IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2015

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.4742 of 2012

M/s.Saravana Global Energy Limited
rep by its Authorised Signatory
registered office at No.43,
Vijayaraghava Road
T.Nagar, Chennai-600 017 .. Petitioner

vs.

1. The Chairman
Tamil Nadu Electricity Board
Chennai

2. The Superintending Engineer
Cuddalore Electricity Distribution Circle
Tamil Nadu Electricity Board
Cuddalore .. Respondents

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records relating to the impugned notice of the second respondent Lr.No.SE/CEDC/Cud/DFC/AO/R/AS/RCS/A4/F Audit/11 dated 31.12.2011 and quash the same as illegal and unconstitutional.

For petitioner : Mr.G.Kalyan Jhabakh
for Surana & Surana

For respondents : Mr.M.Varunkumar for R1 and R2

O R D E R

Heard the learned counsels appearing for the parties concerned.

2. It has been stated that the petitioner is a Company incorporated under the Companies Act, 1956. It is carrying on business in manufacturing transmission and distribution of equipments relating to the power sector. It has been further stated that the property of the petitioner, at Vadalur, had been

purchased by Padam Challani, in the auction proceedings, held on 9.7.2003, in O.A.No.355 of 2001. The auction had been conducted by the Debts Recovery Tribunal (I), Mumbai. The auction had been confirmed in the name of Padam Challani and a sale certificate had been issued to him. Thereafter, Padam Challani, had sold the properties to the petitioner, by way of a registered sale deed, dated 7.3.2007.

3. It has been further stated that, at the time of the purchase of the property, by the petitioner, it had been informed that the electricity service connection, given in favour of the previous owner of the property, had been disconnected, during the year, 1990. Nothing had been stated about the deposit which it made for obtaining the electricity service connection. The petitioner had been informed that it had to apply for an electricity service connection, as a new applicant. The petitioner had obtained a fresh electricity service connection for its premises, in H.T.S.C.No.118/TF/IA/SD/2110 KVA. The earlier electricity service connection given to Seshasayee Industries Limited, Vadalur, had been disconnected, on 16.10.1990. While so, the petitioner had been served a notice, dated 31.12.2011, by the second respondent, asking the petitioner to remit the sum of Rs.13,53,867/- towards the outstanding dues, relating to H.T.S.C.No.4/TF.I/SD/4200 KVA given to the erstwhile owner of the property belonging to the petitioner.

4. It had also been stated that after issuing of notices to the previous consumer, the accounts had also been closed, on 22.11.2001, and the amount of Rs.9,21,847/-, available with the Tamil Nadu Electricity Board, had been adjusted towards the dues payable by the erstwhile owner of the property concerned. The petitioner had become the owner of the property only by way of the sale deed, dated 7.3.2007. In such circumstances, the petitioner is not liable to pay the amount claimed by the second respondent, as it is barred by limitation. The payment made by the second respondent is not enforceable, as per Section 56 (2), read with Regulation 21 of the Tamil Nadu Electricity Supply Code, 2004. The petitioner cannot be considered as a consumer within the meaning of Rule 2(g) of the Tamil Nadu Electricity Supply Code, 2004, in view of the fact that the earlier electricity service connection given to Seshasayee Industries Limited, Vadalur, had not been restored. The new electricity service connection had been given to the petitioner, on payment of the necessary charges. Therefore, it would not be proper for the second respondent to pass the impugned order asking the petitioner to remit a sum of Rs.13,53,867/-, towards the dues.

5. A counter affidavit has been filed on behalf of the respondents. It has been stated that the petitioner is an agreement holder. It is bound by the terms and conditions of the supply of the electricity, as per the provisions of the Tamil Nadu Electricity Supply Code and the distribution code.

6. It had been noted that the electricity service connection, in H.T.S.C.No.4/TF.I/SD/4200 KVA, given to M/s.Seshasayee Industries Limited, Vadalur, had been disconnected, on 16.10.1990, due to non- payment of the electricity charges. The account had been closed, on 22.11.2001. It was found that the outstanding dues of M/s.Seshasayee Industries Limited was Rs.4,80,937/-. In the meantime, the Government of Tamil Nadu had issued an order in favour of the petitioner, to avail certain facilities in the existing and newly effected service connection, by way of a Government order, in G.O.Ms.No.35, Industries (MIA 1) Department, dated 31.3.2010. Accordingly, the power cut exemption and electricity tax exemption had been permitted to the existing electricity service connection, with immediate effect. However, no action had been taken to collect the outstanding amount of Rs.4,80,937/-, which relates to the petitioner. As the assets of M/s.Seshasayee Industries Limited, Vadalur, had been acquired by the petitioner, the second respondent had issued the impugned proceedings asking the petitioner to remit the sum of Rs.13,53,867/-.

7. An additional counter affidavit has also been filed on behalf of the respondents stating that the petitioner ought to pay the outstanding dues of Rs.4,90,987/-, together with the belated payment surcharge, amounting to a sum of Rs.13,53,867/-. As per the terms and conditions of the sale agreement, the petitioner could pay the said amount and recover the same from the vendor of the assets, namely, M/s.Seshasayee Industries Limited, Vadalur.

