IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2016

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

W.P. No. 38953 of 2016
&
W.M.P. No. 33360 of 2016

Rainbow Containers Bangalore (P) Ltd.,
Survey Number :- 209/IA, 210/2B2, 210/2,
Periya Madhagundapalli,
Thally - Hosur Main Road,
Hosur - 635 114,
rep. by its Director,
Jagadeeshkumar Patel ..Petitioner

Vs.

1. Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO),
rep. by its Chairman and Managing Director,
144, Anna Salai, Chennai - 600 002.

2. The Superintending Engineer,
Krishnagiri Electricity Distribution Circle,
TANGEDCO, Krishnagiri - 2. ..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent's impugned proceedings bearing Lr.No. SE/KEDC/DFC/AAO-HT/AS/F.BF/D.No. 551/2016 dated 28.10.2016, quash the same, as illegal, arbitrary, without jurisdiction and against the provision of the Electricity Act, 2003 and consequently, direct the 2nd respondent to effect temporary LT supply to the petitioner as per their application dated 14.10.2016.

For Petitioner :: Mr.S.P. Parthasarathy

For Respondents:: Mr.M. Varunkumar

O R D E R

The petitioner, which is a Private Limited Company, challenges the order dated 28.10.2016 passed by the 2nd respondent by which the petitioner's application for provision of temporary LT supply to the petitioner company has been rejected.

2. The petitioner Company, intending to put up a unit for manufacturing water storage tanks, purchased the land and building comprised in S.Nos. 209/IA, 210/2B2, 210/2, Priya Madhagundapalli, Thally-Hosur Main Road, Hosur – 635 114 from one M/s. Hari Alloys Private Limited, an industry bearing HTSC. No. 164 coming under the second respondent. Since the said industry became sick, it was forced to close down its operations on 26.03.2015 and thereafter, the said industry applied to the 2nd respondent for surrender of their service connection and the 2nd respondent, through communication dated nil. June, 2015, had issued closure of accounts letter as per Regulation 17(3) of Tamil Nadu Electricity Supply Code, 2005. After adjusting the dues from the deposits, the 2nd respondent, in the account closure letter, had arrived at a sum of Rs.11,71,678/- as Security Deposit to be paid to M/s. Hari Alloys Private Limited. However, till date, the said amount has not been paid by the 2nd respondent. In the meanwhile, the 2nd respondent, had issued demand notice dated 20.01.2016, to M/s. Hari Alloys Private Limited calling upon them to pay harmonic penalty charges of Rs.27,98,537/-. Challenging the said levy, M/s. Hari Alloys Private Limited filed W.P. No. 33447 of 2016 before this Court and obtained an order of interim stay on 23.09.2016.

3. When things stood so, after purchasing the land and building from M/s. Hari Alloys Private Limited, as it became a sick industry, the petitioner applied for temporary service connection to the 2nd respondent for the purpose of construction, security and lighting vide application dated 14.10.2016, along with necessary documents. But, the said application was rejected by the impugned order stating that since the erstwhile owner of the premises, to which temporary supply is sought by the petitioner, had challenged the levy of harmonic penalty charges, to the tune of Rs.27,98,537/- for the period from December, 2014 to March, 2015 and obtained an order of interim stay and the matter is sub judice, the request of the petitioner for provision of temporary supply to the same premises in the name of the petitioner is not feasible for complaince.

4. Heard Mr.S.P. Parthasarathy, learned counsel for the petitioner and Mr.M. Varunkumar, learned counsel or the respondents.

5. Mr.S.P. Parthasarathy, learned counsel for the petitioner would submit that the entire dues have been paid by the erstwhile owner and it is the respondent Corporation, which has to pay a sum of Rs.11,71,678/- to the erstwhile owner, towards balance of Security Deposit. However, without paying the said amount, the 2nd respondent had demanded harmonic penalty charges of Rs.27,98,537/- from the erstwhile owner and the said demand notice dated 20.01.2016 was also stayed by this Court in W.P. No. 33447 of 2016 on 23.09.2016. Therefore, as on date, there is no amount due to be paid either by the petitioner or by the erstwhile owner. In such circumstances, the 2nd respondent is not justified in rejecting the petitioner's application for temporary service connection, the learned counsel would contend.

