

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.A.No.719 of 2018
and
C.M.P.No.6946 of 2018

The Superintending Engineering,
Tamil Nadu Electricity Board,
Dharmapuri Electricity Distribution Circle,
Dharmapuri. .. Appellant/Respondent

Vs.

Indus Steels and Alloys Limited, HTSCNO.225
Thally Road, Uliveeranapalli Village,
Denkanikottai Taluk, Belagoundapalli - 635 114
Krishnagiri District rep. by its Manager
S.Srikanth .. Respondent/Petitioner

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, against the order dated 23.04.2012, passed in W.P.No.882 of 2012.

PRAYER IN WP.882 OF 2012: Writ of Certiorarified Mandamus calling for the records of the Respondent in his Letter No.SED/D/F.5(HT.SC.225)/AE-1 D.1761/11 dated 05.12.2011 quash the same as unsustainable in law and consequently direct the respondents to give additional Demand of 800 KVA vide application dated 11.07.2011 in the existing metering point.

For Appellant : Mr.M.Varunkumar

For Respondent: Mr.M.Saravanakumar

JUDGMENT

(Judgment of this Court was made by S.MANIKUMAR, J.)

Material on record discloses that, vide proceedings dated 05.12.2011, the Superintending Engineer, Tamil Nadu Electricity Board, Dharmapuri Electricity (D) Circle, Dharmapuri, declined

extension of HT supply to M/s.Indus Steels & Alloys Ltd., Hosur, for an additional demand of 800KVA, over and above the existing demand of 1700KVA, and directed the respondent to clear the outstanding dues of Rs.60,21,499/- along with BPSC towards Tariff concession case pending before the High Court, vide W.P.No.1255 of 1998, so as to enable the Electricity Department to process the HT application, for an additional demand of 800KVA over and above the existing demand of 1700KVA.

2. Said proceedings dated 05.12.2011 of the Superintending Engineer, Tamil Nadu Electricity Board, Dharmapuri Electricity (D) Circle, Dharmapuri, has been challenged in W.P.No.882 of 2012, with a prayer to quash the same.

3. During the course of hearing of W.P.No.882 of 2012, learned senior counsel appearing for the petitioner has submitted that Tariff concession was challenged by the petitioner before this Court, and that the same was allowed. Thus demand raised by the respondent was quashed. Therefore, in W.P.No.882 of 2012 submission has been made by the learned Senior Counsel, that, on the date of hearing of the said writ petition, there was no demand and that writ appeal filed by the appellant against the decision of the writ court was pending.

4. Opposing the prayer sought for and repelling the contention, learned counsel for the respondent in W.P.No.882 of 2012 has contended that, under the regulations of the Board, a person, who is in default of payment of any amount, is not entitled to additional load. He had reiterated that Board was justified in refusing to accede to the request of the respondent for additional load, when the demand against him, was outstanding.

5. Upon consideration of the rival submissions, writ Court vide order dated 23.04.2012 in W.P.No.882 of 2012 at Paragraph Nos.10 to 13, ordered as hereunder:-

"10. On consideration, I find that the writ petition deserve to succeed. It cannot be disputed that the person against whom dues are outstanding, is not entitled to additional load till the dues are cleared, but the question in this case is whether there are any dues outstanding.

11. It is not disputed that the demand raised against the petitioner was set aside by this Court, and as on date, there is no dues outstanding against the petitioner. In the writ appeal, no stay has been granted in favour of the respondent/board. The respondent therefore, cannot say that any amount is outstanding against the petitioner, which can be directed to be paid before its case is considered for grant of additional

load.

12. The impugned order therefore, suffers from non application of mind, as it does not take note of the fact that demand against petitioner was under challenge before this Court, and that the petitioner succeeded in getting the demand set aside. The impugned order therefore, is not contemptuous, as the respondent is demanding the payment inspite of the decision by Hon'ble Single Judge quashing the demand.

13. For the reasons stated above, writ petition is allowed. The impugned order is quashed, and the case is remitted back to the respondent to consider the case of the petitioner for grant of additional load in accordance with the board regulation. Consequently, connected miscellaneous petition is closed. No costs."

6. Challenging the abovesaid order, instant writ appeal has been filed on the following grounds,

(i) Writ court failed to note that the proviso to Clause 27 (1) of the Tamilnadu Electricity Distribution Code 2004 i.e. the licensee will refuse to supply electricity to an intending consumer who had defaulted in payment of dues to the licensee in respect of any other service connection in his name.

