WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 20.10.2021
PRONOUNCING ORDERS ON : 26.10.2021

CORAM

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

W.P.No.21262 of 2010 and
M.P.Nos.1 and 2 of 2010

Sumangala Steel Private Limited
Rep.by Rajendran Sabanayagam
Managing Director, PIPDIC Industrial Estate
Mettupalayam, Puducherry – 605 009. .. Petitioner

.Vs.

Superintendent Engineer-I
Electricity Department
Government of Puducherry
No.137, Nethaji Subash Chandra Bose Salai
Puducherry. .. Respondents

PRAYER : Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus Calling for the records of the Respondent pertaining to the communication of the Respondent dated 02.09.2010 bearing No.144/ED/SAO/HT/U-3/2010-11/184 quashing the same and consequently forbearing the Respondent from disconnecting the power supply to the Petitioners unit bearing Consumer Code No.144 in pursuance of the above communication.

For Petitioner : Mr.Roshan Balasubramaniam

For Respondents : Mrs.N.Mala,
Government Pleader (Puducherry)
Assisted by Mr.A.Alexander,
Govt.Advocate
(Puducherry)

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

O R D E R

This writ petition has been filed challenging the communication dated 02.09.2010 issued by the respondent wherein the respondent has directed the petitioner company to pay the pending dues to the tune of Rs.5,22,50,561/- failing which the petitioner was informed that the High Tension supply will be disconnected. That apart, the petitioner was also directed to pay Rs.2,65,85,050/- towards security deposit and Rs.15,000/- for Meter Security deposit in order to continue the High Tension power supply to the company.

2. The petitioner is in the business of producing steel at Puducherry from the year 1987. The industry was set up by the petitioner pursuant to a subsidy scheme that was introduced by the Government of India in the year 1985, which provided for power subsidy for small scale units for a period of five years from the date they go into production on tapering basis.

3. The petitioner made an application before the respondent for additional load and the additional power for the new unit was supplied only with effect from 14.08.1994. It was only pursuant to the same, the production was started by the petitioner company.

4. The petitioner was seeking for the subsidy under the scheme that was introduced by the Government of Puducherry through G.O.Ms.No.9/11 dated 11.02.1991. This scheme was introduced pursuant to the subsidy scheme notified by the Government of India in the year 1985. The grievance of the petitioner at that point of time was that they were not able to avail the power subsidy for their new unit since the respondent was keeping the application in abeyance for more that 4 ½ years and this delay should not be put against the petitioner and therefore the petitioner was seeking for the power subsidy for the entire period of five years. Since this did not fructify, the petitioner filed W.P.No.15702 of 1997 before this Court seeking for a direction to sanction all the benefits conferred on new industries in backward areas. The writ petition was finally disposed of by an order dated 05.01.2001 by declaring that the petitioner is entitled to the benefits of subsidy for the unexpired period and the respondent was directed to exclude the time taken by the Department for energizing. Aggrieved by

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

the same, both the petitioner as well as the respondent and the Government of Puducherry filed two separate writ appeals in W.A.Nos.522 and 857 of 2001. The petitioner filed the writ appeal on the ground that the subsidy should not have been restricted for the unexpired period and it should have been given for the entire five years. Whereas, the respondent took the ground that the new unit claimed by the petitioner is a mere expansion of the existing unit and the petitioner is not entitled for any subsidy.

5. The petitioner also filed W.P.18290 of 2000 challenging the notice issued by the concerned authority under the Revenue Recovery Act wherein steps were taken to recover the arrears of electricity charges from the petitioner.

6. Both the writ appeals were taken up along with the Writ Petition by the Hon'ble Division Bench and on consideration of the entire facts and circumstances of the case, the writ appeal filed by the Government and the Department was allowed and the writ appeal filed by the petitioner was dismissed and thereby the order passed in the writ petition was set aside. Insofar as W.P.No.18290 of 2000 is concerned, the same was dismissed as not maintainable since it had become infructuous. Liberty was also granted to take recourse as contemplated under law to recover the amount from the petitioner. The Division Bench disposed of all these cases through a common order dated 21.07.2010.

7. On the strength of the common order passed by the Division Bench, the impugned communication dated 02.09.2010 came to be issued by the respondent. The same has been put to challenge by the petitioner in the present writ petition.

