IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.494 of 2015
and
M.P.Nos.1 & 2 of 2015

M/s.Arun Smelters (P) Ltd.,
H.T.Sc.No.1616,
C-Block, No.804, Shivalaya Buildings,
Ethiraj Salai, Egmore,
Chennai - 600 008,
represented by its General Manager,
K.Venkataraman.

...Petitioner

Vs

The Superintending Engineer,
TANGEDCO,
Chennai Electricity Distribution Circle/North,
144, Anna Salai,
Chennai - 600 002.

... Respondent

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records in Lr.No.SE/CEDC/N/AEE/Dev/AE/D2/F HT1616 addl/D1195/14 dated 19.9.2014 and Lr. No. SE/CEDC/N/AEE/Dev/AE/D2/F1616 addl/D1571/14 dated 22.12.2014 issued by the respondent and quash the same as illegal, arbitrary and untenable under law and against the provisions of Tamilnadu Electricity Supply Code and Distribution Code 2004.

For Petitioner : Mr.S.P.Parthasarathy
For Mr.K.Seshadri

For Respondent : Mr.L.Jeivenkatesh
Standing counsel
[For TANGEDCO]

O R D E R

The relief sought for in the present writ petition is to call for the records in Lr.No.SE/CEDC/N/AEE/Dev/AE/D2/F HT1616 addl/D1195/14 dated 19.9.2014 and Lr. No. SE/CEDC/N/AEE/Dev/AE/D2/F1616 addl/D1571/14 dated 22.12.2014 issued by the respondent and quash the same as illegal, arbitrary and untenable under law and against the provisions of Tamilnadu Electricity Supply Code and Distribution Code 2004.

2. The relief sought for in the present writ petition is similar to the relief sought for by the writ petitioner in W.P.No.6207 of 2013, which was already decided by this Court on 23.01.2020 and the relevant paragraphs of the said order are extracted hereunder :

> “2. Learned counsel for the petitioner submitted that the petitioner industry has been sanctioned with a maximum demand of 1850 K.V.A., by the respondent Electricity Board after complying with all the necessary formalities by the petitioner. Since then, the petitioner industry has been providing employment to about 200 workers. Moreover, to achieve the maximum production in the industry and to expand the industrial activity in the State, after completing civil works and purchasing new machineries by borrowing loan from various banks and private financial institutions to the tune of Rs.3 Crores, the petitioner applied for additional demand of 500 K.V.A., on 26.12.2011, which is in excess of the sanctioned demand of 1850 K.V.A. Pursuant thereto, on 20.3.2012, the respondent requested the petitioner to pay a sum of Rs.500/- towards registration fee and Rs.4,00,000/- towards earnest money deposit with a further request to submit the Tamil Nadu Pollution Control Board consent under the Air and Water Pollution Act before effecting the high tension supply. The petitioner had paid the said demand made by the respondent on 21.3.2012 and thereupon informed the respondent on 30.3.2012 that they have applied for the renewal of consent from the Tamil Nadu Pollution Control Board and the same would be issued at any time, hence, requested time to furnish the consent letter after availing the additional supply. On the same day, the respondent also requested the petitioner to pay a sum of Rs.1,75,000/- towards development charges and Rs.26,420/- towards service connection charges with a further direction to execute the revised agreement and to produce the CEIG/CEA

safety certificate and completion certificate on or before the date of completion of the TANGEDCO side works so as to avail the high tension supply, failing which the first three months notice would be issued to the petitioner to avail the high tension supply and then the monthly minimum charges would be also levied from the date of issue of the first three months notice.

3. Adding further, it was stated that when the respondent has sanctioned the additional demand of 500 K.V.A., with some conditions on payment of Rs.2,01,420/- on 30.3.2012, the respondent also has issued the first three months notice on 28.4.2012 directing the petitioner to avail the supply on or before the expiry of the first three months period, namely, 18.7.2012, failing which the petitioner would be liable to pay the monthly minimum charges of Rs.9 lakhs for six months period from 20.4.2012 to 16.10.2012 before the expiry of first three months period for granting the further extension of three months time beyond the first three months period. There was also a threat of termination of the agreement by forfeiting all the charges, if the above condition was not complied with. In the meanwhile, the petitioner has furnished the consent letter from the Tamil Nadu Pollution Control Board on 7.7.2012 renewed upto 31.3.2013 with a request to the respondent to grant the additional demand of 500 K.V.A., immediately. Whereas, surprisingly, the respondent has included Rs.4,15,000/- towards the minimum demand charges in the current consumption bill of January, 2013. Therefore, the petitioner industry, on 18.2.2013, informed the respondent that if there is any liability of payment of minimum charges, it should be restricted to 90% of the quota permitted, namely, 180 K.V.A., but not on the total additional demand of 500 K.V.A., sanctioned. But to their shock and surprise, the respondent, once again by the impugned letter dated 8.3.2013, asked the petitioner to pay the short levy of Rs.4,15,000/- as pointed out by the audit party of the Board office audit branch in audit slip No.44 dated 30.1.2013 with a threat of disconnecting the supply, if the petitioner failed to remit the said amount within seven days time. Hence, the impugned demand raised is wholly unsustainable in law, inasmuch as the petitioner has been an existing and running unit and have been producing the certificate from the Tamil Nadu Pollution Control Board every year. While so, the respondent

