



W.P. No.3954/2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
23.03.2023	06.04.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.3954 OF 2018

AND

W.M.P. NO. 4842 OF 2018

M/s. Wipro Ltd.

Rep. by its General Manager

Cum Authorised Signatory

.. Petitioner

- Vs -

1. Tamil Nadu Electricity Ombudsman
10-A, Rukmani Lakshmipathy Salai
(Marshal Road)), Egmore
Chennai 600 008.

2. Tamil Nadu Generation & Distribution
Corporation Ltd. ("TANGEDCO")
Rep. by the Superintending Engineer
CEDC/South, 110 KV, KK Nagar
SS Complex, KK Nagar
Chennai 600 078.

3. Tamil Nadu Electricity Board Ltd. ("TNEB")
NPKKR Maaligai (TNEB) Office 144
Anna Salai, Chennai 600 002.

.. Respondents



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Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records comprising the order issued by the 1st respondent in Appeal Petition No.24 of 2017 and dated 6.10.2017, quash the same and consequently to direct the 2nd respondent to refund the sum of Rs.2,31,00,000/- (Rupees Two Crore Thirty One Lakhs Only) paid by the petitioner under protest to the 2nd respondent.

For Petitioner : Mr. Sathish Parasaran, SC, for
Mr. Rahul Balaji

For Respondents : Mr. J.Ravindran, AAG
Assisted by Ms. V.Revathy

ORDER

The present petition, at the behest of the petitioner is for a direction to the respondent to refund the sum of Rs.2,31,00,000/- paid by the petitioner towards cable laying charges.

2. It is the case of the petitioner that application was submitted for sanction of an additional 11 MVA power over and above the existing 4 MVA



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load for the facility of the petitioner at Survey No.602/3, Elcot SEZ, Sholinganallur-Medavakkam Road. It is the further case of the petitioner that, as agreed between the petitioner and the respondent, the petitioner completed its portion of the work as originally stipulated and paid the total earnest money deposit of Rs.1,76,00,000/- on 5.3.2014 vide two demand drafts. Thereafter, the petitioner was called upon to pay an additional amount of Rs.6,42,52,530/- towards development charges to extend the cable and infrastructure works to the Sholinganallur Campus pursuant to which the 2nd respondent was to complete its extension works and supply availability notice.

3. It is the further case of the petitioner that the probable date for effecting supply was 165 days from the date of payment of all charges and execution of agreement, wherein it was also stated that on completion of the works by the Tamil Nadu Electricity Board (for short 'TNEB'), supply availability notice would be issued to the petitioner and if the petitioner does not avail the supply within the stipulated period by producing the safety certificate, monthly minimum charges will be levied from the date of issue of



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notice for a period of three months initially. It is the further case of the petitioner that it has duly paid the demand amount and the HT agreement was executed on 20.08.2014.

4. It is the further case of the petitioner that subsequent to the agreement, through multiple communications, the petitioner requested the respondent to expedite the infrastructure work so as to enable the petitioner to avail the sanctioned power by charging the substation. However, the 2nd respondent did not provide any firm date for providing the supply as there was delays in procuring the cables required by the 2nd respondent.

5. It is the further case of the petitioner that subsequent to the discussions between the petitioner and the 2nd respondent, suggestion was made that the petitioner could take up the cable laying activity so as to expedite the supply. Pursuant to the above suggestion, the petitioner, vide letter dated 24.12.2014 proposed to supply the HT cable with accessories and requested the 2nd respondent to accept the materials arranged by the petitioner for erection and the costs of the above works could be adjusted



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against the future consumption charges. Thereafter, vide letter dated 22.01.2015, the petitioner proposed to supply and lay the HT cables with accessories as per the standards set by the 2nd respondent including the civil and ancillary works required as part of cable laying, which was proposed to be undertaken by the petitioner under the supervision of the TNEB officials and the cost incurred to be adjusted against future current consumption charges.

6. It is the further case of the petitioner that the 2nd respondent, vide its letter dated 11.06.2015, accepted and approved the petitioner's proposal to supply and lay underground cable for 110 KV for a distance of 4.635 Kms., for extension of the additional power supply demand of the petitioner. The route drawing for the routing of the cable was drawn by the petitioner, which was approved by the 2nd respondent on 26.8.2015. Thereafter, upon the production of the cable and obtaining inspection waiver from the 2nd respondent on 19.12.2015, the cables ordered were received by the petitioner.