(ii) Writ court failed to note that Clause 5(2)(iv) of the Tamilnadu Electricity Supply Code 2004 that no addition or reduction of load in case of LT service and no addition or reduction of demand in case of HT service may be sanctioned unless the outstanding dues in the same service connection had been paid.

(iii) Writ court failed to note that under Section 50 r/w Section 181 of the Electricity Act 2003, the state electricity regulatory commission has got the power to make regulations and hence the above provisions of the Tamilnadu Electricity Supply Code 2004 and Tamilnadu Electricity Distribution Code 2004 are statutory in character and hence binding on the respondent/writ petitioner.

(iv) The writ court failed to note that the amount to the tune of Rs.60,21,499/- along with BPSC towards tariff concession is due from the respondent/writ petitioner and hence outstanding dues in the account.

(v) Writ court failed to note that though the demand was set aside by the learned Judge, the writ appeal preferred by the board is pending and hence the issue is at large.

(vi) Writ court failed to consider the ratio laid down by this Hon'ble Court in W.P.(MD).No.12507 of 2011 in M/s.Vishnuvardhan Paper Mills (P) Ltd versus TNEB and others.

(vii) Writ court failed to note that the respondents being an agreement holder is bound by the provisions of the Tamil Nadu Electricity Supply Code and Tamilnadu Electricity Supply Code 2004 and as such estopped from disputing the demand.

(viii) Writ court failed to note that the respondent industry has not produced CEIG certificate, prior to 15.2.1997 and therefore not eligible for Tariff Concession, as admittedly the respondent produced the CEIG Certificate only on 25.10.1997.

7. Firstly the demand raised has been set aside. Pendency of appeal does not amount existence of demand. In W.A.No.1913 of 2011, a Hon'ble Division Bench of this Court, considered a similar case wherein, writ court granted an injunction against the demand in W.P.No.18789 of 2011 dated 25.08.2010, and it was in force. Electricity Department denied permission for additional load. On the above facts the Hon'ble Division Bench, vide order in W.A.No.1913 of 2011 dated 22.10.2013, directed the appellants therein, to consider the application for additional load, as hereunder:-

"2. Learned counsel appearing for the respondent submitted that during the pendency of the writ appeal, the respondent has paid the amount of Rs.62,30,286/- under protest and a letter for paying the said amount remitted by the respondent dated 07.02.2013, is also produced before us. 2. Even if the amount is not paid by the respondent, as the injunction order granted against the demand in W.P.No.18789/2010 dated 25.08.2010 is in force, the Electricity Board cannot deny the consideration of the application seeking additional load on that ground i.e., the respondent is having arrears. The Division Bench of this Court in W.A..No.1283 of 2013 dated 01.07.2013 also took the same view. The Madurai Division Bench of this Court in W.A.(MD) Nos.246 and 247 of 2013 dated 26.06.2013 wherein one of us N.PAUL VASANTHAKUMAR,J as a party also took the same view. In the said Judgment in paragraph Nos.8 to 13, it is held thus: "8.The only reason stated in the rejection order dated 1.11.2012 is that the respondent factory was in arrears to the Board and therefore its request cannot be considered until the arrears are cleared. As the demand of arrears is stayed and the stay order is still in force, rejection of application of the respondent seeking enhancement of additional load is not proper. In the impugned order of rejection dated 1.11.2012 the interim stay granted by this Court was not considered and referred.

9. It is well settled proposition of law that if an authority passes an order, inspite of grant of interim injunction or stay granted by the Court, operating against the authority, the decision taken without considering the interim injunction/stay is a nullity. The Hon'ble Supreme Court laid down the said proposition of law in the decision reported in 2010(4) Supreme 519 (Manohar Lal(D) by Lrs. v. Ugrasen (D) by

LRs.) by following the earlier decisions reported in AIR 1967 SC 1386 (Mulraj v. Murti Raghunathji Maharaj); AIR 1996 SC 135 (Surjit Singh v. Harbans Singh); Air 1996 SC 2005 (Delhi Development Authority v. Skipper Construction Co.(P) Ltd.); and AIR 2007 SC 1386 (All Bengal Excise Licensees Association v. Raghabendra Singh).

