IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON 24-03-2023

ORDERS PRONOUNCED ON 30-03-2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP Nos.4471 and 4472 of 2017
And
WPMP Nos.4708 and 4709 of 2017

Ashok Leyland Limited,
Ennore,
Chennai-600 057 Represented by
its Chief Financial Officer
Mr.P.K.Ranganathan.
[Petitioner cause title amended vide order of
Court dated 15.03.2023 made in WPMP
Nos.8482 and 8487 of 2023 in
WP Nos.4471 and 4472 of 2017] ... Petitioner in both WPs

Vs.

1.The Secretary,
Ministry for Energy Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.

2.Tamil Nadu Electricity Board,
Represented by its Chairman,
No.800, Anna Salai,
Chennai-600 002.

3.Superintending Engineer,
Chennai EDC / North,
TANGEDCO, No.800,
Anna Salai,
Chennai-600 002. ... Respondents in both WPs

Prayer: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writs of Certiorari, calling for the records pertaining to the order of the third respondent in issuing the impugned demand notice in LR.Nos.SE/CEDC/N/DFC/N/AAO/HT/F Court Arc Furnace/D 2558 and SE/CEDC/N/DFC/N/AAO/HT/F Court Arc Furnace/D 2557 dated 10.02.2017.

For Petitioner in both WPs : Mr.M.S.Murali for M/s.R & P Partners.

For Respondent-1 in both WPs : Mr.T.Arunkumar, Additional Government Pleader.

For Respondents-2 and 3 in both WPs : Mr.P.Wilson, Senior Counsel for Mr.L.Jai Venkatesh, Standing Counsel for TANGEDCO.

COMMON ORDER

The writ petitions are filed challenging the order dated 10.02.2017 issued by the Superintending Engineer fixing the liability on the petitioner to pay an extra charge, is under challenge in these writ petitions.

2. The petitioner is a Company in respect of extra levy on energy charges. On earlier occasion, the petitioner filed WP No.2961 of 2002 challenging the levy of 25% extra charges on industries having Arc Furnaces based on G.O.Ms.No.95, dated 28.11.2001. Clause (e) to the said Government Order states as follows:-

> *"High Tension Industries under Tariff I-A having Arc Furnaces, the consumption of electrical energy will be charged at 25 per cent extra to that of High Tension Tariff I-A."*

3. The petitioner-Company has filed the said writ petition on several grounds in respect of levy of 25% extra charge on industries having Arc Furnaces. However, the said writ petition filed in WP No.2961 of 2002 was dismissed as withdrawn at the request of the writ petitioner on 06.02.2017.

4. The contention of the petitioner is that the levy of 25% charge extra for the entire energy consumption as against energy consumption applicable to Arc Furnaces. In WP No.2961 of 2002, the

petitioner obtained an order of injunction. Subsequently the subject matter was referred to Tamil Nadu Electricity Regulatory Commission and a comprehensive order was passed in respect of fixation of levy in TP No.1 of 2002 dated 15.03.2003. In the said order, the Tamil Nadu Electricity Regulatory Commission has reduced the levy of charge from 25% to 15% vide its order in paragraph 7.13.

5. Even that 15% reduction was unsatisfactory to the petitioner-Company and challenged the order passed by the Tamil Nadu Electricity Regulatory Commission in TP No.1 of 2002 dated 15.03.2003. The petitioner filed WP No.12222 of 2003. The High Court granted stay of operation of Clause No.7.13 of the order of Tamil Nadu Electricity Regulatory Commission dated 15.03.2003. The Tamil Nadu Electricity Regulatory Commission raised a ground that the writ petition is not maintainable, since the appeal remedy under Section 27 of the Electricity Regulatory Commission, 1998, is to be exhausted. Thus the petitioner-Company filed regular appeal in CMA No.2485 of 2003 before the High Court. The High Court passed an interim order of status quo on 08.10.2003 and thereafter, the first writ petition in WP No.2961 of 2003 was dismissed

as withdrawn at the instance of the writ petitioner.

6. It was pointed out by the respondents in the said writ petition that the Hon'ble Division Bench of the Madras High Court passed orders vide its order dated 14.06.2002 in WP No.23807 of 2001 and 25219 of 2001 and 25220 of 2001 and WP No.23807 of 2001 in the matter of **Voice (Consumer Care) Council vs. State of Tamil Nadu** and the virus of G.O.Ms.Nos.95 and 96, dated 28.11.2001 and 05.12.2001 had been upheld by the High Court.

