

(2012) 09 MAD CK 0029

Madras High Court

Case No: Writ Petition No. 15791 of 2012

Triveni Alloys Ltd.

APPELLANT

Vs

Chairman, Tamil Nadu Electricity
Board, Chennai and Others

RESPONDENT

Date of Decision: Sept. 14, 2012

Acts Referred:

- Electricity Act, 2003 - Section 2(51), 47

Citation: (2013) 2 MLJ 9

Hon'ble Judges: V. Dhanapalan, J

Bench: Single Bench

Advocate: K. Seshadri, for the Appellant; G. Vasudevan and Ms. Narmada Sampath, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

V. Dhanapalan, J.

By consent of the learned counsel on either side, this writ petition is taken up for final disposal. This writ petition is filed

challenging the impugned demand issued by the 2nd respondent in Lr. No. SE/CEDC/N/AAO/HT/V 1737/D2076/2012, dated 11.6.2012 to the

petitioner in H.T.S.C. No. 1737 and quash the same as illegal, arbitrary and against the Regulation 5(5)(ii)(a) of the Tamil Nadu Electricity Supply

Code, 2004 and consequently direct the 2nd respondent to adjust and refund, as contemplated under Regulation 5(5)(v) of Supply Code, 2004.

2. Facts of the case as put forth in the affidavit would run thus:

2.1. The petitioner industry is involved in the manufacture of Steel Rods etc. having High Tension Service Connection in H.T.S.C. No. 1737,

which comes under the jurisdiction of the 2nd respondent. The said industry is located in the layout promoted by the State Industries Promotion

Corporation of Tamil Nadu Limited (SIPCOT), the 3rd respondent herein and let out for a period of 99 years on and from 29.8.1989 to develop

the industries in the State of Tamil Nadu.

2.2. The petitioner industry applied for electricity supply with all relevant documents and entered into an agreement with the respondents' Board

for getting electricity connection. The High Tension Industry at the time of submitting application for supply of energy has to pay Earnest Money

Deposit (EMD) at the rate of Rs. 800/- per K.V.A. along with Registration fee, subsequently the EMD will be adjusted against the quantum of

initial Security Deposit or Current Consumption Deposit, payable by the applicant before availing the supply and the balance amount, if any

required will be collected from the HT applicant.

2.3. The 2nd respondent is also reviewing the adequacy of Security Deposit available once in a year in the month of April/May as per Regulation

5.5(ii)(a) of the Tamil Nadu Electricity Supply Code, 2004 framed by the Tamil Nadu Electricity Regulatory Commission. As per the above

condition, the average of the current consumption charges for the preceding 12 months prior to the month of April of that year will be arrived at

and a sum equivalent to two times this average will be calculated. The higher of the two viz., the calculated amount and the initial Current

Consumption Deposit held will be the revised Current Consumption Deposit. If the available deposit is less than the revised Current Consumption

Deposit, the balance will be collected as additional Current Consumption Deposit under Regulation 5(5)(IV) of the Code.

2.4. The petitioner has paid a sum of Rs. 31,20,000/- towards the Current Consumption Deposit for H.T.S.C. No. 1737 for getting supply from

the 2nd respondent. As on date, a sum of Rs. 1,45,29,469/- is available to the petitioner's credit towards Security Deposit.

2.5. The 2nd respondent in the impugned Demand Notice vide Lr. No. SE/CEDC/N/AAO/HT/1737/D2076/2012 dated 11.6.2012 has claimed

a sum of Rs. 1,37,51,331/- towards Additional Current Consumption Deposit (ACCD) over and above the existing Current Consumption Deposit of Rs. 1,45,29,469/- held by the petitioner under Regulation 5(5)(iv) of the Tamil Nadu Electricity Supply Code, 2004 treating as Lessee of the land let out for a period of 99 years by the 3rd respondent.

2.6. As per the said Regulation, the total consumption charges paid as per the statement issued by the 2nd respondent is Rs. 8,48,42,402/-. The monthly average of the amount comes to Rs. 70,70,200/- and hence, under Regulation 5(5)(ii)(a), two times of the said amount would be Rs.

1,41,40,400/- which is less than the existing Current Consumption Deposit of Rs. 1,45,29,469/- available with the 2nd respondent. However, the

2nd respondent has wrongly calculated and revised as Rs. 2,82,80,800/- towards ACCD, which is against the Regulation. In fact, a sum of Rs.

3,89,069/- is in excess of the required ACCD and the same has to be adjusted or refunded under Regulation 5(5)(v) of the Supply Code, 2004.