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7. It is the further case of the petitioner that the incessant rain and unprecedented floods in Chennai between November-December, 2015, severely inundated the campus of the petitioner, including the sub-station and Transformer yard, which was completed in October, 2014, resulting in the petitioner carrying out the rectification of all defects and, thereafter, the petitioner commenced cable laying and completed the same on 10.03.2015 and offered for cable testing to TNEB. The test report of the Central Power Research Institute was conducted on 1.4.2016 and test report was submitted on 5.4.2016.

8. However, the 2nd respondent, vide its letter dated 3.2.2016, claimed its readiness to extend the HT supply for an additional demand of 11 MVA over and above the then existing demand of 4 MVA by converting supply voltage from 11 KV to 110 KV. The 2nd respondent further claimed that it could not extend the power supply as the cable laying works for the 110 KV was not completed by the petitioner. It is the further case of the petitioner that the 2nd respondent issued the first three months availability notice from 27.1.2016 and directed payment of monthly minimum charges at the rate of



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RS.350/KVA/Month for the 1st and 2nd 90 days period, which is to be paid in advance to prevent termination of the agreement and also to keep the HT application alive.

9. It is the further case of the petitioner that vide its letter dated 2.3.2016, the petitioner requested additional time till May, 2016, to complete the cable laying activity and also protesting the levy of monthly minimum charges pointing out that the delay was due to the 2nd respondent's failure to perform its obligations and also due to the natural calamity, in the form of rain and floods in the month of November-December, 2015.

10. It is the further averment of the petitioner, the vide letter dated 18.3.2016, the 2nd respondent rejected the petitioner's objections to the monthly minimum charges and its request for extension of time for completion of cable laying work. The petitioner, pointing out the failure of the 2nd respondent, which resulted in the petitioner taking up the job of cable laying after paying an amount of Rs.6,42,52,530/- for arranging to effect the additional demand of 11 MVA over the existing 4 MVA, also pointed out that



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the force majeure condition contributed to the delay in completion of the works. It is the further averment of the petitioner that the 2nd respondent, vide letter dated 2.5.2016, reiterated that waiver of monthly minimum charges is not feasible and that the availability notice period continues to apply without providing any proper explanation for rejection of the representations made by the petitioner.

11. Thereafter, the 2nd respondent, vide its letter dated 28.5.2016, called upon the petitioner to pay a sum of Rs.2,31,00,000/= towards monthly minimum charges immediately, failing which the application will be cancelled without further notice and the HT agreement would stand terminated forfeiting all the amounts paid by the petitioner. Thereafter, letter dated 6.6.2016 was issued by the petitioner attaching the CEA certificate and requesting the 2nd respondent to waive the levy of monthly minimum charges, which, being rejected, the petitioner was constrained to make the payment of Rs.2,31,00,000/- under protest vide letter dated 24.6.2016 by way of demand drafts.



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12. Against the impugned communication of the 2nd respondent directing the petitioner to pay monthly minimum charges to the tune of Rs.2,31,00,000/-, the petitioner filed complaint before the Consumer Grievance Redressal Forum, Chennai on 11.01.2017. However, without considering the submissions and reasoning of the petitioner, the Commission dismissed the petition against which the petitioner preferred appeal before the 1st respondent, which also dismissed the said appeal vide order dated 6.10.2017. It is the further case of the petitioner that the 1st respondent passed the order without providing an opportunity of hearing the petitioner and providing the copies of the papers filed by the respondents.

13. It is the further averment of the petitioner that the impugned order has been passed on the vague reasoning that the time taken for completing the cable laying would should not have delayed procurement of CEA certificate and that it was the petitioner's responsibility to have completed the work on time and the delay cannot be passed on to the respondent. Aggrieved by the said order, the present writ petition has been filed by the petitioner.



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14. Learned senior counsel appearing for the petitioner submits that the delay in the completion of the cable laying work is wholly attributable to the respondents, as it is their duty to have laid the cables and that the delay caused by the respondents in procurement of the cable was the reason for the petitioner entering into the fray and obtaining permission from the respondents for laying the cable at its cost, though the cost towards the cable and the cable laying works had already been paid to the respondents. It is therefore the submission of the learned senior counsel that the delay, said to have been caused by the petitioner is wholly unsustainable as the duty, which the respondents ought to have done was done by the petitioner.

15. It is the further submission of the learned senior counsel that the petitioner had already paid a sum of around Rs.6.5 Crores towards laying of cables, however, the same has not been refunded to the petitioner. However, without refunding the same, over and above the said amount, the 2nd respondent had also directed the petitioner to pay a sum of Rs.2.31 Crores towards monthly consumption charges, which is wholly unsustainable.



