IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.9980 of 2007
and M.P.No.1 of 2007

M/s. Rajan Spinning Mills Private Limited ... Petitioner

Vs.

1. The Union of India,
Rep. by the Secretary,
Department of Energy,
New Delhi.

2. The State of Tamil Nadu,
Rep. by the Secretary,
Department of Energy,
Fort St., George,
Chennai – 600 009.

3. The Tamil Nadu Electricity Board,
Rep. by the Chairman,
800, Anna Salai,
Chennai – 600 002.

4. The Superintending Engineer,
TNED – Salem Distribution Circle,
Salem – 636 106.

5. The Tamil Nadu Electricity Regulatory Commission,
Rep. by the Secretary,

17, Third Main Road,
Seethammal Colony, Alwarpet,
Chennai – 600 018. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring that the clause 20.02 of the Terms and Conditions of supply of electricity of Tamil Nadu Electricity Board in operation upto 31.08.2004 levying and collection of belated payment surcharge 1.5 percent per month (18% per annum) as well as 3% per month (36% per annum) while availing extension of time, is excessive, arbitrary, unreasonable, discriminatory violative of Article 14 and 19(1)(g) of the Constitution of India and consequently direct the third and fourth respondents to refund the BPSC collected from the petitioner from April 1998.

For Petitioner	: Mr.S.Rajesh for Mr.S.Sivanandam
For R1	: Mr.J.Madanagopala Rao, Special Government Pleader
For R2	: Mr.P.Balathandayutham, Special Government Pleader
For R3 to R5	: Mrs.Daniel Mary, SC for TANGEDCO

O R D E R

The short point involved in the present Writ Petition is a challenge to the validity of the interest levied by the respondents herein on the belated payment of Surcharge at the rate of 18% per annum.

2. The learned counsel for the petitioner by relying upon the Division Bench decision of this Court in **(2008) 5 MLJ 559**, submitted that this Court had dealt with the percentage imposed for such belated payment of Surcharge and held that the interest rate of 12% would be the appropriate interest rate and not 18%.

3. The learned Special Government Pleader for the respondents, on the other hand, relied upon two decisions of the Hon'ble Apex Court reported in **(1979) 4 SCC 560** and **(1997) 5 SCC 772** and submitted that the petitioner is liable to pay Surcharge at the rate of 1.5% from the date of charges till due.

4. The Hon'ble Division Bench of this Court in the aforesaid decision in **(2008) 5 MLJ 559** had modified the interest rate from 18% to 12% per annum on the levy of Surcharge by discussing various Judgements of the Hon'ble Apex Court including the two decisions cited by the learned Standing Counsel for the respondents. The relevant portions of the said orders reads as follows:

5. We have heard Mr. P.S. Raman, learned

Additional Advocate General, appearing for the respondent Electricity Board. He would submit in his argument that the Superintending Engineer is empowered to extend the time for the payment with a levy of surcharge at 3% per month and the non payment of the consumption charges even beyond the said period would attract 3% surcharge on belated payment and however, the consumers those who do not seek for extension of time but are paying the payments belatedly would get attracted with class 20.02 of the Terms and Conditions which prescribes only 1.5% towards surcharge. The learned Additional Advocate General would further submit that the terms and conditions of supply of electricity to the High Tension customers have been enacted by the 3rd respondent as per the powers conferred on it under Section 49 of the Electricity (Supply) Act 1948 and the payment of surcharge at 1.5% per month was also fixed for the purpose of avoiding the payments to be made by consumers in time without any delay. He would also *submit in his arguments that the validity of clauses 20.02, 20.03 and 20.05 were questioned before this Court in various writ petitions and a Division Bench of this Court had considered the validity of the terms and conditions, including the clauses therein, and had upheld the clauses 20.02, 20.03 and 20.05 in a judgment reported in* ***2004 W.L.R. 307 (M/s.Sri Krishna Smelters (P) Ltd. vs. The Chairman, Tamil Nadu Electricity Board and another****) and therefore, the petitioners cannot question the validity of those clauses once again as the said judgment will bind the petitioners as well and the consumers who have made belated payments are liable to pay the surcharge at 1.5%. He would further submit in his argument that the order of paying enhanced tariff by the Court did not prohibit any levy of interest as per the terms and conditions in force and the learned single Judge had correctly come to the conclusion of applying the principle laid down in* ***1997 (7) S.C.C. 89****, cited supra, and to disallow the claim of the petitioners. He had also drawn the attention of the Court* *to the judgment reported in* ***1979 (4) S.C.C. 560 [Adoni Ginning Factory vs. Andhra Pradesh Electricity Board, Hyderabad]*** *and also the judgment reported in* ***1996 (1) S.C.C. 597 [Kerala State Electricity Board and another vs. M.R.F. Ltd.]*** *and* ***1997 (5) S.C.C. 772 [Kanoria Chemicals and Industries Ltd. and others vs. U.P. State Electricity Board and others]****. He had also drawn the attention of the Court to a judgment of the Andhra Pradesh High Court reported in* ***A.I.R. 2002 A.P. 493 [M/s.Nava Bharath Ferro Alloys Ltd. vs. A.P.S.E.B. and others]*** *in support of his case that it is a settled law that when a party apply and obtains a stay from the Court of law, it is always at its own risk and responsibility and mere passing of an order of stay cannot be presumed to be a conferment of any additional right upon the litigant public. Therefore, the learned Additional Advocate General would submit that the judgment of the learned single Judge is perfectly in accordance with law and, therefore, there is no necessity to interfere with the same.*

He would also add that the same ratio is applicable to the petitioners also and therefore the writ petitions are also liable to be dismissed along with the writ appeals.

