



Judgment dated 16.09.2022
in W.A.No.848 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.09.2022

Coram:

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE P.D.AUDIKEVALU

Writ Appeal No.848 of 2015
and
M.P.No.1 of 2015 and C.M.P.No.5509 of 2016

Siddhanatha Textiles (P) Ltd.,
Rep. by its Managing Director
K.S.Nagarajan
No.282, Easwaran Koil Street,
Erode-638 001.

.. Appellant

Vs.

1. State of Tamil Nadu, rep. by its Secretary to Government,
Energy Department,
Secretariat,
Fort St.George, Chennai-9.
2. Tamil Nadu Generation and Distribution Corporation Ltd.,
Rep. by its Chairman,
No.800, Anna Salai, Chennai-2.
3. The Superintending Engineer,
Tamil Nadu Generation and Distribution Corporation Ltd.,
Erode Electricity Distribution Circle,
No.948, E.V.N.Road,
Erode-9.

.. Respondents



Judgment dated 16.09.2022
in W.A.No.848 of 2015

WEB COPY

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 23.12.2014 passed by the learned Single Judge in W.P.No.19137 of 2014 on the file of this Court.

For appellant : Mr.V.R.Rajasekaran

For respondents : Mr.J.Ravindran, Addl. Advocate General,
assisted by M/s.Prageetha Rinu Senan

JUDGMENT

(The Judgment of the Court was delivered by T.Raja, J)

This Writ Appeal is directed against the order dated 23.12.2014 in W.P.No.19137 of 2014, which was decided along with batch of cases in W.P.No.17279 of 2014, refusing the request of the appellant/writ petitioner for providing the benefit of High Tension (H.T) tariff concession and holding that the appellant-Company having incorporated on 02.11.1995, made their application only on 18.10.1996 for H.T. electricity supply by remitting the Earnest Money Deposit (EMD) on 03.04.1997, which is after the cut-off date, i.e. 14.02.1997.

2. The learned counsel for the appellant-writ petitioner-Company, heavily assailing the impugned order passed by the learned Single Judge, submitted that the Government of Tamil Nadu announced tariff concession in favour of H.T.

Page No.2/10



Judgment dated 16.09.2022
in W.A.No.848 of 2015

consumers to set up the organisations in the specified areas in the State of Tamil Nadu, vide Notification in G.O.Ms.No.29, Energy (A2) Department, dated 31.01.1995. Induced by the tariff concession extended by the Government of Tamil Nadu, the writ petitioner-Company took steps to establish a textile mill at Pungambadi Village, Perundurai Taluk, Erode District. The writ petitioner-Company was incorporated on 02.11.1995 and applied for H.T. power supply on 18.10.1996 by taking various steps to set up the Unit in conformity with all statutory requirements, such as, getting consent from the Tamil Nadu Pollution Control Board (TNPCB), plan approval from local body, etc.

3. It is further submitted by the learned counsel for the appellant-Company that the appellant-Company started commercial production with effect from 16.07.1998 by investing Rs.6 crores and commenced production within a period of three years. However, in the interregnum, the State Government had issued Notification in G.O.Ms.No.17, Energy Department, dated 14.02.1997 withdrawing the H.T. tariff concession to new industries to be set up on or after 15.02.1997, and by the said G.O.Ms.No.17, it was made clear that H.T. industries set up on or before 15.02.1997 shall continue to avail tariff concession until the expiry of the period of three years from the date on which the consumer is given service connection.

Page No.3/10



Judgment dated 16.09.2022
in W.A.No.848 of 2015

WEB COPY

4. The learned counsel for the appellant also submitted that the appellant-Company was incorporated on 02.11.1995 and thereafter, they submitted application for power supply on 18.10.1996. The Tamil Nadu Electricity Board (TNEB) sanctioned power supply on 03.01.1997. The appellant-writ petitioner-Company has got plan approval on 17.01.1997, which was much before the cut-off date, i.e. on 14.02.1997. The appellant-Company is entitled to get H.T. tariff concession. Moreover, the appellant-Company also paid EMD on 03.04.1997, which was within the extended period. Thereafter, the appellant-Company also reported its readiness on 10.11.1997.

5. It is the further submission of the learned counsel for the appellant-Company that the appellant-Company commenced its commercial production on 16.07.1998. The inspection by CEIG was on 30.12.1998. Thereafter, TNEB issued demand notice for development charges on 26.06.1999, which was paid by the appellant-Company on 27.08.1999. The TNEB gave H.T. power supply on 28.06.2000 to the appellant-Mill.

6. Hence, according to the learned counsel for the appellant-Company, as the appellant-Company has fully complied with the requirements of the TNEB,

Page No.4/10



Judgment dated 16.09.2022
in W.A.No.848 of 2015

WEB COPY

they are entitled to get the H.T. tariff concession.

7. In support of his arguments, the learned counsel for the appellant-Company relied on the judgment of the Supreme Court reported in 2008 (5) MLJ 1267 (SC) (T.N.E.B. Vs. Status Spinning Mills Ltd) and relied on paragraph 45 therein, which reads as under:

"45. We have noticed hereinabove that some of the industries had even installed generators. They had to do it. They inevitably had to do it because the Board would not supply power. Would it not be too much to contend that even those industries have not been set up as they have not become consumers? We think that for the said purpose, the proviso has to be read down. It must be made applicable to them who not only had started commercial production before the said date, namely, 14.02.1997 but also had applied and were otherwise ready to take electrical connections having deposited the amount asked for."

(emphasis supplied by us)

8. The learned Additional Advocate General appearing for the respondents submitted that the appellant-Company having made the proposal for H.T. supply



Judgment dated 16.09.2022
in W.A.No.848 of 2015

only on 18.10.1996, has got the planning permission only just one month before the expiry of the cut-off date. Moreover, the payment of EMD was made only on 03.04.1997, which is after the cut-off date being on 14.02.1997.