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16. It is the further submission of the learned senior counsel that the HT Agreement itself provides that the 2nd respondent shall intimate its readiness and consequently levy monthly minimum charges only after duly completing the entire cable laying work. This clearly shows that the HT Agreement itself would come into force only upon completion of laying work by the 2nd respondent, whereinafter only the 2nd respondent could announce its readiness as per Clause 2 of the HT Agreement. In the present case, even before the completion of the cable laying work, the readiness announced by the 2nd respondent is against the provisions of the HT Agreement, which has not been properly appreciated by the 1st respondent while passing the impugned order. Further, the 2nd respondent announcing its readiness by subverting the stipulation in the order of performance only for the purpose of levying charges even before completing the cable laying work clearly shows the devious mind of the 2nd respondent in taking shelter under the HT Agreement.



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17. It is the further submission of the learned senior counsel that only on account of the difficulties faced by the 2nd respondent in laying the cable, to ease the pressure, the petitioner had taken upon itself the task of cable laying upon proper approval by the 2nd respondent. This clearly shows that the failure of the 2nd respondent has resulted in the petitioner taking up the work later in point of time, which delay, caused by the 2nd respondent, cannot be put against the petitioner. Therefore, the finding recorded by the 1st respondent that the delay is attributable only to the petitioner on account of the petitioner taking up the work of cable laying is not only totally flawed, but the failure of the 2nd respondent to perform the cable laying work despite receipt of consideration clearly shows that the delay is attributable to the 2nd respondent.

18. It is the further submission of the learned senior counsel that the 2nd respondent cannot be permitted to take advantage of its own wrong, as the readiness announced by the 2nd respondent to supply power to the petitioner despite pending cable laying work and also levy monthly minimum charges goes to show that it is not only in breach of the agreement entered



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into between the parties, but the act is against the well established proposition of the wrong doer taking advantage of its own wrong.

19. It is the further submission of the learned senior counsel that the non-performance of work committed to be done by the 2nd respondent resulting in the petitioner undertaking the work, no revised time lines have been prescribed for cable laying work. Though the limit of 165 days has been fixed, but the said time would start from the time when the execution of work has been entrusted with the petitioner and it cannot be counted from the date of signing the agreement, as the 2nd respondent had not taken up the work of laying the cables for want of procurement of cables.

20. It is the further submission of the learned senior counsel that the force majeure circumstance, which is found in the HT Agreement has not been taken into consideration in proper perspective while passing the impugned order, as the impugned order contains no reasoning with regard to the extension of time that requires to be granted in the event of force



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majeure, which prevailed in the region. This error is apparent on the face of the record and requires to be set right by this Court.

21. It is the further submission of the learned senior counsel that the 2nd respondent is not entitled to press the HT Agreement into force to claim the monthly minimum charges, as the 2nd respondent, if had undertaken the task itself, could not have completed the same within the prescribed period, thereby entailing levying of monthly minimum charges, as the work would have further delayed. Therefore, the notice of readiness issued on 3.2.2016 is wholly invalid and perverse and on that score, the impugned order, which has not considered the said aspect properly, deserves to be interfered with.

22. In support of the aforesaid contentions, learned senior counsel appearing for the petitioner laid reliance on the following decisions :-

*“i) S.L.O. Industries Ltd. – Vs – The Superintending Engineer (W.A. No.3910 of 2019 – Dated 7.3.2022); and
ii) Madras Cements Ltd. – Vs – State of Tamil Nadu & Ors. (MANU/TN/1318/2008)”*



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23. Per contra, learned Addl. Advocate General appearing for the 2nd respondent, premising his submissions on the basis of the counter of the 2nd respondent, submitted that the petitioner having accepted and conditions in the HT Agreement and undertaken to pay the minimum monthly charges even if no electricity is consumed for any reasons whatsoever or even for any other valid reason, cannot now come before this Court and claim that the availability notice issued by the 2nd respondent is bad as works had not been completed and, therefore, no minimum monthly charges could be levied till such works are completed and safety certificate of CEA/CEIG is submitted.

24. It is the further contention of the learned Addl. Advocate General that the petitioner having undertaken by its communication dated 12.8.2013 that if the CEA/CEIG safety certificate is not submitted within the stipulated time, the petitioner would accept to pay the monthly minimum charges and such being the undertaking, the petitioner is estopped from contending that minimum monthly charges is not leviable till safety certificate is submitted on completion of the works.



