IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 24.06.2024

Orders Pronounced on : 30.07.2024

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.10551 of 2021
and
W.M.P. Nos. 11138 and 11139 of 2021

Tagros Chemicals India Pvt. Ltd.,
Represented by its Director,
"Jhaver Centre", 4th Floor,
Rajah Annamalai Building,
No. 72, Marshalls Road, Egmore,
Chennai – 600 008. ... Petitioner

Vs

1. The Executive Engineer,
TANGEDCO,
O & M/Cuddalore Division,
No. 6, Rivier Side Road,
Cuddalore – 607001.

2. The Assistant Executive Engineer/Town/
South/Cuddalore,
Cuddalore Electricity Distribution Circle,
TANGEDCO, Periya Koil Street,
Thirupapuliyur – 607 002.

3. The Assistant Engineer,
   TANGEDCO,
   Rural/North/OT/Cuddalore,
   Cuddalore.

4. The Assistant Executive Engineer/General,
   TANGEDCO,
   Central Office, O/o SE/CEDC/Cuddalore,
   230, KV Auto SS Campus,
   Capper Hills, Cuddalore – 607 004.

5. The Superintending Engineer,
   Cuddalore Electricity Distribution Circle TANGEDCO,
   230, KV Auto SS Campus,
   Capper Hills, Cuddalore – 607 004.

6. M/s. Pentafour Products Limited,
   Represented by its Chairman & Managing Director V.Ramakrishnan,
   New No. 39-B, Thirumurugan Complex,
   5th Cross Street, Trustpuram, Kodambakkam,
   Channai – 600 024. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first to fifth respondents comprised in impugned Notice dated 05.11.2020 bearing ref No. Lr. No. SE/CEDC/CUD/DFC/AO/REV/AS/F.HTSC. No. 83/D. No. 1051/2020, dated 05.11.2020 and quash the same and direct the first to fifth respondents to refund the amount of Rs.26,96,156/- paid 'under protect' by the petitioner.

For Petitioner : Mr.Rahul Balaji

For Respondents : Mr. V.Venkata Sesaiah,
Standing Counsel (for R1 to R5)

Mr. T.K.Baskar (for R6)

O R D E R

Heard Mr. Rahul Balaji, learned counsel for the petitioner, Mr. V.Venkata Sesaisah, learned Standing Counsel for the first to fifth respondents and Mr. T.K.Baskar, learned counsel for the sixth respondent and perused materials placed on record, apart from the pleadings of the parties.

2. This Writ Petition has been filed challenging the notice dated 05.11.2020 issued by the fifth respondent, thereby ordering the remittance of the balance outstanding consumption charges arrears of Rs. 26,96,061/-.

3. The petitioner, engaged in manufacturing and marketing several key agrochemicals intermediates and pesticides, has established a chemical

unit at Plot Nos. A-4/1, 4/2, 4/4 & 4/5, Sipcot Industrial Complex, Pachayankuppam, Cuddalore – 607 005. The petitioner obtained an electricity service connection for the said unit under HTSC No. 83 in 1993. The sixth respondent's unit, adjacent to the petitioner's plot, is located at Plot No. A3/1, comprising an extent of 5.38 acres in Sipcot Industrial Complex, and has an electricity service connection bearing HTSC No. 98. After closing its unit, the sixth respondent transferred the leasehold rights in favor of the petitioner. To set up a new project on the leased plot, the petitioner submitted an application to the fifth respondent seeking an additional 5KW power load on the existing HTSC No. 83, obtained for the petitioner's unit. On receipt of the same, the fifth respondent issued a notice dated 05.11.2020, directing the petitioner to pay the outstanding amount of Rs. 26,96,061/- in respect of the electricity connection in HTSC No. 98, still in the name of the sixth respondent.

