(2011) 11 MAD CK 0269

In the Madras High Court

Case No : Writ Petition (MD) No. 12507 of 2011 and M.P. (MD) No. 1 of 2011

M/s. Vishnuvardhan Paper Mills (P) Ltd. APPELLANT

Vs

Tamil Nadu Electricity Board RESPONDENT

Date of Decision : 23-11-2011

Acts Referred:
Electricity Act, 2003 — Section 181, 2(15), 43, 43(1), 44

Citation : (2012) WritLR 676

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : R.S. Pandiyaraj, for the Appellant; S.M.S. Johnny Basha for TNEB, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramasubramanian, J.—The petitioner has come up with the above writ petition, challenging an order passed by the Superintending Engineer of the Tamil Nadu Electricity Board (third respondent) calling upon the petitioner to arrange to pay the dues of 3 sister concerns of the petitioner, which form the subject matter of the 3 writ petitions on the file of this Court, as a pre-condition for sanctioning an additional load to the petitioner. I have heard Mr. R.S. Pandiyaraj, learned counsel for the petitioner and Mr. S.M.S. Johnny Basha, learned Standing Counsel for the respondents.

2. Even at the time when the writ petition came up for admission, I directed the Standing Counsel for the respondent to take notice and make submissions, in view of the fact that there are no disputes on facts and that what falls for consideration is only a legal issue.

3. The petitioner is having a sanctioned load of 1,000 KVA for their Mill. They made an application on 8.5.2011 for an additional load of 2,000 KVA. The third respondent, by a letter dated 23.8.2011, demanded a sum of Rs. 16,00,500/- towards EMD and registration fees. The petitioner made payment on 24.8.2011.

4. However, the third respondent issued the impugned communication dated 29.10.2011 stating that three other Companies viz., (i) Rajalakshmi Papers (ii) Amaravathi Sri Venkatesa Paper Mills and (iii) V.G. Paper and Boards Pvt. Ltd, which are the sister concerns of the petitioner, are due to pay various amounts viz., (i) Rs. 8,69,453/- (ii) Rs. 35,54,675/- and (iii) Rs. 11,48,666/-respectively and that these payments have become the subject matter of writ petitions in W.P.Nos. 11071, 11069 and 11070 of 2011 respectively. Therefore, the third respondent called upon the petitioner to make arrangements to pay the dues of those Companies, as a pre-condition for sanctioning the additional load sought by the petitioner. For making such a demand, the third respondent has relied upon Regulation 17(8) of the Tamil Nadu Electricity Supply Code read with Regulations 5(2)(iv) and 27(1) of the Tamil Nadu Electricity Distribution Code.

5. The short question that arises for consideration is as to whether the respondents are entitled to demand payment of the dues of the sister concerns of the petitioner, as a pre-condition for the sanction of additional load to the petitioner, especially when those sister Companies have filed writ petitions and obtained interim protective orders.

6. In order to find an answer to the question raised in the writ petition, it is necessary to have a bird''s eye view of the provisions of the Electricity Act, 2003 and the Tamil Nadu Electricity Supply Code and Tamil Nadu Electricity Distribution Code.

7. Section 43(1) of the Electricity Act, 2003, obliges every distribution licensee, save as otherwise provided in the Act, to give supply of electricity to a premises, on an application by the owner or occupier thereof. Sub-section (3) of Section 43 also stipulates that the distribution licensee is liable to a penalty, if he failed to supply electricity within the period stipulated in sub-section (1).

8. Section 44 provides an exception to Section 43. As per Section 44, the distribution licensee is exempt from the operation of Section 43, if he is prevented from doing so by cyclone, floods, storms or other occurrences beyond his control.

9. Sections 45 and 46 confer power to recover charges and expenditure from the consumer who seeks supply. Section 47 enables the distribution licensee to require any person who seeks supply of electricity, to give reasonable security as may be determined by the Regulations. However, u/s 47(5), a distribution licensee is not entitled to require security if the person requiring the supply is prepared to take the supply through a pre-payment meter.

