

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2015

Date of Reserving the Order	Date of Pronouncing the Order
06.11.2015	30 .11.2015

Coram

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

W.P.No.36143 of 2015

M/s.Laxmi Rolling and Strips Pvt., Ltd.,
Rep., by its Director,
Hosur - Thally Road,
Kalukondapalli Village
Belagondanpalli PO
Hosur 635 114.

... Petitioner

Vs.

- 1.The Tamil Nadu Electricity Board (TNEB)
Rep., by its Chairman & Managing Director
No.144, Anna Salai,
Chennai - 600 002.
- 2.The Tamil Nadu Distribution and Corporation,
(TANGEDCO) Limited, Rep., by its Chairman &
Managing Director, No.144, Anna Salai,
Chennai - 600 002.
- 3.The Superintending Engineer,
Krishnagiri Electricity Distribution Circle,
The Tamil Nadu Distribution and Corpn.,
(TANGEDCO) Limited,
Kirshnagiri.
- 4.M/s.Chamundi Steel Castings (India) Ltd.,
No.17/21, Casa Capital Wood Street,
Ashok Nagar,
Bangalore 560 025.

... Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the records of the proceedings of the third respondent herein bearing letter No.SE/KEDC/Kgiri/DFC/AAO/HT.AS/RCS/F, HTSC 322/D No.171/2015, dated 26.10.2015 and quash the same.

For Petitioner .. Mr.AR.L.Sundaresan Senior counsel for
M/s.AL.Gandhimathi

For Respondents .. Mr.P.H.Aravind Pandian AAG
Assisted by
Mr.M.Varunkumar for RR1&3

O R D E R

The petitioner, a private limited company incorporated under the provisions of the Companies Act, 1956, has filed this Writ Petition praying for issuance of a Writ of Certiorari, to quash the proceedings of the third respondent, dated 26.10.2015.

2. By the impugned proceedings, the petitioner was informed that the fourth respondent had availed three High Tension service connections in the same premises bearing service connection Nos.322, 159 and 204. Initially the fourth respondent had a service connection in HT SC No.194 which was closed on 26.08.2002 and new service connection was applied for the same premises, which was considered and connection was effected assigning service connection in HT SC No.322. It is further stated in the impugned order that in respect of HT SC No.194, which was closed, there is an arrear of tariff concession being Rs.1,33,07,285/- and challenge to the said demand was pending before this Court in W.P.No.14216 of 1997. After the final decision in the said Writ Petition on 09.03.2015, a demand notice was issued to pay the tariff concession arrears along with Belated Payment Surcharge (BPSC). In the impugned order after considering the petitioner's reply dated 03.09.2015 and a legal notice sent by the petitioner, considering the submissions made and relying upon a decision in W.P.(MD).No.7587 of 2011, dated 29.04.2014, the third respondent informed the petitioner that they are liable to pay Tariff Concession Arrears of the erstwhile owner namely, the fourth respondent and directed them to pay a sum of Rs.5,45,93,393/-. The petitioner was informed that while applying for name transfer, the transferrer namely the fourth respondent transferred the security deposit paid by them and all the rights

and liabilities with respect to their service connection and it was agreed to by the petitioner by an undertaking duly signed and attested by a Notary Public. Further, by referring to the clause 6.10, it is submitted that the purchaser is responsible for the dues of the previous owner and the petitioner enjoying the fruits of the deposits made by the erstwhile owner, they are also responsible to clear the liability.

