BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.08.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.8570 of 2020

and

W.M.P.(MD)Nos.7935 and 7937 of 2020

Shri Ramalinga Mills Limited (Unit A),
Rep. by its Chairman,
212, Ramasamy Nagar, Arupukottai,
Virudhunagar District. ... Petitioner

Vs.

1.Tamil Nadu Generation and Distribution
Corporation Limited,
Rep. by its Chairman Cum Managing Director,
144, Anna Salai, Chennai 600 002.

2.Superintending Engineer,
ABT Division (Open Access & Coordination),
State Load Dispatch Centre,
TANTRANSCO, Chennai - 02.

3.The Superintending Engineer,
Virudhunagar Electricity Distribution Circle,
TANGEDCO, Virudhunagar. ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records comprised in impugned demand notice issued by the 3rd respondent in Lr.No.SE/Virudhunagar EDC/DFC/AO/AS/HTSC No.079094620259/D. No.20/dated 23.07.2020 and quash the same as arbitrary and illegal and consequently direct the respondents to consider the petitioner's representation dated 04.03.2020 and recalculate additional current consumption deposit if any.

For Petitioner : Mr.Raguvaran Gopalan
For Respondents : Mr.P.H.Aravind Pandian,
Additional Advocate General,
Assisted by Mr.S.M.S.Johnny Basha

O R D E R

Heard the learned counsel appearing for the writ petitioner and Mr.P.H.Aravind Pandian, learned Additional Advocate General.

2.The petitioner is a manufacturing company. The petitioner is a consumer with the third respondent. The issue that arises in this case is whether the respondents are justified in taking into account the petitioner's consumption for the month of August, 2019, for the purpose of determining the quantum of additional security deposit.

Regulation No.5 of Tamil Nadu Electricity Supply Code deals with additional security deposit. It reads as under:-

*"**(5) Additional Security Deposit***

i) The adequacy of security deposit may be reviewed and refixed once in a year in case of HT consumers and once in every two years in case of LT consumers taking into account the interest due for credit. Such reviews shall be made in the month of April/May. The rate of interest on the security deposit shall be on the basis of the Commission's directive to the Licensees in this regard.

ii) The adequacy of security deposit shall be based on the periodicity of billing for the respective category.

(b) For the categories of consumer under monthly billing, the Security Deposit is equivalent to two times of the monthly average of the electricity charges for the preceding twelve months prior to April.

(c) For the categories of consumer under bi-monthly billing, the Security Deposit is equivalent to three times of the monthly average of the electricity charges for the preceding twelve months.

(d) For the categories of consumer under half yearly billing, the security deposit is equivalent to seven times of the average charges per month.

iii) Interest at Bank rate or more as specified by the Commission shall be calculated and credited to the Security Deposit accounts of the consumers at the beginning of every financial year i.e. April and the credit available including the interest shall be informed to each consumer before the end of June of every year.

iv) If available deposit is less than the revised Security deposit, the balance shall be collected as Additional Security deposit either through a separate notice or by a distinct entry in the consumer meter card for LT services. Thirty days notice period shall be allowed for the payment. If the payment is not received within the above period of thirty days, the service is liable for disconnection.

v) Where, on review, the amount of Security deposit held is found to be in excess of the requirement, the excess shall be adjusted against two future demands for the electricity supplied. Where, after such adjustment in future two demands, there is balance to be refunded, the refund shall be made by cheque before the due date for payment of the third demand.

vi) In the event of the consumer failing to pay to the Licensee any sum that may become due for payment to the Licensee on the dates fixed for payment thereof, the Licensee may, in addition to and without prejudice to the other rights of the Licensee, appropriate a part or whole *of the Security Deposit and interest thereon towards the sum due from the consumer."*

3.The respondents by the impugned communication dated 23.07.2020 have called upon the petitioner to pay additional security deposit to the tune of Rs.5,08,04,093/-. The petitioner's present security deposit is to the tune of Rs.1,82,15,937/-. By reworking the additional security deposit amount as per the aforesaid regulation, it comes to Rs.6,90,20,030/-. After taking into account the existing security deposit, the amount of Rs.5,08,04,093/- has been demanded from the petitioner.