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25. It is the further submission of the learned Addl. Advocate General that the 2nd respondent's works were taken over by the petitioner on the understanding that they would procure the cable and complete the works, whereinafter, the 2nd respondent could issue the availability notice upon production of safety certificate. However, the works having been delayed by the petitioner itself on taking up the same from the hands of the 2nd respondent, it is not open to the petitioner to contend that the procurement of cable by the 2nd respondent was delayed, which necessitated the petitioner to take up the work and, therefore, the length of time between the HT agreement and the agreement between the petitioner and the 2nd respondent with regard to take over of the work of the 2nd respondent cannot be put against the petitioner, is wholly impermissible, as an undertaking given by the petitioner to take up the work of the 2nd respondent and complete it, the petitioner is bound to honour the undertaking and failure would in no way be an impediment for the 2nd respondent to go ahead with the issue of availability notice and collect monthly minimum charges.



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26. It is the further submission of the learned Addl. Advocate General that though all along, even before the 2nd respondent as also before the 1st respondent, the petitioner had been harping on the delay on the part of the 2nd respondent and also the Force Majeure condition due to floods, but has nowhere spoken about the petitioner's non-obtainment of safety certificate from CEA, which clearly shows the suppression of facts by the petitioner.

27. The respondents have clearly considered all the attendant circumstances including the Force Majeure condition and had come to the definitive conclusion that the petitioner not submitting the safety certificate, the 2nd respondent is entitled to enforce the payment of monthly minimum charges for the petitioner and, accordingly, ordered the same, which cannot be said to be erroneous or unsustainable.

28. It is the further stand of the respondents that the safety certificate from CEA is only with respect to the works undertaken by the petitioner and it does not relate to the scope of works falling with the 2nd respondent. That being the case, the petitioner could very well have completed its work and



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obtained the safety certificate. The safety certificate having not obtained by the petitioner clearly shows that it had not completed the works falling within its scope and, therefore, to extricate itself from paying the amounts due under the HT Agreement, the petitioner has taken up the plea that the delay was due to the 2nd respondent not honouring its work, which was taken up by the petitioner belatedly, which resulted in the delay in the completion of the works.

29. It is the further submission of the learned Addl. Advocate General that insofar as the amount of Rs.6.42 Crores alleged to have been paid by the petitioner towards the cable laying work to be carried out by the 2nd respondent, which has since been taken up by the petitioner and completed, the 2nd respondent had adjusted the said amount towards the future bills of the petitioner and, therefore, nothing is payable. Further, the amount of Rs.2.31 Crores claimed as refund by the petitioner in respect of monthly minimum charges said to have been charged even before the completion of the work by issuance of safety certificate on the mere availability notice



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issued by the petitioner, the same cannot be sustained for the aforesaid submissions and, accordingly, prayed for dismissal of the petition.

30. In reply, learned senior counsel appearing for the petitioner fairly conceded, upon being instructed, that the amount of Rs.6.42 Crores, which was paid by the petitioner, has since been adjusted towards the future bills of the petitioner and, therefore, with regard to the same, the petitioner is not enforcing its legal right to receive the said amount. The said statement of the learned senior counsel is taken on record and is recorded.

31. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

32. The undisputed facts of the case are that the petitioner and the 2nd respondent entered into a HT Agreement for an additional load of 11 MVA. The HT Agreement consisted of two parts, viz., the works that are to be completed by the petitioner and the works that are to be completed by the



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2nd respondent. Towards the works to be completed by the 2nd respondent, which related to the laying of cables, a sum of Rs.6,42,52,530/- was paid by the petitioner, which is also not disputed. There is also no dispute about the fact that procurement of cable by the 2nd respondent was getting delayed, which prompted the petitioner to step in and take up the work of the 2nd respondent with regard to laying of cable, on mutual agreement. Upto this phase, there is no dispute between the petitioner and the 2nd respondent.

33. The whole genesis of the dispute arises only thereafter, as the HT Agreement contemplated a period of 165 days from the date of payment of all charges for effecting supply, which was upon availability notice issued by the 2nd respondent. Insofar as the completion of the works, which were under the realm of the petitioner, the petitioner ought to complete the works and produce the safety certificate from the appropriate authority. All the above said aspects have to be addressed within a period of 165 days from the date of the execution of the agreement.



