



Writ Appeal No.1859 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 02.02.2024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

Writ Appeal Nos.1859 to 1864 and 1896 to 1901 of 2011

Thiru Arooran Sugars Ltd.,
“Eldorado”, 5th Floor, by its Chairman,
134, Nungambakkam High Road,
Chennai – 34. ... Appellant

Vs

- 1.The State of Tamil Nadu,
Rep., by Principal Secretary to Govt.,
Department of Industries,
Fort., St., George,
Chennai – 9.
- 2.Tamil Nadu Electricity Board,
Rep., by its Chairman,
800, Anna Salai, Chennai -02.
- 3.Union of India,
Rep., by its Secretary,
Ministry of Non-Conventional
Energy Sources,
Block No.14, C.G.O., Complex,
Lodi Road, New Delhi – 100 003. ... Respondents



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COMMON PRAYER: Writ Appeals have been filed under Clause 15 of Letter Patent against the order dated 06.06.2011 made in W.P.Nos.20820, 20821, 20624 to 20629, 20730 to 20733 of 2010.

For Appellants : Mr.Rahul Balaji for
W.A.Nos.1859 to 1864 of 2011
Mrs.Nalini Chidambaram Sr., Counsel for
Mrs.C.Uma for W.A.Nos.1896-1901 of 2011

For Respondents : Mr.P.S.Raman Advocate General
Assisted by Mr.R.Kumaravel AGP for R1 in
all W.As.
Mr.P.S.Raman Advocate General
Assisted by Mr.Arun Kumar for R2 in all W.As
Mr.J.Madanagopal Rao for R3 in all W.As.

COMMON JUDGMENT

(Order of the Court was made by Mr.K.KUMARESH BABU.,J.)

These Intra-Court Appeals had been preferred by the unsuccessful Appellants, who are sugar industries wherein Writ Petitions had been rejected by the learned Single Judge.

2. Heard Mrs.Nalini Chidambaram Senior Counsel appearing for Mrs.C.Uma learned counsel for the appellant in W.A.Nos.1896 to 1901 of



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2011 and Mr.Rahul Balaji learned counsel appearing for W.A.Nos.1859 to 1864 of 2011 and Mr.P.S.Raman learned Advocate General Assisted by Mr.R.Kumaravel, learned counsel appearing for the first respondent and Assisted by Mr.Arun Kumar learned counsel appearing for second respondent and Mr.J.Madanagopal Rao, learned counsel appearing for the third respondent.

3. Mrs.Nalini Chidambaram, learned Senior counsel appearing for the appellant would submit that the appellants are all sugar manufacturers. The first respondent herein had issued a Government Order in G.O.Ms.No.230, Industries (MIC – I) Department, dated 16.06.1993. The main purpose of the said Government Order was to evolve the methodology for pricing of electricity purchased by the Tamil Nadu Electricity Board from Sugar Mill Co-Generating Unit. She would submit that as per the Government Order, the price that has to be paid by the Sugar Industries, who are co-generating electricity was to be at the price equal to HT-I tariff charge for industrial consumers less 2% for transmission charges. But however, the second respondent herein by its Board Proceedings impugned in the Writ Petitions of the year 1995 had fixed the charges at Rs.2.25 per unit. According to her,



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the HT-I tariff charge for industrial consumers are more than the amount fixed under the Board Proceedings that had been impugned and she would submit that pursuant to the Government Order only, the appellants all have put up a co-generation plants. The Board Proceedings impugned has taken away the benefit that had been given under the Government Order, since the HT-1, tariff charge for industrial consumers was much more than the amount specified in the Board Proceedings issued by the respondent. She would further submit that the Electricity Board being the arm of the Government is bound by the Government Orders and they cannot unilaterally without the consent of the Government modify the benefit that had been given under the Government Order.

4.She would further submit that the appellants all have put up a co-generation unit, only based upon the concession that had been given under the Government Order and therefore, any Board Proceedings contrary to the Government Order would be prejudicial to their interest. She would submit that however, the learned Single Judge without considering this aspect had held that the appellant having entered into a Power Purchase Agreement consciously accepting the price given under the Board



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Proceedings impugned herein, would be estopped from challenging the same. She would further submit that the learned Single Judge had held that the appellants all have approached the Court much belatedly and therefore, all their claims would have to be also rejected on the ground of laches. She would further submit that there is no laches on the part of the appellant in approaching this Court having after entered into Power Purchase Agreement, the appellants all have been making efforts with the respondents to pay the price as per the Government Order and not as per the Board Proceedings. No response had been evoked to the various representations given by the appellants and therefore, the appellants all have approached this Court. Therefore, she would contend that there is no delay on the part of the appellants for the learned Single Judge to hold the same is hit by laches. She would further submit that the learned Single Judge had held that the Government Order is in nature of the guidelines that will not bind the Electricity Board in arriving at a different price. She would submit that the appellants have all put up their co-generation unit, pursuant to the Government guidelines based upon the report of the committee to which the Electricity Board was also a member and therefore, they cannot



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wriggle out by contending that they could fix the price different to the amount prescribed under the Government Order and hence, she would seek interference of this Court.