10. In the decision reported in AIR 2011 SC 538 (M/s.Nava Bharat Ferro Alloys Ltd. v. Transmission Corporation of A.P. Ltd.) it is held that a party, who fails in the main proceedings, cannot benefit from the interim order issued during pendency of the said proceedings. In the said case, the demand for payment of additional charges having been upheld, the appellant therein was directed to pay additional charges 4 as interim order merges with the final order.

11. In this case, the interim stay is still in operation and the writ petition filed by the respondent is yet to be disposed of. Hence the submission of the learned counsel for the respondent that the respondent will abide by the final decision to be rendered in the writ petition challenging peak hour charges is bound to be accepted.

12. Applying the above said decision to the facts of the cases on hand, the direction given by the learned Single Judge is just and proper. As rightly contended by the learned counsel for the respondent, the claim of the appellants seeking arrear amount will depend upon the decision in the pending writ petition.

13. In the result, the writ appeals are dismissed and the orders of the learned single Judge dated 26.11.2012 and 8.1.2013 are confirmed. The third appellant is directed to consider the application of the respondent herein/writ petitioner dated 23.07.2012 seeking additional load from 400KVA to 830 KVA within a period of four weeks from the date of receipt of copy of this order. No costs. Connected miscellaneous petitions are closed."

3. Applying the said decision to the facts of this case, the writ appeal is dismissed. If the amount is paid already by the respondent, there may not be any impediment to consider the application for additional load in accordance with the direction given by the learned Single Judge. Even if the amount is not paid by the 5 respondent, the appellants cannot deny consideration of providing additional load on that ground. However, it is made clear that if any amount is payable to the Electricity Board, which is under challenge, the respondent is directed to give an undertaking before the appropriate Officer stating that

in case, if the challenge made by the appellants is ultimately decided against the respondent, the amount so payable will be paid.

4. The writ appeal is dismissed with the above observations. The appellants are directed to consider the application of the respondent herein and pass orders within a period of four weeks from the date of receipt of copy of this order. No costs. The connected miscellaneous petition is closed."

8. In W.A.Nos.1652 and 1653 of 2013, respondents therein in separate writ petitions questioned the demand made by the Board and there was stay. Request for dedicated feeder facility was declined. Respondents filed W.P.Nos.3336 and 4052 of 2013, challenging the same. Opposing the prayer appellant filed counter affidavit as hereunder:-

(a) The request made by the High tension consumers for dedicated feeders should not be mandatory and shall be considered subject to technical feasibility. Also requests from litigant consumers should not be considered.

(b) The amount for dedicated feeder has to be collected as per the current cost data from the High tension consumers who were already exempted from load shedding.

(c) The total demand of the High tension consumer seeking a dedicated feeder (feeder feeding only to the High tension consumer without other category of loads) should be atleast 50% or more of the capacity of the feeder line.

(d) The cost of the existing feeder line including equipments and bay etc., has to be collected from the High tension consumers under Deposit contribution works category who opts for conversion of dedicated feeder. However the TANGEDCO reserves the right to use the supply line and its equipments for supply to other consumers.

(e) The maintenance charges of the above dedicated feeder if applicable have to be paid by the High tension consumer.

(f) The open Access consumer should agree to execute the undertaking as per memo No.CE/Comml/EE/R&C/D.70.1/12 dated 12.03.2012.

It is the stand of the official respondents that since the concept of dedicated feeder was evolved by them, they have every right to lay conditions for providing the same and since the writ petitioners have to clear the dues towards self generation tax, penal charges on quota violations and other levies and the said amounts could not be collected in view of the pendency of Court cases, their applications were rightly rejected. Reliance

was also placed upon clause 27(10) of the Tamil Nadu Electricity Distribution Code, 2004."