4. The learned counsel for the petitioner submitted that the petitioner applied for an additional 5KW power load on the existing electricity service connection in HTSC No. 83, and there are no dues from

the said electricity service connection so far, as the petitioner is regular in paying current consumption charges. Therefore, the dues in respect of the adjacent site, which was originally leased out in favor of the sixth respondent, are in no way connected to the petitioner's HTSC service connection.

5. Admittedly, the said outstanding electricity charges were consumed by the sixth respondent. The petitioner, under compulsion, paid the said amount for getting the additional load under protest. However, on receipt of the said amount, the respondents did not provide the additional 5KW load to the petitioner's electricity service connection. He further submitted that the respondents failed to act in accordance with the provisions of Section 43(1) of the Electricity Act, 2003 (hereinafter referred to as 'the Act' for short), by not providing the additional 5KW load in HTSC No. 83 after receiving the application from the petitioner. The Act states that, save as otherwise provided in this Act, every distribution licensee shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises within one month after receipt of the application

requiring such supply.

6. However, upon receipt of the application from the petitioner, the fifth respondent issued the impugned notice dated 05.11.2020, thereby demanding electricity consumption charges that were consumed by the erstwhile lessee. He further submitted that the petitioner did not apply for an electricity service connection for the plot leased out in favor of the petitioner by the sixth respondent. Moreover, the petitioner did not apply for any additional load in HTSC No. 98, which was disconnected as early as 24.12.2000. The petitioner was informed that, as per clause 17(9)(a) of the Tamil Nadu Electricity Supply Code, the demand was made in respect of arrears of consumption charges of the sixth respondent. However, the said provision was inserted only on 18.03.2011, and as such, the said provision does not apply to the petitioner's case. Since the electricity service connection in HTSC No. 98 stands in the name of the sixth respondent and the same was disconnected and closed as early as 24.12.2000.

7. Further, the demand itself is barred by limitation as per Section 56(2) of the Act, which states that arrears of electricity consumption charges

are recoverable within a period of two years from the due date. However, the fifth respondent issued demand for arrears of consumption charges pertaining to the year 2000. Non-payment of consumption charges led to the disconnection of the electricity service connection in HTSC No. 98 as early as 24.12.2000. After a period of 20 years, the present demand has been made, and that too, against the petitioner. In order to claim arrears of electricity connection consumption charges, as per Section 56 of the Act, the outstanding sum must be shown to be continuously recoverable as arrears of charges for electricity supply, and the license shall not cut off the supply of electricity. Therefore, the impugned demand is hopelessly barred by limitation.

8. The sixth respondent filed a counter affidavit, and the learned counsel for the sixth respondent supported the case of the petitioner. He further submitted that the sixth respondent obtained electricity service connection in HTSC No. 98 in 1990 for its unit at Plot No. A3/1, measuring an extent of 5.38 acres of land in Sipcot Industrial Complex, Panchayankuppam Taluk, Cuddalore District. Even according to the first to

fifth respondents, the sixth respondent was in arrears of Rs. 5,78,554/- as consumption charges, which was raised in 1999. Due to non-payment of consumption charges, the electricity service connection was disconnected on 24.12.2000. However, the first to fifth respondents failed to raise any electricity bill against the sixth respondent until 2019. After a period of 19 years, a demand notice was served on one of the Directors of the sixth respondent, demanding a sum of Rs. 5,78,554/- as arrears of consumption charges and a surcharge of Rs. 19,78,655/-, totaling Rs. 25,57,209/-, failing which the said charges would be collected from the Director's personal property electricity service connection. Therefore, the sixth respondent challenged the said demand notice before this Court in W.P. No. 5792 of 2020 on the grounds that the demand itself was barred by limitation as contemplated under Section 56(2) of the Act, and it cannot be linked with the Director's personal electricity service connection. Both grounds were accepted by this Court, and by order dated 06.03.2020, this Court directed the first to fifth respondents not to collect the said amount and not to link HTSC No. 98 with the sixth respondent's personal electricity service connection. Moreover, the first to fifth respondents failed to notify the arrears of consumption charges in the demand for the past 19 years.

