



W.P.(MD) No.1919 of 2014

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.01.2023

PRONOUNCED ON : 22.02.2023

CORAM:

THE HON'BLE MR.JUSTICE K. KUMARESH BABU

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and

W.M.P.No.1 of 2014

PRP Exports,
EHTSC No.183, Therkutheru Village,
Melur Taluk, Madurai Repd. by its
Partner P.Suresh Kumar.

... Petitioner

Vs

1.The Chairman
Tamil Nadu Generation and Distribution
Corporation Limited (TANDEGDCO),
144, Annasalai,
Chennai – 600 002.

2.The Superintending Engineer,
Madurai Electricity Distribution Circle,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Madurai – 7.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, calling for the records relating to the letter No.SE/MEDC/MDU/EE/GL/AEE/GL/AE/F HTDKT/D.2108/13 dated 13.12.2013 and letter No.SE/MEDC/MDU/EE/GL/AEE/GL/AE/F HTDKT/ D. 44/13 dated 07.01.2014 (wronlgy typed as 7.1.2013) in respect of EHTSC No.183 of the petitioner herein, quash the same and consequenlty direct the 2nd respondent to restore the petitioner's application for additional demand of 4000 KVA for the said EHT SC No.183 of the petitioner herein.

For Petitioner : Mr.S.P.Parthasarathy
for Mr.R.S.Pandiyaraj

For Respondents : Mr.S.Deenadhayalan
Standing Counsel for R1 & R2

ORDER

This Writ Petition has been filed seeking to quash the letters dated 13.12.2013 and 07.01.2014 issued by the 2nd respondent and consequentially direct the respondent to restore the petitioner's application for additional demand of 4000 KVA for the service connection in EHT SC No.183 being enjoyed by the petitioner.



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2. Heard Mr.S.P.Parthasarathy, learned counsel appearing for the petitioner and Mr.S.Deenadhayalan, learned Senior Counsel appearing for the respondents

3. Learned counsel for the petitioner would submit that the petitioner is carrying on the manufacture and export of world class granite and have been sanctioned the service connection in H.T.SC No.183 by the 2nd respondent. The petitioner has been issued with a demand capacity of 10050 KVA and since, the requirement of power was more, the petitioner had made an application for additional power of 4000 KVA vide their application dated 12.12.2011. The 2nd respondent by his communication dated 20.12.2011, referring to the application made by the petitioner had called upon the petitioner to pay a sum of Rs. 2,61,600/- (Rupees Two Lakhs Sixty One Thousand and Six Hundred Only) for exceeding quota and also a sum of Rs.37,640/- (Rupees Thirty Seven Thousand Six Hundred and Forty Only) towards short levy of E.Tax. with a threat that unless and untill the aforesaid standing dues are paid, the application of the petitioner would not be considered. The petitioner had originally challenged the said demand in W.P.(MD)No.14788 of 2011 which came to be dismissed together in a batch of Writ Petitions by order of the Court dated 15.03.2012 and hence, the



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petitioner had complied with the demand made by the 2nd respondent in his communication dated 20.12.2011. Thereafter, by communication dated 13.06.2012, the 2nd respondent had directed the petitioner to shift the metering point within a distance of 30 meters from the main gate for clear visibility and accessibility. The said communication was complied with By further communication dated 06.12.2012, the 2nd respondent had called upon the petitioner to remit a sum of Rs.32,00,500/- (Rupees Thirty Two Lakhs Five Hundred only) in favour of the Board towards the registration charges and Earnest Money Deposit. The petitioner has also complied with the said communication and had intimated the same to the 2nd respondent by his representation dated 11.07.2012 enclosing the receipt evidencing the aforesaid demand.