4.The respondents have filed a detailed counter affidavit and the learned Additional Advocate General appearing for the respondents would state that respondents have merely acted in terms of the aforesaid statutory mandate and also the order dated 31.07.2012 passed by TNERC in order No.6 of 2012. The learned Additional Advocate General also points out that the calculation in this case cannot be faulted. The respondents have taken into account the consumption of the petitioner for the preceding 12 months including August, 2019 and calculated the security deposit based on the same. Since the petitioner's existing security deposit was insufficient, additional amount was demanded from the petitioner. The learned Additional Advocate General stressed that the vires or validity of the aforesaid regulation has not been put to challenge. Therefore, the petitioner who is a consumer has to necessarily abide by the terms and conditions of the supply code and cannot in law question the impugned demand. The learned Additional Advocate General also stated that the petitioner is unnecessarily linking his right to draw captive energy with the impugned communication.

5.I carefully considered the rival contentions and went through the materials on record. A mere look at the affidavit averments and also the materials enclosed in the typed set of papers would indicate that the petitioner has been purchasing power from third parties under inter state open access and through IEX to meet their energy requirements. It is also seen that the respondents made some changes in their format for issuing NOC. The changes made by the respondents was challenged in a batch of writ petitions and a learned Judge of this Court by order dated 29.07.2020 in W.P.(MD) Nos.16564 of 2019 granted interim order in the following terms:-

"3.Point Nos.19 (all sub-clauses) and 20 of the new format annexed to memo dated 15.05.2019 will be kept in abeyance for a period of three weeks."

6.The petitioner had, as usual, submitted their application for grant of NOC for the said month. It was of course forwarded by the jurisdictional Superintending Engineer vide communication dated 18.07.2019. Even though the jurisdictional Superintending Engineer had forwarded the petitioner's application dated 02.07.2019, the Superintending Engineer, State Load Dispatch Centre, did not grant the no objection sought for. As a result the petitioner could not purchase power from third party sources for the month of August, 2019. Therefore, the petitioner was compelled to meet their entire energy requirements from TANGEDCO. It is because of this reason, the consumption of energy from TANGEDCO for the month of August, 2019, shot upto Rs.3,45,10,011/-. If one takes note of the monthly consumption of the petitioner from TANGEDCO for the entire 12 months period it can be seen that only in the month of August, 2019, the petitioner was constrained to consume to this extent. Otherwise, the petitioner has been meeting their entire power requirements only from third party sources. Except for paying the minimum demand charges, the consumption of the petitioner from TANGEDCO has been virtually zero.

7. I therefore find considerable force in the contention of the petitioner's counsel that the present situation is solely due to the conduct of the respondents themselves. One swallow does not make a summer. Therefore, the consumption by the petitioner during a solitary month cannot lead to such calamitous consequences. I take note of the fact that we are in pandemic times and calling upon the petitioner to make an extra payment to the tune of Rs.5,08,04,093/- will definitely cripple their financial health. If only the respondents had adhered to the interim direction passed by the learned Judge of this Court in W.P.(MD)No.16564 of 2019, no objection would have given in normal course and the petitioner would have met their energy requirements from third party purchasers. It is well settled that a person cannot take advantage of their own wrong. The respondents by their conduct having forced the petitioner to consume only from them cannot make the petitioner to pay for additional security deposit on that basis.

8.However, I called upon the petitioner to give an undertaking that if their consumption from TANGEDCO shoots up in the coming months certainly they will have to pay additional security deposit. In response to the query from the Court, the petitioner also filed an undertaking affidavit. The said affidavit reads as under:-

> *"4.I submit that a sum of Rs.1,82,15,937/- (Rupees One Crore Eighty Two Lakhs Fifteen Thousand Nine Hundred and Thirty Seven Only) is already maintained as security deposit against petitioner's HT Sc No.259 with the Virudhunagar Electricity Distribution Circle.*
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> *5.The petitioner undertakes to pay ACCD, if levy arises calculated on the basis of the CC Bill amount for the month with highest billing in 2020-21 in the immediate succeeding month, over and above the amount*

of Rs.1,82,15,937/- already in security deposit, without waiting for a year end review of security deposit"

9.Recording the undertaking of the petitioner and taking note of the peculiar facts and circumstances of the case, the order impugned in the writ petition is quashed and the writ petition stands allowed. The respondents are directed to issue a fresh demand without taking into account the petitioner's consumption for the month of August, 2019. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

ias/pmu

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy,shall be the responsibility of the advocate/litigant concerned.

To:

1.Tamil Nadu Generation and Distribution
Corporation Limited,
Rep. by its Chairman Cum Managing Director,
144, Anna Salai, Chennai 600 002.

2.Superintending Engineer,
ABT Division (Open Access & Coordination),
State Load Dispatch Centre,
TANTRANSCO, Chennai - 02.

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

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SPU(31.08.2020) 5P 4C