IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2017

CORAM

The HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.30915 of 2004
and WP.MP.No.41376 of 2004

M/s.Jai Murugan Textiles Limited
(Formerely known an Jaya Murugan
Cotton Mills Limited)
rep. by its Joint Managing Director
V.G.Ravichandran,
L.K.Buildings,
Suramangalam Main Road,
Salem-636 005. .. Petitioner

vs.

1.The Chairman,
Tamilnadu Electricity Board,
800, Anna Salai,
Chennai - 600 002.

2.The Superintendent Engineer,
Tamilnadu Electricity Board,
Mettur Distribution Circle,
Mettur Dam.

3.The Superintending Engineer,
Namakkal Electricity Distribution Circle,
Namakkal.

4.The Secretary to Government,
Energy Department,
Government of Tamilnadu,
Fort St. George,
Chennai - 600 009. .. Respondents

(Respondent Nos.3 & 4 suo-motu impleaded
vide this order)

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus, calling for the records on the file of the first respondent relating to the proceedings with reference to Letter No.1651/CE/Comml./EE.1/Asst/D.513/2004, dated 8.9.2004 and quash the same and direct the respondents to grant relief in respect of surcharge levied on delayed payment, electricity charge levied at 5% minimum demand charges and peak hour charged as recommended by BIFR by order dated 29.10.2003.

For Petitioner : Ms.V.J.Latha

For Respondents : Mr.S.K.Rameshwar
for respondents 1,2 & 3

Mr.R.Vijayakumar
Addl. Government Pleader
for 4th respondent

ORDER

This Court had earlier recorded proceedings on 25.07.2017, which reads as follows:

"Writ petitioner is a company engaged in the manufacture of cotton yarn.

2.Subject matter of the writ petition is payment of electricity charges and certain other allied levies. To be precise, the levies which are subject matter of this writ petition are as follows:

a) Electricity tax;
b) 5% minimum demand charges;
c) Peak hour charges; and
d) Surcharge levied on delayed payment.

3.It is the case of the writ petitioner that on the above said four heads, they are entitled to get back a sum of Rs.59,74,479.53 from the respondents.

4.The plea of the writ petitioner is pivoted and predicated on proceedings of Board for Industrial and Financial Reconstruction ('BIFR' for brevity) dated 29.10.2003 in Case No.337 of 1999 (hereinafter referred to as 'said BIFR proceedings' for brevity).

5.Vide said BIFR proceedings, BIFR, after declaring the writ petitioner company sick and appointing an operating agency, has inter alia given some directions qua creditors of the writ petitioner company. One such direction is to the respondents herein and the same is contained in Clause 11.5.1. of said BIFR proceedings, which reads as follows:

> 11.5 Government of Tamil Nadu
> To consider
> 1. Tamilnadu Electricity Board to waive the surcharge levied on delayed payments, electricity tax levied at 5%, minimum demand charges and peak hour charges from the respective dates of levy.

6.One other clause of the said BIFR proceedings which is of relevance is contained in sub-clause (n) of Clause 15, which reads as follows:

> 15.0 GENERAL TERMS AND CONDITIONS
> .....
> n) The provisions of this Scheme shall have effect notwithstanding anything inconsistent therewith contained in any other Law (except the provisions of the Foreign Exchange Regulation Act, 1973 and the Urban Land (Ceiling and Regulations) Act, 1976, for the time being in force or in the Memorandum and Articles of Association of the sick industrial company or any other instrument having effect by virtue of any Law other than the Sick Industrial Companies (Special Provisions) Act, 1985.

7.On the basis of the above said directions of BIFR in the said BIFR proceedings, writ petitioner appears to have given a representation dated 27.06.2004 to the respondents asking for refund of the above said amount of Rs.59,74,479.53 on the above said four heads, followed by a writ petition in this Court being W.P.No.19005 of 2004 and the same came to be disposed of by an order dated 07.07.2004. The operative portion of the order of this Court is contained in paragraph 2 and the same reads as follows:

> "2.Having regard to the materials brought to my notice, I am inclined to direct the respondent to consider the petitioner's representation dated 21.6.2004 in accordance with law, in the context of the direction stated to have been issued by BIFT - the details of which is given in the writ petition, if such a direction gets

attracted to the case on hand and take a decision thereon in any event, not later than 31.8.2004. The writ petition is disposed of accordingly. Consequently, the connected WPMP is also closed. No costs."