10. Despite the fact that Sections 45 to 47 oblige the distribution licensee only to recover the charges and expenditure as fixed by the State Commission and also require security as determined by the Regulations framed by the State Commission, Section 48 gives a free hand to the distribution licensee, to prescribe additional terms of supply. Section 48 reads as follows:--

48. Additional terms of supply. - A distribution licensee may require any person who requires a supply of electricity in pursuance of Section 43 to accept:

(a) any restrictions which may be imposed for the purpose of enabling the distribution licensee to comply with the regulations made u/s 53;

(b) any terms restricting any liability of the distribution licensee for economic loss resulting from negligence of the person to whom the electricity is supplied.

11. In exercise of the powers conferred by Sections 46 and 86 of the Act, the Tamil Nadu Electricity Regulatory Commission has issued the Tamil Nadu Electricity Distribution Code, 2004, with effect from 1.9.2004. Regulation 27 (1) of the said Code contains the provision for supply of electricity on request, as per Section 43 of the Act. The third proviso under Regulation 27(1) of the Tamil Nadu Electricity Distribution Code, 2004, reads as follows:-

Provided that the licensee will refuse to supply electricity to an intending consumer who had defaulted payment of dues to the licensee in respect of any other service connection in his name.

The above proviso was inserted by a notification dated 22.11.2005, with effect from 7.12.2005 by the Commission. Therefore, it is clear that the right of the consumer to get supply of electricity in terms of Section 43 is not absolute, but curtailed by the condition imposed by the third proviso to Regulation 27(1) of the Distribution Code.

12. The third proviso to Regulation 27(1) uses the expression "intending consumer, who had defaulted payment of dues". Though the Distribution Code defines the expressions "consumer''s installation" and "consumer''s premises", under Regulation 2(k) and (1), the Code does not define the expression "consumer" or "intending consumer". But Section 2(15) of the Electricity Act, 2003, defines the expression "consumer" as follows:-

(15) "consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be.

13. The definition of the term "consumer", thus includes two types of persons viz., (i) any person who is supplied with electricity for his own use and (ii) any person whose premises are connected for the purpose of receiving electricity, with the works of a licensee. In other words, a person who is supplied with electricity as well as a person whose premises are connected with the works of a licensee, are both covered by the definition. This is why Regulation 2(1) of the Distribution Code seeks to define the "consumer''s premises" to mean the area served by a service connection.

14. In exercise of the powers conferred by Section 50 read with Section 181, the State Commission had issued the Tamil Nadu Electricity Supply Code, 2004, with effect from 1.9.2004. Regulation 5 of the Supply Code lists out the various types of charges payable by a consumer. Regulation 5 (2) (iv) of the Tamil Nadu Electricity Supply Code, 2004, reads as follows:-

(iv) No addition or reduction of load in case of LT service and no addition or reduction of demand in case of HT service, may be sanctioned unless the outstanding dues in the same service connection had been paid.

15. While the third proviso under Regulation 27(1) of the Distribution Code enables the licensee to refuse to supply electricity to an intending consumer, who had defaulted in payment of dues in respect of any other service connection in his name, Regulation 5(2)(iv) of the Supply Code enables the licensee not to sanction an addition or reduction of load, unless the outstanding dues in the same service connection had been paid. In other words, the third proviso to Regulation 27(1) of the Distribution Code covers a consumer who applies for a fresh connection, but who had defaulted in paymer. of any other service connection in his name. But Regulation 5(2)(iv) of the Supply Code covers a consumer who seeks an addition or reduction of the load for the same service connection.

16. Regulation 17 of the Supply Code deals with issues relating to recovery of charges. Regulation 17(8) of the Supply Code, inserted by the Commission''s notification dated 18.3.2011, reads as follows:-

(8) Where any consumer has more than one service connection, if he defaults in the payment of dues relating to any one of the service connections, the licensee may cause other service connections in the name of the consumer to be disconnected on issuing proper notice till all the arrears due for all the service connections are paid, notwithstanding the fact that the service connections are covered under separate agreements.

