

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 14.11.2019	PRONOUNCED ON: 22.11.2019
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CORAM::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

WRIT PETITION NO.20024 OF 2019
&
W.M.P.NOS.19505 & 19506 OF 2019

Midhunam Spinners P Ltd.,
HT SC No.170,
S.F.No.151/1, Maniyanaur Village,
Maniyabur Post, Chittalandur (Via),
Tiruchengodu, Namakkal District,
repd. By its Director T.Anand. Petitioner

/versus/

1. The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Namakkal Erode Electricity Distribution Circle,
Namakkal.
2. M/s.Arnic Enterprises Private Limited,
Rep. by its Director,
Old No.116, New No.122, Vellapethampalayam,
Kamdikattu Valasu Post, Avalpoomdurai (Via),
Erode District, Tamil Nadu Respondents

R2 impleaded as per order dated 17.10.2019
in WMP.No.28981 of 2019 in W.P.NO.20024 of 2019,
by Dr.GJJ.

Prayer:

Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, to call for the records of the respondents impugned notice bearing Lr.No.SE/NEDC/NKL/DFC/AS/BF.170/D.024/19, dated 30.04.2019 quash the same as illegal, arbitrary and contrary to the order this Hon'ble Court in W.P.No.18653 of 2014, dated 23.12.2014 and consequently direct the respondent to effect permanent disconnection of Petitioner's HTSC No.170 thereby giving refund of the CC Deposit and meter caution deposit to a sum of

Rs.34,03,410/- along with interest at 12% per annum from the date of the Petitioner's application dated 13.07.2017.

For Petitioner : Mr.R.S.Pandiyaraj,

For R1 : Mr.S.K.Rameshwar,
Standing Counsel

For R2 : Mr.Lesi Saravanan

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents 1 & 2.

2. The Petitioner is a defunct Spinning Mill which has sold its Unit to the 2nd respondent. While so, the 1st respondent has caused demand notice dated 30.04.2019 to the petitioner to pay Rs.89,31,237/- towards Tariff concession charges, self generation tax, BPSC etc., after deducting the security deposit and meter caution deposit.

3. The contention in this Writ Petition is whether the petitioner is liable to pay the Traffic Concession Charges and Belated Payment Surcharge (BPSC), as demanded in the impugned notice. The petitioner claims that, the petitioner applied for HTSC on 02.06.1995 and the 1st respondent sanctioned the same on 20.02.1996. The Earnest Money deposit was made on 04.03.1996. The 1st respondent effected power supply on 20.10.1997. The 1st respondent gave Traffic Concession for High Tension Industrial Consumers for those they effected supply prior to 14.02.1997. When the traffic concession was not extended to the petitioner and similarly placed Industries due to the delay on the part of the respondent, writ petitions were filed.

4. The petitioner M/s.Midhunam Spinning (P) Mill Ltd was established and the dispute culminated in Special Leave Petition before the Hon'ble Supreme Court with observation of the Hon'ble Supreme Court that the Traffic Concession is applicable not only to Industries, which commenced commercial production before 14.02.1997 but also to those who applied for and who were otherwise ready to take electricity connection by depositing the amount sought for. In this case, the Hon'ble Supreme Court directed the Electricity Board to examine the case of each Industries individually and to extend the traffic concession on the basis of eligibility.

5. When the petitioner sought for Traffic Concession based on the above observation of the Hon'ble Supreme Court,

same was declined by the 1st respondent. Hence, another round of litigations started and in the batch of Writ Petitions filed by the Industries which were denied Traffic Concession, this Court case by case, based on merits, passed order on 23.12.2014.

6. In the Writ Petition in W.P.No.18653 of 2014 by the petitioner, this Court held as below:-

Writ Petition No.18653 of 2014:- The petitioner submitted an application for supply of high tension electricity energy on 02.06.1995 which was sanctioned by the respondents on 20.02.1996. The petitioner remitted the earnest money deposit on 04.03.1996. On 11.02.1997, the petitioner expressed their readiness to avail the service connection. Even though the respondents contended that extension of time was granted to the petitioner as per their request, they have admitted that even on 11.02.1997, the petitioner expressed their readiness. However, only on 20.10.1997, the respondents effected power supply. Therefore, it is clear that the delay is on the part of the respondents and consequently, the petitioner is bound to succeed.