8. The petitioner has questioned the demand made by the respondent only based on the sanctioned scheme issued by the Board for Industrial and Financial Reconstruction (BIFR) by an order dated 04.12.2001. The petitioner became a sick company and hence they went before the BIFR. The BIFR prepared a draft rehabilitation scheme and circulated the same to all the creditors including the Government of Puducherry and the respondent. After receiving the objections / suggestions, the scheme was considered and the sanctioned scheme was pronounced through an order dated 04.12.2001. Clause 12.6 of the sanctioned

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

scheme specifically deals with the respondent and for proper appreciation, the same is extracted hereunder.

> " 12.6. Pondicherry Electricity Board
> (i) To grant concessions as per existing policy for sick units including waiver of minimum demand charges levied during the period the plant was not in operation, deferment of balance dues if any and exemption from power cuts and provide uninterrupted power.
> (ii) To consider waiver of penal interest (by way of belated payment surcharge) from October 15, 1997 till the date of reconnection."

9. According to the petitioner, the above direction issued by the BIFR is binding on the respondent. In spite of the same, the impugned communication has been issued to the petitioner by making demand towards minimum demand charges and belated payment surcharge, which according to the petitioner stands waived by the scheme issued by BIFR.

10. The further claim made by the petitioner is that, the petitioner has already made certain payments to the respondent and if the same is taken into account along with the waiver granted by BIFR, it is the respondent who has to refund the excess amount that has been collected from the petitioner. The various payments made by the petitioner is an admitted fact and for proper appreciation, the breakup of the amounts claimed by the respondent and the payments made by the petitioner based on various interim orders passed by this Court, are tabulated separately hereunder.

The current consumption charges from March 1999 to February 2002	Rs.5,55,70,094/-
Minimum Demand charges from November 1999 to February 2002	Rs.3,29,04,913/-
Additional amount for the erection of 110 KV line based on the actual estimate arrived by the Tamil Nadu Electricity Board	Rs.4,52,774/-
Belated payment surcharge for the old arrears paid in instalments	Rs.10,20,343/-
Total (A)	Rs.8,99,48,124/-

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

Amount realised by forfeiture of Security Deposit (Bank Guarantee and Fixed Deposit Receipt)	Rs.1,42,02,302/-
Amount paid by the petitioner industry	Rs.95,26,059/-
Waiver of Minimum Demand Charges	Rs.28,77,066/-
Sales Tax Exempted	Rs.10,92,136/-
Amount paid as per the Court directions vide order, dated 03.10.2001 in C.M.P.No.7638, 11438 and 12874 of 2001 in W.A.No.857 of 2001 and W.M.P.No.26495 of 2000 in W.P.No.18290 of 2000	Rs.1,00,00,000/-
Total (B)	Rs.3,76,97,563/-
TOTAL DUES TO BE PAID BY THE PETITIONER INDUSTRY (A-B)	Rs.5,22,50,561/-

Amount paid by the petitioner	Date of Payment	Remarks
Rs.81,47,843/-	14.10.2010	Based on the directions of this Hon'ble High Court order dated 08.10.2010 in M.P.No.3/2010 in W.P.No.21262/2010
Rs.68,52,157/-	27.10.2010	
Rs.12,95,686/-	12.08.2010	
Rs.1,00,00,000/-	20.12.2010	Based on the directions of this Hon'ble High Court order dated 14.12.2010 in W.A.No.2387/2010 and M.P.No.1/2010.
Rs.2,62,95,686/-	Total amount paid by the petitioner Industry as per the court directions pending disposal of W.P.No.21262/2010	

11. Insofar as the claim made under the head 'Security Deposit', the impugned communication claimed for a sum of Rs.2,65,83,050/- and pursuant to the orders passed in W.A.No.1354 of 2017, the petitioner had given a Bank Guarantee for a sum of Rs.3,50,00,000/-. It is also brought to the notice of this Court that as against the common order passed in the

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

writ appeals, the petitioner has filed Special Leave Petitions before the Hon'ble Supreme Court in Civil Appeal No.(s) 14747-14748 of 2011 and the same is pending. The respondent issued a communication dated 28.01.2019 and 09.05.2019 whereby a demand was made for additional security deposit of two months average consumption charges. This became a subject matter of challenge in W.P.No.19312 of 2019 and this Court disposed of the writ petition by an order dated 08.07.2019 as follows.

> " Accordingly, the Writ Petition is disposed of. Directing the respondent herein to cause fresh demand notice calculating the average consumption charge for the past six months and make a demand of one month charge as additional security deposit. If such demand is made the petitioner herein is directed to give the bank guarantee for the increased security deposit, within a period of 7 days. This order will be the subject to the outcome of the Civil Appeal (SLP) No.12134/2011 pending before the Supreme Court. The other conditions imposed by the Division Bench in W.A.No.1354 of 2019, dated 14.12.2017 as extracted above shall apply. No costs. Consequently, connected Miscellaneous Petitions closed."