2.7 The petitioner has represented to the 2nd respondent to revise the impugned bill and adjust the excess deposit available with him. The

petitioner's grievance is that the 2nd respondent has not taken any steps to revise the Impugned Demand, though the last date for the payment is

stated as 20.6.2012, when Section 47 of the Electricity Act, 2003 mandates 30 days' notice to be issued to the consumers for the payment of

ACCD. Moreover, it is the contention of the petitioner that the 2nd respondent has not followed the Regulation 5(5)(ii)(a) of the Supply Code,

2004. Hence, having no other alternative, the petitioner has approached this Court.

3. Heard Mr. K. Seshadri, learned counsel for the petitioner, Mr. G. Vasudevan, learned counsel appearing for respondents 1, 2 and 4/TNEB and

Ms. Narmadha Sampath, learned counsel appearing for the 3rd respondent/SIPCOT.

4. The issue in the case on hand arose out of a demand for additional current consumption/security deposit in terms of Regulation 5 of the Tamil

Nadu Electricity Supply Code, 2004. Regulation 5 of the Tamil Nadu Electricity Supply Code, 2004 deals with Miscellaneous Charges. Clause

(5) of Regulation 5 deals with Additional Security Deposit. Regulation 5(5)(i), (ii), (iii), (iv), (v) and (vi) of the Tamil Nadu Electricity Supply Code,

2004 reads as follows:

(5) Additional Security Deposit

(i) The adequacy of security deposit may be reviewed and re-fixed once in a year in case of HT consumers and once in every two years in case of

LT consumers taking into account the interest due for credit. Such reviews shall be made in the month of April/May. The rate of interest on the

security deposit shall be on the basis of the Commission's directive to the licensees in this regard.

(ii) The adequacy of security deposit shall be based on the periodicity of billing for the respective category.

(a) For the categories of consumer under monthly billing, the security deposit is equivalent to two times of the monthly average of the electricity

charges for the preceding twelve months prior to April.

(b) For the categories of consumer under bi-monthly billing, the security deposit is equivalent to three times of the monthly average of the electricity

charges for the preceding twelve months.

(c) For the categories of consumer under half-yearly billing, the security deposit is equivalent to seven times of the average charges per month.

(iii) Interest at bank rate or more as specified by the Commission shall be calculated and credited to the security deposit accounts of the consumers

at the beginning of every financial year i.e., April and the credit available including the interest shall be informed to each consumer before the end of

June of every year.

(iv) If available deposit is less than the revised security deposit, the balance shall be collected as additional security deposit either through a

separate notice or by a distinct entry in the consumer meter card for LT services. Thirty days notice period shall be allowed for the payment. If the

payment is not received within the above period of thirty days, the service is liable for disconnection.

(v) Where, on review, the amount of security deposit held is found to be in excess of the requirement, the excess shall be adjusted against two

future demands for the electricity supplied. Where, after such adjustment in future of two demands, there is balance to be refunded, the refund shall

be made by cheque before the due date for payment of the third demand.

(vi) In the event of the consumer failing to pay to the licensee any sum that may become due for payment to the licensee on the dates fixed for payment thereof, the licensee may, in addition to and without prejudice to the other rights of the licensee, appropriate a part or whole of the security deposit and interest thereon towards the sum due from the consumer.

The cause of action for filing the present writ petition is on account of an order passed by the Tamil Nadu Generation and Distribution Corporation

Limited vide Lr. No. SE/CEDC/N/AAO/HT/1737/D2076/2012, dated 11.6.2012, demanding the petitioner to pay a sum of Rs. 1,37,51,331/-

towards Additional Current Consumption Deposit. Relevant portion of the said order reads thus:

On a review of adequacy of the Current Consumption Deposit at your credit for the HT Supply under HT SC No. 1737 with reference to Section

5(5) (ii)(a) of the Tamil Nadu Electricity Supply Code, it is seen that the sum of Rs. 1,37,51,331/- (Rupees One Crore Thirty Seven Lakhs Fifty

One Thousand Three Hundred and Thirty One only) is payable by you towards Additional Current Consumption Deposit over and above the

existing Current Consumption Deposit of Rs. 1,45,29,469/- at your credit for 2011-2012.

The above Additional Current Consumption Deposit may be paid in one lumpsum on or before 20.6.2012. Failure of paying the same on the due

date will entail to disconnect the service without prior notice as per Section 5(5)(iv) of Tamil Nadu Electricity Supply Code.

On reviewing the Additional CCD required for the year 2011-2012 after taking into account the interest on CCD, there is excess CCD in your HT

Service to an extent of Rs. 0/- which will be adjusted in your future Current Consumption Bill along with Rs...../- towards interest allowed for

MCD.

If any amount of deposit other than the amount shown above as existing Current Consumption Deposit has already been paid by you, the same

may be intimated to this Office quoting reference to the Receipt No. and date of payment for taking further action.