9. On a perusal of the counter affidavit filed by the first to fifth respondents, as well as the submissions made by the learned Standing Counsel appearing for the first to fifth respondents, it reveals that the petitioner has already paid the amount demanded by the fifth respondent under protest. Now, this Writ Petition has been filed challenging the very demand itself and seeking a refund of the amount paid under protest.

10. The learned counsel for the petitioner vehemently contended that Clause 17(9)(a) of the Tamil Nadu Electricity Supply Code is not applicable to the case of the petitioner. The said Clause 17(9)(a) of the said Code reads as follows:-

> ***17. Agreement with Respect to Supply: Issue on Recovery of Charges***
>
> *...(9) (a) In case of service connections in a premises, which have been disconnected/dismantled for defaults in payment of dues whatsoever and if such*

service connections are to be reconnected or new service connections are to be obtained by other persons in such premises either by purchase or transfer or lease basis, the Distribution Licensee shall reconnect such service connections or effect new service connections, as the case may be, in such premises only after payment of dues attributed to such premises by the applicant:

11. Admittedly, HTSC No. 98 was obtained by the sixth respondent in the year 1990. The sixth respondent had failed to pay the bill amount of Rs. 5,78,554/-, which was raised in the year 1999. Therefore, the electricity service connection was disconnected on 24.12.2000 for non-payment of the electricity bill. Thereafter, Plot No. A3/1, admeasuring an extent of 5.38 acres, was leased out in favor of the petitioner herein by Sipcot. After acquiring leasehold rights over Plot No. A3/1, admeasuring an extent of 5.38 acres, which was merged with the petitioner/Company Thereafter, the petitioner applied for additional 5KW load under HTSC No. 83, which was obtained for the petitioner's existing Plot Nos. A-4/1, 4/2, 4/4

& 4/5, Sipcot Industrial Complex, Pachayankuppam, Cuddalore – 607 005. Therefore, the above clause is squarely applicable to the case of the petitioner.

12. Further, it is relevant to extract Section 49-B of the Electricity (Supply) Act, 1948, which reads as follows:-

> *"**49-B. Recovery of dues as public demand in certain circumstances.-** Where any sum is due from a consumer on account of supply of electricity or other charges and where such defaulting consumer, being an industrial or commercial concern or establishment, becomes sick financially or otherwise and is would up or closed or put to sale, or transfers its ownership or management, or is amalgamated with any other industrial or commercial concern or establishment, or where any-scheme is drawn up for re-opening or revitalizing or restricting such industrial or commercial concern or*

establishment, either under its own ownership or management or under any new ownership or management, whether in the former name or in a new name, for continuing the same process or function or production as was in vogue prior to its becoming sick or for any other purposes, either on its own or by the order of any Court, Tribunal or other authority, then, notwithstanding the foregoing provisions of this section or the order of the Court, Tribunal or other authority, the sum due to the Board or a licensee shall stand recoverable and shall be recovered from the sale proceeds or from the former owner or manager or new owner or manager, as the case may be, as being a charge recoverable as a public demand under the Public Demands Recovery Act, 1913, and the authority under whose order such industrial or commercial concern or establishment is wound up, closed or put to sale, or the Ownership or management is transferred, or is amalgamated, or any scheme is drawn up for its re-opening *or revitalization or restructuring, as the case may be, shall take such steps as any be necessary for expeditious recovery and payment of the dues of the Board or the licensee, as the case may be, from such sale rate of Current bank rate on the outstanding sum as aforesaid for the period commencing from the date on which such sum became due till the date of payment.”*

13. Thus, it is clear that any sum due from consumption on account of supply of electricity or other charges, where such defaulting consumer, being an industrial or commercial concern or establishment, becomes financially or otherwise sick and is wound up or under new ownership, whether in the former name or in a new name, notwithstanding the foregoing provisions of this Section or the order of the Court, Tribunal, or other authority, the sum due to the Board or a licensee shall stand recoverable and shall be recovered from the sale proceeds or from the former owner or manager or new owner or manager, as the case may be, as being a charge recoverable as a public demand under the Public Demands Recovery

Act, 1913.