cannot request the petitioner to furnish the renewal certificate. Continuing further, it was stated that the impugned demand of Rs.4,15,000/- towards the monthly minimum charges based on the audit slip is illegal, arbitrary and against the provisions of the Tamil Nadu Electricity Supply and Distribution Code, 2004, because the respondent failed to note that under Regulation 17 (1) of the Tamil Nadu Supply Code, the petitioner is liable to pay the minimum charges from the date of commencement of supply till the agreement is terminated, therefore, payment of minimum charges by the petitioner will not arise without effecting the additional demand. Again citing one another reason, learned counsel for the petitioner submitted that the petitioner industry is not a new industry and it has already submitted the Tamil Nadu Pollution Control Board clearance certificate at the time of establishment of new industry, therefore, there is no restriction to sanction the additional demand on the basis of non-production of clearance certificate from the Tamil Nadu Pollution Control Board. Moreover, the payment of minimum charges will not arise in the case of sanction of additional demand, for the reason that there is no provision available in the Tamil Nadu Electricity Supply Code or in the Distribution Code. On this basis, he pleaded that the impugned demand is illegal and liable to be set aside.

4. A detailed counter affidavit has been filed by the respondent. Mr.P.R.Dhilipkumar, learned standing counsel for the respondent submitted that when the petitioner asked for additional demand of 500 K.V.A., which is over and above the existing sanctioned demand of 1850 K.V.A., the respondent asked the petitioner to remit a sum of Rs.500/- towards the registration fee and Rs.4,00,000/- towards earnest money deposit and also to submit the Tamil Nadu Pollution Control Board consent letter. The petitioner also paid the registration fee of Rs.500/- and development charges of Rs.1,75,000/-, service connection charges of Rs.26,420/- and also executed the HT agreement on the same day itself. Thereafter, the respondent also, in his letter dated 28.4.2012, informed that TANGEDCO Limited is ready to extend the HT supply for the additional demand of 500 K.V.A., at 11 KV as requested by the petitioner. But the petitioner has not produced the valid TNPCB consent letter for availing the supply, hence, the petitioner was requested to produce the valid Tamil Nadu Pollution Control Board consent letter

and avail the supply of electricity within three months from 20.4.2012. In the same letter, it was informed that the monthly minimum charges would be levied from 20.4.2012 till the date of availing the supply. As the petitioner has produced the Tamil Nadu Pollution Control Board certificate only on 7.7.2012, the clearance was issued thereafter and the additional demand was effected on 13.7.2012, hence, the monthly minimum charges shall be applicable from 20.4.2012 to 12.7.2012 for about 83 days, as per the TNERC Distribution Code 31(2). Even referring to Regulation 31(5) of the Tamil Nadu Electricity Distribution Code, an intending consumer availing supply during the notice period of availability of supply, shall pay the monthly minimum charges at the notified tariff rate for the period from the date of issue of first notice of supply availability till the date of availing the supply. Hence, the petitioner is bound to pay the monthly minimum charges. Even as per clause 6 of the Tamil Nadu Electricity Supply Code, it is specifically stated that the monthly minimum charges are payable even when no electricity supply was payable or disconnected. In such circumstances, the TNERC Ombudsman has also upheld the monthly minimum charges collected for the additional sanctioned demand in its order dated 30.11.2011 passed in Appeal Petition No.102 of 2010, therefore, the impugned demand cannot be found fault with, resultantly, the writ petition is liable to be dismissed, he pleaded.