5. Based on the amendment to Regulation 5 of the Tamil Nadu Electricity Supply Code, 2004, the respondent Electricity Board has demanded the

petitioner industry to pay additional Current Consumption Deposit at the rate of four times the monthly average of electricity charges for the preceding twelve months prior to April 2012. In other words, the Board wants to implement the new Clause (vii)(a) to Regulation 5(5) of the Tamil Nadu Electricity Supply Code, 2004 insofar as the petitioner is concerned.

6. This demand made by the respondent Electricity Board is challenged by the HT consumers who are under 99 years lease granted by the SIPCOT stating that they are the owners of the premises. According to the petitioner, consequent to the 99 year lease executed by SIPCOT, for which full consideration has been paid, since they are the owner of the superstructure, namely, the industry for which electricity supply is granted, they are the owner of the premises. It is stated that the word ""owner of the premises"" as stated in Clause (vii)(a) of the Regulation 5(5) cannot be interpreted to mean that the owner of the premises in this case, is SIPCOT. On the contrary, each one of the HT industries who have put up building and superstructure on the leased out property will be the owners of the premises. Therefore, there is no need to get a consent in Form 5 of Annexure III to the Distribution Code from SIPCOT.

7. Therefore, on a reading of the above provisions, it is clear that the term ""premises"" under the Electricity Act, 2003 and under the Tamil Nadu Electricity Distribution Code, 2004 would also mean the building or structure to which the service connection is granted. According to the learned counsel for the petitioner, the factory building to which electricity service connection is given would satisfy the requirement of ""premises"" under the Act and the Regulation. In view of the above, the Regulation 5(5)(vii)(a) of the Tamil Nadu Electricity Supply Code, 2004 will not apply to the case of the petitioner. The petitioner will be deemed to have the benefit of paying additional current consumption or security deposit in terms of Regulation 5(5)(ii)(a) of the Tamil Nadu Electricity Supply Code, 2004 only. The amended Regulation will have no implication insofar as the petitioner is concerned.

8. Mr. G. Vasudevan, learned counsel appearing for the respondent Electricity Board would vehemently contend that the 99 year lease does entitle

the petitioner to claim the land as owner of the premises. The developed plot has not been transferred in its entirety, as SIPCOT continues to retain its control over the land. Therefore, the no objection certificate should be given by the SIPCOT, if not, the amended Regulation 5(5)(vii)(a) will apply. It is also his contention that without challenging the Regulation 5(5)(vii)(a), the petitioner cannot seek the benefit of exemption from payment of additional security deposit as per the amended regulation.

9. Having considered the rival submissions, the point in issue is the interpretation of the term ""owner of premises"". The term ""consumer's premises as defined in Regulation 2(1) of the Tamil Nadu Electricity Distribution Code, 2004 and the word ""premises"" as defined u/s 2(51) of the Electricity Act, 2003 and its application and effect on the petitioner's industry. The land in this case has been transferred by SIPCOT to the benefit of HT industries on a 99 year lease and the entire consideration has been paid and the possession has been handed over to the petitioner industry with a clause that the lease can be renewed for a further period of 99 years. It is only thereafter, the industry is set up at a great cost by way of investment.

10. The objection of the respondents is that the land does not vest absolutely with the HT industry and after the lease period the land will have to go back to the SIPCOT, and hence SIPCOT is the owner. In this case, for the purpose of Regulation 5(5)(vii), the issue for consideration is whether the additional Current Consumption Deposit is payable by the HT industry only on the ground that they are not the absolute owner of the land as contended by the respondents.

11. The definition of the term ""consumer's premises"" under Regulation 2(1) of the Tamil Nadu Electricity Distribution Code, 2004 and the word ""premises"" in Section 2(51) of the Electricity Act, 2003 include ""land, building or structure"". In the present case, the building or structure admittedly belongs to the petitioner industry. It is to the petitioner industry that the power supply is granted by the Electricity Board. Therefore, the term ""owner of premises"" will include owner of land, owner of the building or structure. It does not state that the owner of the land alone is the owner of

premises. This definition recognizes the ownership right of the petitioner based on the right over building or superstructure. Hence, the definition has to be interpreted purposefully and harmoniously.

12. Consequently, the amended Regulation, namely, Regulation 5(5)(vii)(a) would apply only to persons who are not owners of the premises. In

this case, the petitioner HT industry has produced records before the Electricity Board to show that they are the owner of the premises and

established that they are the owner of the premises (i.e.) land by way of lease and as owner of the building and industrial superstructure. The

respondent Board therefore, cannot insist on a consent letter in Form 5 of Annexure III to the Distribution Code from SIPCOT, as the petitioner

industry will fall under the definition of a owner of the premises in terms of Regulation 2(1) of Tamil Nadu Electricity Distribution Code, 2004 and

Section 2(51) of the Electricity Act, 2003. It is of no consequence that the SIPCOT has refused to grant NOC as they cannot claim the right of

ownership to the building or structure.

