitioner has been regularly remitted the electricity consumption charges to the respondent.

3. While being so, the petitioner received notice dated 19.07.2012 on the file of the Additional Chief Engineer, TANGEDCO stating that the audit by the Board Office Audit Branch has pointed out the short assessment of current consumption bill on account of incorrect application of tariff and the petitioner was called upon to pay a sum of Rs.6,72,95,384/-. As per the Audit Slip dated 28.12.2022, which was also enclosed along with notice, it was claimed that the petitioner also operates Information Technology Enabled Service and hence it should be charged under HT Tariff III (Commercial) for the period April 2009 to November, 2011.



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WEB COPY 4. In response, the petitioner submitted explanation dated 25.07.2012 stating that, it was engaged only in software development and that the industrial tariff was correctly applied. Further, the office of the Development Commissioner, MEPZ has certified that the petitioner was engaged in software development only in the facility. After explanation the matter was put to rest. Therefore, the petitioner understood that the petitioner's explanation was accepted and the claim of tariff under HT Tariff-III was dropped. After more than eight years, on 19.10.2020, once again the respondent made demand for the period April 2009 to November, 2011 by the show cause notice dated 19.10.2020. It was raised after the petitioner approached the respondent for no objection certificate for green power. Once again, the petitioner submitted explanation dated 28.10.2020, reiterating the facts that it was engaged only in software development and also submitted SOFTEX returns in support of its statement. In pursuant to the same, the respondent raised high tension bill dated 08.01.2021 for the month of December, 2020 and added a amount of Rs.6,76,09,540.12 as adjustment charges pursuant to the impugned proceedings.

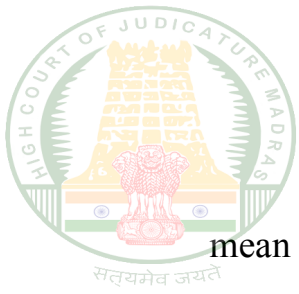


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5. Mr. Jose John, learned counsel appearing for the petitioner

submitted that the claim itself barred by limitation and it is illegal and barred by law and facts. The respondent made demand as early as on 19.07.2012 and on receipt of the reply from the petitioner dated 25.07.2012, the proceeding of the demand was stopped and dropped by the respondent. Therefore, the petitioner had paid the electricity consumption under industrial tariff HT-IA for the period of eight years. Now the respondent raised demand and as such the claim itself barred by limitation of time in terms of Section 56 of the Electricity Act, 2003.

5.1. He further submitted that due to the presence of utilization for commercial activities, the assessment of consumptions of the past and future should be billed under commercial tariff until segregation of such commercial activities based on Tamil Nadu Electricity Regulatory Commission's order dated 11.08.2017 is erroneous as well as arbitrary. The petitioner never leased out any part of its premises to any branded service providers in its food court which is solely for its employee's welfare and has no commercial intent. The petitioner does not even charge any water and electricity charges supplied to the service provider. Though the service providers are running in their brand name, it doesn't



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mean that they are running for profit. Therefore, the commercial tariff would not apply for the service providers of the petitioner. The service providers in turn provide services to the employees of the petitioner at subsidized rates and hence there is no revenue for the petitioner from the sale of foodstuff etc. The welfare activity has no commercial intent. Therefore, the petitioner is not carried out any Information Technology Enabled Service and it cannot be classified under commercial tariff. In fact, the certificate issued by the Development Commissioner, MEPZ and the SOFTEX forms are confirmed that the petitioner is carrying only software development and does not carry any commercial activities. That apart, the consumption of electricity power for these service providers do not involve more than 4% of the energy consumed by them.

6. The respondent filed counter and Mr.P.Wilson, learned Senior Counsel appearing for the respondent submitted that Section 56 of the Electricity Act relates to disconnection of supply in default of payment of current consumption charges. Section 56 of the Electricity Act, has two limbs and two actions are permissible. The first one is to recover the charge of electricity bill by filing suit and other one is to disconnect the electricity supply till the payment of electricity charges.



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The disconnection requires 15 days notice. Clause 2 of the Section 56 of the Electricity Act, states that there can neither be recovery nor the electricity supply be cut-off two years after the amount became due. However, the balance sum due must be shown as continuously as recoverable as arrears of charges. When the demand is made, it becomes a sum due and the non-payment every month becomes a continuing cause of action. The said amount due is continuously shown as recoverable from the petitioner. Therefore, the petitioner cannot rely upon sub clause 2 of the Section 56 of the Electricity Act, to non-suit the respondent.