This Regulation makes it clear that it is a precondition for the consumer to continue to receive electricity supply that he pays the dues in respect of all service connections that he has. His default in payment of dues in respect of one service connection, would enable the licensee to disconnect all other service connections of the consumer.

17. A careful reading of the provisions of the Act, the Distribution Code and the Supply Code indicates -

(i) that the licensee has the discretion to refuse a fresh connection, to a consumer who had defaulted payment of dues in respect of any other service connection in his name;

(ii) that the licensee is entitled to refuse to sanction addition or reduction of load, until the outstanding dues in the same service connection had been paid; and

(iii) that the licensee is entitled to disconnect the other service connections of a consumer, for non payment of dues in respect of one service connection.

18. In the light of the language used in the provisions of the Supply Code and Distribution Code extracted above, it is contended by Mr. R.S. Pandiyaraj, learned counsel for the petitioner that to bring the case on hand, within the purview of the third proviso to Regulation 27(1) of the Distribution Code, the default should be in respect of a service connection standing in the name of the petitioner itself. This is due to the fact that the third proviso uses the expression "in his name". Therefore, according to the learned counsel for the petitioner, the respondents are not entitled to fall back upon the third proviso to Regulation 27(1), when even admittedly, the default, if there is any, is in respect of 3 other companies, whom the respondents seek to label as "sister concerns". Those companies have filed writ petitions against the demands made by the respondents and have also secured interim orders. Those companies as well as the petitioner herein are body Corporates incorporated under the Companies Act, 1956, having common seal and perpetual succession. Since all of them are independent legal entities, the service connections enjoyed by them under separate agreements entered into with the respondents, would not fall within the purview of the third proviso to Regulation 27(1). Therefore, the learned counsel contended that the respondents are not entitled to refuse a service connection to the petitioner, on the ground that three other limited companies, which are independent entities, have gone to Court and obtained interim orders of protection.

19. In support of his contention that the expression "in his name" used in the third proviso to Regulation 27(1) should be given its ordinary literal meaning, the learned counsel for the petitioner relied upon the following decisions of the Supreme Court:-

(1) Commissioner of Wealth Tax Vs. Smt. Hashmatunnisa Begum,

(2) Union of India (UOI) and Another Vs. Hansoli Devi and Others,

(3) Sharma Transports vs. State of Maharashtra {2011 (8) CCC 647 = 2011 5 L.W.420}

20. The learned counsel for the petitioner also relied upon a series of 8 decisions of other learned Judges of this Court, in support of his contention that even in respect of very same consumer or the very same service connection, this Court did not approve a similar stand taken by the respondents, with reference to pending court cases. The decisions relied upon by the learned counsel for the petitioner, are all unreported decisions. I shall deal with them one after another before taking up for consideration, the decisions of the Supreme Court relied upon by him.

21. The first decision relied upon by the learned counsel for the petitioner is that of P.K. Misra, J., as he then was, in M/s. Dindigul Steel Rolling Mills (P) Ltd vs. The Chairman, Tamil Nadu Electricity Board {W.P.No. 13443 of 2006 dated

9.5.2006}. It is a very short decision, whose operative portion is in one paragraph, which reads as follows:-

3. As observed by this Court in W.P.No. 27196 of 2003 dated 29.9.2003, pendency of some litigation relating to some other aspect cannot be a ground for rejections the application for additional supply in such view of the matter, the order passed by the Electricity Board is liable to be quashed. Hence the second respondent is directed to consider the matter on its own merits within a period of 30 days from the date of receipt of a copy of this order.

22. The next decision relied upon by the learned counsel for the petitioner is the one in M/s. Dindigul Steel Rolling Mills (P) Ltd vs. The Chairman, Tamil Nadu Electricity Board {W.P. No. 10807 of 2009 dated 18.6.2009}. This decision simply follows the decision of P.K. Misra, J., quoted in the preceding paragraph.

