IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.11.2021

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.2860 of 2018
and
W.M.P.No.3529 of 2018

Venkatalakshmi Paper & Boards Private Limited,
(Formerly known as V.G.Paper and Boards Ltd)
Andipatty Road, Kolumam,
Madathukulam Taluk – 642 204,
Rep.by its Director Dr.Narendran.
...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.144 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, calling for the records of the 3rd respondent in his impugned demand notice dated 23.01.2018 bearing Lr.No.SE/UEDC/UDT/DFC/AO/R/AAO/HT/AS/F.TF concession/ 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.R.Pandiyaraj

For Respondents : Mr.K.M.D.Muhilan,
Government Advocate for R1
Mr.Abdul Kalam,
Standing Counsel for R2 to R4

ORDER

This Writ Petition has been filed, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent in his impugned demand notice dated 23.01.2018 bearing Lr.No.SE/UEDC/UDT/DFC/AO/R /AAO/HT/AS/F.TF concession/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 petitioner has come forward with the plea that pursuant to the issuance of G.O.Ms.No. 29 Energy (A-2) dated 31.1.1995, they have started to establish the industry with a view to get tariff concession as mentioned therein and ultimately they have set up the industry but due to some reason or other giving power connection was delayed beyond 14.2.1997 which resulted in refusal by the respondents in extending infancy benefit made available as a tariff concession by the Government, in G.O.Ms.No.29, dated 31.1. 1995.

3. The learned counsel for the petitioner would submit that 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 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 in the meanwhile, the tariff concession notification issued in G.O.Ms.No.29 dated 31.01.1995 was withdrawn by the Government vide G.O.Ms.No.17 dated 14.02.1997. Thereafter, on 01.09.1997, the respondents sent a letter to the petitioner, directing to pay a sum of Rs.5,95,945/- towards development and service connection charges, etc. 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. Therefore, according to the petitioner, the petitioner had already set up the industry well prior to 14.02.1997 having invested substantial sum and erected imported machineries in the year 1996 itself and also expressed its readiness even on 18.09.1996 and as such, the petitioner is entitled to receive the Tariff concession. The learned counsel also relied upon the judgment of the Hon'ble Supreme Court dated 16.05.2008 in Civil Appeal Nos.3940 to 4084 of 2008.

4. On the other hand, the learned Standing counsel appearing for the respndents would submit that though the petitioner confirmed in their letter dated 03.12.1997 that they received the Safety certificate from Chief Electrical Energy to Government/Chennai on 02.12.1997 and that they were ready to avail supply, the benefit of G.O.Ms.No.29 dated 31.10.1995 has been seized of by virtue of its withdrawal by the Government and as such, the High Tension Industry set up on or after 15.02.1997 are not entitled for Tariff Concession. He also submitted that the petitioner obtained Safety Certificate from Chief Electrical Inspector to Government only on 02.12.1997 and produced the same on 03.12.1997 and thereafter only, the petitioner was provided with High Tension Service Connection on 12.01.1998 and therefore, the petitioner started the commercial production only from 28.01.1998 onwards, the petitioner is not entitled to the relief and hence, he sought for dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the petitioner and also the learned standing counsel appearing for the respondents and perused the materials available on record.

6. The Government issued G.O. Ms. No.29, Energy Department dated 31.01.1995 by which a policy decision was taken to grant tariff concession to the industries which avail high tension electricity service connection from the respondents electricity board by setting up an industry. It was ordered therein that such tariff concession would be extended to them for the first

three years from the date of availing the high tension service connection. Subsequently, another notification was issued in G.O. Ms. No.17, Energy Department dated 14.02.1997 clarifying that such concession could be granted only to those who have set up industries on or before 14.02.1997 alone. According to the petitioner, they have established their industry even before the cut off date and therefore they are entitled to such concession. Therefore, if the petitioner has established that they set up their industry on or before 14.02.1997, they are eligible for tariff concession.

