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W.P.No.43783 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 25.08.2022

Pronounced on : 30.09.2022

CORAM :

THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.43783 of 2006

and

M.P. No.1 of 2006

M/s.Ultratech Cement Limited,
Cement Division-South,
Reddipalayam P.O.,
Ariyalur-621 704,
Tamil Nadu,
Represented by its representative,
Shri N.S.Padmanabhan

... Petitioner

*(Cause Title Amended Vide order dated 16.08.2019 in M.P.No.1 of 2010
in W.P.No.43783 of 2006.)*

Vs.

1. The Chief Engineer,
Tamil Nadu Electricity Board (Distribution),
Trichy Region, Trichy – 600 017.
- 2.The Superintending Engineer
Tamil Nadu Electricity Distribution Circle (North),
Mannarpuram,
Tiruchirappalli.
3. Executive Engineer (O&M),
Tamil Nadu Electricity Board, Ariyalur.



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4. Assistant Executive Engineer (O&M),
Tamil Nadu Electricity Board,
Ariyalur.

5. The Assistant Engineer (O&M),
Tamil Nadu Electricity Board,
Ariyalur.

6. Tamil Nadu Electricity Board,
Rep. by its Chairman,
Anna Salai,
Chennai.

7. The State of Tamil Nadu,
Represented by its Secretary to Government,
Energy Department, Fort St. George,
Chennai – 600 009.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records culminating in the order Letter.No.Chief Engineer/Trichy/...../Asst.Executive Engineer/Safety/File.Doc./No.2239/06 dated 06.10.2006 passed by the first respondent and quash the same.

For Petitioner : Mr.Krishna Srinivasan
for M/s.S.Ramasubramaniam & Associates

For Respondents : Mr.Abul Kalam,
Standing Counsel for R1 to R6
Mr.S.Jayachandran,
Government Advocate for R7.

ORDER

The writ petition is filed challenging the order of the Appellate Authority dated 06.10.2006, confirming the demand raised by the second respondent vide order dated 04.02.1999.



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2. At the outset, it may be relevant to state that Dharani Cements Limited (hereinafter referred to as DCL) was a company incorporated under the Companies Act. Pursuant to a Scheme of Amalgamation ordered/sanctioned by the Hon'ble High Court of Madhya Pradesh and Madras, DCL merged with the petitioner Company. In view of the amalgamations, though the order dated 04.02.1999 is made in the name of DCL, the petitioner as the transferee Company filed this Writ Petition challenging the impugned order dated 04.02.1999, which stands confirmed vide order dated 06.10.2006, which is in the name of Grasim Industries, which is now known as Ultratech Cement Limited.

3. Brief Facts: -

i) The petitioner intended to set up a new industry for manufacture of cement and commenced construction of a new plant in the land adjacent to DCL as it then existed. The lands identified for construction of the new cement plant by the petitioner was demarcated and fenced with independent access and it is stated to be completely cut off from the then existing plant of DCL. The petitioner had for the purpose of construction of a new cement plant set up its own DG Sets. The petitioner applied to the Respondents to grant permission for a temporary electricity connection



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on payment of the appropriate deposit/fees vide application/letter dated 16.08.1998. The second respondent after verifying and calling for additional documents registered the petitioner's application for 15 MVA power on 13.11.1998. In the meanwhile, there was an inspection by the Assistant Executive Engineer on 04.10.1998 and again on 19.12.1998. On the basis of the above inspection, the Assistant Executive Engineer was satisfied that the petitioner had made its own independent power arrangements for the generation of electricity and also expressed satisfaction of the fact that no power was being drawn by the petitioner from TNEB.

ii) While so, a team of Engineers from Anti Power Theft Squad (APTS) visited the construction site of the petitioner and issued a notice of inspection on 30.12.1998. A Mahazar was drawn which the petitioner's (then DCL) representative, viz, the Deputy General Manager of the petitioner declined to sign as the Mahazar, according to then DCL, was a pre-prepared report.

iii) Thereafter, the representative of DCL met with the Assistant Executive Engineer and after submitting that the inspection and the Mahazar was invalid requested that no action be taken on the basis of the



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same.