23. The third decision relied upon by the learned counsel for the petitioner is also a very short decision and the operative portion of the decision is found in para 4 of the judgment in Balu Spinning Mills Private Ltd vs. The Chairman, the Superintending Engineer, {2011 Writ LR 383}. It reads as follows:-

4. The pendency of a writ petition with regard to claim in one service connection cannot be a ground to reject the petitioner''s right to seek additional demand under different HT Service Connection on its own merits. Respondents'' counsel has not referred to any rule or provision of law to substantiate such a plea nor is it referred to in the impugned letter. Hence, the authority erred in clubbing the issue. It is not disputed by the respondents'' counsel that in respect of HT Service Connections, each service connection is dealt with based on the cause of action that will arise in respect of that service connection.

24. The next decision in K.K.P. Textile Ltd vs. The Superintending Engineer, Pudukottai Electricity Distribution Circle {W.P.(MD) No. 3021 of 2010 dated 10.3.2010} simply follows the first decision in W.P.No. 13443 of 2006. Similarly, the next decision in Maris Spinners Ltd vs. The Superintending Engineer, Trichy Electricity Distribution Circle (W.P.(MD) No. 8550 of 2010 dated 28.10.2010} is also a very short order, where a learned Judge held that the pendency of any other litigation relating to various other issues cannot be a ground for rejecting the request for additional load.

25. The decision in M/s. Best Cotton Mills vs. The Chief Engineer (Distribution), Tamil Nadu Electricity Board {W.P.No. 4142 of 2011 dated 6.7.2011} again follows an earlier decision, to hold that when a consumer is protected by an interim order in a previous writ petition, the respondents are not entitled to seek payment of the amount, for sanctioning additional load.

26. In M/s. Harihar Alloys Private Ltd vs. The Superintending Engineer, Pudukottai Electricity Distribution Circle (W.P.(MD) Nos. 8006 and 8007 of 2011 dated 19.7.2011 and W.P.No. 9946 of 2011 decided on 5.9.2011}, a similar pattern is followed.

27. But unfortunately for the petitioner, none of these 8 decisions relied upon by the learned counsel for the petitioner, make a reference either to the provisions of the Electricity Act, 2003 or to the provisions of the Supply Code, 2004 or the Distribution Code, 2004. Therefore, these decisions are no more than orders granting reliefs to the petitioners therein and they cannot be taken to be laying down the law on the point. They are not authoritative pronouncements either on the question as to whether a licensee is entitled to refuse supply to a licensee in terms of the third proviso to Regulation 27(1) of the Distribution Code or on the question as to whether a licensee can refuse to sanction additional load in terms of Regulation 5(2)(iv) of the Supply Code or not. Therefore, with great respect, I am unable to close my eyes to the above statutory provisions and simply follow the orders relied upon by the learned counsel for the petitioner.

28. In so far as the 3 decisions of the Supreme Court relied upon by the petitioner are concerned, they lay down the law relating to interpretation of statutory provisions. There can be no dispute about the proposition that literal interpretation is the golden rule, though at times, other methods of interpretation are taken recourse to.

29. Therefore, keeping in mind the rules of interpretation formulated in the decisions relied upon by the learned counsel for the petitioner, if we now look at the issue at hand, the only question, as pointed out earlier, is as to whether the dues of certain limited companies, which are considered to be the sister concerns of the petitioner, can be a ground for the licensee to take refuge under the third proviso to Regulation 27(1) or not.

30. It is no doubt true that every company incorporated under the Companies Act, 1956, is a legal personality distinct and different even from its own members. As pointed out by the Supreme Court in Harishchandra Vs. State of Madhya Pradesh, }, every company is capable of enjoying rights and being subjected to duties which are not the same as those enjoyed or borne by its members. But in certain exceptional cases, the Court is entitled to lift the veil of corporate entity and to pay regard to the economic realities behind the legal facade.