12. The respondent has filed a counter affidavit and the relevant portions in the counter affidavit are extracted hereunder.

> " 27. I respectfully submit that I deny the allegations of the petitioner in Para No.26 : GROUNDS of the Affidavit of this Writ Petition and respectfully submit as follows.
>
> (A) The impugned communication of the respondent dated 02.09.2010 bearing No.144/ED/SAO/HT/U-3/2010-11/184 is sent as per law and as such is being wholly unreasonable and legal.
>
> (B) In pursuance of the order dated 21.07.2010 of the Hon'ble High Court of Madras passed in W.A.Nos.522 and 857 of 2001,W.A.M.P.No.15997 of

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

2000 and C.M.P.Nos.7638, 11438 and 12874 of 2001 and W.M.P.No.26495 of 2000, the impugned communication of the respondent dated 02.09.2010 bearing No.144/ED/SAO/HT/U-3/2010-11/184 has been issued to the petitioner to recover the entire arrears amount due to be paid by the petitioner industry. Hence, there is no violation of the principles of natural justice.

(C) I deny the allegation of the petitioner that the impugned communication willfully flouts the order of the BIFR, dated 04.12.2001 that specifically directs the respondent to waive minimum demand charges and belated payment surcharges and I respectfully submit that the above contention of the petitioner is squarely covered in W.P.No.18290 of 2000, preferred by the petitioner and as such the said order operates as res judicata and the petitioner is estopped from raising the same plea. The Hon'ble Division Bench in their common judgment, dated 21.07.2010 is extracted hereunder for better appreciation.

> “76. From the prayer of the writ petition, it is very clear that the petitioner wanted the collection being stopped so along as the petitioner is a sick industrial undertaking under the Sick Industries Company (Special Provisions) Act. It is admitted in the Court that the petitioner company is no more a sick industry and it is doing very good business and in fact in the written statement they have stated that till date they have paid electricity charges to the tune of 132 Crores towards consumption of electricity from the date of reconnection of electricity in the year 2002. When that being the case, the prayer in the writ petition has automatically become infructuous the moment the industry is not a sick industry. It is also admitted that the

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

BIFR proceedings has long back ended. As the only prayer sought for in the writ petition is under the umbrage of Sick Industrial Companies (Special Provisions) Act, the prayer sought for in the writ petitin is not maintainable as it has become infructuous and as such the writ petition is dismissed and it is open to the Electricity Department to take recourse as contemplated under law to recover the amount from the petitioner. No costs."

(D) I deny the allegation of the petitioner that the impugned communication has failed to take into account that the petitioner is not liable to pay the levy of Rs.4,52,774/- towards supplementary charges for the 110 KV line extension as per the terms and conditions of extending the power supply and I respectfully submit that the petitioner requested for an additional load of 20,050 KVA over and above the existing load of 4950 KVA. The excess demand could only be met by erection of a 110 KV EHT line exclusively for the petitioner. The executing authority for election of 110 KV EHT line viz., the Tamil Nadu Electricity Board an estimate (provisional) for Rs.74.91 lakhs. However, during the execution of the line due to the objection raised by the various land owners, the proposed 110 KV EHT line was changed thrice, which was also intimated to the petitioner. Later the line was extended through the boundaries of the PIPDIC land. Even though the petitioner was expected to pay his part of the amount in advance an amount of Rs.10.99 lakhs was paid only after 35 months on 12.07.1994 just a month before the completion of erection. The TNEB revised the estimated cost from Rs.74,91,000/- to Rs.83,96,548/- based on receipt of the final bill, the petitioner's share of Rs.4,52,774/- was required to be paid by the petitioner. Therefore the amount of Rs.4,52,774/- is payable by the appellant towards his part of the erection of the 110 KV EHT line exclusively for the

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

industry. I submit that the Department made payment of the above amount to the Tamil Nadu Electricity Board in anticipation for the payment by the petitioner in good faith. I submit that the petitioner is estopped from pleading that he is not liable as he very much knows that the 100 KV EHT line was exclusively erected for him.

