

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2017

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
And
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.1354 of 2017

And

C.M.P.No.18720 of 2017

- 1.The Senior Accounts Officer - I,
Electricity Department,
Government of Puducherry,
No.137, Nethaji Subash Chandra Bose Salai,
Puducherry.
 - 2.The Financial Controller,
Electricity Department,
Government of Puducherry,
No.137, Nethaji Subash Chandra Bose Salai,
Puducherry.
- ... Appellants/Respondents

Vs.

Sumangala Steel Private Limited,
Rep. by Rajendran Sabanayagam,
Managing Director,
PIPDIC Industrial Estate,
Mettupalayam,
Puducherry - 605 009.

... Respondent/Petitioner

Prayer:

Writ appeal filed under Clause 15 of Letters Patent praying to set aside the impugned order dated 05.11.2014 in W.P.28175 of 2014.

W.P. No 28175 of 2014:

Writ Petition filed under Article 226 of the constitution of India to issue a Writ of Mandamus or any appropriate Writ direction or order, calling for the Records pertaining to the communication of the 1st Respondent dated 20.08.2014 bearing No.144/ED/HT/SAO-I/2013-14/230 as affirmed in its communication dated 10.10.2014 bearing No. 144/ED/HT/SAO-I/2014-15/307 by the 2nd respondent and quash the same and consequently forbearing the respondent from disconnecting the power supply to the petitioners unit bearing Consumer Code No.144 in pursuance of the above communication.

For Appellants : Ms.V.Usha
Additional Government Pleader (Pondy)
For Respondent : Mr.P.S.Raman, Senior Counsel
for Mr.Roshan Balasubramanian

J U D G M E N T

(Judgment of the Court was delivered by K.K.SASIDHARAN,J.)

The Electricity Department, Government of Union Territory of Puducherry, having found that there was no requisite amount of security deposit on the credit of the respondent taking into account their average monthly consumption called upon the consumer to provide additional security of Rs.5,23,18,000/-. The notice for such deposit dated 20.08.2014 was challenged by the respondent before the writ court.

2.The learned Single Judge quashed the notice and restrained the appellants from disconnecting the supply. Feeling aggrieved, the appellants have filed the present intra court appeal.

3.When this appeal was taken up for hearing on 13.12.2017, the learned Senior Counsel for the respondent submitted that taking into account the monthly consumption, the respondent is prepared to provide Bank Guarantee to the tune of Rs.3,50,00,000/-. The learned Senior Counsel further submitted that in case the monthly consumption exceeds Rs.3,50,00,000/-, the respondent would provide additional Bank Guarantee. In view of the said submission, we have adjourned the writ appeal to be posted today for filing the undertaking affidavit.

4.The Managing Director, Sumangala Steel Private Limited, the respondent herein filed an undertaking affidavit dated 14.12.2017. The material portion of the affidavit reads thus:

"3.I state that the consumption of the Respondent for the month of November, 2017 was to the tune of Rs.2,85,50,069/- and the average monthly consumption charge for the past 6 months is Rs.3,24,32,727/-.

4.I humbly state that as represented before this Hon'ble Court, the Respondent herein hereby undertakes to provide in the name President of India, Through Superintending Engineer-I, Electricity Department, Government of Puducherry), bank guarantee towards additional security deposit to the tune of Rupees Three Crore and Fifty Lakhs Only (Rs.3,50,00,000/-), within a

period of 3 weeks.

5.I state that the 1st Appellant would be fully entitled to invoke the said bank guarantee in the event the respondent defaults in payment of current consumption charges or is in arrears at any point in the future.

6.I further state that if at any point in the future, the Respondent's average monthly consumption charge exceeds the said amount (i.e., Rs.3,50,00,000/-), upon being advised of the same by the Appellants, the Respondent shall provide an additional bank guarantee for the difference between the average monthly consumption charge and the amount of Rs.3,50,00,000/-, being now given by way of Bank Guarantee.

