

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:22.12.2015

Date of Reserving the Order	Date of Pronouncing the Order
17.12.2015	22.12.2015

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.No.32659 of 2015

Mountain Spinning Mills Limited,
Rep., by its Managing Director G.Vettivel,
S/o.A.M.M.S.Ganesan
No.97/1A, Kottudankadu,
Mangalagiri Post,
Tuticorin District - 628 103. Petitioner

Vs.

- 1.The Director (Distribution)
Tamil nadu Generation and Distribution
Corporation Limited,
144, Anna Salai, Chennai - 600 002.
- 2.The Executive Engineer/Rural/Tamil Nadu
Generation and Distribution Corporation Ltd.,
Ettayapuram Road,
Thoothukudi - 628 002.
- 3.The Asst., Executive Engineer/Rural/Tamil Nadu
Generation and Distribution Corporation Ltd.,
Ettayapuram Road, Thoothukudi - 628 002.
- 4.The Chairman,
Tamil Nadu Electricity Board,
144, Anna Salai, Chennai - 600 002. Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus, to direct the respondents to forthwith provide uninterrupted power supply to the petitioner Mill in HTSC No.92 to the exception of scheduled load shedding and any contingency areas like grid failure, overloading, etc as per the representation, dated 12.09.2015, given to the respondents herein based upon the order dated 05.03.2015, in the Writ Appeal No.190 of 2015, passed by this Court.

For petitioner .. Mr.G.Ravikumar

For Respondents .. Mr.P.H.Aravindh Pandian
Additional Advocate General
Assisted by
Mr.S.K.Rameshuwar

O R D E R

The petitioner is a Spinning Mill and this Writ Petition is for issuance of a Writ of Mandamus to direct the respondents/TANGEDCO to forthwith provide uninterrupted power supply to the petitioner Mill, having a High Tension Service connection bearing HT SC No.92 to the exception of schedule load shutting and any contingency like grid failure, overloading etc., by considering the petitioner's representation dated 12.09.2015, which has been submitted by the petitioner based on the judgment of the Hon'ble Division Bench of this Court in W.A.No.190 of 2015, dated 05.03.2015.

2. Heard Mr.G.Ravikumar, learned counsel for the petitioner and Mr.A.H.Aravindh Pandian, learned Additional Advocate General assisted by Mr.S.K.Rameshkumar, learned counsel for the TANGEDCO and perused the materials placed on record.

3. The petitioner Spinning Mill was established during 1992 engaged in production of cotton yarn for domestic as well as international markets and it is stated to employ 200 Workmen. The petitioner would state that their customers are very important and they are bound to effect supply of material to their customers on time and therefore, the petitioner requires uninterrupted power supply and with such request, they approached TANGEDCO to ensure that the power supply is not interrupted and the voltage is properly maintained. The petitioner would state that they had to approach the respondent for uninterrupted power supply, as there were unscheduled tripping for several months besides scheduled load shedding and peak hours restrictions resulting in loss of production and consequently resulting in financial loss.

4. The learned counsel for the petitioner submitted that in terms of Regulation 3 of the Tamil Nadu Electricity Distribution Standards of Performance Regulations, quality of service has been defined to mean to provide uninterrupted reliable electric supply at stipulated voltage and frequency which will be the end result and its planning, designing of network, operation and service management to ensure stability in supply and prompt compliance of consumers' complaints on metering and billing; the supply with frequency power failure, fuse of calls, voltage fluctuations will not ensure continuity