(E) I deny the allegation of the petitioner that the impugned communication has also failed to take into account that the petitioner is not able to pay an amount of Rs.10,20,343/- towards Belated Payment Surcharges (BPSC) for old arrears as per the minutes of the meeting between the petitioner and the Government of Puducherry dated 06.12.1995. I respectfully submit that the minutes of the meeting held on 06.12.1995 refers to the belated payment surcharge levied by the Department for the shortage amount paid, in protest by the consumer, to the hike in tariff. This Hon'ble Court later directed for clearance of arrears in 15 equal installments without belated payment surcharges\ (BPSC) if the industries paid as per the schedule. This has nothing to do with the amount of Rs.10,20,343/- accumulated as BPSC for the routine bills paid belatedly by the petitioner after the due date, for the period from August 1990 to August 1994. The petitioner has also undertaken to pay the amount before 27.10.1999 in his earlier communication. I submit that it is evident from the above that the petitioner is trying to confuse the issues with a malafide intention to avoid payment of dues.

(F) I deny the allegation of the petitioner that the impugned communication has failed to consider the fact that from the period 28.06.1999 to 20.09.1999, the petitioner's factory was closed due to labour strike in its unit and the said strike is an act beyond the petitioner and therefore the petitioner cannot be made liable to pay the demand charges during that period amounting Rs.7,00,372/-. I respectfully submit that as per the Labour Department certificate dated 30.09.1999, an amount

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

of Rs.28,77,086/- has already been waived for the period from 28.06.1999 to 19.09.1999 based on merits as per the terms and conditions of supply of electricity, the amount of Rs.7,00,372/- is not related to waiver.

(G) I deny the allegation of petitioner that the impugned communication also fails to take into account the sales tax exemption that the petitioner is entitled to for the months of March, September and October 1999 which amounts to Rs.6,86,252/- and respectfully submit that the Sales Tax exemption for an amount of Rs.10,92,136/- for the period from April 1999 to June 1999 on production of certificate from the Commercial Taxes Department has been allowed already and adjusted in the arrears payable. I further submit that for the months of March 1999, October 1999 and September 1999, the consumer had neither requested for exemption of sales tax nor submitted the certificate from the Commercial Taxes Department. I therefore submit that the demand made by the respondent Department is correct."

13. Heard Mr.Roshan Balasubramaniam, learned counsel appearing for the petitioner and Mrs.N.Mala, learned Government Pleader appearing for the respondent.

14. The learned counsel for the petitioner submitted that, the impugned notice was issued by the respondent even without putting the petitioner on notice and it is in violation of principles of natural justice. It was further submitted that the impugned communication is in violation of the sanctioned scheme issued by the BIFR through order dated 04.12.2001 which is binding on the respondent. It was also submitted that the petitioner has made various payments by virtue of the orders passed by this Court to the tune of Rs.2,62,95,686/-. The claim that has been made under the head of minimum demand charges to the tune of Rs.3,29,04,913/- directly falls under the sanctioned scheme. If this is taken into account, the balance amount that is payable as per the impugned demand works out to a sum of Rs.2,59,54,875/- and the petitioner has already paid in excess

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

of it. Insofar as the additional security deposit is concerned, the petitioner has already given the Bank Guarantee.

15. The learned counsel for the petitioner relied upon the following judgments in order to substantiate the binding nature of the sanctioned scheme issued by BIFR.

(a) Director General of Income Tax -vs- Board for Industrial and Financial Reconstruction (BIFR) and Others 2011 SCC Online Del 1484.

(b) Shree Karthik Papers Limited-Vs- Government of Tamil Nadu and Others 2009 SCC Online Mad 3257.

(c) Jai Murugan Textiles -Vs- The Chairman and 3 Others (Order dated 28.08.2017 passed by Hon'ble High Court of Madras in W.P.Nos.30915 of 2004 and W.M.P.No.41376 of 2004.

16. Per contra, the learned Government Pleader appearing on behalf of the respondent, apart from reiterating the stand taken in the counter affidavit, submitted that the sanctioned scheme had directed the respondent to grant concession as per the existing policy and there are no existing policies for granting waiver for the payment of the minimum demand charges. Therefore, the petitioner has to pay the entire amount claimed under this head. The learned Government Pleader further submitted that the non payment of the amount due will entail disconnection as per Section 56 of the Electricity Act 2003. It was further submitted that if the petitioner is disputing the amount claimed by the respondent, such a dispute can be raised only before a competent civil Court and it cannot be made as a subject matter in writ proceedings. The learned Government Pleader also submitted that out of the two months security deposit, the petitioner has only paid for one month and is yet to pay for the second month. Such a requirement is specifically stipulated under Chapter 6.10 of the Joint Electricity Regulatory Commission (Supply Code) Regulations, 2010. It was further submitted that the earlier order passed by the Division Bench dealt with the claim made by the petitioner seeking for waiver and it was rejected and therefore the petitioner is barred from making the same claim on the principles of res judicata. It was further submitted that the judgments relied

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

upon by the learned counsel for the petitioner are not relevant to the facts of the present case and hence, the learned Government Pleader sought for dismissal of this writ petition.