7.I respectfully state that this affidavit is made and the Bank Guarantee being provided without prejudice to the rights and contentions of the Respondent in W.P 21262 of 2010 pending on the file of this Hon'ble Court and SLP (Civil) No(s).14747-14748/2011 pending on the file of the Hon'ble Supreme Court.

In light of the facts and circumstances stated above, it is humbly prayed that this Hon'ble Court may be pleased to record the above undertaking by the Respondent and pass such orders as this Hon'ble Court deems fit and proper in the circumstances of the case and thereby render justice."

5.We have heard the learned Additional Government Pleader on behalf of the appellants and the learned Senior Counsel for the respondent in the light of the undertaking affidavit filed by the consumer.

6.The respondent is a consumer under the Pondicherry Electricity Department. The appellants have conducted a review for the period from January, 2014 to June, 2014 and it was found that there was no sufficient amount of security given by the industry. The Electricity Department therefore directed the respondent to provide security deposit to the tune of Rs.5,23,18,000/-. The order directing the security deposit was passed strictly in accordance with the Regulations.

7.The learned Single Judge quashed the notice on certain grounds which were not germane to the issue raised in the writ petition.

8.The monthly consumption of the respondent is stated to be in the range of Rs.3,25,00,000/-. The average monthly consumption charges for the past six months is Rs.3,24,32,727/- even according to the respondent. The appellants were therefore legally correct in directing the respondent to provide additional security deposit.

9.Even though we are not in agreement with the views expressed by the learned Single Judge in the order dated 05.11.2014, still to permit the industry to function, we have agreed to the suggestion given by the learned Senior Counsel that the consumer would give Bank Guarantee for a sum of Rs.3,50,00,000/-.

10.The learned Additional Government Pleader submitted that in case, there is default in paying the monthly consumption charges, liberty should be given to the appellants to disconnect the supply and to direct the respondent to deposit additional amount commensurate with the monthly consumption charges as a condition precedent for re-connection. We do see considerable force in the said contention.

11.The respondent is consuming electricity. The earlier litigations between the parties have nothing to do with the demand made by the appellants in the notice dated 20.08.2014 which was challenged in W.P.28175 of 2014. The appellants should be in a position to recover the monthly consumption charges from the respondent. The appellants therefore should be given liberty to proceed against the respondent to ensure that the arrears is paid promptly.

12.We direct the respondent to provide Bank Guarantee to cover the additional security deposit to the tune of Rs.3,50,00,000/- (Rupees Three Crore and Fifty Lakhs Only) in modification of the demand made in the notice dated 20.08.2014. The Bank Guarantee shall be given within a period of one week from the date of receipt of a copy of this judgment. The respondent is directed to pay the current consumption charges every month without default. In case, there is a default, even for a single month, it is open to the appellants to encash the Bank Guarantee without any formal notice to the respondent. The Bank in such a case shall honour the notice issued by the appellants invoking the Bank Guarantee. Similarly, it is open to the appellants to disconnect the supply and call upon the respondent to provide additional security in case there is default in payment of the monthly consumption charges.

13.This order is without reference to the pending proceedings before the Hon'ble Supreme Court in as much as the notice dated 20.08.2014 has nothing to do with the issue of subsidy or the arrears claimed by the Electricity Department earlier.

14.The intra court appeal is disposed of as indicated above. No costs. Consequently, the connected miscellaneous petition is also closed.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

pri

To

- 1.The Senior Accounts Officer - I,
Electricity Department,
Government of Puducherry,
No.137, Nethaji Subash Chandra Bose Salai,
Puducherry.
- 2.The Financial Controller,
Electricity Department,
Government of Puducherry,
No.137, Nethaji Subash Chandra Bose Salai,
Puducherry.

+1 CC to Mrs. Roshan Balasubramanian, Advocate sr 89383.
+1 CC to Govt. Pleader, sr 89087.

W.A.No.1354 of 2017
And
C.M.P.No.18720 of 2017

EV(CO)
SP(01/02/2018)