13. The Industrial plots are taken on a lease for a period of 99 years with a clause for renewal of further period of 99 years lease, which is a

perpetual lease in favour of the petitioner. Hence, for all practical purpose it is in the nature of absolute transfer. Respondents' counsel contends

that there are many defaulters who are lessees of SIPCOT unit and therefore, it is necessary to get NOC from SIPCOT. This plea does not

appeal to this Court as it does not make the situation any better for the simple reason that if there is a default in current consumption charges by HT

industries concerned, the respondent Electricity Board can proceed against the industry as against the building and structure for which the

electricity supply is granted.

14. If the building or structure is leased or parted otherwise to another person by the actual owner, then the respondent Board will have a right to

insist upon a no objection from such owner of the building or structure. This will arise in a case where an industry has been developed by one

person and leased out to third party to run the industry. In that case, the person, who being the owner of the building or structure and has leased it

out to a third party will have to issue the NOC, failing which the Board can insist upon the deposit as contemplated under Regulation 5(5)(vii)(a).

15. At this moment, it is apt to refer to the amended regulation, namely, 5(5)(vii)(a), which reads as under:

For the consumers under monthly billing who are not the owners of the premises and are unable to produce the consent letter in Form 5 of

Annexure III to the Distribution Code from the owner of the premises for availing supply, the Security Deposit shall be equivalent to four times of

the monthly average of the electricity charges for the preceding twelve months prior to April.

16. It is true, the intention of the legislature in amending the Regulation 5(5)(vii)(a) is that for the consumers under monthly billing who are not the

owners of the premises and are unable to produce the consent letter in Form 5 of Annexure III to the Distribution Code from the owner of the

premises for availing supply, the Security Deposit shall be equivalent to four times of the monthly average of the electricity charges for the

preceding twelve months prior to April and the same cannot be questioned unless it is challenged and struck down by a proper forum. It is not a

matter for consideration at this juncture, as contended by the learned counsel for the Board, that after the lease period the land will have to be

given back to SIPCOT, and hence SIPCOT is the absolute owner, but not the petitioner. As a matter of fact, the term ""premises"" means, land and

building or structure. In this case, the petitioner has to be construed as the owner of the premises, as it has put up a structure with its own moneys

on the land leased out to it by SIPCOT for a period of 99 years. The amended provision is applicable only to the consumers, who are not the

owners of the premises, but not the petitioner in this case.

17. Since the Regulation 5(5)(vii)(a) of the Tamil Nadu Electricity Supply Code, 2004 does not apply to HT Consumers who are the owners of

premises, namely, the building or structure, despite the fact that the land developed by SIPCOT is parted by way of 99 year lease, the objection

raised by the respondent Electricity Board on this issue is rejected.

18. In view of the above, the respondent Electricity Board is not entitled to demand additional Current Consumption Deposit in terms of amended

Regulation 5(5)(vii)(a) from the HT industry, who is the owner of the premises, namely, the building or structure put up on the plots developed by

SIPCOT and leased out to the petitioner on a 99 years lease with a further clause for renewal for a further period of 99 years. The amended

regulation does not apply to the petitioner. However, as already pointed out, wherever the building or structure is leased or parted to a different

person by the owner, the amended Regulation as above will be attracted automatically and the respondent Electricity Board is entitled to proceed

as per law against the occupier or lessee. Insofar as the petitioner HT industry, who is the actual owner of the premises, namely, building or

structure is concerned and covered by a lease agreement for a period of 99 years executed by the SIPCOT, the impugned demand in terms of

amended Regulation 5(5)(vii)(a) of the Tamil Nadu Electricity Supply Code, 2004 will not be applicable. The petitioner, however, is liable to pay

additional Current Consumption Deposit as per the earlier provision, namely, Regulation 5(5)(ii)(a) of the Tamil Nadu Electricity Supply Code,

2004. Accordingly, the petitioner industry is directed to pay the additional Current Consumption Deposit as per Regulation 5(5)(ii)(a) of the Tamil

Nadu Electricity Supply Code, 2004 forthwith. The respondent Board is directed to adjust the excess deposit, if any, towards monthly current

consumption charges under Regulation 5(5)(v) of the Tamil Nadu Electricity Supply Code. Writ petition is allowed with the above directions. No

costs. Consequently, the connected M.P. No. 1 of 2012 is closed.