

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved On : 07.09.2018

Order Pronounced On : 15.03.2019

CORAM:

THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.No.12234 of 2009

Wipro Limited,
Represented by its General Manager-
Facilities Management Group
M.N.Ravichandran,
ELCOT SEZ, Survey No.602 & 603,
Medavakkam Road,
Sozhinganallur,
Chennai - 600 119. ... Petitioner

Vs.

- 1.The Superintendent Engineer,
Tamil Nadu Electricity Board,
CEDC - South, 110 KV.S.S. Complex,
K.K.Nagar, Chennai - 600 078.
- 2.The Executive Engineer,
Tamil Nadu Electricity Board,
O & M - IT Corridor,
110 KV.S.S. Complex,
Taramani, Chennai - 600 113. ... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, calling for the records on the file of 1st respondent relating to the letter No.SE/CEDC/S/AEE/GI/AE/Dev/F.Doc./D.1982/2008 dated 10.09.2008 and to quash the same and direct the respondents to refund the sum of Rs.87,72,414/- together with interest, which was paid on 17.09.2008 by way of pay order No.999706 drawn on HSBC Bank.

For Petitioner : Mr.A.Suresh
for Mr. S.Ramesh

For Respondents: Mr.S.K.Raameshuwar
Senior Counsel for TNEB

O R D E R

That the instant writ petition is for a writ of mandamus calling for the records of the first respondent relating to the letter No.SE/CEDC/S/AEE/GI/Dev/F.Doc./D.1982/2008 dated 10.09.2008 and to quash the same and direct the respondents to refund the sum of Rs.87,72,414/- together with interest, which was paid on 17.09.2008 by way of pay order No.999706 drawn on HSBC Bank.

2.The facts in brief are as under:-

(a) The petitioner Wipro Limited is a service provider delivering Information Technology (IT) driven business solutions to meet the strategic objectives of their clients. The petitioner states that it has several "Centers of Excellence" and Software Development Centres all over the Country. It is says that it is a pioneer in this field and creates IT solutions for specific needs of industries all over the world.

(b) The petitioner was granted lease to an extent of 80 acres of land at 138, Sozhinganallur Village, Tambaram Taluk, Kancheepuram District, Tamil Nadu in S.No.602/3 for development of Information Technology in the State of Tamil Nadu. The lease was granted by the Electronics Corporation of Tamil Nadu Limited (ELCOT) for a period of 90 years. The lease deed was executed on 17.08.2005.

(c) That petitioner started activities for the construction of its Unit. The building location for construction of the Information Technology Park was submitted to the Chennai Metropolitan Development Authority (CMDA) on 15.03.2006. Requisite consent, under the Air Pollution and Water Pollution Act was applied for, with the Tamil Nadu Pollution Control Board. Clearances of environment and forest was obtained. The Chennai Metropolitan Development Authority granted approval. The land which was allotted to the petitioner was reclassified as "General Industrial use Zone" from "open space and Recreational and ORR use Zone". No objection was sanctioned. The petitioner applied for 4000 KVA power supply on 13.09.2007 from the Tamil Nadu Electricity Board by paying a sum of Rs. 64,00,500/- towards the registration charges and EMD charges. The petitioner states that it had also submitted the estimated charges, development charges, meter caution deposit etc., amounting to a sum of Rs.16,82,520/- on 30.11.2007.

(d) The Superintendent Engineer, Tamil Nadu Electricity Board, CEDC-South, 110 KV S.S. Complex, K.K.Nagar, Chennai issued an available notice for a period of 3 months, on the condition that the petitioner company produce a completion certificate from CMDA. It was clearly mentioned in the letter that if the certificate was not produced the amount paid by the

petitioner would be forfeited. A copy of the letter dated 29.02.2008 is being reproduced for the sake of brevity:-

"Kind Attn.: Mr. Raveendran / ABB-MCBS Tamil Nadu Electricity Board by RPAD

From:

Mr.S.N.Venkatamohan, BE,
Superintending Engineer,
CEDC - South, 110 K.K.Nagar,
S.S. Complex, K.K.Nagar,
Chennai - 600 079.

To,

M/s. Wipro Limited,
Old No.5, No.802/31,
No.138, Sozhinganallur Village,
Tambaram Taluk,
Chennai - 600 119.

Lr. No. SE/CEDC/AEEGL/AE/DEV/F.415/2008 dated 29.02.2008.