5.Mr.Rahul Balaji learned counsel appearing for the appellants would submit that he would adopt the arguments of the learned Senior counsel for the appellants. He would submit that the Government Order came to be passed by the Government in the year 1993, based upon which the appellants had all installed their co-generation unit. However, by subsequent Board Proceedings, which had been made without the permission of the Government, the Electricity Board had unilaterally refixed the rates payable to the Co-Generating unit of the Sugar Mills, which is therefore contrary to the Government Order, which had been made. He would further submit that the Tamil Nadu Electricity Board being the authority was in a dominant position to dictate the terms on which the Power Purchase Agreement would have to be entered, since the appellants all have installed the Co-Generating Unit based on the Government Orders and had spent huge amount in such installation were forced to execute the Power



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Purchase Agreement. This unequal bargaining power had put the appellants all in a disadvantage except to sign on the clothed terms. He would submit that this aspect had been raised by the appellants, had not been considered by the learned Single Judge and therefore, he would seek interference of this Court.

6.Mr.P.S.Raman, learned Advocate General appearing for the respondents 1 and 2 would submit that the appellants herein all even though had installed the Co-Generation units, pursuant to the Government Orders without any whisper or protest had entered into the Power Purchase Agreement with the Tamil Nadu Electricity Board agreeing for a lesser price. Such a conduct of them would only presuppose that they have all waived their right to claim higher amount, as prescribed under the Government Order. When they have agreed upon a lesser price under the Power Purchase Agreement as per the Board Proceedings without any protest, they cannot be now heard to claim that the Board Proceedings impugned in these Writ Petitions are all bad as they are contrary to the Government Orders which they are bound to follow.



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7.He would further submit that the first Board Proceedings that has been impugned in this Writ Petition was made in the year 1995 and the further order that has been impugned had increased the price under the Board Proceedings is of the year 2000. The appellants all having agreed to receive the price fixed by the Board under the various Board Proceedings cannot now turn back and contend that such price fixation is bad, as it would amount to varying the terms of the Power Purchase Agreement. Therefore, he would submit that not only they have approached this Court belatedly, but they have also estopped from challenging the Board Proceedings.

8.He further relied upon the judgment of the Hon'ble Apex Court in the case of ***Union of India vs. Association of Unified Telegram Service Providers of India***, reported in ***(2020) 3 SCC 525*** and contend that in the matter of commercial contracts doctrine of unconscionable bargaining is not applicable. Therefore, he would submit that there is no infirmity in the order impugned in these Writ Appeals and would seek this Court to dismiss the Writ Appeals.



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9. We have heard the submissions made by the learned counsels appearing on either side and perused the materials placed on record.

10. First we shall deal with as regards to the findings of the learned Single Judge that all the Writ Petitions are also hit by latches. With due respect to the learned Single Judge, we conclude to differ from his decision, since it is not disputed by the respondents namely the respondents 1 and 2 that there has been representations by the respective Sugar Mills which had come into existence after 1995. Based on the said representations made by them, they approached this Court. In such circumstances, the principles of latches/delay should not have been invoked by the learned Single Judge. In such view, we set aside the reasoning by the learned Single Judge in holding that the appellants claim is hit by latches or delay.

11. It is an admitted fact that the Government had issued a Government Order in the year 1993 to encourage Sugar Mills to set up a Co-Generating Unit. As per the aforesaid Government Order, the pricing of the



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Electricity to be supplied by such Sugar Mills was fixed at a price equal to

HT-I Tariff charged for industrial consumers less 2% transmission cost.

This price had been fixed at Rs.2.25ps, per unit by the Electricity Board and Rs.2.73ps per unit by two Board Proceedings of the year 1995 and 2000 respectively. The said Board Proceedings have been impugned by the Sugar Mills apart from other reliefs.

12. It is also to be noted that it is an admitted fact that the appellants Sugar Mills have all entered into a separate Power Purchase Agreement with the Electricity Board. In the said agreement, they have all agreed to receive a price as fixed by the Electricity Board in their Board Proceedings. Having entered into such Power Purchase Agreement, the appellants all have waived their right to receive the better pricing under the Government Order. It is not the case that the Board Proceedings were beneficial to them, as it had given the higher price than the Government Order. Even when they had entered the said Power Purchase Agreement consciously that they were aware that the Board Proceedings impugned herein had prescribed a price lower than the price of the HT-I supply to the Industrial establishments. In such an event, it could only be safely pre-



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sumed that they have waived their right to receive an higher price.

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13. As rightly pointed out by the learned Advocate General that the unconscionable bargaining cannot be applied to a commercial contract. Further till 2000, they have also not raised their little finger on the pricing made by the Tamil Nadu Electricity Board. In such circumstances, we do not find any error or infirmity in the reasoning assigned by the learned Single Judge to come to a conclusion that the appellants are all estopped in challenging the Board Proceedings by coming to a conclusion that they have all waived their right.

14. Since we have held that the learned Single Judge is right in holding that the appellants have estopped from approaching this Court, we hold that the Writ Appeals have to necessarily fail.

15. In fine, these Writ Appeals fails and accordingly the same are dismissed. However, there shall be no order as to costs.



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(R.S.K.,J.)

(K.B., J.)

02.02.2024

Index: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

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To

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