4.While that being so, the District Administration, Madurai had sealed the property of the petitioner and had also taken steps to prohibit the petitioner from carrying on its operation. The bank accounts of the petitioner had also been frozen with effect from 09.08.2012, due to which the entire industrial operation have come to a stand-still. Due to the stoppage of production and freezing of the



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bank account, the petitioner was not able to pay the current consumption charges for the month of August 2012 and by communication dated 10.09.2012, the 2nd respondent had issued a notice of disconnection and the power supply to the petitioner company was disconnected on 29.09.2012. By communication 12.06.2012, the 2nd respondent had addressed a letter to the petitioner herein stating that the service connection of the petitioner had been disconnected for non-payment of consumption charges and that the application of the petitioner is also pending for a prolonged duration and had therefore, called upon the petitioner to get the service connection, reconnected within 15 days failing which the request for the additional loan would be cancelled and the Earnest Money Deposit or Rs.32,00,500/- (Rupees Thirty Two Lakhs Five Hundred Only) will be forfeited as per Clause 34(4) of the Tamil Nadu Electricity Distribution Code.

5.The petitioner had sent a detailed reply stating that the situation was not under the control of the petitioner and that he would not be able to make the reconnection effected in view of the sealing of the industrial premises of the petitioner and sought to drop action of forfeiture of the Earnest Money Deposit. He would further submit that the 2nd respondent by further communication dated



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13.12.2013 had intimated the petitioner that in view of the petitioner not effecting the service connection as contemplated under the Distribution Code had cancelled the additional demand and had forfeited the Earnest Money Deposit already paid. Again the petitioner had intimated the 2nd respondent about the predicaments in which the petitioner had been put in and had requested the application to be kept pending till the case of the petitioner against the District Administration are disposed. The said reply was rejected by the 2nd respondent by the impugned order dated 07.01.2014. Hence, the petitioner had approached this Court challenging the aforesaid communications dated 13.12.2013 and 07.01.2014.

6.Learned counsel for the petitioner would submit that the service connection of the petitioner had been disconnected for non-payment of current consumption charges. The non-payment of the current consumption charges by the petitioner was not of his own violation but for the fact that the industry of the petitioner had been sealed and the petitioner had not been permitted to carry on any operations whatsoever and his bank accounts have been freezed. This according to him was an unforeseen circumstances amounting to force majeure.



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7.He would submit that the petitioner is confident of success in his proceedings against the District Administration for taking various actions against the petitioner on unsustainable and unfound allegations. He would further submit that since, the electricity connection has already been disconnected, there is no question of availing of additional load and hence, therefore, the 2nd respondent cannot cancel the application and forfeit the Earnest Money Deposit.

8.He would further contend that the Earnest Money Deposit would only be forfeited if the petitioner had not shown his readiness and willingness to take the additional load. He would further submit that since, the petitioner is ready and willing to take the additional load subject to the result of the proceedings initiated by the District Administration. Hence, he would submit that the order impugned will have to be set aside and the respondent will have to be directed to keep alive the application filed by the petitioner subject to the result of the proceedings initiated by the District Administration.

9.He would further submit that the invocation of the Clause 34(4) of the



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Distribution Code would only arise when the petitioner had backed out by withdrawing the application given for additional load. In the present case, the petitioner had not made any application seeking to withdraw his request for additional load. He would also submit that the 2nd respondent had not issued any notice calling upon the petitioner to be ready to receive the additional load. When he had not issued such a notice, the invocation of Clause 34(4) of the Distribution Code for forfeiture of the amount is wholly illegal and on that ground alone, the communications impugned in this Writ Petition will have to be set aside. He would further contend that in the present scenario of the case, the Earnest Money Deposit paid by the petitioner would be treated as an additional security deposit to the original service connection availed by the petitioner.

10. Countering the arguments made by the learned counsel for the petitioner, Mr.S.Deenadhayalan, learned Standing Counsel for the respondents would submit that the respondent is at no fault in extending the additional load as demanded by the petitioner. He would also submit that the proposal of the petitioner have been forwarded to the headquarters for getting additional load sanction approval, pending this proposal, the petitioner's service connection have



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been disconnected on 29.09.2012 due to the non-payment of current consumption charges for the month of August 2012. In spite of the communication calling upon the petitioner to restore the service connection, the petitioner had not taken any steps to restore the service connection and therefore, his application is liable to be cancelled and the Earnest Money Deposit forfeited without any further notice as per clause 34(4) of the Distribution Code. The conduct of the petitioner would only show that he was not ready and willing to take the demanded additional load. He would further submit that the respondent had taken all necessary steps for granting the additional load as requested by the petitioner and the respondent Board had incurred the costs for providing such additional load. These costs would be recovered only by the forfeiture of the Earnest Money Deposit and hence, he would conclude his arguments stating that the petitioner for whatsoever reasons had not availed the additional load, in spite of being intimated and therefore, the Authorities have rightly forfeited the Earnest Money Deposit and seeks to dismiss this Writ Petition.

