

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.36007 of 2003

Bhagwandas Metals Limited,
61, 1st Floor, Sembudoss Street,
Chennai 600 001.
rep. by its Director

.. Petitioner

Vs.

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

2. The Superintending Engineer,
Tamil Nadu Electricity Board,
Chennai Electricity Distribution Circle,
(North) Chennai.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of first respondent in the Letter No.IEMC/EE2/A1/ F.Bhagwandas/CR 00455/2000 dated 25.01.2002 and quash the same and direct the respondents to refund a sum of Rs.7,65,000/- with interest @18%.

For Petitioner : Mr.C.S.Krishnamoorthy

For Respondents: Mr.P.R.Dhilipkumar

सत्यमेव जयते
ORDER

The petitioner has come forward with above Writ Petition praying for issuance a Writ of Certiorarified Mandamus to call for the records of first respondent in the Letter No.IEMC/EE2/A1/ F.Bhagwandas/CR 00455/2000, dated 25.01.2002, to quash the same and direct the respondents to refund a sum of Rs.7,65,000/- with interest @18%.

2. The petitioner is a public limited company involved in manufacturer of Steel with a composite unit consisting of an electric induction finance and a steel re-rolling mill. The petitioner submitted that on 15.12.1994, he was sanctioned power of 4950 KVA at 11KV by the second respondent and the

petitioner was directed to pay Earnest Money Deposit (EMD) of Rs.14,85,000/- and the said Deposit was paid by the petitioner to the respondents on 30.12.1994. The petitioner gave a letter on 11.08.1995 to the second respondent stating that the petitioner-Company's plant is ready for production, for which the Electricity Board agreed to sanction the petitioner the demand of 4950 KVA and that 29.08.1995 being the auspicious day, they intended to start the plant and requested for release of the power. On the very same day, there was a reply by the Electricity Board stating that 11 KV HT metering set with CT ratio of 300/5 A has to be erected on the Board's side and the metering set with-out CT ratio is not readily available by then and hence, the readily available 11 KV HT metering set with CT ratio 200/5 A is being erected on the Board's side and for the above said CT ratio, 3810 KVA can be availed by the petitioner and further as per HT application, 4100 KW induction furnace has been proposed for the petitioner-Company's Unit II and there are no split up details, which was to be furnished by the petitioner-Company. For the said letter dated 11.08.1995, the petitioner submitted a reply on 11.01.1996 stating that they have requested for a demand of 4950 KVA, but on the contrary, the Electricity Board has agreed only for partial demand of 2500 KVA due to constraint in the Board's transmission network and even after a lapse of four months, there is no improvement or progress for the total sanction of demand of 4950 KVA. The petitioner-Company requested that steps may be taken to extend the balance demand of 2450 KVA as a separate service.

3. It is the further case of the petitioner that on 03.06.1996, there was a communication from the Board to the petitioner stating that the entire work required for effecting the full load of 4950 KVA to the plant of the petitioner-Company was ready and that the petitioner was requested to produce the Safety Certificate issued by the Chief Electrical Inspector to the Government and the list of equipment installed and to avail the balance demand of 2450 KV within 90 days from the date of receipt of the said communication. Further, if the balance sanctioned demand is not availed within the expiry of 90 days from the date of expiry of the said letter, dated 03.06.1996, monthly minimum charges is leviable from the petitioner-Company.

4. It is further stated by the petitioner that on 10.10.1996, after four months from the date of communication, dated 03.06.1996, it has been stated that the petitioner could not be permitted to avail the sanctioned demand of 4950 KVA and that they have been asked to restrict the demand and that they have restricted the demand of 2500 KVA, which was effected on 04.09.1995. With this demand, the petitioner-Company was able to energise only one furnace. In the meanwhile, as the balance demand could not be ascertained from the Electricity Board, the

petitioner-Company's suppliers for furnace have taken back the furnace and other equipments which were under the guarantee period. It is further stated that they have been put to financial loss. Since the machineries have been taken away by the suppliers, they could not install the machineries within 90 days' notice period as mentioned by the Electricity Board and requested for sanctioning the balance MD of 2450 KVA, which was not considered by the Electricity Board. The petitioner-Company has no other alternative except to request for the cancellation of the balance load of 2450 KVA and sought for the balance EMD of Rs.7,35,000/-. The request for refund was rejected by the Board on 25.01.2002 on the ground that waiver of special guarantee amount was not possible.