9. In this context, we have to follow the dictum of our Supreme Court, The judgment of the Apex Court reported in ***1997 (7) S.C.C. 89 Style (Dress Land) vs. Union Territoy, Chandigarh]*** *would run as follows :*

15... It is a settled principle of law that as and when a party applies and obtains a stay from the Court of law, it is always at the risk and responsibility of the party applying. Mere passing of an order of stay cannot be presumed to be the conferment of any additional right upon the litigating party. This Court in ***Sri Chamundi Mopeds Ltd. Vs. Church of South India Trust Association [1992 (3) S.C.C. 1]*** *held that the said portion of order by the Court means only that such order would not be operative from the date of its passing. The order would not mean that the order stayed had been whipped out from* *existence. The order of stay granted pending disposal of a case comes to an end with the dismissal of a substantive proceeding and it is the duty of the Court in such cases to put the parties in the same position they would have been but for the interim orders of the Court. Again in* ***Kanoria Chemicals and Industries Ltd. Vs. U.P. SEB [1997 (5) S.C.C. 772]*** *the Court held that the grant of stay had not the effect of relieving the litigants of their obligation to pay late payment with interest on the amount withheld by them when the writ petition was dismissed ultimately. Holding otherwise would be against the public policy and interest of justice. In* ***Kashyup Zip Industries vs. Union of India [1993 Supp. (3) S.C.C. 493]*** *interest was awarded to the revenue for the duration of stay under the Courts order, since the petitioners therein were found to have the benefit of keeping back the payment of duty under orders of the Court. Similarly, it is also found in the judgment of the Supreme Court reported in* ***1979 (4) S.C.C. 560 [Adoni ginning Factory and others vs. The Secretary, Andhra***

Pradesh Electricity Board, Hyderabad and others] *that, 5. Surcharge was claimed for the period during which the appeals were pending in the Supreme Court since the Supreme Court did not stay the operation of the G.O. No: 187 but only restrained the Board from collecting the arrears. That no stay of G.O. No; 187 was ever intended to be granted by the Supreme court is also clear from the circumstance that there was no injunction restraining the Electricity Board from collecting future charges at the enhanced rates. The Electricity Board was, therefore, right in claiming surcharge for the period during which the appeals were pending in the Supreme Court and not claiming surcharge for the period during which the writ petitions and writ appeals were pending in the High Court. The judgment reported in* ***1997 (5) S.C.C. 772, [Union of India and another vs. Delhi Cloth and General Mills Co. Ltd. and another]*** *is to the effect that, Stay of operation of order or notification only means the order or notification which has been stayed would not be operative from the* *date of passing the stay order and it does not mean that the order or notification has been whipped out from existence. An order of stay granted pending disposal of a writ petition / suit are other proceeding, comes to an end with the dismissal of the substantive proceeding and it is the duty of the Court in such a case to put the parties in the same position they would have been but for the interim orders of the Court.*

13. Therefore, we find no defect in the judgment of the learned single Judge except the quantum of interest at 18% per annum. Therefore, modifying the said interest rate from 18% per annum to 12% annum, the levy of surcharge is sustained. Accordingly, the writ appeals as also the writ petitions stands disposed of with the aforesaid modification in the rate of interest. Consequently, connected miscellaneous petitions are closed. No costs.

5. Since the decisions relied upon by the learned Special Government Pleader for the respondents have already been considered and distinguished

by the Division Bench of this Court in the aforesaid order, I am of the view that the interest rate at the rate of 1.5% per annum imposed by the respondents herein on the belated payment of Surcharge is opposed to the aforesaid law laid down.

6. Consequently, the impugned proceedings in Lr.No.SED/ RCS/HT/HT SC.No.120/F.E.Tax case/07 dated 23.02.2007, levying 18% interest on the belated payment of Surcharge calculated at the rate of 18% per annum alone, is set aside. The respondents herein are directed to issue a revised demand of calculation on the belated payment of Surcharge at the rate of 12% per annum to the petitioner herein. On receipt of such a demand made, the petitioner shall make the payment within four weeks from the date of receipt of such demand of calculation.

7. With the above observations, the Writ Petition stands disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

29.01.2024

skr
Index : Yes
Speaking order

Neutral Citation : Yes

To

1. The Secretary to the Union of India,
   Department of Energy, New Delhi.

2. The Secretary,
   The State of Tamil Nadu,
   Department of Energy,
   Fort St., George,
   Chennai – 600 009.

3. The Chairman, The Tamil Nadu Electricity Board,
   800, Anna Salai, Chennai – 600 002.

4. The Superintending Engineer,
   TNED – Salem Distribution Circle,
   Salem – 636 106.

5. The Secretary,
   The Tamil Nadu Electricity Regulatory Commission,
   17, Third Main Road,
   Seethammal Colony, Alwarpet,
   Chennai – 600 018.

S.M.SUBRAMANIAM, J.

skr

W.P.No.9980 of 2007

29.01.2024