11.I have considered the rival submissions made by the learned counsel



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appearing on either side and perused the materials available on record before this Court.

12.The issue involved in this Writ Petition is as to whether the 2nd respondent was right in treating the application of the petitioner as cancelled and whether forfeiture of the Earnest Money Deposit was within the powers to be exercised under the Distribution Code.

13.It is an admitted case that the petitioner had made an application seeking for an additional load of 4000 KVA to the petitioner's industry. Pending that application, the petitioner was also directed to make an Earnest Money Deposit by invoking the provisions of Clause 34(1) of the Distribution Code.

14.It would be useful to extract the relevant provisions in the Distribution Code to examine the issue any further.

*Clause 31 - INSPECTIONS , TESTING AND EFFECTING
SUPPLY:*

(1) After completion of the wiring, notice must be sent to the Engineer by the intending consumer (upon printed test report form obtainable free of cost from the offices of the



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Licensee) that the installation has been completed and tested and that the same is complete and ready for inspection and test by the Engineer. Notice of the Engineer's intention to inspect and test the installation will be sent to the intending consumer who must be present or his/her competent representative at the time fixed to give information that may be necessary concerning the installation. 1[Upon executing / signing of the test report, a copy of the test report shall be given to the consumer].

(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.

(3)If the intending consumer fails to avail the supply within the above period, a further three months notice in case of HT and one-month notice in case of LT will be sent to the intending consumer to avail the supply. If he does not avail himself the supply during this notice period, the application will be treated as lapsed and cancelled in the case of Low Tension supply and the application shall be treated as cancelled, terminating the agreement, in the case of High Tension supply. The service connection charges and the Security Deposit /development charges, etc. except Meter Caution Deposit will be forfeited. In case the intending consumer could not avail the supply under force majeure conditions, the Security Deposit / development charges and meter caution deposit shall be refunded to the intending consumer.

(4)However, Licensees of the Distribution are delegated with powers to condone the delay on specific request from them if received before expiry of second notice period and to accord approval to effect supply any day after the date of expiry of second notice of availability of supply without forfeiture of development and other charges and cancellation of application subject to his/her consent to pay monthly minimum charges up



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(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.

(6) Requisition for supply or additional supply of electricity should be made in the prescribed form obtainable from the local office of the Licensee sufficiently in advance of the date of requirement of supply. Such Forms can also be made available in downloadable mode in the Licensee's website or allowed to be printed by others and made available in open market. The requisition should be made by the owner, or occupier, of the premises for which supply is required, and should indicate his / her full name and address. Any assistance or information required in filling up the form has to be given to the intending consumer at the local offices of the Licensee.

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Clause 34. EARNEST MONEY DEPOSIT:

(1) The applicants required to pay Earnest Money Deposit will be asked to pay Earnest Money Deposit along with registration fee for registration of application.

(2) This Earnest Money Deposit will be adjusted against the quantum of initial Security Deposit payable by the applicant before availing supply and balance amount if any shall be collected.

(3) In respect of High Tension applicant the Earnest Money Deposit payable will be equal to the quantum of initial Security Deposit.



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(4) If the applicant backs out after registration and payment of E.M.D. but before payment of Development charges, Service Connection charges and Meter Caution Deposit, then the application shall be cancelled and E.M.D. Forfeited.

(5) If the applicant backs out after payment of all charges and execution of agreement, the application shall be cancelled and agreement terminated forfeiting all amount remitted except meter caution deposit in the case of both High Tension and Low Tension.

(6) If the H.T. applicant who prefers to back out partially against the sanctioned demand before availing supply, then the above forfeiture rule may be applied proportionate to the demand backed out.

(7) The Earnest Money Deposit paid does not bear any interest until the date of service connection.