3. Mr.AR.L.Sundaresan, learned counsel appearing for the petitioner elaborately referred to the factual aspects and submitted that after the petitioner purchased the premises with the three service connections, they had remitted a sum of Rs.42,10,606/- in respect of HT SC No.204; Rs.91,72,222/- in respect of HT SC No.322; and Rs.22,13,110/- as Current Consumption (CC) charges and Rs.19330/- as dismantling charges in respect of HT SC No.159. It is further submitted that on receipt of such payments, the second respondent restored the service connections in HT SC Nos.204 & 322. It is further submitted that the petitioner is carrying on their industrial activity with those two service connections only. It is submitted that in respect of the service connection HT SC No.159, after payment of the dismantling charges on 12.06.2015, the connection which originally stood in the name of the fourth respondent was dismantled and a certificate was also given by the third respondent stating that there is no arrears of current consumption charges payable in respect of the said HT SC No.159. While so, it is submitted that the petitioner was shocked to receive a copy of the letter dated 12.08.2015, addressed to the fourth respondent calling upon the fourth respondent to pay a sum of Rs.1,33,07,285/-, towards Tariff Concession Arrears availed by the fourth respondent in respect of HT SC No.194. On receipt of the said letter, the petitioner submitted representations dated 03.09.2015 and 15.09.2015, stating that they purchased the property from the fourth respondent on 11.03.2015 along with three service connections, they paid all arrears along with BPSC and reconnection charges and name transfer has been effected in their favour and no due certificate was issued in respect of HT SC No.159 and they were surprised to receive the said letter. It is further submitted that HT SC No.194, was disconnected on 12.07.2002 and the account was closed on 26.08.2002 and the tariff concession relating to the period 1997-1999 and the service connection No.194, was not available at the time when the petitioner purchased the property and therefore, the petitioner cannot be fastened with the said liability.

4. Further, it is contended that the third respondent rejected the tariff concession on the basis of the load sanction obtained for HT SC No.194, but after 18.05.1994, and hence was not eligible for tariff concession, and it is on the said basis that the third respondent held that the fourth respondent is not entitled to tariff concession. It is submitted that even that be the position, the petitioner having purchased the premises with machinery and service connection Nos.159, 204, 322 and HT SC No.194, having been permanently dismantled in the year 2002 and account having been closed 12 years prior to the petitioner's purchase, as such the petitioner has nothing to do with the said service connections. It is further submitted that the petitioner has neither sought for transfer of HT SC No.194, in their name nor applied for a new service connection in the premises in which HT SC No.194, had been granted. It is submitted that in the light of the above facts, the impugned demand is arbitrary and unsustainable. It is further submitted that when enquiries were made by the petitioner, they were informed only about the arrears of Current Consumption charges in respect of three service connections and the same were duly paid by the petitioner. Further, it is reiterated that the petitioner cannot be fastened with the said liability, the petitioner is not in arrears and the petitioner has not applied for a new service connection in the same premises. The petitioner had purchased the fourth respondent's company along with the land, building and machinery including three High Tension Service Connections. The impugned demand pertains to arrears of Tariff Concession payable by the petitioner's vendor, the fourth respondent.

5. Heard the learned counsels appearing on either side and perused the materials placed on record.

6. It is not in dispute that the premises purchased by the petitioner is the same premises to which the three service connections were granted. The respondents have admitted that one of the three connections namely HT SC No.194, was closed on 26.08.2002 and new service connection was effected and by assigning a new No.HT SC 322. In respect of the High Tension Service Connection No.194, there was arrears of Tariff Concession, which was subject matter of challenge before this Court in W.P.No.14216 of 1997. In the said Writ Petition, prayer was made to direct the respondent Board to grant Tariff Concession to the petitioner (fourth respondent herein) for the entire sanction demand of 4400 KVA. The Hon'ble First Bench of this Court by order, dated 09.03.2015, directed the second

respondent to take a reasoned decision in the matter after hearing the petitioner therein (fourth respondent herein), within a period two months from the date of receipt of a copy of the order.

7. It has to be pointed out that on the date when the Writ Petition was heard and disposed of, the petitioner therein (fourth respondent herein) was not the owner of the company as they have sold the same along with land, machinery and service connections by registered sale deed, dated 11.03.2015. However, this aspect of the matter appears to have been placed before this Court when the Hon'ble First Bench disposed of the Writ Petition.