9. Upon hearing the parties, Writ Court set aside the order, declining feeder facility. W.A.Nos.1652 and 1653 of 2013 were filed. After considering the rival submissions, a Hon'ble Division Bench of this Court, dismissed the writ appeals, as hereunder:-

"5. Mr.P.H.Arvind Pandian, learned Additional Advocate General appearing for Mr.S.K.Rameswar, learned counsel appearing for the appellants has submitted that under Section 50 r/w. Section 181 of the Electricity Act, 2003, the State Electricity Regulatory Commission has got power to make regulations and hence the Tamil Nadu Electricity Supply Code, 2004 and the Tamil Nadu Electricity Distribution Code, 2004, came into being and in terms of the said regulations, the appellants are entitled to prescribe conditions for providing feeder facility. It is the further submission of the learned counsel appearing for the appellants that as per the 3rd proviso to Regulation 27(1) of the Tamil Nadu Electricity Distribution Code 2004, the licensee will refuse to supply electricity to an intending consumer, who had defaulted in payment of dues in respect of any other service connection in his name. Attention of this Court was also drawn to Regulation 5(2)(iv) of the Tamil Nadu Electricity Supply Code 2004 and it reads as follows:

"(iv) No addition or reduction of load in case of LT service and no addition or reduction of demand in case of HT service, may be sanctioned unless the outstanding dues in the same service connection has been paid."

The learned Additional Advocate General, in support of his submissions, placed reliance upon the following judgments:

(a) Amit Products (India) Ltd., v. Chief Engineer (O&M) Circle and Another [(2005) 7 SCC 393]

(b) Suvidha Engineers India Limited v. Paschimanchal Vidyut Vitran Nigam Limited through its Managing Director and Others [Manu/UP/0502/2009]

(c) Tehri Girders Limited and Ors. v. Paschimanchal Vidyut Nigam Limited and Others [2011(1) RCR (Civil) 731= Manu/UP/0503/2009]

(d) Vishnuvardhan Paper Mills (P) Ltd., v. TNEB and Others [2012 Writ L.R. 676]

6. Per contra, Mr.A.R.L.Sundaresan, learned Senior Counsel appearing for the respondents in these writ appeals contended that the demand made in the impugned orders, which are the subject matter of challenge in the writ petitions, have been stayed by this Court in the writ petitions filed by the respective respondents and it is always open to the appellants herein either to file applications for vacating the interims orders or take steps to expedite the final disposal of the writ petitions and unless and until the interim orders are vacated, it is not open to them to make the demand of the said amount. It is the further submitted by the learned Senior Counsel appearing for the respondents that the litigants are having right to approach the Court for redressal of their grievance and in the present case also, the respondents herein had resorted to such a course and obtained interim orders which are in force and in view of the the pendency of the Court course, the condition insisting for withdrawal of those cases cannot be made and the similar issue was considered by a learned Single Judges of this Court and the writ petitions came to be allowed by placing reliance upon the said orders. Lastly it is submitted by the learned Senior Counsel appearing for the respondents that if the impugned orders, which are the subject matter of chllange in the writ petitions, are allowed to stand, it would definetely result in undermining the interim orders passed by this Court and ultimately affect its majesty also and hence, prays for dismissal of these writ appeals. The learned Senior counsel appearing for the respondents, in support of his submissions, placed reliance upon the following decisions:

- (a) Govind Sahai and Another v. State of U.P and Another [(1969) 1 SCR 176]
- (b) Pratap Singh and Another v. Gurbaksh Singh [1962 Supp (2) SCR 838]
- (c) Kanoria Chemicals and Industries Ltd., and Others v. U.P.State Electricity Board and Others [(1997) 5 SCC 772]
- (d) Bhagubhai Bhanabhai Kailasi and Another v. State of Gujarat and Others [(2007) 4 SCC 241]
- (e) Common order dated 01.08.2012 made in W.P.Nos.16203/2012 batch etc.

7. This Court paid its best attention to the rival submissions and also perused the materials available on record.

8. The Tamil Nadu Generation and Distribution Corporation Limited vide Memo No.CE/Coml/EE/R&C/AEE/F.Dedicated Feeder/D.219/12 dated 15.05.2012 stipulated working instructions and the same is extracted below:

"The Chief Engineer/Distribution/Madurai Region has sought guide lines under letter reference cited (3), to process the request of the HT consumers for provision of dedicated feeder and exempt from load shedding for purchase of power. In this regard, the Chief Engineers/Distribution may be permitted to accord approval to exempt the dedicated feeders from the purview of Load Shedding for power purchase to Open Access consumers after ascertaining the condition of the feeder, subject to conditions as follows:

i) The request made by the HT consumers for dedicated feeders should not be mandatory and shall be considered subject to technical feasibility. Also the request from litigant consumer should not be considered.

ii) The total demand of the HT consumer seeking a dedicated feeder (feeder feeding only to the HT consumer/consumers without other category of loads) should be at least 50% or more of the capacity of the feeder line. The 50% load concept is applicable only for provision of new dedicated feeders.