Dear Sirs,

Sub.: Electricity-CEDC/South - EOHT Supply for a new Demand of 4000 KVA to M/s Wipro Limited - monthly minimum to be levied-availability issued - regarding.

Ref.1) Regn. No./2007-2008, dated 13.09.2007.

2) Lr.No.SE/CEDC/AEE/GI/AE/Dev./F Doc. No.2550/2007 dated 23.11.2007.

All board side works have been completed for effecting the HT supply demand to your firm.

You are requested to shall the supply within 3 months from the date of 21.02.2008. It is also informed that the monthly minimum will be loaded from the date of 21.02.2008, no the TNEB has completed all work in connection with effecting the HT supply as requested by you and you are not in a position to await the HT supply.

If you require further extension, period beyond the above cited notice period, you shall have to pay monthly minimum charges for the above three months and also for the further period of extension of three months well in advance before the expiry of this Availability Notice, while applying for second three months extension.

Since your building comes under special category of building, you have to produce the compliance certificate from CMDA / Competent Authority within the stipulated time limit failing which all the amounts paid by you will be forfeited and no further time extension will be permitted and also your application will be cancelled and agreement terminated.

Yours faithfully,
Sd/-
Superintending Engineer,
CEDC/South
Copy to the Executive Engineer / O & M
Copy to the EE /MRT /CEDC /South
Copy to the AEE / O & M/ Cholinganallur and
Copy to the DPO / CEDC / South"

(e) That the petitioner submits, that it had intimated the respondent No. 1 on 04.03.2008 that they had moved into the IT Park and had commissioned the building is being presently generated with Diesel Generators. It was specifically mentioned by the petitioner that they had represented to the Chennai Metropolitan Development Authority along with ELCOT regarding the compliance certificate and the CMDA had given time to clear the proposal for change of classification of land. The respondent was therefore requested to provide supply of electricity to the company without insisting on completion certificate.

(f) The first respondent did not supply the Electricity, but insisted that they would have to produce the completion certificate. A copy of the letter dated 26.09.2008, which is the second Available Notice directing the petitioner to produce the completion certificate and also informing the petitioner that monthly minimum charges could be levied from the date of first Available Notice dated 29.02.2008, is reproduced hereunder for ready reference:

"Tamil Nadu Electricity Board
From:

Mr.S.N.Venkatamohan, BE,
Superintending Engineer,
CEDC - South, 110 K.K.Nagar,
S.S. Complex, K.K.Nagar,
Chennai - 600 079.

To,

M/s. Wipro Limited,
Old No.5, No.802/31,
No.138, Sozhinganallur Village,
Tambaram Taluk,
Chennai - 600 119.

Lr. No. SE/CEDC/AEEGL/AE/DEV/F.415/2008 dated
29.02.2008.

Dear Sirs,

Sub.: Electricity-CEDC/South - EOHT Supply for a new
Demand of 4000 KVA to M/s Wipro Limited - monthly
minimum to be levied-availability issued - regarding.

Ref.1) Lr.No.SE/CEDC/AEE/GI/AE/Dev./F Doc.D415/2008

dated 29.02.2008.

It is informed that the first Availability Notice issued vide reference cited was expired on 20.05.2008.

Since your firm has not yet produced completion certificate from CMDA, the Second Availability Notice with effect from 21.05.2008 is issued herewith. Further, you are requested to avail the supply within 3 months from the date of 21.05.2008. You are requested to pay monthly minimum charges of Rs.300/- per KVA, per month, for the supply availability notice period (6 months) granted by this office, well in advance.

It is also informed that the monthly minimum will be levied from the first 90 days notice (i.e) 21.02.2008, till the supply is availed by you.

Kindly avail supply duly producing the Completion certificate from CMDA, within the stipulated time limit, failing which all the amounts paid you will be forfeited and no further time extension will be permitted and also your application will be cancelled and agreement will be terminated.

Yours faithfully,

Sd/-

Superintending Engineer,
CEDC/South

Copy to the Executive Engineer / O & M Corridor

Copy to the EE /MRT /CEDC /South

Copy to the AEE / O & M/ Cholinganallur

Copy to the DFC / CEDC / South

Copy submitted to the Chief Engineer/
Distribution / Chennai Region South

For kind information please"

(g) The petitioner states that they were forced to pay a minimum monthly charge in order to avert the forfeiture charges of Rs.64 Lakhs in September, 2007. The petitioner also submits, that they had approached the High Court against the respondent for supply of electricity by filing writ petition No.18946 of 2008 without insisting on the production of the completion certificate.