15.A reading of Clause 31(1) of the Distribution Code would show that when the intending consumer had made ready all the facilities for receiving the supply, he should intimate the same to the Engineer concerned for causing an inspection and to submit a Test Report. Based on a favourable Test Report, he should intimate the Board that he is ready to receive the supply. Thereafter, under Clause 31(2), the intending consumer should be called upon to receive the supply within the time stipulated therein. If the intending consumer fails to avail the supply, then as per Clause 31(3) the application shall be treated as cancelled and



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certain charges paid by the petitioner will be forfeited. The said Clause also provides that if the intending consumer could not avail the supply under certain force majeure conditions the deposits made by the intending consumer shall be refunded.

16.Clause 34(4) of the Distribution Code, which the respondent seeks to invoke provides that if the applicant/ the intending consumer backs out after registration and the payment of Earnest Money Deposit but before the payment of development charge, service connection charge and meter caution deposit then the application shall be cancelled and Earnest Money Deposit forfeited. With these relevant regulations, I would proceed to analyse the facts of the case.

17.In the present case, the petitioner had made an application to avail an additional loan of 4000 KVA. Pursuant to the demand made by the 2nd respondent, the petitioner had also made an Earnest Money Deposit of Rs. 32,00,500/-. Thereafter, the petitioner's proposal has been forwarded to the headquarters for sanctioning of the additional loan, that is where it stands. The petitioner on payment of the Earnest Money Deposit has expressed his readiness



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and willingness to avail his additional load, that is where the factual aspects stand on. The instances stipulated in Clause 31 of the Distribution code, thereafter, had not been followed. No inspection of the petitioner premises has been carried out by the Department as per Clause 31(1) has been made to ascertain the claim of the petitioner. The petitioner had not been issued with a notice in writing informing him that the supply is ready as per Sub Clause 2 of Cause 31 of the Distribution Code. Further, the petitioner had not backed out from his request to take additional load as stipulated under Sub Clause 4 of Clause 34.

18.The right to forfeit Earnest Money Deposit made by the petitioner would arise

(a) If the petitioner had failed to avail the supply, inspite of intimation to him that the supply is ready to avail.

(b)If the petitioner had backed out of his request.

19.In the instant case neither of the instances had occurred. There is no intimation of readiness to supply by the Board as per Clause 31(2). There has been no intimation by the petitioner that he is backing out of the proposal. The



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reason that the petitioner was unable to avail the supply is due to the certain action initiated against it by the District Administration on various allegations which are of subjudice either before the Authority or before the Court. I have already found that even in case, the intending consumer (petitioner) fails to avail supply in spite of the notice under Clause 31(2) due to a force majeure condition then Clause 31(3) mandates that the deposits shall be refunded.

20. Force majeure has not been defined under the Distribution core. The word force majeure in law would mean **"unforeseen circumstances that prevent from someone from fulfilling a contract"**. It would also taken to account infrastructural failures, human actions. Force majeure is an exception to what otherwise amount to breach of contract. In the present case, the petitioner factory has been sealed by the District Administration not permitting the petitioner to proceed any further, which according to him would also amount to a force majeure condition as the operation of the industry of the petitioner was not within his control.

21. As I have already held that the instances for forfeiture of the Earnest



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Money Deposit had also not been satisfied, I am of the view that the order forfeiting the Earnest Money Deposit made by the petitioner towards the demand of additional supply would not be correct. Since the cancellation of the request either under Section 31(1), 31(3) or 31(4) had not arisen. However, I also do not propose to issue a direction to direct the respondent to refund the Earnest Money Deposit. The respondents are permitted to retain the same subject to the outcome of the proceedings initiated by the District Administration against the petitioner. If the petitioner is successful in reopening the industry and carry on its business, it was always open to the petitioner to renew his request.

22.The Writ Petition is allowed to the extent indicated as above. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

*Index: Yes/no
Speaking/non-speaking
gba*

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To

- 1.The Chairman
Tamil Nadu Generation and Distribution
Corporation Limited (TANDEGDCO),
144, Anna Salai,
Chennai – 600 002.
- 2.The Superintending Engineer,
Madurai Electricity Distribution Circle,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Madurai – 7.



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K. KUMARESH BABU, J.

gba

order in
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