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iv) However, a Show Cause Notice came to be issued on 07.01.1999. Immediately the representative of DCL met the Respondents on 12.01.1999 and 14.01.1999 and submitted representations requesting to drop the proposal/proceeding. However, the Respondents issued another Show Cause Notice dated 25.01.1999. On receipt of the said notice, DCL requested that the matter be deferred and accordingly the matter stood deferred to 02.02.1999.

v) Thereafter an Original Suit in O.S.No.14 of 1999 before the Sub-Judge, Ariyalur, came to be filed by DCL for a declaration that the Show Cause Notice dated 07.01.1999 pursuant to the alleged inspection dated 30.12.1998 was null and void and to restrain the respondents from proceeding with the inquiry. In the meanwhile the 2nd respondent passed the impugned order dated 04.02.1999. The impugned order came to be passed after the suit was filed and the notice of the suit was served on the respondents. The learned Sub Judge Ariyalur vide order dated 23.02.1999 granted an injunction in I.A.No.26 of 1999. Aggrieved by the interim orders of the learned Sub-Judge the respondent Board preferred an appeal before the learned Principal District Judge, Perambalur. The said appeal in



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CMA No.11 of 1999 was dismissed vide order dated 05.02.2003 with a direction to the Trial Judge to dispose of the suit within 90 days. Thereafter, the Original Suit filed by DCL in O.S.No.14 of 1999 was dismissed vide judgment dated 27.10.2003 on the ground that the suit was not maintainable in view of availability of alternate remedy.

vi) The second respondent served the petitioner with an order dated 21.01.2004, which is similar to the order dated 04.02.1999, the petitioner (Grasim Industries Limited) has challenged the impugned proceedings dated 04.02.1999 as well as 21.01.2004 by way of an appeal. The petitioner also preferred an appeal before the learned District Judge, Perambalur against the judgment and decree in O.S.No.14 of 1999 by way of abundant caution with an undertaking to withdraw once the appeal is entertained. It is submitted that the appellate proceeding commenced in November 2004 and was completed in March 2005 and in the course of the appeal, there has been a change in the position of the Appellate Authority thrice. The impugned order was passed by an authority different from the one who heard the petitioner. This would be evident from the fact that the position of the Chief Engineer was held by Mr.Shanmugavadivelu till 30.06.2005 and then by Mr.Mani from 04.07.2005 to 30.09.2005



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followed by Mr.Kaliappan from 01.10.2005 onwards until the order came to be passed on 19.04.2006.

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vii) The Appellate Authority while confirming the demand made by the second respondent proceeded to demand remittance of Rs.99,43,869/- after adjusting Rs.66,29,906/- from various accounts. The petitioner was called upon to pay the remaining sum.

4. Aggrieved by the above, the petitioner filed a Writ Petition in W.P.No.21217 of 2006 directing the respondent not to take any coercive steps. This Court was pleased to set aside the impugned order and directed the Appellate Authority to conduct a de-novo adjudication. Pursuant to the above orders of this Court, the Appellate Authority vide proceeding dated 06.10.2006, confirmed the demand notice dated 04.02.1999, yet again.

5. Aggrieved by the same, the petitioner has filed the present writ petition, challenging the proceeding dated 06.10.2006, whereby the demand originally raised and affirmed by the Appellate Authority was re-affirmed. The crux of the allegation against DCL was that the supply of power was unauthorizedly extended to the petitioner viz., Grasim



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Industries for building construction purposes for a load of 1591.42 KVA.

6. The present writ petition is filed challenging the order of the appellate authority dated 06.10.2006, confirming the orders of the 2nd respondent dated 04.02.1999 and 21.01.2004 *inter alia* on the following grounds:

(i). That the Appellate Authority failed to take note that the cable allegedly detected in the inspection on 30.12.1998 is admittedly an underground cable of 3.5” x 300sq.mm, which cannot cater/transmit a load of 1591.42 KVA. In other words, the allegation of transmission of electricity of 1591.42 KVA through underground cable of 3.5”x 300 sq.mm dimension is scientifically impossible.

(ii). That the reliance on the Mahazar which has no sanctity in Law is unjustified.

(iii).The Appellate Authority has passed orders mechanically confirming the earlier orders without application of mind. The Appellate Authority has failed to appreciate and has overlooked Clauses 6.02 and 6.03 of Schedule 37.

(iv). The Appellate Authority ought to have considered the findings



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of the Advocate Commissioner appointed by the Sub-Court in O.S.No.14
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of 1999.

(v). The First Appellate Authority ought to have seen that photographs could have been taken and Respondents could have requested the Police Officers to accompany them to find out whether any cables are passing the fence. They could have also dug and inspected the relevant area, in other words, there was failure to conduct a proper enquiry.

7. To the contrary, it was submitted by the learned Standing Counsel for the Respondent Board that during the inspection of the petitioner's premises by the Anti Power Theft Squad, it was found that the supply of electricity was unauthorisedly extended to M/s.Grasim Industries for construction work through underground cable. The extension beyond the boundaries of the premises of DCL constitutes violation of the terms and conditions of Supply of Electricity. The petitioner was found during the inspection to use excess load of 1591.42 KVA without authorisation that the petitioner, viz., Grasim Industries was not granted any temporary electricity service connection atleast until the date on which the violation was detected. It was submitted that in view of the above the impugned



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order is valid in law and the writ petition is liable to be dismissed.