31. In Tata Engineering and Locomotive Co. Ltd. Vs. State of Bihar and Others, }, a Constitution Bench of the Supreme Court pointed out that the doctrine that the company has a legal and separate entity of its own, has been subjected to certain exceptions by the application of the fiction that the veil of corporation can be lifted and its face examined in substance. The Court further pointed out that the doctrine of lifting of the veil marks a change in the attitude that law had originally adopted. This was a result of the impact of the complexity of economic factors. In a prophetic tone, the Supreme Court noted in that case {rendered about 45 years ago}, that in course of time, the exceptions to the rule of independent corporate entity, may grow in number, to meet the requirements of different economic problems. After pointing out 5 categories of cases indicated by Palmer on Company Law, where the doctrine of lifting of the veil could be

applied, the Supreme Court held in that case that it would not be possible to evolve a rational, consistent and inflexible principle, which can be invoked in determining whether to lift the corporate veil or not. But the Court also broadly stated that (i) where fraud is intended to be prevented or (ii) where trading with an enemy is sought to be defeated, the veil could be lifted.

32. In Secretary, H.S.E.B Vs. Suresh and Others etc. etc., the Supreme Court held that the doctrine of lifting of the corporate veil, as enunciated in Sa-loman case, has come to be recognised in corporate jurisprudence and that the law Court invariably has to rise up to the occasion to do justice between the parties in a manner as it deems fit.

33. In State of U.P. and Others Vs. Renusagar Power Co. and Others, the Court held that the concept of lifting the corporate veil is a changing concept. The Court pointed out that in the expanding horizon of modern jurisprudence, the frontiers of the doctrine, are unlimited. It must depend primarily on the realities of the situation.

34. In Kapila Hingorani Vs. State of Bihar, }, the Supreme Court held that "the corporate veil indisputably can be pierced when the corporate personality is found to be opposed to justice, convenience and interest of the revenue or workmen or against public interest".

35. In Amit Products (India) Ltd. Vs. Chief Engineer (O and M) Circle and Another, , the appellant before the Supreme Court was denied electricity connection on the ground that the arrears of electricity charges payable by a company which was the previous consumer, had to be cleared first. In the first round of litigation, the claim of the company which was the appellant before the Supreme Court, had been rejected on the ground that the defaulting company was its sister concern. A second round of litigation was started, after there was a change in the constitution of the shareholders and the directors. But the High Court rejected the claim, forcing the company to go on appeal to the Supreme Court. While dismissing the appeal, the Supreme Court held in para 7 of the report as follows:-

7. We have carefully considered the rival contentions of both the parties. We are unable to accept the contention of the appellant Company that by changing the members of the Board of Directors of the Company or by changing the shareholding pattern, the appellant Company had undergone any change. The very same company wanted the electricity connection without making any payment towards the electricity charges payable by the previous consumer and the matter was dealt with in detail by the High Court and it was held that the appellant Company is none other than the sister concern of M/s. Amar Amit Jalna Alloys Pvt. Ltd., and was representing the same consumer who had committed the default and it was held that condition 23(b) of the conditions of miscellaneous charges for supply of electricity energy would apply to the appellant Company. We do not think that by change of Directors or by change of

pattern of shareholding, the appellant Company is really a different entity than M/s. Amit Products (India) Ltd., who filed the previous Writ Petition No. 2090 of 2002. The reasons given in the previous judgment which were confirmed by this Court would apply with all force against the present appellant Company and the High Court has rightly dismissed the writ petition filed by the appellant Company.

36. The above decision of the Supreme Court (in Amit Products), steers clear all the suspicion that one may have about the issue on hand. The said case arose out of a rejection of the request for supply of electricity to one private limited company, on the ground that its sister company was in arrears of electricity. Apart from approving the rejection of the request for supply, the Supreme Court also confirmed it once again, even after a change in the constitution of the shareholders and the directors had taken place in the company which happened to be the intending consumer.

37. Taking the law relating to the lifting of the corporate veil to greater heights, the Supreme Court pointed out in Sangramsinh P. Gaekwad and Others Vs. Shantadevi P. Gaekwad (Dead) thr. Lrs. and Others, that ever, principles of quasi partnership could be invoked, when the company in question is a family company. The Court also noted that the true character of the company and the business realities of the situation should not be confined to a narrow legalistic view and that the principles of quasi partnership are not foreign to the concept of the Companies Act.