6. On the other hand, Mr.M.Varunkumar learned counsel for the respondents would vehemently argue that the 2nd respondent had rightly rejected the petitioner's request for temporary service connection as harmonic penalty charges have not been paid by the erstwhile owner. He relied upon clause 17(8) of the Tamil Nadu Electricity Supply Code, 2004 by which the respondents are authorized to collect any due either from the owner or from the subsequent purchaser or interested person and thereafter only, the connection can be given. Further, in the counter affidavit itself, it is stated in paragraph No.4 that the Distribution licensee is entitled to claim arrears as per Regulations 17(8) and 17(9) of the Tamil Nadu Electricity Supply Code, 2004 and it is supported by the judgments of the Honourable Supreme Court rendered in Shree Chamundi Mopeds Ltd., V. Church of South India Trust Association reported in 1992 (3) SCC 1; Paschimanchal Vidyut Vitran Nigam Ltd V. DVS Steels & Alloys (P) Ltd reported in 2009 (1) SCC 210; Haryana State Electricity Board V. Hanuman Rice Mills, Dhanauri & Others reported in 2010 9 SCC 145 & Dakshin Haryana Bijli Vitran Nigam Ltd. V. Paramount Polymers (P) Ltd reported in 2006 13 SCC 101. Relying upon these judgments, he made an attempt to convince this Court that the respondents are justified in refusing to give temporary service connection sought by the petitioner.

7. It is evident that there was an industry by name M/s. Hari Alloys Private Limited, which was functioning in the premises in question having HTSC No. 164 under the 2nd respondent. As the said industry became sick, it closed down its operations and the accounts of the said industry was also closed as evident from the communication of the 2nd respondent dated nil June, 2015 and the service connection held by the said industry bearing HTSC No. 164 was disconnected on 23.06.2015. Paragraph 2 of the communication of the 2nd respondent dated

23.06.2015 gives the details of the amount due by M/s. Hari Alloys Private Limited, the deposit of the said industry available with the 2nd respondent and the balance amount to be paid by the said industry after adjustment of dues:

> "As per your request, the accounts of your HT service is closed detailed below as per TNERC Supply Code clause 17(3).
>
> 1. CC arrears upto 6/15 :: Rs. 1,00,09,056/-
> 2. BPSC as on 2/15 :: Rs. 6,17,506/-
> 3. ½ DC fees :: Rs. 1,500/-
> 4. E. Tax on demand :: Rs. 13,42,395/-
>
> ....
>
> Total amount of arrears :: Rs. 1,19,70,457/-
> ....
>
> .....
>
> Less:
>
> CCD available in your accounts:: Rs. 1,31,27,135/-
>
> MCD available in your accounts:: Rs. 15,000/-
>
> ....
>
> Rs. 1,31,42,135/-
>
> ....

As per the above extract, it is clear that a sum of Rs.1,31,42,135/- was available in the account of the said Company and the amount payable by the said industry was Rs.1,19,70,457/- and the balance amount payable to the said industry by the respondent Corporation was Rs.11,71,678/-. Even though the said amount was liable to be paid by the respondents, the learned counsel for the petitioner would submit that even, as on date, the said amount has not been paid to the said industry, which speaks volumes about the conduct of the respondent Corporation.

8. However, still not satisfied with the non-payment of the eligible amount to the said industry, namely, M/s. Hari Alloys Private Limited, the 2nd respondent, subsequently, issued a demand notice dated 20.01.2016, calling upon the said industry to pay a sum of Rs.27,98,537/- towards harmonic penalty charges. The said order was challenged before this Court in W.P. No.

33447 of 2016 and this Court, by order dated 23.09.2016, granted an order of interim stay. Therefore, it is clear that the demand of Rs.27,98,537/-made towards harmonic penalty charges has been stayed by this Court. In this scenario only, the petitioner had applied for new connection and the application made by the petitioner, for the said purpose, was rejected quoting the pendency of the writ petition before this Court and the liability of the erstwhile owner.