5. Heard both sides.

6. When the petitioner has been sanctioned with HT supply with a maximum demand of 1850 K.V.A., by the respondent-TANGEDCO in H.T.S.C.No.1519, the petitioner industry is continuously involved in the manufacture of steel ingots, steel rounds etc., and also providing employment to about 200 persons. That shows the petitioner industry is an existing industry. While so, they applied for additional demand of 500 K.V.A., on 26.12.2011, which is over and above the existing sanctioned demand of 1850 K.V.A. The respondent also on 20.3.2012 requested the petitioner to pay a sum of Rs.500/- towards registration fee and Rs.4,00,000/- towards earnest money deposit along with the Tamil Nadu Pollution Control Board consent letter. The petitioner also applied to the Tamil Nadu Pollution Control Board seeking consent and this was also informed to the

respondent on 30.3.2012 stating that they have applied for renewal of consent from the Tamil Nadu Pollution Control Board and the same also would be issued at any time. Thereafter, the respondent also directed the petitioner to pay a sum of Rs.1,75,000/- towards development charges and Rs.26,420/- towards service connection charges and in addition thereto, to execute a revised agreement and produce the CEIG/CEA safety certificate on or before the date of completion of the TANGEDCO side works. The petitioner was able to get the Tamil Nadu Pollution Control Board certificate on 7.7.2012 and the same was also submitted to the respondent. Now the question is when the respondent has issued a notice on 28.4.2012 to the petitioner to avail the additional supply before 18.7.2012 and the clearance letter was also produced by the petitioner on 7.7.2012, whether the petitioner is liable to pay the minimum charges from 20.4.2012 to the date of availing supply i.e., till 12.7.2012 for 83 days or not. When the petitioner industry is not a new industry and there is no restriction to sanction the additional demand on the basis of non production of the Tamil Nadu Pollution Control Board certificate, the stand of the respondent that the petitioner has been informed by the letter dated 28.4.2012 that TANGEDCO limited is ready to execute the HT supply for additional demand of 500 K.V.A., at 11 KV, but the petitioner has not produced the valid Tamil Nadu Pollution Control Board certificate under the Air and Water Pollution Act and hence liable to pay the monthly minimum charges, is wholly untenable and unjustified.

7. As mentioned above, when the Tamil Nadu Pollution Control Board certificate was produced by the petitioner on 7.7.2012 and thereafter the clearance was also issued and the additional demand was also effected on 13.7.2012, the question of payment of monthly minimum charges will not arise in this case, as per Regulation 31(2) of the Tamil Nadu Electricity Distribution Code. While dealing with a similar issue, I have held in my order dated 3.10.2019 passed in W.P.No.19709 of 2010 (M/s K.L.Concast Private Limited, Thiruvallur v. The Superintending Engineer, CEDC/North, Tamil Nadu Electricity Board) that the respondent-TANGEDCO should issue the readiness certificate informing the petitioner that all board side works with regard to the extension of HT supply have been completed and secondly, the respondent shall also clearly indicate that they are ready to supply the

additional demand. While so, in the case on hand, when the respondent in their letter dated 28.4.2012 has informed that the TANGEDCO is ready to extend the additional demand of 500 K.V.A., they have not indicated that the board works have been completed. Even in the counter affidavit also, the respondent has not mentioned that they have completed the board works. Nonetheless, the letter dated 28.4.2012 shows that TANGEDCO is ready to extend the HT supply for the additional demand of 500 K.V.A., at 11 KV to the petitioner. For the reason that the petitioner has not produced the Tamil Nadu Pollution Control Board certificate within time, but produced the same only on 7.7.2012, the respondent cannot claim the monthly minimum charges, for two reasons. As the petitioner industry is not a new industry and an existing industry, it has already submitted the Tamil Nadu Pollution Control Board certificate at the time of establishment of the new industry, therefore, there is no restriction to sanction the additional demand on the basis of non production of the Tamil Nadu Pollution Control Board certificate again. Secondly, when the Tamil Nadu Pollution Control Board has delayed the issuance of the certificate, the petitioner cannot be held responsible. Hence, the impugned order is set aside and the writ petition stands allowed. Consequently, M.P.No.1 of 2013 stands closed. No costs."

3. In view of the fact that the case of the writ petitioner is also similar to that of the case cited supra, the petitioner is also entitled to the relief. Accordingly, the impugned orders in proceedings in Lr.No.SE/CEDC/N/AEE/Dev/AE/D2/F HT1616 addl/D1195/14 dated 19.9.2014 and Lr. No. SE/CEDC/N/AEE/Dev/AE/D2/F1616 addl/D1571/14 dated 22.12.2014 are quashed and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

The Superintending Engineer,
TANGEDCO,
Chennai Electricity Distribution Circle/North,
144, Anna Salai,
Chennai - 600 002.

+1cc to M/s.K.Seshadri, Advocate, S.R.No.62116

+1cc to M/s.L.Jai Venkatesh, Advocate, S.R.No.62107

W.P.No.494 of 2015

KSM(CO)
SU(08/12/2021)