6.1. Further, the proceeding of the respondent dated 07.11.2020 revealed that it demands to pay a sum of Rs.6,76,09,540.12 and to bill the consumption under the commercial tariff until segregation of commercial activities. Further, there are different activities claimed to be for staff welfare like food court, shopping outlets, gymnasium, auditorium etc., in different blocks in the petitioner campus. But there is no segregation or separate connection and they are not billed separately. The Tamil Nadu Electricity Regulatory Commission of the year 2017, mandates that supply used for creating facilities for the compliance of Acts/Laws or for the facilities incidental to the main purpose of the establishment of the



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consumer, such as facilities extended to their employee/students/patients/

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residents as the case may be, the premises of the consumer, shall be considered to be bonafide purpose, irrespective of whether there are outsourced to a third party or provided by the consumer himself.

6.2. However, if such facilities extended to the public, or if part/full premises are leased/rented out to a service provider like food outlets present in food court, which provide service in their own name, the energy consumption to such facilities shall be metered by the license separately and only the energy charges under appropriate LT tariff. Such metered energy consumption shall be deducted from the total energy consumption registered in the main meter of the HT/EHT supply for billing. Accordingly, if the facilities are extended to the public or the premises are leased out to service provider which provides service in their own name or rent is collected, then the energy consumption must be metered separately.

6.3. Admittedly, the petitioner licensed its premises to its service providers on the agreement and collecting certain amounts from the service providers. Hence, the respondent will take decision after



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inspection. Therefore, the respondent cannot be precluded from deciding the applicability of the tariff on the basis of the facts available. After inspection the decision will be taken on the basis and also on the follow up action will be taken.

7. Heard the learned counsel appearing on either side and perused the material placed before this Court.

8. On perusal of the license agreement filed by the respondent between the petitioner and its service provider revealed that the service providers are not paying any rent for the premises which is provided to them and also for the electricity charges, water charges for their portion. However, the petitioner collected license fee from its service providers. Though the service providers of the petitioner are not paying any rent or electricity charges and water charges for their portion, which is provided to them to run their business, the service providers are running their business to the petitioner's employees with profit. No service provider is running their respective business on subsidized rate to the employees of the petitioner.



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9. Further all the service providers are running their business in

their brand name viz., Murugan Idly Shop, Apollo Pharmacies Limited, ICICI Bank etc., which is very familiar to the general public. For example no bank would operate on subsidized rate such as for low interest. No food provider would sell the food without any profit that too, all the food providers are running their business in their own brand name.

10. Insofar as the contention raised by the learned counsel appearing for the petitioner regarding limitation, the learned Senior Counsel appearing for the respondent relied upon the judgment of the Hon'ble Supreme Court of India reported in **(2022) 2 SCC 25** in the case of **Union of India and ors Vs. N.Murugesan and ors**, which held as follows :-

"27.2. State of Punjab v. Dhanjit Singh Sandhu: (SCC pp. 153-54, paras 22-23 & 25-26)

"22. The doctrine of "approbate and reprobate" is only a species of estoppel, it implies only to the conduct of parties. As in the case of estoppel it cannot operate against the provisions of a statute. (Vide CIT v. MR. P. Firm Muar.)

23. It is settled proposition of law that once an order has been passed, it is complied with, accepted by the other party and derived the benefit out of it, he cannot challenge



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it on any ground. (Vide Maharashtra SRTC v. Balwant Regular Motor Service.) In R.N. Gosain v. Yashpal Dhir this Court has observed as under: (R.N. Gosain case, SCC pp. 687-88, para 10)

"10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage"

11. Thus, the doctrine of election is based on the rule of estoppel - the principal that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of law and the person may be precluded by way of his actions or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had. Thus, a party cannot be permitted to blow hot-blow cold, fast and loose or approbate and reprobate. Where one knowingly accepts the benefits of a contract or conveyance, or of an order, the person is estopped from denying the validity of or the binding effect of such contract or conveyance or order upon himself. This rule is applied to

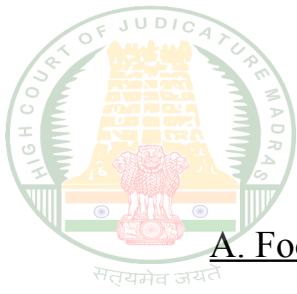


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ensure equity, however, it must not be applied in such a manner so as to violate the principles of what is right and of good conscience.

