IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.12.2021

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.9154 of 2018
and
W.M.P.Nos.10971 & 10972 of 2018

Anangoor Textile Mills (P) Ltd.,
SF No.5, Anangoor, Chinnadarapuram via,
Dharapuram Taluk,
Erode District,
Rep.by its Authorized Signatory Mr.C.Kumar ...Petitioner

Vs.

1. State of Tamil Nadu,
   Rep.by the Secretary to Government,
   Energy Department,
   Secretariat, Fort St.George,
   Chennai - 600 009.

2. The TANGEDCO,
   Rep.by its Chairman,
   No.800, Anna Salai,
   Chennai - 600 002.

3. The Chief Engineer/Commercial,
   TANGEDCO,
   144, Anna Salai,
   Chennai - 600 002.

4. The Superintending Engineer,
   Udumalpet Electricity Distribution Circle,
   TANGEDCO, Udumalpet. ...Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 4th respondent in his impugned demand notice dated 09.03.2018 bearing No.Lr.No.SE/UEDC/UDT/DFC/AO/R/AAO/HT/AS/ F.TF concession204/2018, and quash the same as illegal, arbitrary, without the authority of law and against the very spirit of the order of the Supreme Court dated 16.05.2008 and consequently direct the respondents to grant tariff concession to the petitioner by following the procedure laid down by the Hon'ble Supreme Court in its Judgment dated 16.05.2008 passed in Civil Appeal No.3940 of 2008 and permit the petitioner to release the Bank Guarantees executed in favour of the respondents with respect to the tariff concession amount.

For Petitioner : Mr.S.P.Parthasarathy

For Respondents : Mrs.C.Meera Arumugam
Additional Government Pleader for R1

Mr.L.Jai Venkatesh
Standing Counsel for R2 to R4

ORDER

This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus, to call for the records of the 4th respondent in his impugned demand notice dated 09.03.2018 bearing No.Lr.No.SE/UEDC/UDT/DFC/AO/R/AAO/HT/AS/ F.TFconcession 204/2018, and quash the same as illegal, arbitrary, without the authority of law and against the very spirit of the order of the Supreme Court dated 16.05.2008 and consequently direct the respondents to grant tariff concession to the petitioner by following the procedure laid down by the Hon'ble Supreme Court in its Judgment dated 16.05.2008 passed in Civil Appeal No.3940 of 2008 and permit the petitioner to release the Bank Guarantees executed in favour of the respondents with respect to the tariff concession amount.

2.The issue involved in the present Writ Petition and the issue in W.P.No.2860 of 2018 dated 16.11.2021 are one and the same. Therefore, the learned counsel appearing for the petitioner submits that this matter also may be disposed of on the very same lines. The petitioner expressed their readiness on 13.01.1997 and therefore, he submits that the issue in this Writ Petition is squarely covered by the issue in W.P.No.2860 of 2018.

3.It is relevant to extract Paragraph Nos.10 and 11 of the order of this Court passed in W.P.No.2860 of 2018 dated 16.11.2021, reads as under:

> "10.For determining the eligibility of the petitioner, the word "set up" indicated in the Government Order requires to be interpreted. The word "set up" has to be liberally and harmoniously interpreted in the best interest of the consumers. This Court carefully perused the pleadings made by the petitioner in the Writ Petition. The petitioner set up an industry, i.e., a Paper Mill with a capital investment of around Rs.23.81 Crores and made an