(h) The learned Single Judge of this Court by an order dated 06.06.2008 allowed the writ petition, the relevant paragraphs are being extracted herein below for ready reference:-

"4.Following the same, several number of writ petitions filed by the allottees have been allowed by this Court by reserving the liberty to the CMDA to take action if there is any deviation, which are considered to be minor in nature. One such writ

petition is W.P.No.2973 of 2008 decided on 28.02.2008 (M/s.Maricar Estate 3 Private Ltd. Vs.The Tamil Nadu Electricity Board), wherein a learned single Judge of this Court has held as follows:-

"This Court, under identical circumstances passed an order in W.P.No.34967 of 2007 directing the respondent therein to issue necessary service connection to the petitioner's premises. Following the same, this writ petition is allowed with a direction to the respondents 1 to 4 to consider and provide electricity service connection to the respective flats, departmental stores and for the common areas of the a building put up by the petitioner forthwith for the building put up at No.19/1 Mc.Nicholas Road, comprised in R.S.No.363/2 (T.S.No.362/42) Block No.21 of Egmore village, Chetpet, Chennai 31 without insisting upon completion certificate from the fifth respondent-CMDA to decide about the deviation at the time of giving completion certificate. In view of the above view taken by this Court, the other contentions relating to the merits of the case are not considered."

5. In view of the above, the writ petition is disposed of in terms of orders made in W.P.No.2973 of 2008 decided on 28.02.2008 and W.A.No.1102 of 2007 dated 04.09.2007, cited supra.No costs."

i) It is the contention of the petitioner, that despite the order of the High Court to supply electricity without insisting on the completion certificate, the respondent insisted on the monthly minimum charges to be paid. The petitioner states that it had given a representation on 23.02.2008 for the refund of the monthly minimum charges, which has not been considered and hence they have filed the instant writ petition.

j) This Court issued notices on 06.07.2008. The matter is now being taken up for final disposal.

K) Heard, the learned counsel for the petitioner and the learned counsel for the respondents.

3. The petitioner has reiterated the contentions made in the writ petition.

4. The Counsel for the Electricity Board would submit, that the Division Bench of the High Court of Madras in its judgment dated 23.08.2006 in a batch of writ petitions in judgment reported in 2006 (4) CTC 483 in the matter of Consumer Action Group vs. State of Tamil Nadu, dealing with unauthorized

construction, passed a number of directions. Direction No.9 reads as under:-

"(ix). To avoid future violations, buildings should be certified as having been constructed in compliance of planning permit and other applicable laws. The Certifying Officer will be personally responsible if any illegal building is certified. Electricity, water connection and occupation should be contingent on such certificate. In respect of the builders who have been identified by the Monitoring Committee as having put up illegal buildings, constructions by such builders should be certified for compliance only by the chief planner, who shall better bear personal responsibility."

5. The Counsel for the respondent Board therefore submits that they could not supply electricity until the completion certificate is given. It is therefore submitted that once they had applied for supply of electricity, it was the responsibility of the applicant to provide all documents, before the meter is energized. The counsel for the Board submitted that, once the cables are laid by the electricity board, then the electricity board is duty bound to collect the monthly minimum charges.

6. The learned Counsel for the Electricity Board contends that the judgment of the Learned Single Judge on which reliance is being placed by the petitioner, does not exempt the petitioner from the payment of monthly minimum charges. It is only a direction to give electricity to the petitioner herein without producing the completion certificate. He submits that they complied with and obeyed the order of the Learned Single Judge even though the order of the Learned Single Judge is actually contrary to the order of the Division Bench dated 23.08.2006. He further submitted that the Electricity Board, on the basis of the order of the Division Bench has issued a Circular Memo dated 22.11.2006 bearing No.CE/Comm1../EE3/AEE/2/F. Planning Permission/D.No.874/2006. The relevant portion of the circular dated 22.11.2006 is being reproduced for ready reference:

"In respect of multistoried buildings and Special Buildings, Planning permit and compliance certificate issued by the Competent Authority must be insisted while applying Electricity Service Connection to the said buildings.

If the applicant fails to produce the planning permit and compliance certificate issued by the competent authority, local the field officials may refuse to effect Service Connection in respect of the Special Buildings and Multi storied Buildings.

Compliance Certificate (Completion Certificate) should be issued by the authority such as Local Authority, Local Planning authority, New Township Development Authority, Chennai Metropolitan Development Authority or any other Authority designated by the Government to issue planning permission and compliance certificate as the case may be.