12. The above dictum has been relied upon by the petitioner that once the respondent accepted the explanation submitted by the petitioner for the show cause notice dated 19.07.2012 as if the petitioner is engaged only in software development and industrial tariff was rightly applied to the petitioner and thereafter after the period of eight years once again issued notice dated 19.10.2020, stating that the petitioner is also operated and engaged in information technology enabled services along with commercial activities.

13. Further, the petitioner's premises was inspected on 04.12.2020. The service connection is being under tariff HT-IA industrial tariff, from the date of service connection. The load details of available industrial and commercial establishment such as food court, shopping outlets, food catering, gymnasium, auditorium, mini theater, hospital facilities have also been taken into consideration. On inspection, following load utilized by the service providers of the petitioner as follows :-



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A. Food Courts:-

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Sl.No	Name of the private vendors	Load in KW
1	Murugan Idly shop	15.35
2	Kannan coffee	36.61
3	Carnival	103.0
4	Dhal Roti	9.0
5	Clay over	6.0
6	Frootz	3.0
7	Sri Yoga Hayagraver	8.2
8	Sandheepa	20.5
9	Tulsi Shop	65.0
10	Chair Brother	8.0
	Total	274.66 or 275

B. Shopping complex :-

Sl.No	Name	Load in KW
1	ICICI Bank	8.0
2	Future Lifestyle Fashion Limited (Indigo Nation)	3.5
3	Aditya Birla Retail Limited (MORE)	6.0
4	PRISM Corporation Pvt. Ltd. (ODYSSEY)	3.5
	Total	21.0

C. Club House & Hospital Facilities (First Aid Center):-

Sl.No	Name	Load in KW
1	Lifetime Wellness RX International Ltd., (APOLLO) & APOLLO Pharmacy	15.0
2	Club House	75
	Total	90

Out of total load availed by the petitioner viz., 9550 KVA, the petitioner's service providers used the electricity power for commercial purpose to



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the extent of 386 KW. As per the Board Memo No.77 dated 02.02.2008

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and as per the Tamil Nadu Electricity Regulatory Commission's tariff order dated 15.03.2003, the basic service providers and IT enabled services are to be charged under HT tariff III for HT services and LT tariff V for LT services. The information technology enabled services including the business process outsourcing.

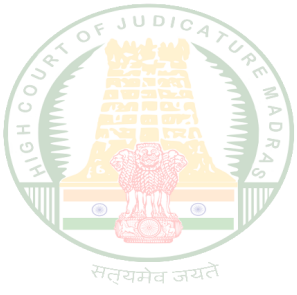
14. On perusal of audit enquiry report dated 20.05.2009 revealed that the petitioner is engaged in the activities of software development and also information technology enabled services as certified by MEPZ, Chennai. Based on the Board circular dated 02.02.2008, all the companies engaged in the activities of Information Technology Enabled Services should be billed under the commercial tariff. No separate means was adopted to ascertain the activity of the company and as such the bills were rendered under HT Tariff I Industry based on the certificate issued by MEPZ, Chennai. Hence, in as much as the certificate provides proof of the petitioner being engaged in both software development and Information Technology Enabled Service, within the same premises, and it is appropriate to adopt higher tariff which is the norms, in the case of services engaged in two types of activities, within the same premises.



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Therefore, the respondent ought to have adopted commercial tariff for the petitioner. Non-adoption of the same has resulted in loss of revenue to the extent of Rs.4,50,18,325/-. Further on perusal of subsequent demand, it was clearly mentioned about the amount due from the petitioner for the amount calculated under the commercial tariff in respect of these service providers. Therefore, the judgment cited by the learned counsel appearing for the petitioner is not applicable to the case on hand.

15. Further, it also cannot be said that the demand made by the respondent barred by limitation as per Sub Clause 2 of Section 56 of the Electricity Act. As per the Tamil Nadu Electricity Regulatory Commission's order No.3 of 2010 dated 31.07.2010, Clause 9.10.4.8, the HT/LT services of information technology enabled services or private communication providers will be charged under HT tariff III or LT tariff V. Accordingly, the different to be collected from the petitioner from April, 2009 to August, 2010 is Rs.2,34,85,411/- under the HT tariff III. For the period from August, 2017 to February, 2024, the different amount to be collected from the petitioner is to the tune of Rs.7,12,51,028/- under HT Tariff III.



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25.03.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

rts

To

The Superintending Engineer,
TANGEDCO,
Chengalpattu.



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G.K.ILANTHIRAIYAN. J.

rts

ORDER IN
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and W.M.P.No.2075 of 2021

23.05.2024