

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.01.2018

Delivered on : 21.03.2018

CORAM:

THE HON'BLE MR.JUSTICE **K.K.SASIDHARAN**
AND

THE HON'BLE MR.JUSTICE **P.VELMURUGAN**

W.A No.1728 of 2015, W.P.No.41412 of 2016,
M.P.No.1 of 2015 and WMP No.35383 of 2016

M/s.Laxmi Rolling and Strips Pvt. Ltd.,
Rep. By its Director,
Hosur- Thally Road,
Kalukondapalli Village
Belagondapalli PO
Hosur 635 114.

...Appellant in W.A.1728/2015

M/s.Chamundi Steel Castings (India) Ltd.,
Adm.Office No.17/21, Casa Capital Wood Street,
Ashok Nagar, Bangalore 560 035.
Rep. By its Director,
Mahendra Kumar Gupta

... Petitioner in W.P.No.41412/2016

Vs

1.The Tamil Nadu Electricity Board (TNEB)
Rep. By its Chairman and Managing Director
No.144, Anna Salai, Chennai – 600 002.

2.The Tamil Nadu Distribution and Corporation
(TANGEDCO) Limited,
Rep. By its Chairman and Managing Director
No.144, Anna Salai, Chennai – 600 002.

3.The Superintending Engineer,
Krishnagiri Electricity Distribution Circle
The Tamil Nadu Distribution and Corporation
(TANGEDCO) Limited, Krishnagiri.

4.M/s.Chamundi Steel Castings (India) Ltd.,
No.17/21, Casa Capital Wood Street,
Ashok Nagar, Bangalore 560 025.

...Respondents in
W.A.No.1728 of 2015

1.The Government of Tamil Nadu,
Rep. By its Secretary,
Energy Department,
Fort St.George, Chennai -600 009.

2.Tamil Nadu Electricity Board,
Rep. By its Chairman and Managing Director,
144, Anna Salai, Chennai – 600 002.

3.The Superintending Engineer,
Krishnagiri Electricity Distribution Circle,
TANGEDCO, Krishnagiri.

...Respondents in
W.P.No.41412/2016

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent against the order dated 30.11.2015 in W.P.No.36143 of 2015.

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Lr.No.SE/KEDC/KGIRI/DFC/AAO-HT/AS/RCS/F.HTSC No.194/D.No.148/2015 dated 12.08.2015 issued by the 3rd respondent and quash the same as illegal, arbitrary and against the G.O.Ms.No.88 Energy (A2) Department dated 18.5.1994 issued by the first respondent and consequently direct the 3rd respondent to refund the excess amounts collected from the petitioner in H.T.S.No.194 M/s.Chamundi Steel Casting (I) Ltd., with interest till this Hon'ble Court granted interim injunction dated 17.09.1997 restraining the 2nd and 3rd respondents from demanding payment in excess of concession tariff.

For Appellant in : Mr.ARL.Sundaresan
W.A.No.1728/2015 Senior Counsel for
Mrs.AL.Gandhimathi

For Petitioner in : N.L.Rajah
W.P.No.41412/2016 Senior Counsel for
Mr.K.Seshadri

For Respondents : Mr.C.Manishankar
Additional Advocate General
Assisted by Mr.M.Varunkumar
for R1 to R3 in W.A.No.1728/2015
and W.P.No.41412/2016

COMMON JUDGMENT

K.K. SASIDHARAN,J.

Introductory

The case on hand exposes the contradictory stand taken by a consumer of electricity and the successor company in the matter of tariff concession and arrears in respect of a particular connection, which was disconnected and a new connection was taken at the very same premises. The writ petitioner is challenging the denial of tariff concession in respect of High Tension Service Connection given on 30 April 1996 on the ground that withdrawal notification dated 18 May 1994 would not apply to the industry in view of sanction of load before such withdrawal .

2. The demand for arrears in respect of the earlier connection is opposed on the ground that it was a new connection and not a connection covered by the earlier sanctioned load.

3. The successor company knowing well that HT SC No.194 was disconnected earlier and in its place HT SC No.322 was given at the very same premises and is also covered by an undertaking to pay the entire arrears after the disposal of the pending writ petition before the High Court is now pleading that their liability would arise only in case the earlier connection is used or a new connection is taken in the very same premises.

W.P.No.41412 of 2016

4. The petitioner submitted application for sanction of power with a demand of 4400 KVA to accommodate two furnaces at their factory established at Denkanikottai. The Electricity Department sanctioned the demand as per order dated 16 December 1992. The High Tension (H.T) Supply was effected on 29 July 1993. The petitioner availed the benefits of the Government Order in G.O.Ms.No.1330 P.W.(Electricity) dated 17 September 1992 giving Tariff concession for new industries for a period of three years.