7. Having succeeded, the petitioner vide letter dated 13.07.2017, requested to disconnect the HTSC No.170 permanently and refund the Security Deposit and Meter Caution Deposit with interest, citing pendency of Writ Appeal preferred by the respondents against the judgment of the Single Judge. The 1st respondent refused to dismantle and cause permanent disconnection, till the disposal of the Writ Appeal. The 1st respondent vide its proceedings dated 05.02.2018 had informed the petitioner that the request for permanent dismantling of HTSC No.170, will be processed based on the outcome of the judgment in W.A.No.1478 of 2017. The petitioner herein has sent a detailed representation on 5th March 2018 indicating that, after the order of the Single Judge, claiming Traffic Concession Charges and Belated Payment Surcharge (BPSC) is contemptuous. Despite representation to return back the Security Deposit and Meter Caution Deposit, the 1st respondent instead of refunding the deposit money with interest through the impugned notice demand Traffic Concession Charge and BPSC upto 31.03.2019, contrary to High Court order.

8. The 1st respondent in the counter, admits that pending W.A.No.1478 of 2017, the petitioner sought for permanent dismantling the service connection which was disconnected in October - 2016 for non-payment of current consumption charge. As per Regulation in clause 17(1), the agreement entered into by

the petitioner with the 1st Respondent/TANGEDCO has been terminated. The accounts of the service connection have been closed by adjusting the available security deposit. Also as per regulation in clause 17(2), wherein it has been stipulated that, "notwithstanding the termination of the agreement, the consumer shall liable to pay the arrears of current consumption charges or any other sum due to the Licensee on the date of disconnection if any up to the date of termination of the agreement and Belated Payment Surcharge (BPSC) up to the date of payment" the balance dues including the disputed tariff concession amount has been demanded by the impugned letter dated 30.04.2019. As the service connection was availed on agreeing to the terms of the supply agreement, the dues outstanding have to be cleared for considering the lawful requests of the consumer.

9. In the counter, it is also placed on record that the petitioner has sold the Unit to M/s.Arinca Enterprises (P) Ltd., and they have come forward to pay Rs.89,31,237/- demanded under the impugned notice.

10. The said M/s.Arinca Enterprises (P) Ltd, has filed implead petition and got impleaded as 2nd respondent. The Learned Counsel representing M/s.Arinca Enterprises (P) Ltd., submit that, they have withheld sufficient money from the sale consideration payable to the petitioner. Hence, they are ready to pay the money demanded by TANGEDCO.

11. In response to the 2nd respondent submission, the learned Counsel for the petitioner would state that, the petitioner is disputing the very liability of paying Tariff concession charge and BPSC. The 2nd respondent, cannot offer the petitioner's money to the first respondent. The impugned demand notice dated 30.04.2019 claims Rs.89,31,237.00.

1. Bank Charges	: Rs.	91.00
2. Self Generation Tax	: Rs.	6,69,469.00
3. Tariff Concession Charges	: Rs.	27,07,644.00
4. BPSC upto 31.03.2019	: Rs.	96,54,003.00
Total	: Rs.	1,27,31,207.00

Less

1. Security Deposit	: Rs.	37,54,970.00
2. Meter caution Deposit	: Rs.	45,000.00
Total	: Rs.	89,31,237.00

12. As on date, by virtue of the order passed by this Court on 23.12.2014 in W.P.No.18653 of 2014, the respondent cannot claim Tariff concession charges from the petitioner. Already the petitioner has given a letter of undertaking in a stamped

paper on 20.11.2017 that, he will abide by the final verdict of the Court. While fact stands as above, the 1st respondent has no legal authority to issue the impugned demand notice claiming Traffic Concession Charges and BPSC for that. The refusal of the respondent to permanently dismantling the High Tension(HT) installation till the disposal of the W.A.No.1478 of 2017 is also not proper.

13. The Learned Standing Counsel for the 1st respondent submitted that the purchaser of the M/s.Midhunam Spinners (P) Ltd., (2nd respondent) has come forward to clear the dues. While so, the petitioner need not prevent it and no prejudice will be caused to the petitioner. The said submission is legally sound for two reasons.

(i). A sum of Rs.89,31,237.00, from the Consumer itself not permissible in view of the judgment in W.P.No.18653 of 2014, dated 23.12.2014, the 1st respondent can have any right to claim Traffic Concession Charges and Belated Payment Surcharge (BPSC) only if it succeed in W.A.No.1478 of 2017.