17. This Court has carefully considered the submissions made on either side and the materials available on record.

18. The learned Government Pleader has raised the ground of res judicata and therefore this ground has to be considered at the outset before going into the merits of the case. To substantiate this ground, the learned Government Pleader relied upon Para 69, 73, 75 and 76 of the order passed by the Division Bench and the same are extracted hereunder.

> “69. As pointed out earlier, the petitioner Company is stated to be the single largest consumer of electricity in the Union Territory of Pondicherry. We have asked the respondents to inform us as to whether petitioner company has paid the electricity consumption charges between 1994 to 1999. It was stated before us that the petitioner company had paid the electricity consumption charges at the normal tariff rate for the period from 1994 to 1999. After filing of the writ petition, in October, 1997 also, the petitioner company had paid the current consumption charges at the normal tariff rate. Petitioner company is said to have committed default in payment of the current consumption charges from March 1999 to October 1999 (8 months). For the said eight months, current consumption charges is stated to be Rs.5,55,70,094/-. Power supply was disconnected from November 1999 till February 2002. During the said period, the petitioner company has to pay the minimum charges which is stated to be Rs.3,29,04,913/-.
>
> …..
>
> …..
>
> 73.Since the issue before us is only in respect of grant of benefit of subsidy to the petitioner company, which we have held against the petitioner conmpany we do not propose to go into the disputed

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

claim on the charges due and payable by the petitioner company. Suffice to note that it is open to the respondents and the Electricity Department, Pondicherry to take appropriate action against petitioner company in accordance with law against the petitioner company for recovery of the amount.

…....

…..

75.W.P.No.18290 of 2000

This writ petition is filed seeking for writ of Certiorarified Mandamus calling for the records of the third respondent in his proceedings No.87/ED/RG/IAI/1999-2000 dated 18.10.2000 received on 21.10.2000 and quash the same and consequently restrain the respondents from initiating any coercive proceedings under the Revenue Recovery Act against the petitioner for arrears of electricity charges so long as the petitioner is a sick industrial undertaking under the Sick Industrial Companies (Special Provisions) Act.

76. From the prayer of the writ petition, it is very clear that the petitioner wanted the collection being stopped so long as the petitioner is a sick industrial undertaking under the Sick Industrial Companies (Special Provisions) Act. It is admitted in the court that the petitioner company is no more a sick industry and it is doing very good business and in fact in the written statements they have stated that till date they have paid electricity charges to the tune of Rs.132 Crores towards the consumption of electricity from the date of reconnection of electricity in the year 2002. When that being the case, the prayer in the writ petition has automatically become infructuous the moment is not a sick industry. It is also admitted that the BIFR proceedings has long back ended. As the only prayer sought for in the writ petition is under the umbrage of Sick Industrial Companies (Special Provisions) Act, the prayers sought for in the writ petition is not maintainable as it has become infructuous and as such the writ

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

petition is dismissed and it is open to the Electricity Department to take recourse as contemplated under law to recover the amount from the petitioner. No costs."

19. It must be borne in mind that W.P.No.18290 of 2000 came to be filed even before the sanctioned scheme was ordered by BIFR on 04.12.2001. Therefore, when the writ petition was filed, the petitioner was only relying upon Section 22 of the Sick Industrial Companies (Special Provisions) Act 1985. That apart, there is nothing to show that the Division Bench while disposing of the case had looked into or relied upon the sanctioned scheme before passing the order. Therefore, it cannot be held that the order passed by the Division Bench will amount to res judicata and will bar the petitioner to claim the benefits of the sanctioned scheme in the present writ petition. That apart, the order passed by the Division Bench has been taken on appeal before the Hon'ble Supreme Court and the Hon'ble Supreme Court is seized of the matter. This Court is of the considered view that the present writ petition is not barred by the principles of res judicata.

20. The next issue to be gone into is with regard to the scope and ambit of the sanctioned scheme approved by the BIFR through order dated 04.12.2001. There is no dispute with regard to the fact that the respondent was also a party in the proceedings before BIFR and the claim made by the respondent was one of the claims that was taken note of by BIFR. It is pursuant to the same, the sanctioned scheme came to be issued and the claim made by the respondent is dealt with under Clause 12.6 and the same has been extracted supra.