38. Again in Jai Narain Parasrampuria (Dead) and Others Vs. Pushpa Devi Saraf and Others, , the Supreme Court held that when the same individuals attempt to use the personality of the company for furthering their own personal object, the doctrine of lifting of the corporate veil is applicable. But there was one distinction in this Supreme Court case viz., that the Court found that there was a dishonest and fraudulent design.

39. Therefore, it is clear that when the same set of persons are found to be operating under different corporate names in the form of different corporate entities, it is possible and sometimes even necessary to lift the corporate veil. Once it is found that there is a necessity to lift the corporate veil and once it is found after the lifting of the corporate veil that the same persons are behind all these entities, then there is no escape from the conclusion that the expression "in his name" appearing in the third proviso to Regulation 27(1) of the Distribution Code, would cover all those companies. Therefore, to find out the actual persons behind the show in all the companies viz., (i) Vishnuvardhan Paper Mills Private Ltd., who is the petitioner herein (ii) Rajalakshmi Paper Mills Private Ltd., (iii) V.G. Paper and Boards Ltd., and (iv) Amaravathi Sri Venkatesa Paper Mills Ltd., I directed the learned counsel on both sides to file the list of Directors. The learned counsel appearing on both sides have done so. The list reveals the following:-

Name of the person

Address

Designation

Company

Relationship

Dr. V. Genguswamy

Venkata Nilayam, Venkatesa

Mills Post, Udumalpet 642 128, Tiruppur District

1. Chairman

2. Chairman

3. Chairman

4. Managing Director

1. Vishnuvardhan Paper Mills Pvt. Ltd

2. Rajalakshmi Paper Mills Pvt. Ltd

3. V.G. Paper and Boards Ltd

4. Amaravathi Sri Venkatesa Paper Mills Ltd

Head of the family.

G. Raveendran

-do-

1. Managing Director

2. Director

3. Managing Director

4. Director

1. Vishnuvardhan Paper Mills Pvt. Ltd

2. Rajalakshmi Paper Mills Pvt. Ltd

3. V.G. Paper and Boards Ltd

4. Amaravathi Sri Venkatesa Paper Mills Ltd

Son

Smt. G. Rajalakshmi

-do-

1. Director

2. Director

3. Director

4. Director

1. Vishnuvardhan Paper Mills Pvt. Ltd.

2. Rajalakshmi Paper Mills Pvt. Ltd.

3. V.G. Paper and Boards Ltd.

4. Amaravathi Sri Venkatesa Paper Mills Ltd.

Wife

Smt. G.R. Nandhini

-do-

1. Director

2. Director

1. Vishnuvardhan Paper Mills Pvt. Ltd

2. V.G. Paper and Boards Ltd

Daughter-in-law

G.R. Vishnuvardhan

-do-

1. Director

2. Whole-time Director

3. Director

4. Director

1. Vishnuvardhan Paper Mills Pvt. Ltd.

2. Rajalakshmi Paper Mills Pvt. Ltd.

3. V.G. Paper and Boards Ltd.

4. Amaravathi Sri Venkatesa Paper Mills Ltd.

Grandson

G.R. Harshavardhan

-do-

1. Exe. Director

2. Director

3. Director

4. Director

1. Vishnuvardhan Paper Mills Pvt. Ltd.

2. Rajalakshmi Paper Mills Pvt. Ltd.

3. V.G. Paper and Boards Ltd.

4. Amaravathi Sri Venkatesa Paper Mills Ltd.

Grandson

V. Rama krishnan

Sri Saravana Mills, No. 36, Dharapuram

Road, Udumalpet- 42 126

Director

Rajalakshmi Paper Mills Pvt. Ltd

--

A.Nalia-muthu

12, >, Udumalpet-642126

1. Director

2. Director

Rajalakshmi Paper Mills Pvt. Ltd.

