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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.No.3910 of 2019

S.L.O. Industries Limited,
403/D, T.H.Road,
Thiruvottiyur,
Chennai - 119.
Rep. By vista Managing Director,
Anil Kumar Ojha.

.. Appellant/Petitioner

Versus

The Superintending Engineer,
Chennai Electricity Distribution Circle/North,
791, Anna Salai,
Chennai - 2.

.. Respondent/Respondent

Prayer: Writ Appeal has been filed under Section 15 of Letters Patent against the order dated 11.06.2019 passed in W.P.No.22238 of 2008 by the learned Single Judge.

Praer in WP.No.22238 of 2008:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of respondent in Bill No.1816 dated 29.04.2008 and quash that portion of the amount included in Item No.19, namely, other adjustment as illegal, arbitrary and against Regulation of Tamilnadu Electricity Supply Code 2004 and consequently, direct the respondent to adjust or refund the excess amount collected towards monthly minimum charges with current consumption charges of April 2008.

For Appellant : Mr.AR.L.Sundaresan,
Senior Counsel,
assisted by Mr.AR.Karthik Lakshmanan

For Respondent : Mr.L.Jai Venkatesh



JUDGMENT

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

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The present writ appeal is directed against the impugned order passed by the learned Single Judge in W.P.No.22238 of 2008, dated 11.06.2019, refusing to interfere with the letter dated 24.04.2008 issued by the respondent board claiming a sum of Rs.1,40,000/- from the appellant towards monthly minimum charges for the period from 18.10.2006 to 01.11.2006 based on the Audit Party Report.

2. The appellant is a Mill involved in the manufacturing of Steel Rolling Rods and the factory is situated at S.No.67/1, 2A Part 67/2B Part and 70/7 Part, Chinnambedu Village, Ponneri Taluk, Thiruvallur District. The respondent electricity board had sanctioned High Tension Service Connection in H.T.S.C.No.1816 with maximum demand of 1000 K.V.A. The appellant/Mill is providing employment to more than 400 persons living in and around Ponneri. When the appellant Mill applied for a new H.T. Service Connection with maximum demand of 1000 K.V.A., the respondent by letter dated 05.08.2006 asked the appellant to pay Rs.500/- towards Registration fee and Rs.8,00,000/- towards Earnest Money Deposit (EMD). Thereafter, on payment of such sum, the respondent also had assigned HT Application registration number as AN 22/06-07. Subsequently, on 07.09.2006, the respondent has once again asked them to pay a sum of Rs.3,50,000/- towards development charges, Rs.40,000/- towards meter caution deposit and Rs.4,720/- towards service connection charges, within a period of 7 days from the date of receipt of the letter. The appellant was further asked to execute an agreement within the said period of 7 days failing which their HT application will be cancelled and all the charges paid by them will be forfeited. It was further informed to them that the probable date of effecting supply was 37 days from the date of payment of all charges and execution of agreement, besides informing them to keep the CEIG (Chief Electrical Inspector to Government) safety certificate ready before the probable date of effecting supply. If the CEIG certificate is not produced, then the appellant's application will be cancelled forfeiting all the charges, except Meter Caution Deposit.

3. It is also further claimed by the appellant Mill that they have paid all the aforesaid charges on 12.09.2006 and obtained safety certificate from the Chief Electrical Inspector to Government on 26.10.2006 after completing laying of supply lines from the respondent's substation till their premises. It is further stated that since the respondent board did not complete their work till 26.10.2006, there was a delay in



getting CEIG safety certificate, hence, the appellant Mill cannot be held responsible for the delay. Finally, HT supply was effected to the Steel Rolling Mill of the appellant on 01.11.2006 after executing the agreement on the same date. Whiles, after a lapse of 1 ½ years, the respondent board, by letter dated 24.04.2008, claimed Rs.1,40,000/- towards monthly minimum charges for the period from 18.10.2006 to 01.11.2006 based on the Audit Party Report indicating that the said sum would be included in the current consumption bill for April, 2008, for realization. Thereafter, the appellant Mill, in order to avoid disconnection of supply, had paid the above said sum with the current consumption charges on 05.05.2008, although they are not liable for the same.

4. Learned Senior Counsel for the appellant Mill submitted that the CEIG, after inspecting the appellant mill on 25.10.2006, had issued the Safety Certificate on 26.10.2006. Thereafter, the appellant mill sent a communication dated 31.10.2006 to the respondent intimating that apart from strengthening of lines no other works have been completed. Thus, as the delay was on the part of the respondent's side, the impugned order passed by the respondent demanding monthly minimum charges for the period in which there was no supply of electricity in the appellant mill is impermissible in law, hence, the same is liable to be set aside.

