

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G. RAMESH
AND
THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

Writ Appeal No.115 of 2016

1. The Tamil Nadu Generation and Distribution Corporation Ltd.,
rep. by its Chairman,
No.800, Anna Salai,
Chennai 600 002.
2. The Superintending Engineer,
Dharmapuri Electricity Distribution Circle,
TANGEDCO,
Dharmapuri-636 705. Appellants

Vs.

1. M/s.Varalakshmi Starch Industries Ltd.,
rep. by Managing Director V.Anbalagan,
'Varalakshmi Tower',
2nd Floor, 127/1, Gandhi Road,
Hasthampatty,
Salem - 636 007.
2. State of Tamil Nadu,
rep. by its Secretary to Government,
Energy Department,
Secretariat, Fort. St. George,
Chennai 600 002. ... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 23.12.2014 made in W.P.No.18903 of 2014.

W.P.No.18903 of 2014 : Petition presented to this Court, to issue a Writ of Certiorarified Mandamus, calling for the entire records which culminated in the impugned proceedings made by the 3rd respondent in letter No.SED/DFC/RCS/HT/F.HT.SC.No.235/2014 dated 11.06.2014 and quash the same as arbitrary illegal and contrary to the findings of the judgement rendered by the Honourable Supreme Court of India reported in 2008(7) SCC 353 - Tamilnadu Electricity Board and another Vs-Status Spinning Mills

Limited and another and the order of this Honourable Court dated 13.11.2008 made in W.P.No.19095 of 2008 and further direct the 2nd and 3rd respondents to refund a sum of Rs.15,29,558/- paid by the petitioner during the initial period without availing tariff concession for the relevant concession period originally proposed by the Government of Tamilnadu in G.O.Ms.No.29 Energy Department dated 31.01.1995.

For Appellants : Mr.C.Manishankhar
Additional Advocate General
assisted by Mr.M.Varunkumar

For R1 : Mr.V.P.Sengottuvel

For R2 : Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

J U D G M E N T

(Judgment of the Court was delivered by HULUVADI G. RAMESH, J.)

Aggrieved by the common order dated 23.12.2014 made in W.P.No.18903 of 2014, the Electricity Department/TANGEDCO has come up with the present Writ Appeal.

2. Heard the learned counsel for the parties, gone through the affidavit filed by the appellants and the counter affidavit filed by the 1st respondent Company.

3. While dealing with the case of the 1st respondent herein, the learned Single Judge in the common order dated 23.12.2014, has held as under:

''(xxii) Writ Petition No. 18903 of 2014:-
This is an extreme case where, in the earlier round of litigation itself, by virtue of the order passed by the learned single Judge in WP No. 16348 of 2008 etc., batch dated 13.11.2008, WP No. 19095 of 2008 filed by the petitioner was allowed (para No.42 of the order dated 13.11.2008) holding that the petitioner is entitled for the relief of tariff concession. However, the Superintending Engineer, Dharmapuri has chosen to reject the claim made by the petitioner on the ground of non-production of excise certificate. From the documents made available in the typed set of papers, even on 03.02.1997, safety certificate itself was produced by the petitioner. However, the Superintending Engineer, without looking

into those documents, has passed the impugned order in a mechanical manner. In fact, the petitioner expressed their readiness to avail high tension electricity supply on 26.08.1996 and remitted the payment towards development charges and meter caution deposit on 16.12.1996 itself. Even according to the petitioner, they have commenced commercial production on 30.12.1996 much before the cut off date. Therefore, the petitioner in this writ petition has to be granted the relief of tariff concession.''

4. According to the learned counsel for the appellants, the learned Single Judge failed to note that as per G.O.Ms.No.29, Energy, dated 31.03.1995, new HT Industries set up in area other than Madras Metropolitan area are entitled for Tariff concession for the first three years from the date of service connection given under HT Tariff I and that as per the subsequent notification vide G.O.Ms.No.17, Energy, dated 14.02.1997, new High Tension Industries set up in any area on or after 15.02.1997 shall not be eligible for any Tariff concession. It is the further contention of the learned counsel that in view of the common judgment dated 16.05.2008 passed by the Hon'ble Supreme Court in Civil Appeal No.3940 of 2008, etc., the 1st respondent should have started commercial production before 14.02.1997 and should have applied and been ready to take electrical connections having deposited the amount asked for. At the end of arguments, learned counsel submitted that the 1st respondent shall produce Safety Certificate in this regard.

5. In reply, learned counsel appearing for the 1st respondent submitted that the 1st respondent Company completed all the formalities as prescribed by the Appellants/Board and made its Industry ready for availing power supply by submitting and executing all documents inclusive of Safety Certificate and paid all the money as demanded by the Appellants/Board. He further submitted that since power supply was inordinately delayed by the Appellants/Board due to inadequate transformer capacity in Pappireddypatti Power substation feeding power to their Unit, after getting approval from the Appellants/Board, they installed Gensets and commenced production.

6. For better appreciation of the case, relevant portion of the judgment passed by the Hon'ble Supreme Court in C.A.No.3940 of 2008 on 16.05.2008 in the case of Tamil Nadu Electricity Board vs. Status Spinning Mills Ltd. reported in (2008 (7) SCC 353), is extracted hereunder:

'52. We have noticed herein before that some of the industries had even installed generators. They had to do it. They inevitably had to do it because the Board would not supply power. Would it not be too much to contend that even those industries have not been set up, as they have not become consumers? We think that for the said purpose, the proviso has to be read down. It must be made applicable to them who not only had started commercial production before the said date, namely, 14.02.1997 but also had applied and were otherwise ready to take electrical connections having deposited the amount asked for.'

7. It is seen from the records that the 1st respondent Company had completed required formalities as prescribed by the Appellants/Board for availing power supply and that Safety Certificate was issued to the 1st respondent/Company on 03.02.1997 itself. Learned Single Judge has also observed the same in the order under challenge.

8. Thus, when the 1st respondent Company has complied with the requisite conditions of the appellants/Board for availing power supply and that production has also commenced in the 1st respondent/Company, the appellants/Board cannot persistently ask for another Safety Certificate from the 1st respondent.

9. In view of the above, we are of the view that there is no scope of interference in the order passed by the learned Single Judge. Accordingly, this Writ Appeal is dismissed. However, it is made clear that if any amount is calculated by the appellants/Board for extension of tariff concession to the 1st respondent/Company, the same may be calculated and adjusted towards future commercial tariff. No costs. Consequently, connected C.M.P.No.1640 of 2016 is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To:

The Secretary to Government,
State of Tamil Nadu,
Energy Department,
Secretariat, Fort. St. George,
Chennai 600 002.

+1cc to Mr.V.P.Sengottuvel, Advocate, S.R.No.50926
+1cc to Mr.M.Varunkumar, Advocate, S.R.No.50880

W.A.No.115 of 2016

NM(CO)
CA(26/09/2016)



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