9. As already observed, technically speaking, as on date, there is no liability either on the part of the petitioner or on the part of the erstwhile owner. No doubt, Regulation 17(8) of Tamil Nadu Electricity Supply Code, 2004, enables the 2nd respondent to make a demand to pay arrears or any due from the previous owner or from the subsequent purchaser and based on non-payment, the 2nd respondent is entitled to reject the claim of the subsequent applicant and the said Regulation is extracted hereunder:

> "Where any consumer has more than one service connection, if he defaults, in the payment of dues relating to any one of the service connections, the licensee may cause other service connections in the name of the consumer to be disconnected on issuing proper notice till all the arrears due for all the service connections are paid, notwithstanding the fact that the service connections are covered under separate agreements.
>
> In case of service connections in a premises, which have been disconnected/dismantled for defaults in payment of dues whatsoever and if such service connections are to be reconnected or new service connections are to be obtained by other persons in such premises either by purchase or transfer or lease basis, the Distribution Licensee shall reconnect such service connections or effect new service connections, as the case may be, in such premises only after payment of dues attributed to such premises by the applicant...."

But, it has to be stated that even as per the aforesaid Regulation, neither the petitioner nor the erstwhile owner is liable to the respondent Corporation. On the other hand, at the risk of repetition, it is worthmentioning that it is the respondent Corporation, which owes a sum of Rs. 11,71,678/- to the erstwhile owner and even the subsequent demand towards harmonic penalty charges has been stayed by this Court. If at all, any course is open to the 2nd respondent, it is to accept an undertaking from the petitioner or from the erstwhile owner to give electricity connection. Even without getting an undertaking, the 2nd respondent is entitled to proceed against, either the petitioner or the erstwhile owner, after the dismissal of W.P. No. 33447 of 2016, but, that occasion would arise, if the case of the erstwhile owner is negatived by this Court and till such time, there is no reason, whatsoever, for the 2nd respondent to reject the petitioner's application.

10. It has been pointed out in an earlier order of this Court, in W.P.(MD) NO. 11842 of 2013 dated 31.07.2013 that, once an order of interim stay is granted, the order stayed is deemed to be not in existence, temporarily, and for all practical purposes, the respondents have to treat, as if the order has not been passed, however, subject to the result of the writ petition. Paragraphs 8 to 10 of the said judgment, which was passed, following the judgment of the Division Bench of this Court in W.A. Nos. 1652 & 1653 of 2013 dated 06.11.2013 (The Chairman, TANGEDCO and 2 Others V. T.T. Limited) are usefully extracted hereunder:

> "8. It is evident from the records that the demand of Rs.45,58,345/- was already stayed by this Court in W.P.(MD) No. 13867 of 2012 on 30.10.2012 by a speaking order. When an order has been stayed, in effect, it is not in existence temporarily, though it is not finally. For all practical purposes, the respondents have to treat, as if the order has not been passed subject to the result of the writ petition. If the respondents are able to succeed in the writ petition, definitely, the liability of the petitioner gets revived and the same has to be paid by the petitioner and in that event, for non-payment of the said amount, they can also disconnect.
>
> 9. As far as the judgment relied upon by the learned counsel appearing for the respondents is concerned, there is no quarrel with regard to them. Certainly, there is a distinction between quashing of the order and stay of operation of the order. Stay of the operation means, it is temporarily not given effect and quashing of the order is once for all becomes null and void and that distinction, this Court is aware. Once stay has been made, it is only subject to the result of the writ petition and therefore, it is made clear that once the respondents are able to succeed in the writ petition, the petitioner is pushed back to the same position, when the demand was made and in that event, the respondents are at liberty to collect the money and as observed earlier, they can disconnect also. Therefore, as long as the impugned demand is

stayed, it should be deemed that there is no arrears. Otherwise, the process of law will be made as a mockery.

10. As rightly pointed out by the learned Senior Counsel appearing for the petitioner, all the authorities will try to undo the orders, by passing this kind of order and it is not good for the Justice Delivery System."

11. Pursuant to the aforesaid judgments, the Chairman, Tamil Nadu Generation and Distribution Corporation Limited (Technical Branch), has issued a circular dated 23.01.2014 to all the Superintending Engineers, Electricity Distribution Circles, stating that when there is an order of stay, injunction, etc, granted by the Court restraining the TANGEDCO from collecting outstanding dues, the consumers should not be insisted to remit such outstanding dues covered by stay as a condition precedent to process/allow their requests. The aforesaid circular reads as follows:

"In continuation to the instructions already issued vide reference (i) to (iv) cited above, the following instructions are hereby issued:

(i) Whenever any order of stay, injunction, etc.is granted by the Court, immediate action should be taken to vacate such order of stay, injunction, etc. so as to realise the outstanding dues, if any from the consumers.