9. Heard both sides and perused the materials available on record.

10. It is relevant to mention that the amendment to the Schedule to the Tamil Nadu Revision of Tariff Rates on Supply of Electrical Energy Act, was made by G.O.Ms.No.29, Energy (A2) Department, dated 31.01.1995, by substituting the Schedule therein. The Schedule Part-A deals with H.T. supply, relevant portion of which is extracted hereunder:

"THE SCHEDULE
(See Section 3)
PART-A
HIGH TENSION SUPPLY

High Tension Tariff. I:

Registered factories, tea estates, **textiles**, railway tractions, fertilisers, Salem Steel Plant, Heavy Water Plant, Caustic Soda, Calcium Carbide, Aluminium and Potassium Chlorate and all other industrial establishments:

Area	Rate per KWH	Rate per KVA of maximum demand per month
(1)	(2) (in paise)	(3) (in Rupees)
Madras Metropolitan	250	100
Non-Metropolitan	240	100

Tariff concession for High Tension Industries coming under High Tension Tariff:-

(a) In the case of new High Tension Industries to be set up in the areas other than the Madras Metropolitan areas the



WEB COPY



Judgment dated 16.09.2022
in W.A.No.848 of 2015

following concessional tariffs shall be charged for the first three years from the date the consumer is given service connection under high tension tariff:--

For the first year 60 per cent of the High Tension Rates
For the second year 70 per cent of the High Tension Rates
For the third year 80 per cent of the High Tension Rates
For the fourth year Full tariff

The above concession shall apply to both unit rates and maximum demand charges. This concession shall not however, be applicable to an industry set up before the 3rd May 1989. The concession shall not also be applicable to a consumer, who utilises power from his own generating units or makes other arrangements for production purposes and utilise the power supplied by the Board for auxiliary purposes only:

Provided that the High Tension Industries set up in any area (including industrially under developed area, notified as such by the Government) before the 3rd May 1989 which are availing tariff concessions or reduction under High Tension Tariff I as on the 2nd May 1989, shall continue to avail the said tariff concession or reduction until the expiry of the period of five years from the date the consumer is given service connection under High Tension Tariff I.

Explanation: -- For the purpose of electricity tariff concessions for new industries the term 'new industries' shall mean a new investment by any entrepreneur including by an existing industry in any area other than the Madras Metropolitan areas, provided the assets other than cash, of the existing industry, are not transferred and shown as assets of the new industry.

(aa) The tariff concession shall be applicable to expansion of industry also to be set up in any city, municipality, township or panchayat union limit other than the Madras Metropolitan areas in which the main industry is functioning, provided the assets, other than cash of the existing industry are not transferred and shown as the assets of the expansion:

Provided that the tariff concession shall be applicable only once to a new industry or an expansion of the industry in the area comprising the satellite town of Maraimalai Nagar New Town developed by the Madras Metropolitan Development Authority, irrespective of the fact whether such industry has availed of such concession outside the area of Maraimalai Nagar earlier or not, and also whether such industry is considered new investment or not:

Provided further that the concession for the expansion of



Judgment dated 16.09.2022
in W.A.No.848 of 2015

industry shall not be applicable to the existing industry availing the concession for the additional load in the High Tension service for its expanded activity beyond the period of three years or five years, as the case may be, as specified in item (a) and the proviso thereto, respectively.

Explanation:- The term "expansion" shall mean an increase in production which results in an increase of 25 per cent of more in the consumption of electricity by the industry with reference to the highest electricity consumption of such industry in the three completed financial years preceding the application."

11. The appellant-Company made application for power supply only on 18.10.1996, which was sanctioned on 03.01.1997. The payment of EMD was on 03.04.1997. The date of reporting of readiness by the appellant-writ petitioner-Company was on 10.11.1997. The date of commercial production with generator, was on 16.07.1998, which was nearly after eight months from the date of reporting of readiness. Therefore, when the cut-off date has been fixed on 14.02.1997, as per the ratio laid down by the Apex Court in paragraph 45, which was extracted above, if carefully perused, would make the point clear that the *proviso* must be made applicable to those who not only had started the commercial production before the cut-off date, but also had applied and were otherwise ready to take the electricity connection having deposited the amount asked for.

12. In the present case, at the cost of repetition, we mention that when



Judgment dated 16.09.2022
in W.A.No.848 of 2015

the application for H.T. power supply was made on 18.10.1996, the EMD was paid only on 03.04.1997 and readiness certificate was given to the appellant-Company only on 10.11.1997, which are after the cut-off date being 14.02.1997.

13. Therefore, for the foregoing reasons, we do not find any infirmity or illegality in the impugned order passed by the learned Single Judge. The Writ Appeal fails and it is accordingly dismissed. Consequently, the miscellaneous petitions are closed. There shall be no order as to costs.

(T.R.J) (P.D.A.J)
16.09.2022

Index: Yes / no
Speaking Order: Yes/no
CS

To

1. State of Tamil Nadu, rep. by its Secretary to Government,
Energy Department, Secretariat,
Fort St.George, Chennai-9.
2. Tamil Nadu Generation and Distribution Corporation Ltd.,
Rep. by its Chairman, No.800, Anna Salai, Chennai-2.
3. The Superintending Engineer,
Tamil Nadu Generation and Distribution Corporation Ltd.,
Erode Electricity Distribution Circle,
No.948, E.V.N.Road, Erode-9.

Page No.9/10



WEB COPY



Judgment dated 16.09.2022
in W.A.No.848 of 2015

T.RAJA, J
and
P.D.AUDIKESAVALU, J

CS

W.A.No.848 of 2015

16.09.2022