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W.P.No.9311 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.9311 of 2020

and

W.M.P.Nos.11368 & 11369 of 2020

M/s.Binny Limited

No.1, Cooks Road,

Perambur, Chennai – 12

Represented by its General power of Attorney Holder

M/s.SPR Construction Private Limited

Rep. by its Director, Mr.Chetan Bohra,

No.57, Narayan Mudali Street,

Sowcarpet, Chennai 600 079.

... Petitioner

Vs.

1.Tamil Nadu Generation and Distribution Corporation Limited
(TANGEDCO)

Rep. by its Chairman cum Managing Director,

NPKRR Maaligai, 144, Anna Salai

Chennai 600 002.

2.The Chief Financial Controller / Revenue

TANGEDCO, NPKRR Maaligai

144, Anna Salai, Chennai 600 002.

3.The Chief Engineer / Distribution, TANGEDCO

North Region, NPKRR Maaligai,

144, Anna Salai, Chennai 600 002.



4.The Superintending Engineer
Chennai E.D.C. / Central
110 KV Valluvarkottam SS Complex
Chennai 600 034.

5.The Tamil Nadu Electricity Regulatory Commission,
No.19-A, Rukmini Lakshmiipathy Salai (Marshalls Road)
Egmore,
Chennai 600 008.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned order in LR.No.SE/CEDC/C /EE/GL/AEE /Dev /AE /FHT. New.Ty.Sy/D.239/20 dated 02.07.2020 passed by the 4th respondent and consequent demands of BPSC amount of Rs.2,19,66,612/- and quash the same, and further direct the Respondent to refund Rs.2,99,47,665/- collected from the Petitioner by the Respondents allegedly towards belated payment surcharge (BPSC) together with appropriate rate of interest since the said BPSC levy and collection is without legal sanction.

For Petitioner : Mrs.Narmadha Sampath

For R1 to R4 : Mr.P.Kumaresan
Assisted by
Mr.L.Jai Venkatesh
Standing Counsel
[For TANGEDCO]



ORDER

The order dated 02.07.2020 passed by the 4th respondent / Superintending Engineer, Chennai E.D.C / Central, asking the petitioner to pay a sum of Rs.2,19,66,612/- (Rupees Two Crore Nineteen Lakhs Sixty Six Thousand Six Hundred and Twelve Only) for considering the new HT temporary supply application for a maximum demand of 400 KVA is under challenge in the present writ petition.

2. Mr.P.Kumeresan, learned Additional Advocate General appearing on behalf of the respondents 1 to 4 would submit that new HT temporary supply application submitted by the petitioner was considered and temporary connections are provided to the premises of the petitioner.

3. With reference to the order impugned, Mrs.Narmadha Sampath, learned counsel for the petitioner would submit that the scheme introduced by the respondents / Board would entitle the petitioner to avail the benefits stipulated. In the present case, the petitioner had paid the dues in two instalments i.e., the first instalment on 19.04.2016 and the second instalment on 08.06.2016. Since the petitioner had paid the entire dues within a period



of six months as contemplated under the one time scheme, the benefit of scheme to waive the surcharge is to be granted in favour of the writ petitioner.

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4. The learned counsel for the petitioner would further submits that the petitioner addressed several letters to the respondents to grant waiver of the surcharge and since the claim of the writ petitioner was rejected, the present writ petition came to be instituted.

5. It is further brought to the notice of this Court that the application submitted by the petitioner was recognised by the 2nd respondent / Chief Financial Controller and despite the recommendations, the benefit under the one time scheme waiver has not been extended.

6. Mr.P.Kumaresan, learned Additional Advocate General appearing on behalf of the respondents 1 to 4 would oppose the said contention by stating that waiver of BPSC in respect of certain categories of consumers were granted on certain conditions. The conditions would reveal that the scheme of waiver of BPSC shall be a one time measure and the application for waiver of BPSC should be made in writing within the said six months period along with an undertaking to pay the outstanding dues in one lump sum immediately



without any demur.

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7. Therefore, twin conditions are to be complied with by the applicants for the purpose of availing the benefits. The application for waiver of BPSC should be submitted within a period of six months from the scheme date. Along with the application, an undertaking to pay the outstanding dues in one lump sum immediately without any demur also must be given by the applicant. In the present case, the petitioner had paid the dues in two instalments on 19.04.2016 and on 18.06.2016. Thereafter, the authorities have granted time to pay the balance amount. The petitioner themselves has admitted the said fact in their letter dated 10.06.2016 that they have cleared the principle due amount of Rs.79,05,394/- in two instalments. When the petitioner themselves admitted that they have paid the amounts in two instalments, they are not entitled to avail the benefit of waiver of BPSC under the one time scheme.