21. A plain reading of the said clause reveals that the respondent has to grant concession as per the existing policy for sick units including waiver of minimum demand charges. The learned Government Pleader submitted that there is no existing policy for granting concession to the sick units and therefore there is no scope for granting any waiver to the petitioner. Such interpretation given by the respondent to the sanctioned scheme goes against the very purport of the scheme. There are two portions to the scheme issued by BIFR. The first portion deals with granting concessions as per the existing policy for sick units and the second portion deals with waiver of minimum

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

demand charges. Insofar as the waiver of minimum demand charges are concerned, it does not contemplate an existing policy and it is a positive direction issued by BIFR. That apart, the petitioner is also entitled for the waiver of belated payment surcharge from October 15, 1997 till the date of reconnection. The waiver granted by BIFR is plain and clear and there is no ambiguity.

22. The next question is with regard to the binding nature of the sanctioned scheme issued by BIFR. For this purpose, the judgment of the Delhi High Court relied upon by the learned counsel for the petitioner provides the perfect answer. For proper appreciation, the relevant portions of the judgment are extracted hereunder.

> "8.7. We may only point out that insofar as certain entities are concerned, such as the Central Government and the State Government or other Banks or even Public Financial Institutions or State Level Institutions or any Institution or Authority, SICA provide for obtaining their consent to the draft scheme where the scheme provides for financial assistance to a sick industrial company by way of loans, advances, guarantees or reliefs and concessions or calls upon them to make sacrifice in relation to financial assistance already granted by such entities. [See Section 19(1) and (2)]. The entities described in Section 19(1) are required to convey their consent or response to draft scheme within 60 days. In case no response is reached within the period of 60 days or within such further period not exceeding 60 days, then sub-section(2) of Section 19 provides for deemed consent. Once the process under Sub-section(2) of Section 19 is over, the Scheme becomes binding on all concerned from the date of such sanction [See Clause (3A) of sub-section (3) of Section 19].
>
> 10. In the context of the above discussion, we would like to reproduce specifically the provisions of Section 32(1) of the SICA reads as follows:
>
> 32.EFFECT OF THE ACT ON OTHER LAWS
>
> (1) The provisions of this Act and of any

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

rules or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law except the provisions of the Foreign Exchange Regulation Act,1973 (46 of 1973) and the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976) for the time being in force or in the Memorandum or Articles of Association of an industrial company or in any other instrument having effect by virtue of any law other than this Act."

11. In view of aforesaid provision there can hardly be any doubt that once a scheme is formulated after a reference is gone through the process of Section 17 and 18 of the SICA, the said Scheme would have been force of law notwithstanding anything inconsistent therewith contained in any other law. Thus, neither the party making any concessions at the time of formulation of the scheme nor the company at whose behest the scheme is formulated and sanctioned can get out of the Scheme. As noticed above, a draft scheme is sanctioned under the provisions of Sub-section (4) of Section 18 of the SICA. Once a draft scheme is sanctioned, it is binding on those concerned as this reflected in sub-section (8) of Section 18 and Section 19 (3) of SICA. Thus, once a sanctioned scheme or any of its provisions is made operable it binds the sick industrial company, and the entities referred to in Section 18(8) and 19(3) of SICA. In these circumstances, the Department cannot surely be heard to argue that the provisions of the scheme are not binding on it.

12. We have to keep in mind that any scheme is a package to rehabilitate the company. It is possible that such rehabilitation may result in early success or at times may take a greater period of time to such financial stability. If the argument of the Department were to be accepted, it would imply that if a sick industrial company achieves success in making its net worth positive, all

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

benefits of a sanctioned scheme would stand withdrawn whether exhausted or not, even though the emergence from sickness and its continued health is dependant on the sanctioned scheme being fully implemented. This would according to us defeat the very purpose of formulating a sanctioned scheme. A sanctioned scheme is myriad would ordinarily devise ways and means by which the assets of the referrer are to be dealt with. The provisions of the sanctioned scheme would bind both the referrer and those who are the party to it, including those in respect of which SICA makes a specific provision. It has to be appreciated that to forge a consensus on rehabilitation of a sick industrial company is no mean task. But once consensus is arrived at, and a scheme is sanctioned, it cannot equally be jettisoned without due deliberation and adherence to the provisions of law. Thus, the apprehension of the department that assets will be salted away is misconceived. The company which is the beneficiary of the sanctioned scheme can be brought to heal by taking recourse to appropriate remedies in order to obtain its obeisance to the sanctioned scheme.