8.From the operative portion of the order of this Court, it is clear that the respondents have been directed to consider the representation of the writ petitioner in the context of the aforesaid directions issued by BIFR in said BIFR proceedings. Pursuant thereto, the respondents have passed a cryptic order dated 08.09.2004 bearing Ref. Letter No.1651/CE/Comml./EE.1/Asst.513/ 2004, which has been called in question in this writ petition (hereinafter referred to as 'impugned order' for the sake of clarity).

9.A perusal of the impugned order shows that it is not only cryptic, but there is no discussion whatsoever about the directions given by BIFR, particularly clauses 11.5.1 and 15(n), which have been extracted supra.

10.A counter-affidavit dated 18.01.2005 has been filed by the respondents, wherein the respondents have again reiterated their lone plea that there is no provision in the Electricity Act, 2003, to waive the surcharge levied on delayed payment or for refund under the other three heads set out supra.

11.Today, Ms.V.J.Latha, learned counsel for the writ petitioner, would contend that they are entitled to refund of the above sum in the light of the said order of BIFR as the same has been made under a special Statute, i.e., SICA which would prevail over a general Statute, i.e., Electricity Act, 2003. It was also pointed out that the impugned order is not in tune with the directions given by this Court. It was also pointed out that the impugned order cannot be improved by a counter-affidavit or oral submissions at the bar.

12.Faced with the above situation, learned Standing Counsel for the respondents, Mr.S.K.Raameshwar, would submit that it is necessary to get break-up of the sum of Rs.59,74,479.53 and also to ascertain whether the respondents need the nod of the Regulatory

> Authority in this regard. He also seeks to get instructions regarding one of the abovesaid four heads, namely, electricity tax.
>
> 13.On the above grounds, learned Standing Counsel seeks a fortnight's time to get instructions.
>
> 14.Post the writ petition after two (2) weeks."

2. This order shall be read in conjunction with and in continuation of the earlier proceedings dated 25.07.2017, which has been extracted supra.

3. Mr.S.K.Raameshwar, learned Standing Counsel appearing for the Tamil Nadu Generation and Distribution Corporation Limited (hereinafter referred to as "TANGEDCO") today states on instructions that there has been a bifurcation of the area and the area where the petitioner company is now situate falls under the Superintending Engineer, Namakkal Electricity Distribution Circle, Namakkal. Mr.S.K.Raameshwar, learned Standing Counsel has also brought to the notice of this Court that with regard to the electricity tax component of the refund, the erstwhile Tamil Nadu Electricity Board (now TANGEDCO) is only a collecting agent and that electricity tax so collected by them were deposited into the Treasury and the concerned department of the State Government being Energy Department, represented by its Secretary, Government of Tamil Nadu, Fort St. George, Chennai-600 009.

4. In the light of the above submissions and in the light of the order I propose to pass, it is deemed appropriate to suo-motu implead both the above said authorities as respondents in this writ petition.

5. Therefore, the Superintending Engineer, Namakkal Electricity Distribution Circle, Namakkal and the Secretary to Government, Energy Department, Government of Tami Nadu, Fort St. George, Chennai-600 009 shall be impleaded as respondent Nos.3 & 4 in the instant writ petition. Registry to amend the memo of parties accordingly.

6. Mr.S.K.Raameshwar, learned Standing Counsel accepts notice on behalf of the newly impleaded respondent No.3. Mr.R.Vijayakumar, learned Additional Government Pleader accepts notice on behalf of the newly impleaded respondent No.4.

7. Mr.S.K.Raameshwar, learned Standing Counsel appearing for respondent Nos.1 to 3 raised a plea, referring to the counter-

affidavit that the order of the Board for Industrial and Finance Reconstruction (hereinafter referred to as "BIFR" for brevity) is dated 29.10.2003, whereas a sum of Rs.59,74,479.53 claimed is only for the period from 1999 to October, 2003.

8. On this basis, referring to the counter-affidavit of the TANGEDCO, Mr.S.K.Raameshwar, learned Standing Counsel would submit that the money has been collected prior to the date of the order of BIFR.

9. I have perused the order of BIFR and particularly Clause 11.5.1 of the order of the BIFR, which has been extracted elsewhere supra in this order.

10. BIFR says that the above said levies shall be waived from the respective dates of levy. Therefore, I am of the view that the writ petitioner will be entitled to the benefit of waiver and that opposing the same on the ground that the levy was prior to 29.10.2003 is untenable

11. Again referring to the counter-affidavit, the learned Standing Counsel for TANGEDCO would submit that there is no provision under the Electricity Act, 2003 for such refund. As set out supra, this is the sole ground on which the impugned order has been passed.