iii) All HT consumers in a feeder (if more than one HT consumer is connected in the feeder) should purchase power during the load shedding period and otherwise exemption from load shedding could not be considered. Necessary combine undertaking should be obtained from all consumers in this regard.

iv) The cost of the existing feeder line including equipments and bay etc. may be collected from the HT consumers under DCW category who opts for conversion of dedicated feeder. However TANGEDCO reserves every right to use the supply line and its equipments for supply to other consumers.

v) The maintenance charges of the above dedicated feeders if applicable, have to be

collected from the HT consumers.

vi) The OA consumers should agree to execute the undertaking communicated in this office Memo.No.CE/Coml/EE/R&C/AEE/F.R&C/D.70-1/12, dt. 12.3.2012, for erection of ABT meter for purchase of power.

Vii) While considering the request for erection of new dedicated feeder for HT consumers, necessary care should be taken to retain the bays etc., in the substation to cater load growth for future period.

Viii) Necessary undertaking from HT consumers should be obtained regarding clauses (iii) to (vi).

9. It is the stand of the appellants/respondents in the said writ petitions that the respondents/writ petitioners requested for open access facility to avail third party power to their units and since the concept of dedicated feeders was evolved by the respondent Board, they are having every right to stipulate conditions and since the respondents/writ petitioners are owing large sums of money and that the recovery of the same has been stayed in Court cases in the form of writ petitions and having been imposed such conditions/instructions in the form of memos dated 15.05.2012 (extracted above) and 03.07.2012.

10. Let this Court consider the decisions relied on by the learned Additional Advocate General appearing for the appellants.

10.1. In Amit Products (India) Ltd., v. Chief Engineer (O&M) Circle and Another [(2005) 7 SCC 393], the facts are that the appellant company filed an application for getting electricity connection and it was rejected by the Maharashtra State Electricity Board insisiting that it should clear the dues of electricity charges payable by previous consumer. The stand of the appellant was that they are not liable to pay the electricity charges payable by the previous consumer as they are distinct and separate company. The Hon'ble Supreme Court of India, taking into consideration the reasons assigned by the High Court of Bombay, held that the appellant company is none other than the sister concern of M/s.Amar Amit Jalna Alloys Pvt. Ltd., and was representing the same consumer

who had committed default in payment of electricity dues and the stand taken by the Maharashtra State Electricity Board is sustainable. The said decision has no applicability to the facts of this case.

10.2. In Suvidha Engineers India Ltd., v. Paschimanchal Vidyut Vitran Nigam Limited and Ors. [Manu/UP/0502/2009], the facts read that the appellant suffered an assessment alleging theft of electricity and an appeal was filed before the Appellate Committee and it was also dismissed and challenge was made by filing writ petition, wherein conditional interim order was granted and it has been complied with. The petitioner made an application for enhancement of load and it was sanctioned subject to the condition that it has to remit an amount of Rs.2,97,800/- as line charges and security etc., and it was also deposited. The petitioner filed the writ petition challenging the vires of Condition No.5 of the order, which required that the provisions of the U.P. Electricity Supply Code, 2005 be strictly complied with and pending disposal of the writ petition, a direction was also sought for releasing the additional load. Thereafter, a letter was issued to the petitioner asking him to provide bank guarantee as per Clause 4.49 of the U.P. Electricity Supply Code 2005 and it was challenged by filing the writ petition. One of the contention put forth was that the assessment amount having been stayed by the Allahabad High Court and it is still subsisting, the order asking for submission of bank guarantee to cover the said amount is interference with the High Court's power of judicial review and the provisions of Clause 4.49, which abridges the Court's order deserves to be struck down. The High Court of Allahabad, after considering the relevant provisions and the decision of the Hon'ble Supreme Court of India in 1991 Supp (1) SCC 96 in the matter of Cauvery Water Disputes Tribunal and other decisions, has held that the bank guarantee has been asked on the premise that petitioner has applied for enhancement of load. Had the petitioner not applied for enhancement of the load, there was no question for asking any bank guarantee and further found that Clause 4.49 of the U.P. Electricity Supply Code, 2005, is merely a protective provision rather than a provision for enforcing

recovery and therefore, held that no grounds have been made out to declare Clause 4.49 of the U.P. Electricity Supply Code, 2005 as ultravires.