13. We may also not that the mere fact that the net worth has become positive does not provide any automatic exit route from the proceedings before BIFR. It is open to BIFR to continue to monitor the implementation of the unimplemented part of the sanctioned scheme. In the captioned cases, the BIFR appears to have discharged the reference solely on the ground that the net worth has turned positive. The discharge of reference is followed by consequent directions of relieving the operating agency and the independent director of its mandate. The BIFR has noticed that a substantive part of the sanctioned scheme has been implemented while issuing a direction to implement the remaining part of the sanctioned scheme if one may say so, the second part is really redundant since, as observed by us. Once a scheme is sanctioned, it has the force of law; making its enforcement amenable as a

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

matter of law, even in foras other than BIFR. We may emphasise at the cost of repetition that the gaining entry within the domain of BIFR, the erosion of net worth (amongst other jurisdictional attributes) is an essential criteria; the inverse does not necessarily follow. In other words, a referrer cannot seek an exit as a matter of right merely on the ground that the net worth has turned positive, especially where a sanctioned scheme is under implementation. This is a call that the BIFR has to take. Where the BIFR takes such a call by discharging the reference, it does not impact the sanctity of a sanctioned scheme which continues to bind all concerned."

23. This Court also had an opportunity to deal with the effect of such a sanctioned scheme qua the demand made under the Electricity Act and Regulations made thereunder. The order passed by this Court was relied upon by the learned counsel for the petitioner. The relevant portions of the order in Jai Murugan Textiles -Vs- The Chairman and 3 Others in W.P.No.30915 of 2004 referred to supra are extracted hereunder.

" 2.Subject matter of the writ petition is payment of electricity charges and certain other allied levies. To be precise, the levies which are subject matter of this writ petition are as follows:

a) Electricity tax;
b) 5% minimum demand charges;
c) Peak hour charges; and
d) Surcharge levied on delayed payment.

3.It is the case of the writ petitioner that on the above said four heads, they are entitled to get back a sum of Rs.59,74,479.53 from the respondents.

4.The plea of the writ petitioner is pivoted and predicated on proceedings of Board for Industrial and Financial Reconstruction ('BIFR' for brevity) dated 29.10.2003 in Case No.337 of 1999 (hereinafter referred to as 'said BIFR proceedings' for brevity).

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

5.Vide said BIFR proceedings, BIFR, after declaring the writ petitioner company sick and appointing an operating agency, has inter alia given some directions qua creditors of the writ petitioner company. One such direction is to the respondents herein and the same is contained in Clause 11.5.1. of said BIFR proceedings, which reads as follows:

> 11.5 Government of Tamil Nadu
> To consider
> 1.Tamilnadu Electricity Board to waive the surcharge levied on delayed payments, electricity tax levied at 5%, minimum demand charges and peak hour charges from the respective dates of levy.

6.One other clause of the said BIFR proceedings which is of relevance is contained in sub-clause (n) of Clause 15, which reads as follows:

> 15.0 GENERAL TERMS AND CONDITIONS
> .....
> n) The provisions of this Scheme shall have effect notwithstanding anything inconsistent therewith contained in any other Law (except the provisions of the Foreign Exchange Regulation Act, 1973 and the Urban Land (Ceiling and Regulations) Act, 1976, for the time being in force or in the Memorandum and Articles of Association of the sick industrial company or any other instrument having effect by virtue of any Law other than the Sick Industrial Companies (Special Provisions) Act, 1985.

7.On the basis of the above said directions of BIFR in the said BIFR proceedings, writ petitioner appears to have given a representation

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

dated 27.06.2004 to the respondents asking for refund of the above said amount of Rs.59,74,479.53 on the above said four heads, followed by a writ petition in this Court being W.P.No.19005 of 2004 and the same came to be disposed of by an order dated 07.07.2004. The operative portion of the order of this Court is contained in paragraph 2 and the same reads as follows:

> "Having regard to the materials brought to my notice, I am inclined to direct the respondent to consider the petitioner's representation dated 21.6.2004 in accordance with law, in the context of the direction stated to have been issued by BIFR, the details of which is given in the writ petition, if such a direction gets attracted to the case on hand and take a decision thereon in any event, not later than 31.8.2004. The writ petition is disposed of accordingly. Consequently, the connected WPMP is also closed. No costs"

8.From the operative portion of the order of this Court, it is clear that the respondents have been directed to consider the representation of the writ petitioner in the context of the aforesaid directions issued by BIFR in said BIFR proceedings. Pursuant thereto, the respondents have passed a cryptic order dated 08.09.2004 bearing Ref. Letter No.1651/CE/Comml./EE.1/Asst.513/ 2004, which has been called in question in this writ petition (hereinafter referred to as 'impugned order' for the sake of clarity).

