

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.27741 of 2008

And

M.P.Nos.1 and 2 of 2008

Rayala Corporation Private Ltd.,
Rep. by its Managing Director
Mr.Ranjit Pratap ... Petitioner

Vs.

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

2.The Executive Engineer,
Tamil Nadu Electricity Board,
CEDC / MRT / South
Dr.J.J.Maaligai KV Campus,
Chennai 600 032. ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent relating to the proceedings in the letter No.SE/CEDC/S/AEE/GI/AE/Dev/F.Doc./D.1984/2008 dated 10.09.2008 and connected all other proceedings pursuant there to and quash the same and the direct the first respondent to refund the sum of Rs.62,80,845/- paid by way of banker's cheque No.911412 dated 26.09.2008 drawn on Andhra Bank, Adyar Branch vide Receipt S No.0028594 dated 28.09.2008.

For Petitioner : Mr.George Cheriyan

For Respondents : Mr.S.K.Rameshwar

O R D E R

The petitioner has filed this petition seeking issuance of Writ of Certiorarified Mandamus calling for the records of the

first respondent relating to the proceedings in the letter No.SE/CEDC/S/AEE/GI/AE/ Dev/F.Doc./D.1984/2008 dated 10.09.2008 and connected proceedings pursuant thereto and to quash the same and to direct the first respondent to refund the sum of Rs.62,80,845/- paid by way of banker's cheque No.911412 dated 26.09.2008 drawn on Andhra Bank, Adyar Branch vide Receipt S No.0028594 dated 28.09.2008.

2.The case of the petitioner is that the petitioner Company envisaged a project for the promotion and development of an Information Technology Park in Survey Nos.278/1A, 1B, 2A, 2B, 7A, 7B, 8A and 8B of Kottivakkam Village situated at No.144/7, Old Mahabalipuram Road, Chennai 600 041 in an extent of 2 acres and 41 cents and decided to construct the Techno Park by name 'HALDA'.

3.It is the further case of the petitioner that the petitioner in order to avail the power supply to the single project of the petitioner, the petitioner applied for HT Power supply of 1000 KVA to the first respondent along with the relevant documents. The first respondent by letter dated 21.08.2006 intimated the petitioner to remit a sum of Rs.8,00,500/- towards Registration Fees and EMD and the petitioner remitted the said amount on 26.08.2006. Further, the first respondent requested the petitioner to pay a sum of Rs.7,40,790/- for arranging to effect the new demand of 1000 KVA and the same was paid by the petitioner on 22.09.2006.

4.It is the further case of the petitioner that the Chief Electrical Inspector GoTN also accorded approval on 17.04.2007. Thereafter, the petitioner applied for extension of temporary power supply of 1000 KVA for 90 days and the same was accepted by the first respondent. The first respondent by letter dated 12.07.2007 requested the petitioner to pay a sum of Rs.67,57,320/- towards estimate charges, development charges, meter caution deposit, dismantling charges etc., and it was further informed that on completion of Board's works, a notice of supply availability shall be issued and if the supply is not availed within the period stipulated by producing the CEIG/CEA safety certificate, monthly minimum charges will be levied from the date of issue of notice for a period of three months initially.

5.It is the further case of the petitioner that the petitioner by letter dated 23.07.2007 forwarded demand draft for Rs.67,57,320/- along with the agreement and requested to provide temporary power supply. Thereafter, the petitioner by letter dated 25.07.2007 requested for extension for 90 days and accordingly, the first respondent granted extension vide letter dated 21.08.2007 and insisted for production of planning permit

and compliance certificate. Though the petitioner has remitted the entire amount and produced the CEIG safety certificate, the respondent Electricity Board has not provided power supply to the petitioner's premises due to non production of completion certificate from CMDA.

6.It is the further case of the petitioner that earlier the petitioner filed W.P.No.27514 of 2007 before this Court and this Court vide order dated 26.09.2007 directed the fourth respondent therein to provide electricity service connection of 1000 KVA by energizing the same to the single project situated at No.144/7, Old Mahabalipuram Road, Kottivakkam, Chennai 600 041. Even thereafter, the Electricity Board did not provide electricity service connection. Hence, the petitioner filed Contempt Petition No.89 of 2008 and this Court vide order dated 25.04.2008 closed the contempt petition. Thereafter, the Electricity Board effected service connection on 30.09.2008. After service connection, the impugned letter was passed by the first respondent requesting the petitioner to pay monthly minimum charges of Rs.62,80,645/- from the date of first supply availability notice i.e., 03.01.2007 till 30.09.2008. Aggrieved by the same, the petitioner has filed this writ petition.