14. Insofar as the limitation is concerned, as provided under Section 56(2) of the Act, arrears of electricity service connection charges are recoverable within a period of two years from the due date. Further, Section 56 of the Act reads as follows:-

> ***56. (Disconnection of supply in default of payment): --***
>
> *... (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.*

15. In this regard, the learned counsel for the petitioner relied

upon the judgment of the Hon'ble Supreme Court of India in the case of ***Ajmer Vidyut Vitran Nigam Ltd. vs. Rahamatullah Khan*** [(2020) 4 SCC 650], and the relevant portion is extracted hereunder:-

> *“4.3. Sub-Section (2) of Section 56 bars the remedy of disconnection of supply for default of payment, if the consumer deposits the amount demanded under protest, or if the demand has been raised two years after the sum became “first due”, albeit the same had been continuously shown to be recoverable as arrears of charges.*
>
> *4.4 The word “due” has been used under Section 56(1) as well as under Section 56(2). The term “due” refers to the amount for which the demand is raised by way of a bill. The term “first due” would therefore imply when the demand is raised for the first time. The bill raised by the licensee company would be the starting point for the exercise of power under sub-Section (1) of Section 56.”*

16. Further, it was held that Section 56(2) of the Act, by a non-obstante clause, provides that notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer shall be recoverable under Section 56 after the expiry of two years from the date when the sum became "first due", unless such sum was shown continuously recoverable as arrears of charges for the electricity supplied, nor would the licensee company disconnect the electricity supply of the consumer.

17. The electricity service connection in HTSC No. 98 was obtained by the sixth respondent, who committed default in payment of current consumption charges in the year 1999. A demand was issued, but not paid by the sixth respondent, resulting in disconnection of the electricity service connection on 24.12.2000. Hence, there is no question of raising the demand for subsequent current consumption charges, as the electricity service connection itself was disconnected as early as 24.12.2000. Thereafter, the first to fifth respondents raised the demand in the personal capacity of one of the Directors of the sixth respondent by linking it to their

own electricity service connection. When the petitioner took over the said Plot and applied for additional load of 5KW under its own service connection in HTSC No. 83, for the purpose of executing construction work in the Plot, which was originally allotted in favor of the sixth respondent, and which is now merged with the petitioner/Company. Immediately after taking over the sixth respondent's Plot, the first to fifth respondents rightly raised demand with surcharge in respect of the arrears of consumption charges of the Plot, now taken over by the petitioner.

18. Further, Section 56(2) of the Act 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 the 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. Therefore, the contention of the learned counsel for the petitioner that the demand itself is hopelessly barred by limitation cannot be countenanced.

19. The Modified Lease Deed dated 09.11.2020, entered into between the petitioner and Sipcot, in respect of the Plot which was originally allotted in favor of the sixth respondent, and the relevant portion is extracted hereunder:-

> *"19 (i) The PARTY OF THE SECOND PART shall pay all existing and future rates and taxes, charges, claims, assessment and out goings of every description, chargeable against the owner or occupier in respect of the allotted plot and any building erected thereon or services received."*

20. In fact, the petitioner cleverly applied for additional load, that too, under its own electricity service connection, for the purpose of construction to be made in the newly purchased unit, in order to escape from the arrears of consumption charges and surcharges. Now, the Plot, which was originally allotted in favor of the sixth respondent, and is merged with the petitioner/Company. Therefore, the fifth respondent rightly raised the

demand against the petitioner for arrears of consumption charges and surcharges. Therefore, this Court finds no infirmity or illegality in the order passed by the fifth respondent, and the Writ Petition is devoid of merits.

21. In the result, this Writ Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

30.07.2024

Index:Yes/No
Neutral Citation/Yes/No
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G.K.ILANTHIRAIYAN, J.

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