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34. As aforesaid, it is not disputed by either side that procurement of cables by the 2nd respondent got delayed, which prompted the petitioner to step in and take up the work, which was within the scope of the 2nd respondent. The case of the petitioner revolves around the fact that the work, which was within the scope of the 2nd respondent was delayed, for which the petitioner stepped in and completed the work. In this scenario, it is the case of the petitioner that delay in completion of the work, which was within the scope of the 2nd respondent, which was aided by the petitioner by taking up the said work and completing due to the act of the 2nd respondent not able to complete the work by procuring the cables cannot be put against the petitioner and, therefore, the collection of monthly minimum charges before the completion of the work by the 2nd respondent by issuing the availability notice is wholly unsustainable.

35. In this regard, clause 2 and clause 8 of the agreement, which pertains to date of coming into force of the agreement as also the Monthly Minimum Charges, have a bearing on the present case and the same are quoted hereunder :-



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“ 2. Date of coming into force of the agreement

The Consumer shall begin to take electrical energy from the Licensee subject to the conditions of this agreement within three months from the date on which intimation is sent in writing to the consumer by the Licensee that supply of electrical energy is available. The provisions of this agreement shall be deemed to come into force from the date of commencement of supply of energy or the date of issue of first three months' notice of availability of supply whichever is earlier. If the consumer fails to avail the supply within three months, a further three months extension will be granted by the Licensee, after collecting the monthly minimum for the extended period in advance.

8. Minimum Monthly Charges

The consumer agrees to pay minimum charges every month as prescribed in the tariff and supply code even if no electricity is consumed for any reasons whatsoever, and also if the charges for electricity actually consumed are less than the minimum charges. The minimum shall be payable even if electricity is not consumed because of disconnection of supply by the Licensee due to non-payment of electricity charges, pilferage or other mal-practices or for any other valid reason.”



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36. A careful perusal of clause 2 of the HT Agreement reveals that the agreement would come into force from the date on which electrical energy is supplied to the petitioner by the 2nd respondent or from the date of issue of notice of availability of supply, whichever is earlier. It also further mandates that if the petitioner fails to avail the supply within three months, subject to a further extension of three months being granted, the monthly minimum charges will be collected for the extended period.

37. Further, clause 8 of the HT Agreement mandates that even if no electricity is consumed for the reasons shown in the said clause, the consumer would be bound to pay the minimum monthly charges every month once the notice of availability is issued by the 2nd respondent from which date the clock starts ticking for the completion of the three months period.

38. As aforesaid, the work, which is within the scope of work of the 2nd respondent, was executed by the petitioner, which is not disputed even by the 2nd respondent. However, the petitioner seeks the indulgence of this Court citing that the delay of the 2nd respondent in not executing the work, which



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prompted the petitioner to take up the work and execute it and, therefore, the period of delay to that extent should be adjusted while computing the date of commencement. Though the said submission looks attractive, but the said submission cannot be countenanced for two reasons.

39. The scope of work within the fold of the 2nd respondent ought to be completed by the 2nd respondent. The clock started ticking from the date on which the agreement was entered into between the petitioner and the 2nd respondent with regard to the 165 day period. However, as the 2nd respondent could not procure the requisite materials and take up the work, the petitioner took it upon itself to procure the materials and complete the work. There has been no further agreement between the petitioner and the 2nd respondent with regard to extension of time to the petitioner for completing the work, which was within the scope of the 2nd respondent. That being the factual position, once the clock started ticking, which has not been set back by the petitioner and the 2nd respondent entering into any further agreement, the petitioner was bound to complete the work within the time stipulated for the 2nd respondent. When the petitioner has took upon itself



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the scope of work falling within the realm of the 2nd respondent with no strings attached to it, the only inference that could be drawn from the above is that the petitioner ought to complete the work within the time stipulated for the 2nd respondent.

40. It is case of the petitioner that it could not complete the work pertaining to the 2nd respondent within the stipulated time, however, the notice of availability has been issued by the 2nd respondent, which is wholly unjustified, arbitrary and perverse. However, it is the case of the 2nd respondent that the work falling within the scope of the petitioner was not completed and the requisite safety certificate from CEA was not obtained and submitted within the prescribed period. However, taking umbrage under the delay in the completion of the work of the 2nd respondent, the petitioner is trying to wriggle out of the commitment to pay the monthly minimum charges as provided for under clause 8. Without satisfying its part of the contractual obligations, trying to squirm out from the commitment citing the delay in completion of the work which is within the scope of the 2nd respondent is wholly unsustainable.