12. I am unable to accept the aforesaid submission of the learned Standing Counsel for the TANGEDCO for the simple reason that the impugned order came to be passed pursuant to a writ of mandamus issued by this Court dated 07.07.2004 in W.P.No.19005 of 2004.

13. It would be relevant to extract the operative portion of the order made in W.P.No.19005 of 2004 dated 07.07.2004, which is paragraph 2 and the same reads as follows:

> "2.Having regard to the materials brought to my notice, I am inclined to direct the respondent to consider the petitioner's representation dated 21.6.2004 in accordance with law, in the context of the direction stated to have been issued by BIFR - the details of which is given in the writ petition, if such a direction gets attracted to the case on hand and take a decision thereon in any event, not later than 31.8.2004. The writ petition is disposed of accordingly. Consequently, the connected WPMP is also closed. No costs." (underlining made by me to supply emphasis)

14. This Court, while issuing mandamus to the erstwhile Tamil Nadu Electricity Board (now TANGEDCO), clearly directed the respondents to consider the petitioner's representation dated 21.06.2004 in accordance with law, particularly in the context of the directions given by the BIFR, but the impugned order makes no reference to the BIFR order. The impugned order does not say how the order of BIFR dated 29.10.2003 made in Case No.337 of 1999 is not applicable to the petitioner's claim.

15. Law is well settled that an impugned order cannot be improved either by way of counter-affidavit or by way of submissions made across the Bar by the respondent counsel, representing the respondent, who passed the impugned order.

16. Therefore, the specious and general plea that there is no provision under Electricity Act, 2003 for such refund does not hold the water.

17. In my view, there is one more reason as to why this plea that there is no provision under the Electricity Act, 2003 is of no avail to the respondents is as follows:

> Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as "SICA" for brevity) is a special statute whereas the Electricity Act, 2003 is a general statute. It is undisputable that the provisions of a special statute will always prevail over the provisions of any general statute. As a corollary, it is axiomatic that absence of an enabling provision in a general statute, cannot be put against anyone for depriving the benefits which one may be entitled to under the special statute.

18. Therefore, for this reason also, the plea that there is no provision under the Electricity Act, 2003 for such refund fails and in my opinion, such a plea is untenable and therefore, unacceptable.

19. Owing to all that have been stated supra, the following directions are given:

(a) Respondent No.3 viz., the Superintending Engineer, Namakkal Electricity Distribution Circle, Namakkal shall refund a sum of Rs.59,74,479.53 to the petitioner less electricity tax component for the same, within a period of twelve (12) weeks from the date of receipt of a copy of this order.

(b) In the interregnum, within a period of six (6) weeks from the date of receipt of the copy of this order, respondent No.3 viz., the Superintending Engineer, Namakkal Electricity Distribution Circle, Namakkal shall communicate to the petitioner under due acknowledgement the exact sum of the electricity tax component from and out of the aforesaid amount of Rs.59,74,479.53 and also affirm that the same has been paid to respondent No.4 i.e., the Secretary to Government, Energy Department, Government of Tamil Nadu, Fort St. George, Chennai - 600 009.

(c) Respondent No.4 viz., the Secretary to Government, Energy Department, Government of Tamil Nadu, Fort St. George, Chennai - 600 009 shall refund the electricity tax component within a period of twelve (12) weeks from the date of receipt of communication by the petitioner as in paragraph 19(b) supra.

(d) If there is no communication and/or affirmation from respondent No.3 as in paragraph 19(b) supra, paragraph 19(a) will stand substituted by this clause, entire refund including electricity tax component i.e., Rs.59,74,479.53 shall be refunded by respondent No.3 within twelve (12) weeks from the date of receipt of a copy of this order.

20. With the above observations and directions, the writ petition is disposed of. No costs. Consequently, W.P.M.P.No.41376 of 2004 is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

bbr

To:

1.The Chairman,
Tamilnadu Electricity Board,
800, Anna Salai,
Chennai - 600 002.

2.The Superintendent Engineer,
Tamilnadu Electricity Board,
Mettur Distribution Circle,
Mettur Dam.
3.The Superintending Engineer,
Namakkal Electricity Distribution Circle,
Namakkal.
4.The Secretary to Government,
Energy Department,
State of Tamilnadu,
Fort St. George,
Chennai - 600 009.

+1CC TO Mr.V.J.Latha, Advocate sr.61459

+1cc to Mrs.K.Rameshvar, Advocate sr.61584

W.P.No.30915 of 2004

ss(5/10/2017)