application 09.10.1995 for a maximum demand of 3500 KVA of supply of electrical energy pet under the category of "High Tension". The said application was kept pending for more than 10 months without assigning any reason by the respondents. Later, vide communication dated 19.08.1996, the 3rd respondent sanctioned the demand of 3500 KVA and pursuant to the same, the petitioner also paid EMD of Rs.10,50,000/- on 11.09.1996. Thereafter, the petitioner vide communication dated 18.09.1996, expressed its readiness to avail power after completion of civil works and having equipments installed at the site. While so, there was no response from the respondents despite the petitioner approaching them periodically and despite expressing its readiness to avail power. It is pertinent to note that the respondents had kept silent without taking any efforts to process the request of the petitioner, which expressed its readiness as early as on 18.09.1996. But only in the year 1997, i.e. after a lapse of 11 months, the respondents sent a communication dated 01.09.1997, requesting the petitioner to pay Development and Service Connection Charges for the purpose of providing service connection. Immediately, the petitioner also paid the said amount on 03.09.1997. Later, the petitioner obtained CEIG certificate and finally, the respondents provided service connection on 31.10.1998. Had the respondents responded in time well before the cut off date, the petitioner would have certainly come under the zone of consideration for availing tariff concession. But due to the delay on the part of the respondents in providing the power supply, there is no justification on the part of the respondents to contend that the petitioner is not eligible to avail the tariff concession. In such event, the petitioner cannot be penalized for the inaction on the part of the respondents in effecting electricity supply before the cut off date. Therefore, the contention of the respondents that the petitioner did not commence commercial production before the cut off date and thereby, they are not eligible for tariff concession cannot be countenanced. It has to be seen whether the petitioner did not commence production owing to the delay attributable on his part or the delay is on the part of the Board in effecting service connection. This is more so that this was not the intention of the Government in taking a policy decision to extend tariff concession. Had it been the intention of the Government, it could have excluded those who have not obtained power connection before 15.02.1997 by specifically stating that the concession would be extended only to those who have commenced commercial production before the cut off date. It was merely stated that those who have set up the industries are entitled for the tariff concession, meaning thereby, those who have applied and are ready to take up the service connection are also entitled for the concession. This alone would be the criteria for extending the tariff concession and the word "set up" has to be interpreted only in this way. Such consumers who were ready to take up the service connection by keeping intact all the infrastructural amenities can only be construed as pre-existing industries.By virtue of this position, the petitioner, who had set up a new industry with the electricity supply to be provided by the respondents, acquires a vested right. It is not in dispute that the petitioner has applied well before the cut off date and having paid EMD, expressed its readiness and was anticipating to get power supply effected by the respondents by providing all the infrastructural facilities required for the same. In other words, the petitioner was ready to take the service connection that may be provided by the respondents. The anticipation of the petitioner in setting up industry by investing huge amount towards recruiting men, machineries, fixtures and other infrastructural amenities, on the basis of the concession announced by the Government to extend power tariff, is a legitimate expectation which cannot be denied by the respondents.

11. As regards the impugned order is concerned, the 3rd respondent did not take note of the delay on the part of the department in effecting the service connection but merely rejected the claim of the petitioner. In other words, it was not specifically stated as to whether the delay in getting service connection is on the part of the petitioner or not. It was also not specifically stated as to whether the individual consumer/petitioner has applied for setting up the industry in time, provided necessary infrastructural amenities to take the service connection, remitted the amount required for effecting service connection etc., As regards remittance of amount towards development charges/meter charges, unless the respondents demand the petitioner to remit it before the cut off date, they will not be in a position to do so. Therefore, the respondents ought to have stated in the impugned order that in spite of demands made by them, the petitioner has failed and

neglected to remit the amount. In the absence of indicating any such specific date on which the amount was demanded by the respondents and the date on which the amount was paid by the petitioner, the impugned order is liable to be vitiated."

4. In view of the above, the writ petition stands allowed and the impugned demand notice dated 09.03.2018 bearing No.Lr.No.SE/UEDC/UDT/DFC/AO/R/AAO/HT/AS/F.TFconcession204/2018, issued by the 4th respondent is hereby set aside. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

Pns

To

1. The Secretary to Government,
   State of Tamil Nadu,
   Energy Department,
   Secretariat, Fort St.George,
   Chennai – 600 009.

2. Chairman,
   The TANGEDCO,
   No.800, Anna Salai,
   Chennai – 600 002.

3. The Chief Engineer/Commercial,
   TANGEDCO,144, Anna Salai,Chennai – 600 002.

4. The Superintending Engineer,
   Udumalpet Electricity Distribution Circle,
   TANGEDCO, Udumalpet.

+1cc to Mr.R.S.Pandiyaraj, Advocate, S.R.No.64651
+1cc to the Government Pleader, S.R.No.64810

W.P.No.9154 of 2018
and W.M.P.Nos.10971 & 10972 of 2018

KV(CO)
RGA(20/12/2021)