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41. It is not disputed by the petitioner that safety certificate was not submitted within the time stipulated in the agreement. Though it is the case of the petitioner that it is due to the work relatable to the 2nd respondent, however, a careful perusal of the materials available on record as also the clauses in the Agreement show that the safety certificate from CEA, which is to be produced by the petitioner only relates to the scope of work, which falls on the head of the petitioner. The said safety certificate would not take within its fold the work relatable to the 2nd respondent. That being the position, the stand of the petitioner that the delay in the execution of the work of the 2nd respondent, taken upon itself by the petitioner, resulting in the delayed obtainment of safety certificate cannot be put against it, is wholly unsustainable, as the delay in completion of the work, which falls within the scope of the petitioner cannot be put against the 2nd respondent.

42. Further, as provided for in Clause 8 of the agreement, even if no electricity is consumed for any reason whatsoever, the minimum monthly charges is payable even if there are valid reason for the same. For the sake of



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argument, without admitting, that the delay is envisioned by the work undertaken by the petitioner, which is relatable to the 2nd respondent, still the petitioner is bound to pay the monthly minimum charges as per clause 8 as the aforesaid valid reason would not be a bar for the 2nd respondent to demand monthly minimum charges. When the petitioner, on its own volition and with eyes open had entered into the agreement with the aforesaid clause attached thereto, thereafter, the mere fact that the petitioner had undertaken the work of the 2nd respondent without in any manner entering into any subsequent understanding or agreement, it is the bounden duty of the petitioner to honour the HT Agreement in letter and spirit and, therefore, the issuance of notice of availability by the 2nd respondent which in terms of clause 8 of the agreement cannot be said to be unsustainable.

43. It is not the case of the petitioner that it had completed its scope of work within the stipulated period and had also obtained the safety certificate. Further, it is also not the case of the petitioner that the work relatable to the 2nd respondent would also fall within the scope of safety certificate and, therefore, there was delay in the issuance of safety certificate. On the



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aforesaid two aspects, the affidavit of the writ petitioner is silent. When such is the case, the petitioner cannot wriggle out of its commitment to pay the monthly minimum charges by taking a stand that the delay in the execution of the work, which was within the ambit of the 2nd respondent was the reason for which the petitioner should not be penalised. The petitioner having wilfully and of its own volition accepted the work of the 2nd respondent and not completed the work falling within its scope, cannot claim that the notice of availability issued by the 2nd respondent is arbitrary and perverse. The overall facts of the case, as stated above, clearly reveals a picture that the 2nd respondent was right and justified in issuing the notice of availability and in such view of the matter, the petitioner is bound to pay the monthly minimum charges as per the terms of the agreement entered into.

44. The decisions, which were relied on by the learned senior counsel for the petitioner would in no way be beneficial to the case of the petitioner herein, as the facts in the said case stand on a totally different footing and would not stand attracted to this case.



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45. In the case in *Madras Cements (supra)*, it was allowed on the ground that the Electricity Board cannot refuse tariff concession on the ground that CEIG certificate was not obtained. However, in the case on hand, the petitioner having consciously entered into the agreement with the 2nd respondent, wherein safety certificate was a mandatory condition, the failure to obtain the certificate within the time stipulated would have to be put against the petitioner.

46. Insofar as *SLO Industries case (supra)* is concerned, the Board did not complete the work. However, in the case on hand, the work of the Board was, on mutual agreement, taken over by the petitioner, without any extension of time sought for. Such being the case, the petitioner cannot claim that it was doing the work of the Board and, therefore, necessarily, the delay envisioned by the inaction of the Board should be compensated in favour of the petitioner. The facts in the aforesaid case are totally different and the ratio laid therein would not stand attracted to this case.



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47. The authorities below, including the 1st respondent, have carefully considered all the factual aspects, vis-a-vis the HT Agreement entered into between the petitioner and the 2nd respondent and have come to a conclusion that the act of the 2nd respondent in issuing the notice of availability and claiming monthly minimum charges is as per the terms of the agreement, with which this Court is in full agreement and, therefore, there arises no necessity to interfere with the order impugned herein.

48. For the reasons aforesaid, the contentions advanced on behalf of the petitioner fails and, accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petition is also dismissed. There shall be no order as to costs.

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To

1. Tamil Nadu Electricity Ombudsman
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(Marshall Road)), Egmore
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GLN

**PRE-DELIVERY ORDER IN
W.P. NO.3954 OF 2018**

**Pronounced on
06.04.2023**