BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.3015 of 2022 AND
W.M.P.(MD)Nos.2634 & 2636 of 2022

M/s.India Cements Ltd.,
Shankar Nagar,
Tirunelveli,
Tirunelveli District – 627 357. ... Petitioner

Vs.

1. The Chairman-cum-Managing Director,
TANGEDCO,
NPKRR Maaligai,
No.144, Anna Salai,
Chennai – 600 002.

2. The Superintending Engineer,
Thirunelveli Electricity District Circle,
Tirunelveli District-11. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, calling for the records comprised in the impugned show cause notice dated 19.01.2022 bearing Lr. No.SE/TEDC/TIN/DFC/AO/R/AAO/HT/AS/F.BOAB/D.No.04/21 issued by the second respondent and quash the same as being arbitrary and illegal as barred by limitation and consequently refrain the second respondent from levying the operation and maintenance charges for Bay Maintenance pertaining to High Tension Service Connection No.079104720001.

For Petitioner : Mr.Aravind Subramaniam,
Senior counsel.

For Respondents: Mr.S.Deenadhayalan,
Standing Counsel.

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O R D E R

Heard both sides.

2. The writ petitioner is a cement manufacturer. They have installed a captive power plant in their premises. It has an installed capacity of 48MW. The petitioner is wheeling a portion of the power generated under open access regime. The remaining portion of 24MW is consumed at the plant itself. This is facilitated by installation of a power line known as bay. It is maintained by TANGEDCO. TANGEDCO is collecting bay maintenance charges from the petitioner and the petitioner is also remitting the same.

3. The question that arises for consideration is whether the respondents can claim such bay maintenance

charges with effect from 31.01.2012 when the captive power plant was commissioned. The respondents raised the demand for the first time only on 01.02.2021. In response to the notice dated 01.02.2021, the writ petitioner agreed to pay bay maintenance charges with effect from 04.02.2018. In respect of the demand for the period prior thereto, the petitioner invoked the law of limitation. The petitioner's explanation was not accepted by the second respondent who reiterated their earlier demand. To that effect, the impugned communication dated 19.01.2022 came to be issued.

4. Challenging the same, the present writ petition came to be filed.

5. The learned Senior counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. Reliance was placed on the order dated 15.12.2020 passed by TNERC in I.A.No.1 of 2020 in D.R.P.No.11 of 2020. He also wanted this Court to follow the order dated 08.03.2022 passed by a learned Single Judge in W.P.No.21007 of 2019. He further submitted that the

statutory mandate set out in Section 56 of the Electricity Act 2003 is binding on the respondents. He called upon this Court to set aside the impugned communication and grant relief as prayed for.

6. The respondents filed counter affidavit and the learned Standing counsel took my through its contents.

7. The learned Standing counsel wanted this Court to apply the ratio laid down by the Hon'ble Apex Court in the decision reported in ***2021 11 Scale 743 (M/s.Prem Cottex V. Uttar Haryana Bijli Vitran Nigam Ltd., and Others)***. The respondents wanted this Court to sustain the impugned demand notice and dismiss the writ petition.

8. I carefully considered the rival contentions and went through the materials on record.

9. At the outset, I queried the learned Senior counsel appearing for the petitioner, if they are disputing their liability on merits. The learned Senior counsel categorically stated that

he is anchoring his entire case on the ground of limitation as set out in Section 56 of the Electricity Act 2003.

10. Let me see the basis for the demand raised by the respondents. It is beyond dispute that originally the wheeling agreement entered into between the parties did not provide for payment of bay maintenance charges. Only in the year 2017, it was decided to demand bay maintenance charges from the generators. The board proceedings dated 23.12.2017 reads as follows:-

> " Approval is accorded for collection of Annual Operation and Maintenance (O&M) charges from fossil fuel based private generators for the bay Maintenance by TANRANSCO / TANGEDCO as collected for the bays for the interstate transmission lines maintained by PGCIL & TANTRANSCO. The annual operation and maintenance charges from the private generators towards maintenance of bay and its associated equipments may be collected at the rate of 1% of the capital cost of the bay in the

year of commissioning with an escalation of 4% per annum in the subsequent years up to 08.04.2014 and with an annual escalation of 5.72% per annum from 09.04.2014.

The capital cost of the bay is as per the respective approved B.P. Of the fossil fuel based private generators for their grid connectivity with grid.