10.3. In *Tehri Girders Limited and Ors. v. Paschimanchal Vidyut Vitran Nigam Limited and Ors.* [Manu/UP/0503/2009], the petitioner therein made an application for sanction and release of additional load and it was sanctioned subject to the condition that the petitioner has to deposit an additional security of Rs.67.38 lakhs in the form of bank guarantee. It was contended that the demand of additional security has already been stayed by this Court in W.P.No.53238/2006. The petitioner subsequently submitted the bank guarantee and later moved an application for releasing the same, however the said request was rejected by placing upon Clause 4.49 of the U.P. Electricity Supply Code, 2005 and challenge was made to the said order. The High Court of Allahabad, after referring to Clause 4.49 of the U.P. Electricity Supply Code, 2005, held that the condition precedent for applicability of the said Clause is recovery of dues and formulated a question whether the demand of additional security can be treated to be of any dues and after referring to various decisions, held that Clause 4.49 of the U.P. Electricity Supply Code, 2005 was not attracted in the case where demand of additional security has been stayed by this Court in different writ petitions and the writ petitions challenging the demand of bank guarantee, which has been stayed by this Court, deserves to be allowed.

10.4. In *Vishnuvardhan Paper Mills (P) Ltd., v. TNEB* [2012 Writ L.R. 676], challenge was made to the order calling upon the petitioner therein to arrange to pay the dues of 3 sister concerns of the petitioner, which form the subject matter of 3 writ petitions on the file of this Court, as a pre-condition for sanctioning an additional load to the petitioner. The learned Judge, after referring to the decisions rendered by this Court on the same issue has held that the 3rd proviso to Regulation 27(1) of the Tamil Nadu Electricity Distribution Code, 2004 and Regulation 5(2)(iv) of the Tamil Nadu Electricity Supply Code, 2004, have not been brought to the knowledge of the learned Judge, who rendered the said decision and after

referring to Amit Products case (cited supra) has found that when the same set of persons are found to be operating under different corporate names in the form of different corporate entities, it is possible and sometimes even necessary to lift the corporate veil and on the facts of the case, held that all the companies are closely held family companies and there was nothing wrong in the respondents demanding payment of the dues of those companies, which form the subject matter of other writ petitions. With regard to the interim orders granted in the writ petitions, the learned Judge held that such orders enable those writ petitioners to enjoy uninterrupted supply, subject to the compliance with all other usual conditions, except the demand for payment of the charges made under the orders impugned in those writ petitions and that the stay does not obliterate the demand made for all purposes whatsoever and hence, it has been held that when the petitioners in those writ petitions seek any other facility, which does not form part of the subject matter of those writ petitions, the respondents would naturally have a right to insist upon payment of those amounts and citing the said reason, dismissed the writ petition.

11. This Court has also considered the decisions relied on by the learned Senior Counsel appearing for the respondents.

11.1. In *Govind Sahai and Another v. State of U.P. and Another* [(1969) 1 SCR 176], the facts of the case would disclose that with regard to the election to the membership of the Congress association, a suit was filed and interim orders were obtained and Working Committee of a particular political party passed a resolution stating that any member, who instituted a suit or other proceeding in law Courts against any Congress Committee or Official, did so at the risk of being considered guilty of gross discipline and of being summarily, and without any further notice removed from membership of the Congress. Accordingly, the second respondent therein was removed. Before the Trial Court, contempt application was moved and it was dismissed and further challenge was made before the High Court of Allahabad and the High Court of Allahabad found him guilty of contempt and imposed a fine and

challenge was made to the said order before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India has referred to its judgments in Pratap Singh and Another v. Gurbaksh Singh [AIR 1962 SC 1172] and held that such a kind of act amounts to contempt and given a finding that the High Court of Allahabad was justified in holding the appellant guilty of contempt.

11.2. In Kanoria Chemicals and Industries Ltd., and Others v. U.P. State Electricity Board and Others [(1997) 5 SCC 772], the notification providing for payment of bill amount with interest within the stipulated time was challenged and interim order was granted and all the writ petitions were ultimately dismissed. After the dismissal of the writ petitions, demand was made for late payment of surcharge and fresh batch of writ petitions were filed by several consumers, challenging the same. The contention put forth was that inasmuch as the High Court had stayed the operation of the notification, which remained inoperative during the period 25.07.1990 to 01.03.1993, no late payment surcharge can be levied on the amount withheld by the appellants under the orders of the High Court, even though their writ petitions were dismissed ultimately. The said writ petitions were dismissed and hence, appeal was filed before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India referred to its earlier decisions rendered in Shree Chamundi Mopeds Ltd., v. Church of South India Trust Association [(1992) 3 SCC 1], where it has been held as follows:

"While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence."