5. There was a communication dated 11.09.2003 by the petitioner-Company to the Tamil Nadu Government stating that the rejection of the request for cancellation of the balance load of 2450 KVA and refund of the balance EMD of Rs.7,35,000/-, was not considered by the TNEB. In the said communication to the Government, the petitioner submitted that as 2450 KVA was not extended by Electricity Board as required by the petitioner, and the respondents-TNEB may be directed to refund the necessary amount.

6. The respondents have filed counter affidavit, stating that the petitioner being a consumer, as per the terms and conditions of supply of electricity, applied for maximum demand of 4950 KVA at 11 KV at Unit II SF No.36/1 & 21, Sadayankuppam Village, Manali, Thiruvallur District during 1994. It is further stated that an EMD advice for an amount of Rs. 14,85,000/- was issued on 15.12.1994, which was duly paid by the petitioner on 30.12.1994 and an administrative sanction was communicated to the petitioner on 15.12.1994. As per the concurrence of the petitioner, the supply was effected with partial demand of 2500 KVA by the TNEB on 04.09.1995 as against the sanctioned demand of 4950 KVA. Further, the TNEB has issued 90 days' notice for reporting readiness to avail the balance demand of 2450 KVA. The petitioner had requested for refund of the balance EMD amount, as the machineries have been taken away by their supplier and that it may not be possible to install the machineries back within 90 days and requested for the cancellation of the balance load of 2450 KVA. The petitioner was informed by the Electricity Board that the refund of EMD towards unavailed portion of sanctioned demand and waiver of special guarantee amount, is not feasible as per terms and conditions for supply of electricity, vide letter dated 25.01.2002. According to the respondents, Clause 14.07 of the terms and conditions of supply of electricity, is not applicable to the petitioner, since the TNEB was ready to effect the balance demand and the petitioner alone requested for cancellation of the balance demand.

7. It is further stated that only Clause 14.10 of the terms and conditions of supply of electricity, is applicable to the petitioner and the question of the refund of the balance EMD does not arise. It is further averred in the counter that the petitioner was informed that a separate 11 KV VCB was installed at Manali 110 KV SS to control the newly erected 11 KV Sadayankuppam Feeder to the HT supply to the petitioner's Unit II on 03.06.1996 itself, and hence the Special guarantee Clause 13.08 of the terms and conditions of supply of electricity, will be applicable to the petitioner, since the capital cost incurred by the TNEB for extending supply is more than Rs.10 lakhs. It is the further stand of the respondents in the counter that Clauses 14.04 to 14.07 of the terms and conditions of supply of electricity, were deleted and the same was published in the Tamil Nadu Government Gazettee No.7 dated 21.02.1996 and therefore, the respondents prayed that this petition may be dismissed.

8. Heard both parties and perused the materials available on record.

9. The fact that there was demand for 4950 KVA to the unit/plant of the petitioner-Company, that there was supply of 2500 KVA to the petitioner by the TNEB and the entire amount of Rs.14,85,000/- was paid as EMD for availing 4950 KVA on 30.12.1994, are not in dispute. Admittedly, the petitioner has not availed the balance demand of 2450 KVA. The issue involved in the Writ Petition is as to whether the petitioner is justified in demanding the refund of the amount for not availing 2450 KVA. The correspondence referred to in the pleadings make it clear that there are periodical representations/request by the petitioner for supply of the balance of 2450 KVA. The relevant communication dated 03.06.1996 sent by the TNEB to the petitioner, reads as follows:

"Sub: Elecy. - MEDC/North - Extension of 11 KV H.T. supply to M/s.Bhagavandoss Metals Ltd., Unit-II at Sadayankuppam Village for a demand of 4950 KVA - 90 days notice issued for reporting readiness to avail balance demand of 2450 KVA issued - Reg.

- Ref: 1) Lr.No.SE/MEDC/N/AEE/Dev./AED/D2/F.HT Doc.343/PR.5630/94, dt.15.12.1994.
2) Memo.No.CED/MSR/EET/T3/F.Extn.Est./D.242/95 dated 25.02.1995.
3) Memo No.SE/MEDC/N/AEE/Dev/AED/D2/F.HT Doc.343/PR.1020/95 dated 04.09.1995.
4) Endt.No.SR/MEDC/N/AEE/DEV/AED/D2/FHT Doc.343/PR.1013/95, dated 11.09.1995.

Load sanction for effecting of H.T. supply for a demand of 4950 KVA to your factory, i.e. M/s.Bhagavandoss Metals Ltd, Unit-II at Sadayankuppam Village, Manali vide reference (1) cited and 11 KV Feeder works executed based on working estimate sanctioned vide reference (2) cited.