5. The petitioner submitted application for bifurcating the total sanctioned demand of 4400 KVA into 2550 KVA as one service and 1850 KVA as a separate service. The application was processed by the second respondent and sanction was given by order dated 13 April 1996.

6. While so, the Government of Tamil Nadu issued an order in G.O.Ms.No.88 Energy (A2) Department dated 18 May 1994 withdrawing the Tariff concession. The petitioner was not given the tariff concession after sanctioning the demand of 1850 KVA to the second Furnace.

7. The representation submitted by the petitioner was considered by the Krishnagiri Electricity Distribution Circle and by order dated 12 August 2015, the request was rejected. The order is under challenge in the writ petition.

W.A.No.1728 of 2015

8. The appellant purchased the land, building and machineries along with three High Tension Service Connection (HTSC) bearing Nos.159, 204 and 322 from the petitioner in W.P.No.41412 of 2016. The appellant paid a sum of Rs.1,47,71,490/- towards the arrears of consumption charges in respect of those three connections.

9. While so, the Electricity Department served a demand on the predecessor-in-interest of the appellant claiming a sum of Rs.1,33,07,285/- which was in arrears towards the Tariff concession availed by the industry pursuant to the interim order granted by this Court. The arrears was in respect of HT SC No.194.

10. The appellant in its representation to the Electricity Department contended that new connection was not given in respect of the premises covered by HT SC No.194 and as such, there is no liability to pay the past arrears. The representation was rejected by the Superintending Engineer, Krishnagiri Electricity Distribution Circle, by order dated 26 October 2015. The said order was challenged before the Writ Court. The learned single Judge was of the view that even though Service Connection in HT SC No.194 was closed in 2002, the claim for Tariff concession in respect of the said Service Connection was pending before the High Court in a writ petition filed by the predecessor-in-interest of the appellant in W.P.No.14216 of 1997. The Tariff concession was given on the strength of an interim order passed by the High Court in the said writ petition. Since the writ petition has already been disposed of, the consumer is liable to pay the subsidy received on the basis of the interim order passed by the High Court. The writ petition was accordingly dismissed. The order is under challenge at the instance of the holder of the service connection.

Submissions

11. The learned Senior Counsel for the petitioner in W.P.No.41412 of 2016 contended that the approval for a total load of 4400 KVA was sanctioned on 16 December 1992. The Tariff concession was withdrawn as per G.O.Ms.No.88 dated 18 May 1994. According to the learned Senior Counsel, withdrawal notification very clearly states that it would apply only to those industries, who got Service Connection after 18 May 1994. Since the load was sanctioned to the petitioner before the said Government Order, the respondents were not correct in negating the plea for Tariff concession.

12. The learned Senior Counsel for the appellant in W.A.No.1728 of 2015 submitted that there was no basis for claiming the arrears from the appellant in respect of HT SC No.194. According to the learned Senior Counsel, the HT SC No.194 was dismantled and the connection was permanently closed on 26 August 2002. The industry obtained a new Service Connection bearing No.322 and it was transferred to the appellant. There was no undertaking given by the appellant to pay the arrears in respect of HT SC No.194. The Department was therefore not correct in claiming the arrears from the appellant.

13 a). The learned Additional Advocate General contended that the petitioner in W.P.No.41412 of 2016 was given Tariff concession in respect of HT SC No.159 for 4400 KVA from the date of service connection viz., 9 August 1993. It was given upto 12 August 1994. Thereafter, Tariff concession was given for the period from 13 August 1994 upto 8 August 1996 in respect of the reduced load of 2550 KVA. According to the learned Additional Advocate General, there was a fresh application for a load of 1850 KVA. The request for new connection was made after the withdrawal of Tariff concession scheme on 18 May 1994. The Electricity Department was therefore justified in denying the benefit for 1850 KVA after the cut-off date.

b) The learned Additional Advocate General contended that there is a statutory liability to pay the arrears in respect of HT SC No.194. Though Service Connection No.194 was closed, a new connection viz., HT SC No.322 was given in its place at the very same premises. This was clearly indicated in the correspondence exchanged between the parties. The appellant has given an undertaking agreeing to pay the entire charges relating to HT SC No.194. Since new connection in HT SC No.322 was given at the very same premises where HT SC No.194 was given originally, the appellant is liable to pay the amount, the company being the subsequent purchaser of the said connection.

Analysis**W.P.No.41412 of 2016**

14. The writ petitioner submitted application for a new Service Connection on 23 July 1992. While the Electricity Department was in the process of considering the said application, the Government issued an order in G.O.Ms.No.102 Public Works Department, dated 24 January 1992 providing for concessional tariff for a period of three years from the date on which service connection is given to the consumer.