V.G. Paper and Boards Ltd.

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A. Srinivasan

Sapparam Street No. 103, Pulankinar, Krishnapuram, Udumalpet Taluk

Director

Rajalakshmi Paper Mills Pvt. Ltd

--

D. Senthilumar

Pethappampatty, Somavarapatti PO, Udumalpet Taluk

Director

V.G. Paper and Boards Ltd

--

T. Devadass

Vullakundapuram, Ammapatti Post, Pethappampatty

Director

V.G. Paper and Boards Ltd

--

A.G.S. Rambabu

36, ahalvadambokki Street Madurai 625

126

Director

Amaravathi Sri Venkatesa Paper Mills Ltd

--

T. H. Venkatesh

H-47, Anna Nagar East, Chennai-102

Director

Amaravathi Sri Venkatesa Paper Mills Ltd

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40. Therefore, it is clear that all the companies are closely held family companies. Hence, there was nothing wrong in the respondents demanding payment of the dues of those companies, which form the subject matter of other writ petitions. The petitioner contends that the demand of the amounts whose collection is stayed by this Court in the other writ petitions would amount to a circumvention, if not a contempt of the stay orders of this Court. But this contention cannot be accepted. The stay granted by this Court in the writ petitions filed by the sister companies of the petitioner, would go only so far as to enable those writ petitioners to enjoy uninterrupted supply, subject to the compliance with all other usual conditions, except the demand for payment of the charges made under the orders impugned in those writ petitions. What is stayed is only the enforcement of the demand, which forms the subject matter of those writ petitions. The stay does not obliterate the demand made, for all purposes whatsoever. Therefore, when the petitioner herein or the petitioners in those writ petitions seek any other facility, which does not form part of the subject matter of those writ petitions, the respondents would naturally have a right to insist upon payment of those amounts.

41. Today, despite the fact that the supply of electricity is regulated by the statute, the terms and conditions of supply continue to remain in the realm of a contract. The consumers enter into agreements with the respondents and they

become bound by the terms of such agreements. After the Electricity Act, 2003, the Electricity Board itself has undergone a metamorphosis. Therefore, it is possible in course of time, that there would be no bail-out plan. In para 1.5 of its Tariff Order No. 3 of 2010, issued on 31.7.2010, the Tamil Nadu Electricity Regulatory Commission (TNERC) presented an overview of the Tamil Nadu Electricity Board, which was created as a statutory body on 1.7.1957 under the 1948 Act. In para 1.7, the TNERC presented the "Commercial and Financial Performance" of the Board. The statistics presented therein would send cold shivers down the spine. It is stated in para 1.7.2 therein that the accumulated deficit of TNEB upto 2008-2009 was Rs. 16,774.47 crores. In para 1.7.4, it is stated that the loans outstanding as at the end of 2008-2009 were Rs. 20,250.32 crores. The gross and net assets value of the Board as at the end of 2008-2009 are indicated to be Rs. 25,016.17 crores and Rs. 14,841.40 crores respectively. In other words, the accumulated deficit has gone far beyond the net assets value. Therefore, it will not be in public interest to issue directions to the respondents to grant additional load to a consumer, whose sister companies or whose own company has obtained the benefit of stay of recovery of the demand made in respect of the existing service connection or any other service connection.

42. In any event, the decision of the Apex Court in Amit Products (India) Ltd. Vs. Chief Engineer (O and M) Circle and Another, is a complete answer to the contentions raised by the petitioner. Since the said decision was not considered by this Court in all the 8 decisions relied upon by the learned counsel for the petitioner and also since none of those 8 decisions deal with any of the provisions of the Act or the Supply/Distribution Code, the said decisions cannot be taken to be laying down the law on the point. Moreover, the decision of the Supreme Court in Amit Products, is a binding precedent, which I am obliged to follow. In view of the above, the demand made by the third respondent in the impugned order is justified and cannot be said to be unfair, illegal or arbitrary. Hence, the writ petition is dismissed. There will be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