7. The other writ petition filed by the writ petitioner in WP No.12222 of 2003 had been withdrawn in view of the statutory appeal filed by the writ petitioner in CMA No.2485 of 2003.

8. At the outset, the two writ petitions filed by the writ petitioner were withdrawn. While-so the third respondent-Superintending Engineer in order dated 10.02.2017 asked the petitioner to pay the additional charge for the period from 11.04.2001 to 15.03.2003 for a sum of Rs.5,12,61,297/- and also claimed belated payment of surcharge upto

31.01.2017 for a sum of Rs.13,67,84,154/-.

9. The writ petitions were filed by stating that the tariff order was nothing but an additional charge for industries using Arc Furnace replacing the earlier charge, which was imposed under the Government Order. The said ground was raised in CMA No.2485 of 2003. At the time of filing of these writ petitions, CMA No.2485 of 2003 was pending. Therefore, the petitioner-Company states that depending upon the outcome of the CMA, the payment if any could have been raised. An order of status quo has been granted by the High Court in CMA No.2485 of 2003. Thus the petitioner-Company has mainly contended on the ground that the issues are to be decided in the CMA and depending upon the outcome of the CMA, the payment if any could have been raised.

10. Pertinently, CMA No.2485 of 2003 was dismissed by this Court on 30.03.2021.

11. The learned Senior Counsel appearing on behalf of the respondent-Tamil Nadu Electricity Board mainly contended that the

Division Bench of this Curt has upheld the revision of tariff issued in G.O.Ms.Nos.95 and 96 dated 28.11.2001 and 05.12.2001. As per Clause (e) in G.O.Ms.No.95 (High Tension industries under Tariff I-A having Arc Furnaces, the consumption of electrical energy will be charged at 25 per cent extra to that of High Tension Tariff I-A). The Tamil Nadu Electricity Regulatory Commission has modified this clause in view of the Tariff Schedule and thus the Arc Furnaces now have to pay the additional surcharge of 15% based on the HT 1-A Tariff.

12. The entire grounds raised by the petitioner challenging the levy of additional energy charges of 15% based on the HTS 1-A tariff in CMA No.2485 of 2003. However, the said Civil Miscellaneous Appeal was dismissed. Therefore, the very basis for these writ petitions is untenable in view of the subsequent developments and the dismissal of CMA No.2485 of 2003.

13. The learned Senior Counsel appearing on behalf of the second and third respondents contended that the petitioner is liable to pay a sum of Rs.29 crores towards belated surcharge. As of now, they are evading

payment for more than 20 years and therefore, any further delay would cause irreparable financial loss to the Tamil Nadu Electricity Board and thus the writ petition is to be rejected.

14. This Court is of the considered opinion that the challenge made in these writ petitions is the order of the Superintending Engineer dated 10.02.2017, imposing extra levy of energy charges as per tariff fixed by the Government in G.O.Ms.No.95 dated 28.11.2001. The said Government Order was challenged by many such similarly placed persons and the Hon'ble Division Bench of this Court upheld the Government Order issued in G.O.Ms.No.95. The matter was referred to Tamil Nadu Electricity Regulatory Commission, who in turn modified the clause in the Tariff Schedule and these Arc Furnaces are directed to pay additional energy charges of 15% based on the HT 1-A tariff.

15. Not satisfied with the modification from 25% to 15%, again the writ petitioner filed writ petitions and those writ petitions were withdrawn by them and they preferred statutory appeal in CMA No.2485 of 2003. Those writ petitions were dismissed as withdrawn. The present writ

petitions were filed mainly on the ground that the CMA was pending and the issues are to be finalised. Now that the appeal filed by the writ petitioner in CMA No.2485 of 2003 was dismissed. This Court is of the opinion that the petitioner is liable to pay the amount as determined by the impugned orders by the respondents.