15. The Superintending Engineer, Dharmapuri vide order dated 16 December 1992 sanctioned High Tension Service Connection for a demand of 4400 KVA to the writ petitioner. The service connection was effected on 29 July 1993. The Electricity Department granted service connection to HT SC bearing No.159 for the full sanctioned load of 4400 KVA as per the request made by the writ petitioner.

16. The writ petitioner was given Tariff concession for the period from 9 August 1993 to 8 August 1996 in accordance with the Government Order in G.O.Ms.No.102 dated 24 January 1992.

17. The Government of Tamil Nadu issued an order in G.O.Ms.No.88 Energy (A2) dated 18 May 1994 restricting the benefit of Tariff concession only to those consumers who got the sanction of load prior to the said cut-off date.

18. The writ petitioner after the issuance of G.O.Ms.No.88 dated 18 May 1994 submitted an application on 19 July 1994 for reduction of load from 4400 KVA to 2550 KVA. The Superintending Engineer, vide letter dated 12 August 1994 permitted the reduction of load. The writ petitioner was given Tariff concession in respect of HT SC 159 i.e, for 4400 KVA from the date of service connection i.e., 9 August 1993 upto 12 August 1994 and for 2550 KVA, which is the reduced load from 13 August 1994 to 8 August 1996 viz., the end of three years period as per G.O.Ms.No.102 dated 24 January 1992.

19. The writ petitioner through application dated 6 August 1994 sought reduction of load in HT SC No.159 and applied for a new HT Service Connection within the very same premises for a load of 1850 KVA. The load sanction was accorded by order dated 16 August 1994. While sanctioning the new HT Service Connection, by order dated 16 August 1994, a condition was incorporated. As per Clause (iii) of the said order,

the consumer is not eligible for any concessional tariff for the restricted period of supply and that effecting supply taking into account the demand as a separate service would not be taken as a commitment that the Board would grant tariff concession.

20. The writ petitioner accepted the order dated 16 August 1994 including the condition that there would not be any concessional tariff for the restricted period. The Electricity Board on payment of necessary charges effected service connection on 30 April 1996. The new Service Connection was given in respect of HT SC No.194. The new connection bearing HT SC No.194 was taken after the withdrawal of the tariff concession. The respondents were therefore justified in denying the tariff concession for the new connection taken on 16 August 1994.

21. There is absolutely no merit in the contention taken by the writ petitioner that the industry is eligible for the Tariff concession for the total sanctioned load of 4400 KVA for a period of three years in accordance with the Government Order in G.O.Ms.No.102 dated 24 January 1992. The documents available on record and the counter affidavit filed by the Superintending Engineer, TANGEDCO, Krishnagiri, clearly shows that the reduction of load from 4400 KVA to 2550 KVA was made only after the withdrawal of the Tariff concession. The writ petitioner submitted an

application for new connection. The sanction was given after withdrawing the Tariff concession. The respondents were therefore right in declining the relief to the petitioner. We do not find any error or illegality in the order passed by the competent authority warranting interference by entertaining the writ petition.

W.A.No.1728 of 2015

22. The appellant purchased the land, building, machineries and Service Connection owned by the petitioner in W.P.No.41412 of 2016. The appellant cleared the arrears in respect of HT SC Nos.159, 204 and 322.

23. There was a litigation pending before the High Court when the purchase was made by the appellant. The writ petition was filed by the writ petitioner in W.P.No.14216 of 1997 for issuance of a Writ of Mandamus to grant Tariff concession to the industry for the entire sanctioned demand of 4400 KVA. In the said writ petition, the High Court, on 17 September 1997 passed an interim order restraining the respondents from demanding payment in excess of the concessional tariff. The interim order was extended periodically. The High Court while granting the interim order made it clear that in case the writ petition is ultimately dismissed, the industry shall pay the entire amount with interest at the rate of 12%. The writ petition was disposed of by order dated 9

March 2015. The Electricity department was directed to take a decision in the matter.

24. The learned Senior Counsel for the appellant contended that the appellant would be liable to pay the amount only in case a new connection was taken in the place of old Service Connection at the very same premises. The learned Senior Counsel contended that HT SC No.322 was a new connection, which has nothing to do with HT SC No.194 and as such, the appellant is not be liable to pay the dues in respect of HT SC No.194. There is absolutely no merit in the said contention for more than one reason.