8. This Court finds that the impugned proceedings suffers from the following infirmities and thus liable to be set aside:

(A). Allegation of transmission/supply of 1591.42 KVA electricity with underground cable of 3.5"x300 sq.mm dimension – scientifically/technically impossible:

The petitioner's submission that it was impossible to supply/transmit/cater electricity to the extent of /load of 1591.42 KVA with underground cable of 3.5"x300 sq.mm dimension, though pleaded consistently has not even been dealt with much less demonstrated/shown either by the 1st or 2nd Respondent to be incorrect.

(i) The petitioner had submitted the brochure of the manufacturer to show that the cable of the dimension of 3.5"x300 sq.mm cannot carry/transmit electricity to the extent of 1591.42 KVA. The following table of the manufacturer would reveal that it is impossible to transmit 1591.42 KVA of electricity within underground cable of the dimension 3.5"x300 sq.mm, The following table of the manufacturer is relevant:

Comparative current Rating and Short Circuit Rating for XLPE Cable Vis-a-vis PVC Cables



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COMPARATIVE CURRENT RATINGS OF 650/1100 VOLTS MULTICORE HEAVY DUTY PVC INSULATED CABLES & XLPE INSULATED CABLES.

(3.35 & 4 Core Unarmoured / Armoured PVC Sheathed Cables with Aluminium Conductor)

Nominal Size of Cable	3, 3.35 & 4 Core PVC Insulated & Sheathed Cables as per IS – 1554 (Part – 1) 1988			3, 3.35 & 4 Core PVC Insulated & Sheathed Cables as per IS – 7098 (Part – 1) 1988		
	In Ground	In Air	Approx Voltage Drop	In Ground	In Air	Approx Voltage Drop
sq.mm	Amp	Amp	Mv/amp/ mtr	Amp	Amp	Mv/amp/ mtr
16	60	51	4.0	73	70	4.20
25	76	70	2.5	94	96	2.70
35	92	86	1.8	113	117	1.90
50	110	105	1.3	133	142	1.40
70	135	130	0.93	164	179	0.99
95	165	155	0.68	196	221	0.72
120	185	180	0.54	223	257	0.58
150	210	205	0.46	249	292	0.48
185	235	240	0.38	282	337	0.39
240	275	280	0.28	326	399	0.31
300	305	315	0.25	367	455	0.26
400	335	375	0.20	420	530	0.21

(ii) Expert's certificate:

The petitioner had also submitted an expert's certificate in support of their contention that the cable of the dimension of 3.5"x300 sq.mm cannot technically take a load of 1591.42 KVA. The relevant portion of the



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expert's opinion of Arundhodaya Trust consultant is extracted hereunder:

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"Our opinion: On Technical grounds: 300 SQ mm. cables could carry a maximum current of 360 Amps only and the possible utilization by the formula $\sqrt{3} V_L I_L$ could be $\sqrt{3} \times 415 \times 360 = 258.76 \text{ KVA}$. Hence, it is technically not feasible to take a load of 1591.42 KVA."

Further, the impugned order is silent about the way/manner of tapping the supply of electricity through the Cable. The Expert opinion also states that there was no evidence to show the existence of any switchboard or main or any breakers in the panel room and it is not possible to take a lead directly from the LT bus without any switch board or other protective accessories because of the following reasons:

(a). In temporary construction power supply, chances of cable damage and flash over is more due to overloading, Short circuit and due to mechanical damage. If the temporary power supply is extended from the Switchboard directly without any protective switchgears then any short circuit in temporary cable will directly result in flash over in Main panel or tripping of transformer or HT fuse will blow off which will totally interrupt power supply to the plant.



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(b). It is not technically feasible for a load of 1591.42 KVA to be connected directly to a Bus Bar.

(c). Further LT panel of Dharani Cements is designed to take the fault level of 2000 KVA load and if an additional load of 1591.42 KVA (about 80% more than the designed capacity) is connected, then system fault level will increase and melt the Bus Bar.

The above expert opinion and the manufacturer's brochure would show that the petitioner's submission of impossibility of supply/transmission of electricity of 1591.42KVA with a cable of 3.5"x300 sq.mm dimension is supported by material evidence. However, the above contention of impossibility remains untraversed. As a matter of fact, the counter only denies the same vaguely as untrue. The following extracts of the counter is relevant:

"12. The further allegations that the machinery listed for calculating the unauthorized excess load to the tune of 1591 42 KVA is not practically possible. Since maximum power available for M/s Dharani Cements Ltd., is 2000 KVA and the previous meter readings does not indicate any excess consumption is denied as not true and the same was satisfactorily explained in detail during appeal proceedings."