in supply and these factors determine the degree of satisfaction of the consumers. It is further submitted that frequency unscheduled tripping is primarily due to lack of maintenance work on the part of the respondents, which is clearly avoidable, and therefore, the respondent should ensure that the insulators are in order by carrying out periodic maintenance work and in spite of several representations, since no action was taken by the respondents, the petitioner approached this Court by filing a Writ Petition in W.P.No.28890 of 2014, seeking direction upon the respondents to provide uninterrupted power supply to their Spinning Mill. The said Writ Petition was allowed by order dated 11.12.2014, with a direction to the respondents to provide uninterrupted power supply to the petitioner Spinning Mill to the exception of scheduled load shedding, against which, the respondents filed W.A.No.190 of 2015, contending that uninterrupted power supply to the petitioner is not feasible as there is scheduled load shedding and also some time grid failure and other breakdown and other contingencies and to maintain uninterrupted power supply to the exception of scheduled load shedding may be difficult to be complied with. The petitioner, who was the respondent in the said Writ Appeal submitted that the grievance of the petitioner is one of non-supply or uninterrupted supply of electricity in the normal course and in case of contingency or scheduled load shedding, the petitioner has no objection. In the light of the said submission, the Hon'ble Division Bench of this Court by judgment, dated 05.03.2015, disposed of the Writ Appeal clarifying that the order passed in the Writ Petition shall be maintained except in case of scheduled load shedding and any contingency areas like grid failure, overloading, etc. It is further submitted that inspite of the orders passed by the Hon'ble Division Bench, the power interruption continued unabated, which caused heavy financial loss to the petitioner, and therefore, the petitioner filed a Contempt Petition in C.P.No.1268 of 2015, which was dismissed by order dated 02.09.2015. Thereafter, the petitioner is said to have submitted a representation on 12.09.2015, mentioning the details of power interruption that occurred during the period from 01.09.2015 to 11.09.2015, and it is submitted that even during the subsequent period till 30.09.2015, the power supply was disrupted 52 times for a total of 10 hours and one minute and this is due to the fact that no routine maintenance work was done by TANGEDCO, no pre-monsoon inspection was conducted, inferior quality insulators were used, failure to effect cleaning operations on monthly basis etc. Since no action has been taken on the representation dated 12.09.2015, the petitioner has filed this Writ Petition.

5. The learned counsel appearing for the petitioner after reiterating the above factual submissions, referred to the Tamil Nadu Electricity Board Maintenance Manual for

Distribution Network and submitted that the respondents have failed to carry out periodic maintenance work, which has put the petitioner to great prejudice.

6. The learned Additional Advocate General submitted that the Writ Petition is not maintainable in the light of the orders passed by the Hon'ble Division Bench in W.A.No.190 of 2015, and in Contempt Petition No.1268 of 2015. It is submitted that the petitioner without being aware of the shut down procedure, has filed this Writ Petition and a total shut down procedure in the sub-station was programmed to carry out the maintenance to work both in the sub-station and the HT feeder, emanating from the sub-station, all essential maintenance works such as tree cutting, damaged line, materials changing, rectification works are programmed on the said date to avoid unexpected interruption. Similarly, the sub-station equipment is also maintained and the shut down is carried out after due publication in the newspapers well before the day of shut down. In this regard, the copy of the Tamil Daily, viz., 'Dinathanthi' dated 15.10.2015, was produced before this Court for reference, and it was submitted that the petitioner was also informed over phone a day ahead of the shut down. The request made by the petitioner for back feeding arrangement is stated to be not feasible, as it would make the entire HT line in live condition and no maintaining work would be carried out. Further, it is submitted that the scheduled load shedding is programmed to maintain the grid frequency in the entire State that SLDC. Further, the procedures followed by the respondents have been set out in paragraph 7 of the counter affidavit. It is submitted that the actual duration of interruption for 19 days i.e., out of 456 hours, is only 5 hours and 12 minutes and the reasons thereof have been set out in paragraphs 8(i) to 9(xiii) of the additional counter affidavit. It is submitted that the affidavit filed in support of this Writ Petition is verbatim same to the affidavit filed by the petitioner in connection with C.P.No.1268 of 2015, and the said submissions were considered by the Hon'ble Division Bench and Contempt Petition was dismissed. Further, it is submitted that several improvement works were completed and one new 100/22KVSS was proposed to bifurcate the load of 22KV Mill feeder and all the works were combinedly inspected by the team of officers on 27.10.2015, along with the special maintenance team and copies of the maintaining work register have been furnished in the form of typed-set of papers. It is further submitted that another Writ Petition was filed by the petitioner in W.P.No.30868 of 2014, wherein, he wanted a dedicated feeder line. The said Writ Petition was disposed of by order dated 07.09.2014. Against which, the respondents preferred W.A.No.569 of 2015, and the Writ Appeal was disposed of by judgment dated 23.04.2015, with a direction to the petitioner to satisfy all the requirements for installing the

dedicated feeder line and thereafter, ordered the respondents to take steps to grant the dedicated feeder line. It is submitted by the learned Additional Advocate General that the petitioner has not complied with the directions of the Hon'ble Division Bench and has not satisfied the requirements for installing the dedicated feeder line and has abandoned such request. Further, by referring to the typed set of papers filed by the respondents, it is submitted that the actual interruption which have occurred for the period from 01.09.2015 to 30.09.2015, have been furnished in a tabulated statement, which is replete with details, including the reason for interruption. It is submitted that these interruptions are contingencies which were taken note of by the Hon'ble Division Bench in W.A.No.190 of 2015 and when the petitioner alleged violation of the said order, the Hon'ble Division Bench dismissed the Contempt Petition by order dated 02.09.2015 and therefore, the present Writ Petition is clear abuse of process of Court and an attempt to grab the dedicatory feeder or its equipment by unlawful method and therefore, the Writ Petition is liable to be dismissed.