16. The writs on hand are the classic cases, where the petitioner has adopted the litigative tactics in order to evade the payment for several years. The various litigations are filed periodically, so as to evade the payment of additional energy charges and belated sur charges. Therefore, the petitioner is not entitled for any relief from the hands of this Court

17. The Hon'ble Supreme Court in the case of **Nava Bharat Ferro Alloys Ltd vs. Transmission Corporation of Andhra Pradesh Limited [(2011) 1 SCC 216]**, wherein in paragraphs 27 and 38, it has been held as under:-

> *"27. Suffice it to say that the decision of this Court in Kerala SEB case [(1996) 1 SCC 597] does not grant any relief to a defaulting consumer*

once the demand is upheld nor does it interfere with the principle of restitution which would entitle the successful party to be relegated back to the position it would hold had there been no judgment adverse to it.

38. It is manifest from the above that both on the question of restitution of the benefit drawn by a party during legal proceedings that eventually fail as also on the general principle that a party who fails in the main proceedings cannot benefit from the interim order issued during the pendency of such proceedings, this Court found against the consumers and upheld the demand for payment of additional charges recoverable on account of the delay in the payment of the outstanding dues. Far from lending any assistance to the appellant Company the decision squarely goes against it and has been correctly appreciated and applied by the High Court."

18. In the case of **State of UP vs. Prem Chopra [2022 SCC OnLine SC 1770]**, wherein in paragraph 24, the Apex Court held as follows:-

"24. From the above discussion, it is clear that imposition of a stay on the operation of an order means that the order which has been stayed would not be operative from the date of passing of the stay order. However, it does not mean that the stayed order is wiped out from the existence, unless it is quashed. Once the proceedings, wherein a stay was granted, are dismissed, any interim order granted earlier merges with the final order. In other words, the interim order comes to an end with the dismissal of the proceedings. In such a situation, it is the duty of the Court to put the parties in the same position they would have been but for the interim order of the court, unless the order granting interim stay or final order dismissing the proceedings specifies otherwise. On the dismissal of the proceedings or vacation of the interim order, the beneficiary of the interim order shall have to pay interest on the amount withheld or not paid by virtue of the interim order."

19. The learned Senior Counsel for the respondent-Electricity Board brought to the notice of this Court that the petitioner has given a

letter of undertaking on 16.08.2017, which reads as under:-

> *"I, P.K.Ranganathan, son of Thiru P.V.Krishnaswamy, for and on behalf of M/s.Ashok Leyland Limited, Foundry Division, under HT Sc.No.1072 is hereby undertake :-*
>
> *1. To pay the short fall of arrears if any found till the latest date in respect of H.T.Sc No.1072 of M/s.Hinduja Foundries Limited, in one lumpsum or by inclusion in our current consumption bill as claimed without any condition.*
>
> *2. To abide by the High Court Order in the cases WP Nos.1961 of 2022 and WP No.12222 of 2003 and WP Nos.4471 and 4472 of 2017 and CMA No.2485 of 2003 if disposed in favour of TANGEDCO, we agree to pay the charges along with Belated Payment Surcharges.*
>
> *3. If any kind of arrears found out on later date in respect of H.T. supply of M/s.Hinduja Foundries Limited. Under H.T.Sc.No.1072, consequent on change of name to name, we undertake to pay the same in one lump sum as claimed and also agree to include the said amount in our current consumption bill of M/s.Ashok Leyland Limited, Foundry Division, under*

H.T.Sc.No.1072, falling which the Service Connection may be disconnected without any further notice."

20. Now CMA No.2485 of 2003 has been dismissed and therefore, the petitioner-Company, as per their own undertaking before the Superintending Engineer, Chennai EDC/North, Anna Salai, Chennai-2, has to settle the entire charges along with the belated payment charges as determined by the Tamil Nadu Electricity Board. Accordingly, the petitioner is directed to settle the amounts due, within a period of eight weeks from the date of receipt of a copy of this order.

21. Accordingly, both the writ petitions are devoid of merit and consequently, the writ petitions stand dismissed. The connected miscellaneous petitions are also dismissed.

30-03-2023

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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To

1.The Secretary,
Ministry for Energy Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.

2.The Chairman,
Tamil Nadu Electricity Board,
No.800, Anna Salai,
Chennai-600 002.

3.Superintending Engineer,
Chennai EDC / North,
TANGEDCO, No.800,
Anna Salai,
Chennai-600 002.

S.M.SUBRAMANIAM, J.

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Pre-Delivery Common Order in WPs 4471 and 4472 of 2017

30-03-2023