11.3. Mr.AR.L.Sundaresan, learned Senior

Counsel appearing for the respondents by placing reliance upon the decision in Shree Chamundi Mopeds case (cited supra) vehemently contended that the order which has been stayed would not be operative from the date of the passing of the stay order and in the case on hand, admittedly, interim order are in force and unless and until it is vacated, there cannot be any demand calling upon the respondents herein to pay the said amount as a pre-condition for providing dedicated feeder facility and they cannot be directed to withdraw the writ petitions.

11.4. The learned counsel appearing for the appellants has also drawn the attention of this Court to the common order dated 06.11.2012 made in W.A.(MD).Nos.895 and 896/2012 and would contend that in the light of the said judgment, the judgment reported in 2012 Writ. L.R.676 [Vishnuvardhan Paper Mills (P) Ltd., v. TNEB], rendered by a learned Single Judge of this Court cannot be made applicable to the case on hand.

11.5. Attention of this Court was also drawn to the common orders dated 01.08.2012 made in W.P.Nos.16203/2012 etc., batch, wherein similar issue arose for consideration before the Single Bench of this Court, wherein the learned Judge has considered the issue of access to justice and held that access to justice is a right of individual or groups to obtain quick, effective and fair judicial remedy to protect their rights, prevent or solve disputes and also considered the stand of the TANGEDCO that no objection certificate cannot be issued and the Executive cannot take offence against the assessee for seeking recourse to legal remedy and the right to challenge executive action cannot be curbed by the respondent Board and that the Executive does not have the power to injunct a citizen from approaching the Court, as that would not only prejudice the party litigant, but will also amount to interfering with the course of justice, for which the authority is liable to be proceeded for acts in contempt of Court.

12. The facts of the case on hand would disclose that with regard to the request made by the respondents herein for dedicated feeder facility, they have been called upon to clear the pending arrears in the form of self generation tax

and the Court cases. The self generation tax was the subject matter of challenge in the writ petitions and in those cases, interim orders have been passed and are pending adjudication. The appellants herein required the respondents to clear the pending arrears and the Court cases and the memo dated 15.05.2012 also made it clear that the request made by the HT consumers for dedicated feeders should not be mandatory and shall be considered subject to technical feasibility and also that the request from the litigant consumer should not be considered.

13. The decisions relied upon by the learned Additional Advocate General, the facts of which have been narrated above, have no application to the case on hand and in fact, in the judgment of the Division Bench of the High Court of Allahabad in Tehri Girders Limited and Ors. V. Paschimanchal Vidyut Vitran Nigam Limited and Ors. [Manu/UP/0503/2009], it has been held that the writ petitions challenging the demand of bank guarantee with regard to amount of additional security as per Clause 4.49 of the U.P. Electricity Supply Code, 2005, which has been stayed by this Court, deserved to be allowed and therefore, allowed the writ petitions challenging the demand of bank guarantee with regard to additional security deposit.

14. The Hon'ble Supreme Court of India in Shree Chamundi Mopeds Ltd., v. Church of South India Trust Association [(1992) 3 SCC 1], has held that subsistence of interim orders would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. The fact remains that interim orders are in force in the above said two writ petitions filed by the respondents and unless and until the said interim orders are vacated in favour of the appellants herein, they cannot insist the respondents herein to pay the said dues and also to clear the Court cases wherein challenge was made to the said demand.

15. A Single Bench of this Court in the common order dated 01.08.2012 made in W.P.Nos.16203/2012 etc., batch, has elaborately and extensively considered the same issue and after referring to various decisions rendered by the Hon'ble Supreme

Court of India, has held that the impugned orders passed by the TANGEDCO denying the facility or refusing to grant No Objection Certificate as arbitrary and set aside the impugned proceedings.