7. An additional affidavit has been filed by the petitioner stating the disruption power supply, which have occurred from 01.11.2015 to 19.11.2015 and reiterated the submission that it is on account of the non-adherence to the maintenance manual and lack of inspection.

8. After hearing the learned counsel appearing for the parties and perusing the materials placed on record, it has to be held that the petitioner seeks to re-agitate a settled issue by way of this Writ Petition. This conclusion is supported by the following reasons :-

9. Challenging the order passed in W.P.No.28890 of 2014, dated 19.12.2014, wherein, this Court issued a positive direction to the respondents to provide uninterrupted power supply to the petitioner Mill to the exception of scheduled load shedding, the respondent filed W.A.No.190 of 2015, contending that this was not feasible as interruption of power supply could occur due to various factors. The Hon'ble Division Bench disposed of the appeal by judgment dated 05.03.2015, clarifying the order passed by the Writ Court and directing the same to be maintained except in the case of scheduled load shutting and any contingency area, like grid failure, overloading, etc. Thus, the Hon'ble Division Bench did not confine the interruption to schedule load shutting, but other contingency areas like grid failure, overloading etc. Now, the issue would be as to whether the interruptions which have occurred, as pointed out by the petitioner in their affidavit as well as their additional affidavit would fall within any of these contingencies?.

10. Admittedly, the maintenance of uninterrupted power supply is a technical issue. Therefore, the Hon'ble Division Bench was conscious that all parameters which would fall within the ambit of such contingency could not be included and therefore, use of express "ETC". The respondents in their counter affidavit have justified their stand and have given the details of interruption which have occurred in a tabulated format giving reasons for each interruption. This Court exercising jurisdiction under Article 226 of the Constitution would lack expertise to examine as to whether the technical reason on account of which interruption took place would fall within the ambit of the contingency "ETC". The respondents is a limb of the Government and while controlling their electrical installations and while maintaining power supply, they should be given leverage exercise their technical expedite. This Court cannot convert itself as an appellate forum over the decision taken by the respondents which are undoubtedly technical matters. The petitioner has not disputed the reasons assigned by the respondent for the interruptions which have occurred, but their case appears to be that the maintenance work has not been carried out in accordance with the procedure provided under the maintenance manual. This averment is denied by the respondents stating that regular maintenance work is being periodically carried out prior notice is given before the load shedding which is also widely published in the newspapers.

11. In such factual scenario, this Court is not inclined to disbelieve the stand taken by the respondent Board. That apart, the allegations and averments based on which this Writ Petition has been filed is virtually the same as was done in Contempt Petition No.1268 of 2015. While dismissing the Contempt Petition by order dated 02.09.2015, the Hon'ble Bench took note of the counter affidavit filed by the respondent and observed that the respondent has clearly indicated the steps taken by them to comply with directions given by the Court. Further, it was held that the respondent has explained the action taken by the authorities to comply with the direction issued by the Hon'ble Division Bench and therefore, there was no act of disobedience on the part of the respondents so as to give a cause of action to the petitioner to initiate proceedings for contempt. The Hon'ble Division Bench having been satisfied that the respondents have taken steps to comply with the directions issued by the Division Bench and there is no case made out for initiating contempt proceedings, this Court cannot reconsider the same issue and issue directions which would run counter to the observations made by the Hon'ble Division Bench. The Hon'ble Division Bench was satisfied with the explanation given by the respondents to comply with the directions of the Court. In such circumstances and for the same reasons once over again the petitioner cannot seek to re-

agitate the matter and file this Writ Petition. In other words, the Writ Petition is clearly barred by the principle of resjudicata.

12. For all the above reasons, the petitioner has not made out any case for issuing a Writ of Mandamus as sought for and the Writ Petition being devoid of merits is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To

- 1.The Director (Distribution)
Tamil nadu Generation and Distribution
Corporation Limited,
144, Anna Salai,
Chennai - 600 002.
- 2.The Executive Engineer/Rural/Tamil Nadu
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- 4.The Chairman,
Tamil Nadu Electricity Board,
144, Anna Salai,
Chennai - 600 002.

3 ccs to Mr.G. Ravikumar, Advocate, Sr. 69704
1 cc to Mr.S.K.Rameshuwar, SR. 69740

W.P.No.32659 of 2015

VGI (CO)
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