(ii). The 2nd respondent/Midhunam Spinners (P) Ltd., offer to pay the money demanded by the 1st respondent, not from his source but the money what the 2nd respondent has withheld from the petitioner. If the 2nd respondent is allowed to pay, it will be literally the petitioner's paying.

14. In view of the above discussion, this Court hold that in the impugned order in Lr.No.SE/NEDC/NKL/DFC/AS/BF. 170/D.024/19, dated 30.04.2019, demanding Traffic Concession Charge and Belated Payment Surcharge (BPSC) is bad and illegal. For the present, the 1st respondent/Superintending Engineer, Namakkal, cannot claim these two amounts. After getting the undertaking affidavit from the petitioner on 20.11.2017, the respondents should have waited for the verdict in W.A.No.1478 of 2017 and only thereafter, can demand Traffic Concession Charge and Belated Payment Surcharge (BPSC) that too only if the respondents succeed in the W.A.No.1478 of 2017. Therefore, this Court partially struck the impugned demand notice dated 30.04.2019, in so far as demand of Traffic Concession Charge and Belated Payment Surcharge (BPSC).

15. In the result, the Writ Petition is Partly Allowed. The demand of Traffic Concession Charge and Belated Payment Surcharge (BPSC) made in the impugned notice, dated 30.04.2019 is quashed. The respondents are at liberty to claim and recovered any other money due and payable by the petitioner. The HTSC No.170 shall be disconnected permanently and dismantle

the unit as requested by the petitioner, without waiting for the verdict in W.A.No.1478 of 2017. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

bsm

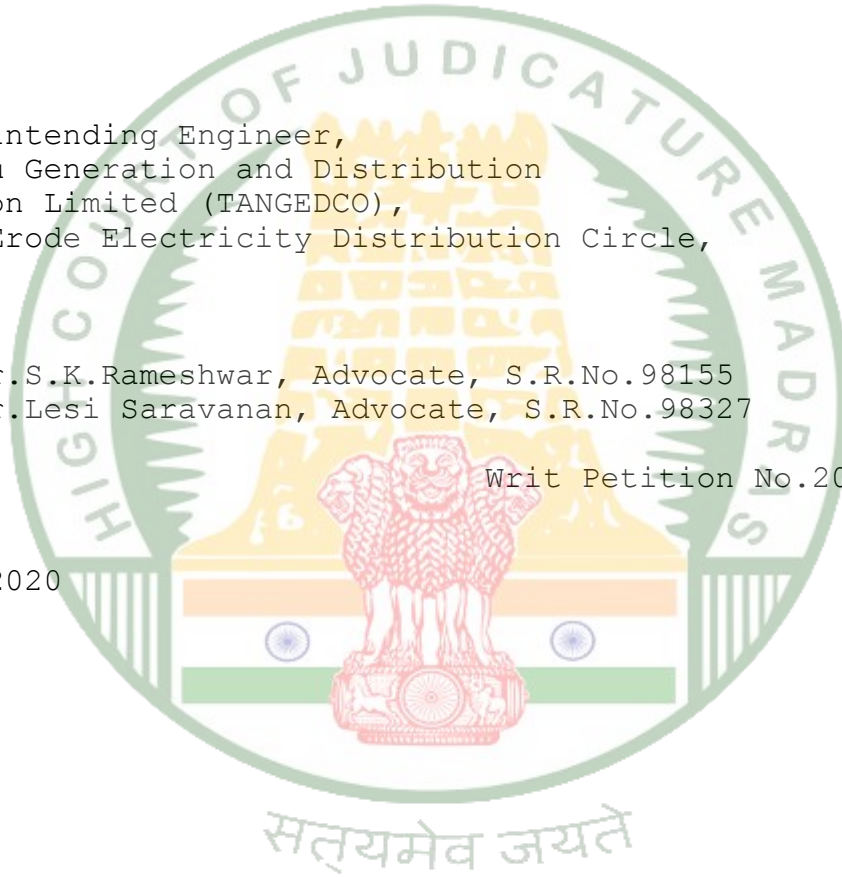
To,

The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Namakkal Erode Electricity Distribution Circle,
Namakkal.

+1cc to Mr.S.K.Rameshwar, Advocate, S.R.No.98155
+1cc to Mr.Lesi Saravanan, Advocate, S.R.No.98327

Writ Petition No.20024 of 2019

KJ(CO)
CS/21/01/2020



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