Due to non-availability of adequate 11 KV Metering set of ratio 300/5 amps, the 11 KV metering set of ratio 200/5 amps was erected and service was energised to the restricted demand of 2500 KVA instead of actual sanction demand of 4950 KVA on 04.09.1995 with your specific concurrence vide your Lr.No.BML/833/95-96 dated 11.08.1995.

Now a separate 11KV VCB was installed at Manali 110 KV SS to control the newly erected 11KV Sadayankuppam Feeder to the HT supply of M/s.Bhagavandoss Metals Ltd, Unit-II and other existing services and Distribution Transformers in that area. The 11 KV Metering set of C.T. ratio 300/5 amps was also erected and commissioned on 25.05.1996 at your supply point on 25.05.1996. This completes the entire works required for effecting the full load of 4950 KVA to your plant.

In the above circumstances, you are requested to produce the Safety Certificate issued by the Chief Electrical Inspector to the Government and list of equipments installed and avail the balance demand of 2450 KVA within 90 days from the date of receipt of this letter. Further it is to be stated that if you do not avail the balance sanctioned demand within 90 days from the date of expiry of this letter, monthly minimum is leviable from you from the next date following that date until the date of availing supply. Hence please arrange to avail supply.... ."

10. The petitioner sent a communication, dated 10.10.1996 after four months from the date of the said communication, dated 03.06.1996 and stated that the petitioner has no other alternative but to request for refund of cancellation of the balance load of 2450 KVA and the balance EMD of Rs.7,35,000/-. The relevant portion of the terms and conditions of supply of electricity relating to refund is provided in Clauses 14.08 to 14.10, which reads as follows:

"Clause 14.08: If the applicant backs out after entering readiness but before taking up of work and payment of development charges, the entire Earnest

Money Deposit may be forfeited both in case of High Tension and Low Tension.

Clause 14.09: If the applicant backs out after entering readiness and after payment of development charges, even then if the work has not been taken up both Earnest Money Deposit and Development charges shall be forfeited in respect of both Low Tension/High Tension.

Clause 14.10: If the applicant who prefers to back out partially against the sanctioned demand before availing supply to their industry, then the above forfeiture/refund rules may be applied proportionate to the demand backed out, respectively."

11. The petitioner would be justified in seeking refund, if there is no supply of remaining 2450 KVA by the TNEB. At no point of time, the petitioner has sought refund of amount or cancellation of demand prior to 03.06.1996. Throughout, the petitioner's request was to extend the balance demand of 2450 KVA. Only after the Electricity Board stated that the entire Unit had been set up and that they are ready to supply the electricity, as demanded by the petitioner, the petitioner has chosen to send reply on 10.10.1996 after expiry of 90 days mentioned in the communication dated 03.06.1996 stated supra.

12. In order to meet the demand of the petitioner, the TNEB has incurred cost. From a reading of the aforesaid Clauses of the terms and conditions of the supply of electricity, it is clear that if from the date of supply of lesser KVA, the petitioner seeks cancellation of the balance 2450 KVA and requested for refund of the balance EMD amount, there is justification to grant the relief. After commission of the metering set, etc., pertaining to electric supply by the TNEB, as sought for by the petitioner and after the request made by the Electricity Board, the petitioner has chosen to go back and requested for refund of money, which is not permissible. A reading of the entire terms and conditions of supply of electricity, either conjointly or separately, indicates that the petitioner will not be entitled to refund of the amount as demanded, as, at no point of time, prior to 03.06.1996, there was a demand for refund of amount. Apart from that, the petitioner-Company received the said communication, dated 03.06.1996 from the TNEB, for which, the petitioner has replied after 90 days and requested for refund of a portion of the EMD on the ground that there was no supply of balance load of 2450 KVA.

13. In view of the foregoing discussion, the petitioner is not entitled to the relief sought in this Writ Petition, which is accordingly dismissed. No costs.

Sd/-

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

cs

To

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

2. The Superintending Engineer,
Tamil Nadu Electricity Board,
Chennai Electricity Distribution Circle, (North)
Chennai.

+1cc to Mr.C.S.Krishnamoorthy Advocate SR.No.71797

+1cc to Mr.P.R.Dilipkumar, Advocate Sr.No.71628

W.P.No.36007 of 2003

PVS (CO)

SM:22.11.2017

सत्यमेव जयते

WEB COPY