5. Learned Senior Counsel has relied on a similar order passed by this Court in W.P.No.19709 of 2010, dated 03.10.2019, whereby, this Court, by referring to Clause 31(2) and (5) of the Electricity Distribution Code, held that intending consumer shall avail himself of the supply within three months in case of HT from the date of issuance of notice in writing informing them that the supply is available, and by holding so, it is observed that when the respondents have not completed their work, it is their fault, hence, the petitioner therein cannot be held liable for payment of minimum charges. With these submissions, learned Senior counsel contended that the impugned order passed by the learned Single Judge suffers infirmities and hence, the same is liable to be interfered with.

6. Learned Standing Counsel for the respondent board submitted that when the appellant was informed by letter dated 18.10.2006 to produce CEIG certificate to SE/CEDC/North within 3 months from the date of issuance of letter i.e. 18.10.2006, only the appellant has delayed to produce the said certificate, therefore, electricity service connection was given only from 01.11.2006. Hence, when there was a default committed by the appellant, the respondent is entitled to collect minimum charges from 18.10.2006 till 01.11.2006, therefore, no interference is called for.



7. But, we are unable to find any merit on the above said submission, for the reason that the letter dated 18.10.2006 issued by the Superintending Engineer, Chennai EDC/North, Chennai, to the appellant mill would show that the appellant was informed to produce CEIG safety certificate within three months from date of issuance of letter dated 18.10.2006. Thereafter, the Chief Electrical Inspector to Government, Chennai, inspected the appellant's premises on 25.10.2006, and thereafter, CEIG safety certificate was also issued on 26.10.2006. Despite issuance of CEIG safety certificate, the respondent board did not complete their work like erection of metering sets, fixing of meters and wiring, as could be seen from the letter dated 31.10.2006 of the appellant Mill. Thereafter, on receipt of such communication, the respondent has not informed the appellant that the respondent's side wiring work was over and the supply availability was ready. Therefore, the collection of minimum charges from 18.10.2006 till 01.11.2006, is wholly unwanted and unjustified.

8. In a similar circumstances, this Court, by referring to Clause 31(2) and (5) of the Electricity Distribution Code, held thus:-

10. In this regard, it is relevant to extract Clause 31(2) and (5) of the Electricity Distribution Code here under:

'31(2) The intending consumer shall avail himself of the supply within three months in case of HT and one month in case of LT from the date of issue of notice in writing, informing him that supply is available.

...
...

31(5) If the intending consumer avails supply during the notice period of availability of supply, he 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 supply.'

A conjoint reading of Clause 31(2) and (5) of the Electricity Distribution Code would go to clearly show that the petitioner being an intending consumer no doubt shall avail himself of the supply within 3 months in case of HT from the date of issuance of notice in writing informing them that the supply is available. But in the present case, neither the letter dated 20.05.2010 informing the petitioner that the Board side work with regard to the



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extension of HT supply for a maximum demand of 8000 KVA at 33 KV to the petitioner Industry has been completed on 17.05.2010 has given the supply availability nor the respondent despite the letter dated 26.05.2010 has completed the line and cable work, therefore, this Court is unable to find any merit in the Writ Petition for the reason that even when the respondents also have not completed the work, it is their fault only for which the petitioner cannot be held liable for payment of minimum charges."

9. In the present case, as highlighted above above, although the appellant Mill had produced CEIG certificate on 26.10.2006, that is, within 9 days from the date of issuance of notice by the respondent on 18.10.2006, the respondent has not produced a single document to establish that on a particular date, the supply was made ready and they have completed their part of work like fixing of meters and wiring. Therefore, in our considered, the impugned order passed by the learned Single Judge overlooking all these aspects is liable to be set aside.

10. Accordingly, for the reasons stated above, the impugned order passed by the learned Single Judge is set aside and the writ appeal stands allowed. Needless to state that in order to avoid disconnection, the appellant has deposited the entire amount of Rs.1,40,000/-, therefore, the same shall be adjusted for future consumption by the respondent board. No Costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rkm

To:

The Superintending Engineer,
Chennai Electricity Distribution Circle/North,
791, Anna Salai, Chennai - 2.

+1cc to Mr.K.Seshadri, Advocate, S.R.No.15382

+1cc to Mr.L.Jai Venkatesh, Advocate, S.R.No.15274

W.A.No.3910 of 2019

GSM(CO)
SU(02/05/2022)