16. This Court is of the considered view that unless and until the interim orders granted by this Court in the above said writ petitions are vacated, varied or modified in favour of or to the advantage of the appellants herein, they cannot insist for payment of the said amount or directing them to withdraw the Court cases. Any view would definitely result in undermining the interim orders passed by this Court and it is also not open to the appellants herein to interpret the interim orders passed by this Court to their advantage and the remedy open to them, if any, is to approach this Court by filing petitions for vacating the interim orders or seeking modification of the interim orders. In the impugned orders, which are the subject matter of challenge in these writ appeals, reliance has been placed on the common judgment dated 06.11.2012 made in W.A.(MD).Nos.895 and 896/2012, in which TANGEDCO are the appellants therein and no challenge was made to the said common judgment and it had attained finality and therefore, it not open to the appellants to take a different stand by insisting the respondents in these writ appeals to clear the arrears which are the subject matter of challenge in these writ appeals and also to clear/withdraw those cases.

17. In the light of the reasons assigned above, these writ appeals are dismissed, confirming the orders dated 18.02.2013 and 27.02.2013 made in W.P.Nos.3336 and 4052/2013 respectively and the appellants are directed to consider the application submitted by the respondents herein subject to technical feasibility and other requirements stated in conditions (ii) to (vii) of their memo dated 15.05.2012. It is also made clear that in the event of the writ petitions filed by the respective respondents ending in dismissal, it is always open to the appellants to recover the same in terms of their Rules/regulations and terms and conditions of the electricity supply. However, in the circumstances of the case, there shall be no order as to costs. Consequently, the connected

miscellaneous petitions are closed."

10. In the light of the above decisions, challenge to the order impugned fails, accordingly the writ appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS-)

//True Copy//

Sub Assistant Registrar

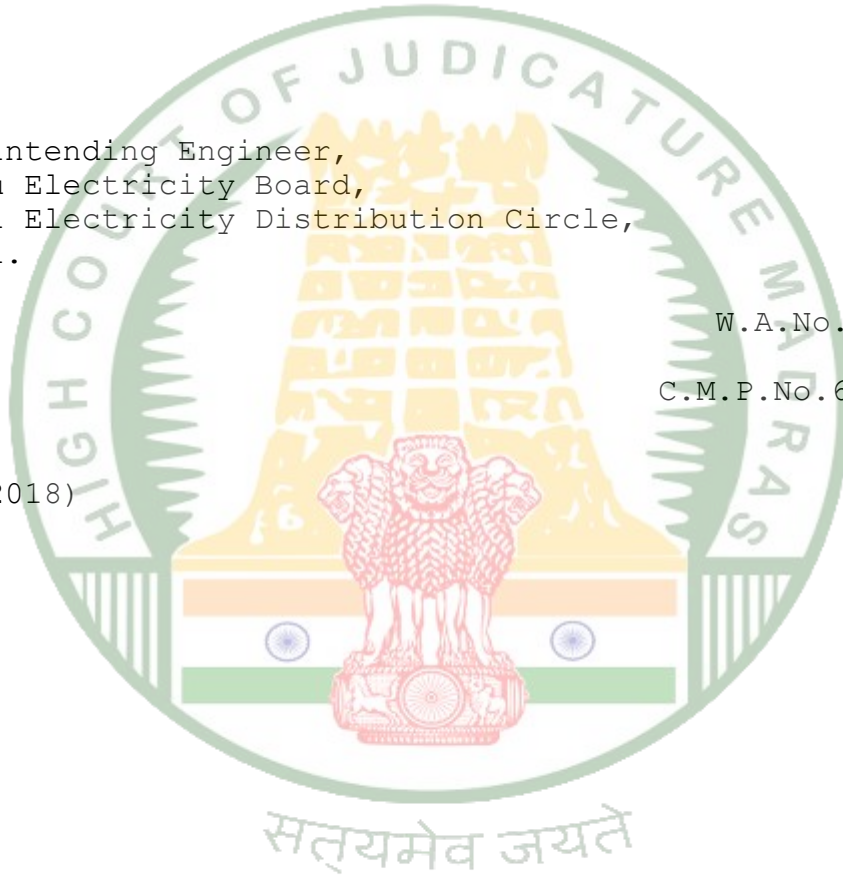
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To

The Superintending Engineer,
Tamil Nadu Electricity Board,
Dharmapuri Electricity Distribution Circle,
Dharmapuri.

W.A.No.719 of 2018
and
C.M.P.No.6946 of 2018

ca (CO)
TR(06/06/2018)



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