If there is any deviation in the above instruction regarding effecting of power connection, the concerned officials are personally responsible and action as deemed fit will be taken."

7. The counsel for the electricity board would further submit that the writ petition is not maintainable. In rejoinder, the counsel for the petitioner would submit that Section 43 of the Indian Electricity Act casts a duty on the Electricity Board to supply electricity on request of the consumer and refusal to supply electricity is contrary to the mandate of the Electricity Act. He would further submit that the circular No. CE/Comm1./EE3/AAE/2/F. Planning Permission/D.No.874/2006 dated 22.11.2006 has been declared to be bad by an order dated 20.06.2007, of the Tamil Nadu Electricity Ombudsman in O.P.No.5 of 2007. The Division Bench of the High Court of Madras in 2006(4) CTC 483 has categorically stated that electricity must be supplied only to such buildings, which have received the completion certificate. Learned counsel for the petitioner contended that, they are not a party to the said judgment and that the learned single judge of this Court in W.P.No.18946 of 2008 dated 06.08.2008 had directed the electricity Board to supply electricity without insisting on the completion certificate.

8. The argument is not tenable. The mandate of the Division Bench of this Court is that electricity can be supplied only when completion certificate is given and that if the completion certificate was not given the electricity board could not supply electricity, otherwise it is contempt of the judgment of the learned Division Bench.

9. The question which therefore, is as to whether the petitioner must be exempted from minimum monthly charges when the High Court had directed to supply electricity without insisting for the completion certificate. The answer would be in the negative.

10. The first availability notice dated 29.02.2008 issued by the respondent categorically states that the electricity connection would be given only on issuance of completion certificate. It also says that they are in a position to supply

electricity if the completion certificate is provided. The minimum monthly charges is levied on a consumer even if he does not consume electricity. The availability certificate was issued only on the basis of the request letter from the petitioner to supply electricity. On said request the work which had to be completed from the side of the electricity department was finished and only then the demand was made for monthly minimum charges. Regulation 31(5) of the Tamil Nadu Electricity Distribution Code reads as under:-

"If the intending consumer avails supply during the notice period of availability of supply, he shall pay the monthly minimum charges at the notified tariff rate for the period from the date of issue of first notice of supply availability till the date of availing supply."

11. The liability to pay monthly minimum charges cannot be avoided by the petitioner. The petitioner should not have applied for electricity supply without obtaining the completion certificate because they were not entitled to supply of electricity. Section 43 of the Indian Electricity Act, 2003 does not mandate that the electricity should be supplied the moment the application by the owner or occupier of any premises makes the request for supply of electricity. Electricity can be supplied only if all formalities and all requirements under law are completed. Without giving the completion certificate the petitioner was not entitled to supply of electricity. There is no mandate under Section 43, of the Indian Electricity Act, which says that without completion of all necessary requisites, it is still the duty of the distribution agency to supply electricity.

12. The fact that a single judge judgment of this Court had directed the respondent to supply electricity without insisting on a completion certificate is no answer for non-payment of monthly minimum charges which is leviable under the electricity board. The judgment of the Division Bench in 2006(4) CTC 483 is a judgment in rem and it binds the electricity board and electricity board is duty bound to comply with the order of the Division Bench. The order of the learned single Judge exempting the petitioner from monthly minimum charges as stated earlier would not exempt the petitioner from paying the monthly minimum charges.

13. The first availability notice and the second availability notice have been issued after the judgment of the Division Bench. The circular dated 22.11.2006 is also in compliance with the order of the Division Bench. The said circular cannot be held void by the Electricity Ombudsman, with great respect the Electricity Ombudsman have the jurisdiction to

strike down a circular issued by the electricity board. The electricity board is bound by its circular and the Division Bench and was therefore justified in insisting on the completion certificate.

14. The monthly minimum charges as stated above is to be paid by the consumer regardless of whether he consume electricity or not. The moment, a request is made of electricity board on completion of its work and the moment it is in a position to supply electricity it is entitled to levy monthly minimum charges, which he has done in this case.

15. The writ petition is dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Superintendent Engineer,
Tamil Nadu Electricity Board,
CEDC - South, 110 KV.S.S. Complex,
K.K.Nagar, Chennai - 600 078.

2.The Executive Engineer,
Tamil Nadu Electricity Board,
O & M - IT Corridor,
110 KV.S.S. Complex,
Taramani, Chennai - 600 113.

W.P.No.12234 of 2009

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