(ii) When the consumers having outstanding dues approach TANGEDCO for their various requests such as new, additional demand, dedicated feeder, etc. and if there is no order of stay by Court against collection of outstanding amount from the consumers, action may be taken to realise the pending amount from the consumer before processing their request.

(iii) When the consumers having outstanding dues approach TANGEDCO for their various requests and if there is an order of stay, injunction etc. granted by the Court restraining the TANGEDCO from collecting such outstanding dues, the consumers should not be insisted to remit such outstanding dues covered by stay as a condition precedent to process/allow their requests. Such request of the consumers shall be processed and thereafter, a report is to be sent duly stating the full and complete details of the case such as brief history of case, actual date of filing of a counter affidavit together with vacate stay /injunction

> petition, number assigned by the registry of the Court on such vacate stay /injunction petition and the action taken to list such vacate stay/injunction petition for early hearing in consultation with the Standing Counsel/Government Pleader/Advocate on behalf of the TANGEDCO and subsequent developments that took place in such cases, etc., with connected records."

When a judgment has been rendered following the judgment of a Division Bench of this Court and thereafter, based on the said judgments, a circular has been issued by the 1st respondent, The Chairman, TANGEDCO, the said instructions are binding on the officials in the lower hierarchy . The way, in which the judgments of this Court have been flouted and the circular issued by the topmost official of TANGEDCO has not been complied with, would only go to show that all is not well with the administration in TANGEDCO and it is high time that the officials of the respondent Corporation are properly sensitised about complying with the orders passed by this Court and their higher officials. To put it in other words, the officials do not give due respect to the judgments of this Court as well as to the orders of their higher-ups. This kind of attitude, on the part of the officials of the respondent Corporation, needs to be deprecated and condemned.

12. Hence, the rejection of the petitioner's claim is unjustified, illegal and unwarranted. The order dated 28.10.2016 passed by the 2nd respondent is liable to be set aside and accordingly, set aside, reserving the liberty of the 2nd respondent to make a demand, if the writ petition filed by the erstwhile owner in W.P. No. 33447 of 2016 is decided in favour of the respondent Corporation.

13. Since the impugned order has been set aside, the 2nd respondent is directed to effect temporary LT supply to the petitioner, as sought, on or before 30th November, 2016.

14. This Court cannot lose sight of the manner in which the officials of the respondent Corporation have conducted themselves. The present case only reveals the scant regard, which the respondent Corporation has got for Courts' orders as well as the orders issued by the superiors of the respondent Corporation. When the circular dated 23.01.2014 has been issued pursuant to the orders passed by this Court, non-compliance of the same, not only amounts to indiscipline, but also amounts to contempt of Court by the officials concerned. In this case, admittedly, even as per the communication of the 2nd respondent dated nil, June, 2015, a sum of Rs.11,71,678/- was due to be paid to M/s. Hari Alloys Private Limited and the said amount was not paid from June, 2015 and the subsequent demand of Rs. 27,98,537/- was made only on 20.01.2016. Therefore, it is clear

that eventhough Rs.11,71,678/- was admittedly payable from June, 2015, the same had not been paid till the demand notice dated 20.01.2016 was issued, which shows the negligence on the part of the 2nd respondent.

15. The writ petition is disposed of with the above directions. For reporting compliance with regard to providing temporary service connection to the petitioner, call the writ petition on 1st December, 2016.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To
1. The Chairman and Managing Director,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
144, Anna Salai, Chennai - 600 002.

2. The Superintending Engineer,
Krishnagiri Electricity Distribution Circle,
TANGEDCO, Krishnagiri - 2.

+1cc to Mr.R.S. Pandiyaraj, Advocate, S.R.No.68822
+1cc to Mr.M. Varunkumar, Advocate, S.R.No.68442

UG(CO)
EU(29/11/2016)

W.P. No. 38953 of 2016