8. The letter of the Superintending Engineer dated 15.05.2018 would reveal that the Chairman cum Managing Director / TANGEDCO has considered the request for payment of belated payment surcharge in instalments and the petitioner was permitted to pay 40% of BPSC amount of



Rs.1,87,17,291/- as down payment immediately and to pay the balance BPSC amount of Rs.2,80,75,935/- in two monthly instalments totalling in all to Rs.4,67,93,226/-. With reference to the belated payment charge, the petitioner was requested to execute an undertaking in a non-judicial stamp paper valued Rs.80/-. It is not in dispute that the petitioner had paid the down payment of Rs.1,87,17,291/- and executed an undertaking in a stamp paper. The undertaking executed by the petitioner in a stamp paper dated 7th August, 2018 as under:

*“Form – 5
(Refer to Regulation 22(8))
Undertaking for Payment of Dues in Instalments
To*

*The Superintending Engineer,
CEDC/Central,
Nungambakkam,
Chennai – 600 034.*

UNDERTAKING

Sir,

In considering of our paying the Belated Payment Surcharge amounting to Rs.2,80,75,935/- in 5 instalments against HTSC No.2132, M/s.Binny Limited (Disconnect Service), I, Chetan Bohra, Director, of M/s. SPR Construction Private Limited, undertake-



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(i) To pay the total due of Rs.2,80,75,935/- (Rupees Two Crores, Eighty Lakhs Seventy Five Only) in 5 equal monthly instalments subject to levy of Belated Payment Surcharge in case of default to pay the instalment on the date specified below:

<i>Instalments</i>	<i>Instalment Amount in Rupees</i>	<i>Mode of Payment</i>
<i>1st</i>	<i>Rs.56,15,187.00</i>	<i>Paid on 01/09/2018</i>
<i>2nd</i>	<i>Rs.56,15,187.00</i>	<i>On or before 30/09/2018</i>
<i>3rd</i>	<i>Rs.56,15,187.00</i>	<i>On or before 31/10/2018</i>
<i>4th</i>	<i>Rs.56,15,187.00</i>	<i>On or before 30/11/2018</i>
<i>5th</i>	<i>Rs.56,15,187.00</i>	<i>On or before 31/12/2018</i>
<i>Total</i>	<i>Rs.2,80,75,935.00</i>	

(ii) To adhere strictly to the schedule of instalments and also to pay before the due date the belated payment surcharge, failing which the supply may be disconnected without further notice and the reconnection may be effected only on settlement of the entire (including balance instalment) dues with Belated Payment Surcharge for the instalments not paid on the due date.”



9. Undertaking was given by the petitioner for the balance payment of Rs.2,80,75,935/-, since the petitioner has already paid the down payment of Rs.1,87,17,291/-.

10. The orders of the Superintending Engineer dated 15.05.2018 would reveal that the waiver of BPSC under the one time scheme was not granted in favour of the petitioner, since the conditions stipulated in the one time scheme had not been complied with by the petitioner. Since the petitioner has not paid the dues in one lump sum, the Board granted further time to pay the amount, but declined to grant the benefit of the Scheme. Accepting the letter of the Superintending Engineer, the petitioner has paid the belated payment surcharge amount in instalments. The first instalment of Rs.1,87,17,291/- was paid based on the letter of the Superintending Engineer dated 15.05.2018 and thereafter, the petitioner executed an undertaking that they will pay the balance amount of Rs.2,80,75,935/- in 5 equal monthly instalments subject to levy of belated payment surcharge in case of default to pay the instalment on the date specified in the letter of undertaking.

11. The scheme was introduced in Circular Memo dated 16.02.2016. The last date for submitting application was 06.07.2016. Though the



petitioner submitted an application within the time limit prescribed under the scheme, failed to pay the outstanding dues in one lump sum immediately.

Admittedly, the petitioner paid the outstanding dues in two instalments and subsequently, the letter of the Superintending Engineer was accepted by the petitioner and an undertaking was also executed in a stamp paper by the petitioner to pay the balance amount.

12. When the petitioner themselves have admitted and executed a letter of undertaking in a stamp paper to settle the outstanding dues in 5 equal instalments, now they cannot turn around and seek the benefit of the scheme which was introduced in the year 2016. However, temporary connection was granted to the petitioner's premises subject to the payment of the balance amount.

13. Now the learned counsel for the petitioner would submit that the entire payment has already been settled. That being so, the benefit of the one time scheme of the year 2016 cannot be now extended in favour of the writ petitioner.



14. Accordingly, this Writ Petition stands dismissed. No costs.

Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes

Speaking order

Neutral Citation : Yes

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