(iii). The very basis of the impugned proceedings is the fact that the



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petitioner had used the underground cable of dimension of 3.5"x 300 sq.mm to transmit/ supply of electricity to the extent of 1591.42 KVA.

The above fundamental fact is shown to be scientifically/technically impossible, thus the finding/conclusion suffers from the vice of being perverse and liable to set aside. In this regard, it may be relevant to refer to the following judgments:

a)S.R. Tewari v. Union of India, (2013) 6 SCC 602 : (2013) 2 SCC (L&S) 893 : 2013 SCC OnLine SC 486 at page 615

"30. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse.

b)Arulvelu and another Vs. State Represented by the Public Prosecutor and another reported in (2009) 10 SCC 206:

27. The expression "perverse" has been defined by various dictionaries in the following manner:



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1. *Oxford Advanced Learner's Dictionary of Current English, 6th Edn.*

"Perverse - Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable."

2. *Longman Dictionary of Contemporary English, International Edn.*

Perverse - Deliberately departing from what is normal and reasonable.

3. *The New Oxford Dictionary of English, 1998 Edn.*

Perverse - Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.

4. *The New Lexicon Webster's Dictionary of the English Language (Deluxe Encyclopedic Edn.)*

Perverse - Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

5. *Stroud's Judicial Dictionary of Words & Phrases, 4th Edn.*

"Perverse.-A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence."

....30. The meaning of "perverse" has been examined in *Excise and taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons*, this Court observed as under:

'7. It is, no doubt, true that if a finding of fact is arrived at



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by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law' "

9. Further the allegation of transmission/supply of electricity using the underground cable which is a fundamental fact, having been shown by the appellant to be not just improbable but impossible on the basis of material evidence, the impugned order may also be contrary to the Maxim "*sublato fundamento, cadit opus*", which means "when the foundation is removed, the superstructure falls". In the present case, the very foundation of the impugned proceedings being transmission of electricity of 1591.42KVA using underground cable of 3.5"x300 sq.mm dimension which has been shown to be impossible, the conclusion on the basis thereof cannot be sustained. When the very assumption forming the basis of the order/conclusion breaks down then the conclusions cannot but be perverse and irrational. In this regard, it may be relevant to refer to the following judgments:

**(a) *Kalabharati Advertising v. Hemant Vimalnath Narichania*,
(2010) 9 SCC 437 : (2010) 3 SCC (Civ) 808 : 2010 SCC OnLine SC**



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970 at page 447:

"20. The aforesaid judgments are passed on the application of legal maxim sublato fundamento, cadit opus, which means in case a foundation is removed, the superstructure falls."

(b) Kanwar Singh Saini v. High Court of Delhi, (2012) 4 SCC 307 : (2012) 2 SCC (Civ) 497 : (2012) 2 SCC (Cri) 423 : 2011 SCC OnLine SC 1311 at page 327:

"39. In view of the above, as the application under Order 39 Rule 2-A CPC itself was not maintainable all subsequent proceedings remained inconsequential. Legal maxim sublato fundamento cadit opus which means foundation being removed structure falls, is attracted."

10. The impugned order also stands vitiated since the Mahazar which is sought to be relied upon suffers from serious irregularities which has not been examined. Further, though the petitioner sought to rely upon the report of the Advocate Commissioner in O.S.No.14 of 1999 which would again reveal that the allegations of the Respondent were unfounded and perverse was not even taken into account. In this regard, it may be relevant to note that the report of the Advocate Commissioner reveals the following:

(a). No trace of unauthorized power tapping for construction



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activities that allegedly was drawn by the Petitioner.

(b). 5 Gensets of the Petitioner and 2 Gensets of DCL were found at the site.

(c). The said Advocate Commissioner also enclosed a report of the electrical consultant who is an electrical engineer to the said effect.

(d). That the construction activities were in the preliminary stage at the time of the inspection.

(e). The Commissioner's report does not say that the machineries listed in the Mahazar report were available in the spot during his inspection in the presence of both the parties.

11. Thus, the impugned order also stands vitiated for not taking into account relevant factors but proceeding on the basis of mere suspicion. It is trite law that suspicion cannot take the place of proof nor can any proceeding made on the basis of mere suspicion be sustained.

12. For all the above reasons, the impugned orders are liable to be set aside. This Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

30.09.2022

nst/ lm

Index : Yes/No

Speaking Order/Non-speaking Order

To:

1. The Chief Engineer,



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Tamil Nadu Electricity Board (Distribution),
Trichy Region, Trichy – 600 017.

2. The Superintending Engineer
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MOHAMMED SHAFFIQ, J.

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