7.The learned counsel for the petitioner would submit that the respondents are justified to collect monthly minimum charges from the date of first availability notice till the date of CEIG safety certificate, however, they are not justified to collect the monthly minimum charges for the period of non supply of power due to non production of completion certificate from CMDA. Accordingly, the petitioner is entitled for refund of the amount for the period of non supply of power.

8.The learned counsel for the respondents would submit that the first supply availability notice was issued on 03.01.2007. As per Clause 31 (5) of the Tamil Nadu Electricity Distribution Code, 2004, the Electricity Board is entitled to collect monthly minimum charge from the petitioner from the date of first supply availability notice. He would further submit that at the time of submitting the application, there is no necessity for the petitioner to furnish the completion certificate. However, as per the guidelines issued by the Hon'ble Division Bench of this Court, vide Circular dated 22.11.2006, the Electricity Board has to effect service connection only after production of the completion certificate. Though the petitioner produced the CEIG safety certificate, the petitioner did not produce the completion certificate. Hence, the Electricity Board insisted for production of completion certificate. Thereafter, this Court issued direction to effect service connection. Hence, the impugned proceedings need not be interfered with. Accordingly, he prayed for dismissal of the writ petition.

9.Heard both sides.

10.The un-disputed facts are that the petitioner applied for HT Power supply of 1000 KVA to the first respondent and the first supply availability notice was issued to the petitioner on 03.01.2007. Perusal of records reveals that the petitioner by letter dated 25.07.2007 requested for extension for 90 days and accordingly, the first respondent granted extension vide letter dated 21.08.2007 and insisted for production of planning permit and compliance certificate. The petitioner produced the CEIG safety certificate and was ready to pay the minimum charges due to the Electricity Board, however, the respondent Electricity Board has not provided power supply to the petitioner's premises due to non production of completion certificate from CMDA.

11.The Electricity Board insisted for completion certificate as per the guidelines issued by the Hon'ble Division Bench of this Court. Though the guidelines of the Hon'ble Division Bench issued vide Circular dated 22.11.2006 is binding on the Electricity Board, the same is not binding on the petitioner. The Electricity Board may have justification for the same.

12.While so, the petitioner filed W.P.No.27514 of 2007 before this Court seeking Mandamus directing the respondents therein to provide electricity service connection of 1000 KVA and energize the same for the single project situated at No.144/7, Old Mahabalipuram Road, Kottivakkam, Chennai 600 041. This Court vide order dated 26.09.2007 directed the fourth respondent therein to provide electricity service connection of 1000 KVA by energizing the same to the single project situated at No.144/7, Old Mahabalipuram Road, Kottivakkam, Chennai 600 041. Even thereafter, the Electricity Board did not provide electricity service connection. Hence, the petitioner filed Contempt Petition No.89 of 2008 and only after the order of this dated 25.04.2008 made in the contempt petition, the Electricity Board effected service connection on 30.09.2008.

13.In view of the above, this Court finds some force in the argument of the learned counsel for the petitioner. Even upto the order dated 25.04.2008 made in the contempt petition from the date of first supply availability notice, there may be justification for demanding the monthly minimum charges from the petitioner. However, the respondent Board's demand of monthly minimum charges thereafter is un-sustainable one. Hence, I am inclined to set aside the impugned proceedings to the limited extent.

14.The respondent Board is entitled to collect the monthly minimum charges from the petitioner from the date of first supply availability notice i.e., 03.01.2007 till the date of order of this Court made in Contempt Petition No.89 of 2008 i.e., 25.04.2008. The respondent Board is not entitled to collect the monthly minimum charges from the petitioner from 25.04.2008 till 30.09.2008. The Electricity Board is directed to refund the amount, if any, collected for the period from 25.04.2008 till 30.09.2008, within a period of six weeks from the date of receipt of a copy of this order (or) shall adjust the amount in the petitioner's future current consumption charges.

15.The writ petition is allowed on the above terms. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To

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

2.The Executive Engineer,
Tamil Nadu Electricity Board,
CEDC / MRT / South
Dr.J.J.Maalgai KV Campus,
Chennai 600 032.

+1cc to Mr.George Cheriyan, Advocate SR.No.50359

+1cc to Mr.SK.Rameshuwar, Advocate SR.No.49596

W.P.No.27741 of 2008
And
M.P.Nos.1 and 2 of 2008

NMI (CO)
GMY(18/07/2019)