8. Be that as it may, the more important factor is that the said service connection in HT SC No.194, though had been closed in 2002, the claim for tariff concession was still pending before this Court as the fourth respondent had filed Writ Petition in 1997. It is not known as to whether the fourth respondent had disclosed the fact to the petitioner nor did the petitioner carry out due diligence before effecting purchase. However, this is an inter se dispute between the petitioner and the fourth respondent, which will have no impact on the present proceedings. Pursuant to the direction issued by the Hon'ble First Bench, the plea raised by the fourth respondent regarding Tariff Concession stood rejected. Therefore, the impugned demand has been raised on the petitioner. When the said service connection No.194, was in respect of the same premises and still arrears are due and payable to the Board, such arrears are recoverable from the present owner, who is in possession of the premises. Closure of the service connection while the fourth respondent was the owner of the company by itself will not efface the liability towards the Board, more so, when the Writ Petition was pending with regard to the entitlement for the tariff concession. Therefore, on the given facts, the test is not as to whether the petitioner had applied for a fresh service connection or is presently operating only with two service connections, but as to whether there is any arrears regarding tariff concession or other charges payable in respect of a service connection effected in the same premises. The petitioner is the successor in interest from the fourth respondent.

9. As observed in the impugned order, the security deposits effected by the fourth respondent stood transferred in the name of the petitioner. Therefore, all rights and liabilities which

goes along with the premises would definitely accrue to the petitioner. Even going by the arguments advanced by the learned Senior counsel for the petitioner, if in the event, the petitioner applies for a new service connection for the same premises, he will be treated as a defaulter and the new service connection will not be given. Therefore, merely because the petitioner has not applied for a new connection will not absolve the liability attached to the premises for which service connection No.194, was given. The petitioner cannot wriggle out of the liability having purchased the entire assets of the fourth respondent and the tariff concession arrears being an arrears in respect of a service connection effected in the premises now owned by the petitioner, the petitioner is bound by such liability. Further, the petitioner is also said to have executed an undertaking duly attested by Notary Public, thereby binding himself to the terms and conditions of supply of electricity, thereby making them responsible for the liability which accrued, when the premises was in the hands of the fourth respondent.

10. In support of his contention, the learned Senior counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of Haryana State Electricity Board vs. Hanuman Rice Mills, Dhanauri & Ors., reported in (2010) 9 SCC 145. The said decision is distinguishable on facts as it was held by the Hon'ble Supreme Court that payment of arrears of previous owner/occupier can be a precondition for reconnection/fresh connection of electricity if statutory rules or terms and conditions provide for. In the instant case, the terms and conditions provided for such recovery. Therefore, the decision does not render any support to the case of the petitioner. The decision of the Hon'ble Division Bench of this Court in the case of The Chairman, TNEB, vs. KTV Health Foods (P) Ltd., in W.A.No.720 of 2014, dated 27.01.2015, also does not render any support, since the said decision related to theft of energy charges/arrears with BPSC and therefore, clearly distinguishable on facts.

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11. In the light of the above, the petitioner has not made out a case for interfering with the impugned demand. Accordingly, the Writ Petition fails and it is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-III)

True Copy

Sub Assistant Registrar

To

1. The Chairman & Managing Director
The Tamil Nadu Electricity Board (TNEB)
No.144, Anna Salai,
Chennai - 600 002.
2. The Chairman & Managing Director,
The Tamil Nadu Distribution and Corporation,
(TANGEDCO) Limited,
No.144, Anna Salai,
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3. The Superintending Engineer,
Krishnagiri Electricity Distribution Circle,
The Tamil Nadu Distribution and Corpn.,
(TANGEDCO) Limited, Kirshnagiri.

+ 1 cc to Mr.M.Varunkumar, (TNEB) Advocate Sr 65302 (12/1/16)

Pre-Delivery Order in
W.P.No.36143 of 2015

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