9.A perusal of the impugned order shows that it is not only cryptic, but there is no discussion whatsoever about the directions given by BIFR, particularly clauses 11.5.1 and 15(n), which have been extracted supra.

10....

11....

12....

13....

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

14. This Court, while issuing mandamus to the erstwhile Tamil Nadu Electricity Board (now TANGEDCO), clearly directed the respondents to consider the petitioner's representation dated 21.06.2004 in accordance with law, particularly in the context of the directions given by the BIFR, but the impugned order makes no reference to the BIFR order. The impugned order does not say how the order of BIFR dated 29.10.2003 made in Case No.337 of 1999 is not applicable to the petitioner's claim.

15. Law is well settled that an impugned order cannot be improved either by way of counter-affidavit or by way of submissions made across the Bar by the respondent counsel, representing the respondent, who passed the impugned order.

16. Therefore, the specious and general plea that there is no provision under Electricity Act, 2003 for such refund does not hold the water.

17. In my view, there is one more reason as to why this plea that there is no provision under the Electricity Act, 2003 is of no avail to the respondents is as follows:

> Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as SICA for brevity) is a special statute whereas the Electricity Act, 2003 is a general statute. It is undisputable that the provisions of a special statute will always prevail over the provisions of any general statute. As a corollary, it is axiomatic that absence of an enabling provision in a general statute, cannot be put against anyone for depriving the benefits which one may be entitled to under the special statute."

24. It is clear from the above that the Sick Industrial Companies (Special Provisions) Act, 1985, as a special statute will always prevail over the Electricity Act, 2003 which is a general statute. That apart, once a scheme is formulated by BIFR after going through the process stipulated under Sections

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

17 and 18 of the Act, the scheme will have the force of law notwithstanding anything inconsistent therewith contained in any other law, and the concerned company is entitled for all the benefits of a sanctioned scheme even though such a company would have emerged from sickness at a future point of time. The fact that the net worth of the company has become positive does not automatically result in depriving the company of the benefits given under the sanctioned scheme. Even after the BIFR takes a decision ultimately to discharge the reference, it does not in any way impact the sanctity of a sanctioned scheme and it will continue to bind all concerned.

25. In the present case, the respondent was very much a party to the proceedings before the BIFR and the sanctioned scheme will bind the respondent insofar it touches upon the claim made by the respondent. It was made very clear in the sanctioned scheme that the petitioner is entitled for waiver of minimum demand charges levied during the period the plant was not in operation. The respondent has demanded for a payment of Rs.3,29,04,913/- under this head for the period from November 1999 to February 2002. It is during this period, the HT connection was disconnected. Therefore, the petitioner obviously will be entitled to claim waiver of this amount in line with the sanctioned scheme of BIFR.

26. The total demand that was made under the impugned communication dated 02.09.2010 was a sum of Rs.5,22,50,561/- which also included the amount due towards minimum demand charges. In view of the findings given by this Court to the effect that the petitioner is entitled for the waiver of the amount under this head under the sanctioned scheme, the total amount that becomes payable by the petitioner gets reduced to Rs.5,22,50,561/- minus (-) Rs.3,29,04,913/- = Rs.1,93,45,648/-. As against this amount, the petitioner has paid through various interim orders a sum of Rs.2,62,95,686/-. That apart, the respondent has claimed a sum of Rs.2,63,85,050/- towards security deposit and out of which, one month security deposit has been paid by the petitioner and the petitioner has also given a Bank Guarantee for a sum of Rs.3,50,00,000/- pursuant to the orders passed in W.A.No.1354 of 2017. The excess amount that has been paid by the petitioner against the demand of Rs.5,22,50,561/- to the tune of Rs.69,50,038/- can also be directed to be adjusted towards security deposit.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

27. In view of the above discussion, the impugned communication dated 02.09.2010 is partly set aside insofar as the demand made under the head of minimum demand charges. The payments made by the petitioner are adjusted towards the balance amount that are due and payable by the petitioner and the excess payment made by the petitioner to the tune of Rs.69,50,038/- is directed to be adjusted towards security deposit. This writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar

KST

To

Superintendent Engineer-I
Electricity Department
Government of Puducherry
No.137, Nethaji Subash Chandra Bose Salai
Puducherry.

+1CC to Mr.Roshan Balasubramanan, Advocate, SR.No. 54739
+1CC to The Government Pleader, SR.No. 54820

W.P.No.21262 of 2010

SJ(CO)
B.VC (02/11/2021)

https://hcservices.ecourts.gov.in/hcservices/