8. The learned counsel appearing for the petitioner had relied on the decision of the Division Bench of this Court, dated 27.1.2015, in W.A.No.719 of 2014 (THE ASSISTANT ENGINEER/O&M Vs. SABASTHI AMMAL AND ORS) in support of his contentions.

9. The learned counsel appearing for the respondents had relied on the following decisions in support of his contentions.
(i) PASCHIMANCHAL VIDYUT VITRAN NIGAM LTD., Vs. DVS STEELS & ALLOYS (P) LTD., (2009) 1 SCC 210.
(ii) HARYANA SEB Vs. HANUMAN RICE MILLS (2010) 9 SCC 145.
(iii) DAKSHIN HARYANA BIJLI VITRAN NIGAM LTD., Vs. PARAMOUNT POLYMERS (P) LTD., (2006) 13 SCC 101.

10. In view of the submissions made by the learned counsels appearing on behalf of the parties concerned and on a perusal of the records available and in view of the decisions cited supra, this Court is of the considered view that the petitioner has shown sufficient cause to set aside the impugned order of the second respondent, dated 31.12.2011, as prayed for by the petitioner, in the present writ petition.

11. As seen from the records available, it is noted that the electricity service connection No.H.T.S.C.No.4/TF.I/SD/4200 KVA, given to M/s.Seshasayee Industries Limited, Vadalur, had been disconnected due to the non-payment of the electricity consumption charges. The account relating to the said electricity service connection had been closed, on 22.11.2001, with an outstanding amount of Rs.4,80,937/- as the dues payable to the Tamil Nadu Electricity Board. However, the assets of M/s.Seshasayee Industries Limited, Vadalur, had been sold, by way of an auction held on 9.7.2003. A sale certificate had also been given in favour of the highest bidder. Thereafter, M/s.Saravana Global Energy Limited, which had been established in the year, 2003, had acquired the assets, by way of a sale deed, dated 7.3.2007, entered into with Padam Challani. A Government order had been passed, in G.O.Ms.No.35, Industries (MIA 1) Department, dated 31.3.2010, granting certain exemption, including the electricity tax exemption, for setting up an integrated power equipments manufacturing complex in Kancheepuram District. While so, the second respondent had issued the impugned order, dated 31.12.2011, asking the petitioner to remit a sum of Rs.13,53,867/-, as dues of M/s.Seshasayee Industries Limited, Vadalur. However, no acceptable reasons had been shown on behalf of the respondents stating the reason as to why no steps had been taken by the respondents, to collect the outstanding dues, for more than 20 years.

12. It has also been brought to the notice of this Court that no claim had been made by the respondents, as the Official Receiver had been appointed to take over the assets before it had been brought for sale, by way of an auction held by the Debts Recovery Tribunal (I), Mumbai.

13. No reasons had been shown for the undue delay in making the demand, with regard to the arrears of the electricity consumption charges payable by M/s.Seshasayee Industries Limited, Vadalur. It is also noted that a Government order had been issued, in G.O.Ms.No.35, Industries (MIA 1) Department, dated 31.3.2010, granting a new electricity service connection in favour of the petitioner, for setting up an Integrated power equipments manufacturing complex in Kancheepuram District.

14. It had also not been shown that the petitioner had been put on notice, with regard to the outstanding dues liable to be paid by M/s.Seshasayee Industries Limited, Vadalur, before the petitioner had purchased its assets. Further, nothing has been placed on record before this Court to show that the claim had been made against Padam Challani for the payment of the dues, after he had purchased the assets of M/s.Seshasayee Industries Limited, Vadalur, by way of an auction, held on 9.7.2003. While so, it would not be proper on the part of the second respondent to make a demand, with regard to the arrears payable by M/s.Seshasayee Industries Limited, Vadalur, in respect of the electricity service connection, which had been disconnected, on 16.10.1990. Thus, it is clear that the claim of the second respondent, against the petitioner, for the payment of the dues, after a lapse of more than 20 years, cannot be sustained. It is also noted that the decisions cited by the learned counsel appearing for the respondents are not applicable to the facts and circumstances of the present case.

15. There is no clear explanation as to the delay on the part of the respondent Tamil Nadu Electricity Board to make the claim, belatedly. In such circumstances, this Court finds it appropriate to set aside the impugned order of the second respondent, dated 31.12.2011. Accordingly, the writ petition stands allowed. The amount deposited, by the petitioner, pursuant to the order passed by this Court, on 15.3.2012, in M.P.No.2 of 2012, shall be adjusted towards the future bills to be raised by the respondent Tamil Nadu Electricity Board, with regard to the consumption of electricity, by the petitioner. No costs. Connected M.P.No.1 of 2012 is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To:
1. The Chairman
Tamil Nadu Electricity Board Chennai
2. The Superintending Engineer
Cuddalore Electricity Distribution Circle
Tamil Nadu Electricity Board Cuddalore

+1cc to Mr.M. Varunkumar, Advocate, S.R.No.57490
+1cc to M/s. Surana & Surana, Advocate, S.R.No.

AR(CO)
EU(20/11/2015)

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