Superintending Engineers EDCs concerned shall execute an addendum to this effect in the existing grid connectivity agreement and issue demand notice to the fossil fuel based generators for collecting the annual O&M charges.

The generators shall remit the annual O&M charges to TANTRANSCO SBI collection account in the respective account head."

11. Section 56(2) of the Electricity Act 2003 reads as follows:-

"**56. Disconnection of supply in**

default of payment

(1) ...

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

12. The expression "first due" occurring in the above provision was considered by the Hon'ble Apex Court in the decision reported in ***(2020) 4 SCC 650 (Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited and Anr. Vs. Rahamatullah Khan alias Rahamjulla)***. In the aforesaid decision, the Hon'ble Apex Court held as follows:-

" 6.9. The liability to pay arises on the consumption of electricity. The obligation to pay would arise when the bill is issued by the licensee company, quantifying the charges to be paid. Electricity charges would become “first due” only after the bill is issued to the consumer, even though the liability to pay may arise on the consumption of electricity.

...

7.5. The period of limitation of two years would commence from the date on which the electricity charges became “first due” under sub-section (2) of Section 56. This provision restricts the right of the licensee company to disconnect electricity supply due to non-payment of dues by the consumer, unless such sum has been shown continuously to be recoverable as arrears of electricity supplied, in the bills raised for the past period. If the licensee company were to be allowed to disconnect electricity supply after the expiry of the limitation period of two years after the sum became “first due”, it would defeat the object of Section 56(2).

...

> 8. Section 56(2) however, does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of two years. It only restricts the right of the licensee to disconnect electricity supply due to non-payment of dues after the period of limitation of two years has expired, nor does it restrict other modes of recovery which may be initiated by the licensee company for recovery of a supplementary demand."

13. This decision was considered in a subsequent decision of the Hon'ble Apex Court reported in ***2021 11 Scale 743 (M/s.Prem Cottex V. Uttar Haryana Bijli Vitran Nigam Ltd., and Others)***. It was held therein that if a licensee discovers in the course of audit or otherwise that a consumer has been short billed, the licensee is certainly entitled to raise a demand. So long as the consumer does not dispute the correctness of the claim made by the licensee that there was short assessment, it is not open to the consumer to claim that there was any deficiency.

14. The decision in ***Prem Cottex*** case rendered by

the Hon'ble Supreme Court of India is in consonance with the decision of the Delhi High Court in ***H.D.Shourie V. Municipal Corporation of Delhi (1987 SCC OnLine Del 151)***. In the said case also, it was held that the expression “first due” as occurring in the corresponding provision in the Electricity Act 2010 would refer to liability only after the submission of the bill and the raised demand of the licensee and not earlier. In ***Prem Cottex*** case also, it was held that if the licensee has not raised any bill, there cannot be any negligence on the part of consumer to pay the bill and consequently, the period of limitation prescribed under Sub-section (2) of the Act will not start running. So long as limitation has not started running, the bar for recovery and disconnection will not come into effect. In W.P.No.21007 of 2019 dated 08.03.2022, there is no reference to ***Prem Cottex*** decision.

15. Respectfully adopting the ratio laid down in ***Prem Cottex*** case, I hold that the respondents are entitled to demand for payment of bay maintenance charges from 23.12.2017 when the board proceedings were issued. Since there was no quantification of the liability by the respondents

even before the said date, the respondents cannot call upon the petitioner to pay bay maintenance charges for the period prior to 23.12.2017. With effect from 23.12.2017 the petitioner is bound to pay bay maintenance charges. However, the liability of the petitioner became first due only after the impugned demand notice dated 19.01.2022 was passed confirming the demand set out in the show cause notice dated 01.02.2021. Relief is granted to the petitioner from payment of bay maintenance charges for the period prior to 23.12.2017. The petitioner is obliged to pay bay maintenance charges for the period with effect from 23.12.2017. The impugned demand notice is interfered with to this extent. This writ petition is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

04.12.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU

G.R.SWAMINATHAN,J.

PMU

To:

1. The Chairman-cum-Managing Director,
   TANGEDCO, NPKRR Maaligai,
   No.144, Anna Salai, Chennai – 600 002.

2. The Superintending Engineer,
   Thirunelveli Electricity District Circle,
   Tirunelveli District-11.

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