25. The petitioner in W.P.No.41412 of 2016 submitted application for a new service connection. The application was registered on 17 February 2006. While according sanction for new connection, the Superintending Engineer in the order dated 25 February 2006 made it clear that S.C.No.194 which was disconnected is now being operated as a new service connection by the consumer. The order is found at page 1 of the additional typed set of papers filed by the respondents. The Superintending Engineer in Clause No.(I) of the order dated 25 February 2016 very clearly stated that the Chairman, Tamil Nadu Electricity Board, by proceedings dated 16 February 2006 instructed to take necessary

action to tag the consumer in order to get a bank guarantee for an amount of Rs.1.33 crores for the tariff concession case filed by the consumer in HT SC No.194, in respect of the premises where a new connection is taken. The new connection is HT SC No.322 and it was in substitution of HT SC No.194. The notice dated 2 December 2006 sent by the Superintending Engineer to the petitioner in W.P.No.41412 of 2016 indicates that demand was made to pay the amount due from HT SC No.194 and that HT SC No.322 was given at the very same premises where the earlier connection viz., HT SC No.194 was standing. The Superintending Engineer made it clear that in case payment is not made, HT SC No.322 would be disconnected as it was given in the place of HT SC No.194.

26. The Superintending Engineer, Dharmapuri Electricity Distribution Circle by notice dated 16 March 2007 called upon the writ petitioner to pay Belated Payment Surcharge pertaining to the accounts in respect of the closed HT SC No.194. Even in the said communication, the factum of new service connection in HT SC No.322 which was given in the place of HT SC.No.194 was clearly mentioned.

27. The appellant has given an undertaking dated 26 April 2016 to pay the entire arrears pertaining to HT SC No.194 due from the petitioner

28. The appellant has filed an affidavit dated 2 February 2018 disputing the contents of the undertaking affidavit. According to the appellant, the undertaking affidavit dated 25 April 2016 was withdrawn by letter dated 29 November 2016. The appellant has produced a copy of the letter dated 29 November 2016 along with postal receipt. There is nothing on record to show that the letter was served on the respondents. In any case, the undertaking given cannot be withdrawn unilaterally by the appellant. Even otherwise, there is a statutory liability to pay the amount.

29. Clause 17 (8) of the Tamil Nadu Electricity Supply Code, 2004 permits the Electricity Department to disconnect the supply in case the consumer has more than one connection and he defaults in the payment of dues relating to any one of the service connections.

30. The service connections in the subject case were all taken by the predecessor-in-interest of the appellant. The service connection in HT SC No.322 was taken in the place of HT SC No.194. It was not in respect of a different premises. The service connection bearing HT SC No.322 was given at the very same premises where originally the industry was given service connection in HT SC No.194. Therefore, the case of the appellant would be covered under Clause 17(8) of the Tamil Nadu Supply Code, 2004.

31. The file produced by the respondents very clearly shows that even when new connection bearing HT SC.No.322 was given, it was with a clear understanding that it was a connection in the place of HT SC No.194 and arrears in respect of the said connection must be paid by the consumer.

32. The appellant is now taking advantage of the fact that there was no demand made by the respondents at the time when service connection was transferred in its name. The demand could not be made at that point of time in view of the pendency of the writ petition in W.P.No.14216 of 1997 and the interim order granted by the High Court. The High Court while passing the interim order made it clear that in case the writ petition is dismissed, the consumer would be liable to pay the amount. The writ petitioner with a view to avoid the liability transferred the assets and the service connections to the appellant. Since HT SC.No.322 is the new avadhara in the place of HT SC No.194, there is a statutory liability on the part of the appellant to pay the dues. We are therefore of the view that the learned single Judge was justified in dismissing the writ petition.

33. The writ petition in W.P.No.41412 of 2016 is dismissed. The intra court appeal in W.A.No.1728 of 2015 filed against the order in W.P.No.36143 of 2015 is also dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(K.K.SASIDHARAN.,J.) (P.VELMURUGAN.,J.)

21 March 2018

Index : Yes
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To

- 1.The Chairman and Managing Director
The Tamil Nadu Electricity Board (TNEB)
No.144, Anna Salai, Chennai – 600 002.
- 2.The Chairman and Managing Director
The Tamil Nadu Distribution and Corporation
(TANGEDCO) Limited,
No.144, Anna Salai, Chennai – 600 002.
- 3.The Superintending Engineer,
Krishnagiri Electricity Distribution Circle
The Tamil Nadu Distribution and Corporation
(TANGEDCO) Limited, Krishnagiri.
- 4.The Secretary,
The Government of Tamil Nadu,
Energy Department,
Fort St.George, Chennai - 600 009.

K.K.SASIDHARAN,J.
and
P.VELMURUGAN,J.

(svki)



W.A No.1728 of 2015 and
W.P.No.41412 of 2016

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