7. The Hon'ble Supreme Court in connected batch of cases passed a judgment in the case of "Tamil Nadu Electricity Board and another vs. Status Spinning Mills Limited and another" reported in (2008) 5 MLJ 1267 (SC) wherein in para No.42 and 45, it was specifically held that such concession would be applicable not only to those who had started commercial production before 14.02.1997, but also had applied and were otherwise ready to take electrical connections having deposited the amount demanded by the electricity board. The relevant portion of the judgment of the Hon'ble Supreme Court as found in paragraphs 43 and 44, is extracted as under:

> "43. The proviso is an exception to the main clause whereas all industries which were set up on or after 15th February become wholly ineligible for any tariff concession but those who had set up prior thereto shall continue to avail themselves of the said tariff concession. Legally, those who had not become consumer of electrical energy, but were the potential consumers, they had not only applied for it but they were and, in fact, some of them has also been gone into commercial production. Once they have set up the high tension industries and who had gone up for commercial production must be held to have set up the high tension industries. Once they have set up the high tension industries after 31st March, 1995, they became entitled to the benefit of concessional tariff for a period three years. Such concession was to be availed by them from the date of grant of service connection. If they had already been granted service connection, they would continue to avail themselves of the said tariff concession. However, the difficulty arises only in cases where despite applying for grant of electrical communication, actual service connection had not been granted. If a literal interpretation of the proviso is taken recourse to, the same may result in an anomaly in the sense that in one case, connection may be granted in one day and in another case,

connection may not be granted for a long time. Because of the acts of discrimination on the part of the officers of the Board or the State, the entrepreneurs would suffer. It is in the aforementioned limited sense, the doctrine of promissory estoppel will have application. If doctrine of promissory estoppel applies, the right accrued in terms thereof cannot be withdrawn with a retrospective effect. [See Mahabir Vegetable Oils (P) Ltd. (supra) Southern Petrochemical Industries Co. Ltd. (supra)]

"44. However, the difficult arises only in cases where despite applying for grant of electrical connection, actual service connection had not been granted. If a literal interpretation of the proviso is taken recourse to, the same may result in an anomaly in the sense that in one case, connection may be granted in one day and in another case, connection may not be granted for a long time. Because of the acts of discrimination on the part of the officers of the Board or the State, the entrepreneurs would suffer. It is in the aforementioned limited sense, the doctrine of promissory estoppel will have application. If doctrine of promissory estoppel applies, the right accrued in terms thereof cannot be withdrawn with a retrospective effect (See. Mahabir Vegetable Oils (P) Ltd., and Souther Petrochemical Industries Co., Ltd.,)."

8. It is contended on behalf of the petitioner that by virtue of the judgment of the Hon'ble Supreme Court, they are entitled to the tariff concession especially when they have set up the industry before the cut off date viz., 14.02.1997. It is evident from the interpretation given by the Hon'ble Supreme Court that the tariff concession can be extended to those who commenced commercial production before 14.02.1997 and also to those who have applied and were otherwise ready to take electrical connections before the said date. In other words, even those who have applied for service connection and are ready to avail the service connection, but not started the commercial production are also eligible to get tariff concession. Thus, the Hon'ble Supreme Court had interpreted the word "set up" in such a way that the benefit of tariff concession has to be extended for the best use of the consumers who have set up the industry in anticipation of the tariff concession.

9. According to the learned counsel appearing for the petitioner, if any one of the two conditions, as interpreted by

the Hon'ble Supreme Court are fulfilled, then the petitioner is eligible for extending the tariff concession. However, it is contended on behalf of the respondents that unless both the conditions are fulfilled namely, setting up the industry and commencing commercial production within the cut off date, the petitioner is not eligible to the tariff concession.

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.

12. Accordingly, the writ petition stands allowed and the impugned demand notice dated 23.01.2018 bearing Lr.No. SE/UEDC/UDT/DFC/AO/ R/AAO/HT/AS/F.TF concession/ 2018 issued by the 3rd respondent is hereby set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//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. The Chairman,
   TANGEDCO,
   144 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.59168

W.P.No.2860 of 2018
and
W.M.P.No.3529 of 2018

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