
(2014) 11 MAD CK 0365

In the Madras High Court

Case No : Writ Petition No. 28175 of 2014 and M.P. Nos. 1 and 2 of 2014

Sumangala Steel Private Limited

APPELLANT

Vs

The Senior Accounts Officer

RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Electricity Act, 2003 — Section 43, 47

Citation : (2014) 11 MAD CK 0365

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Judgement

C.S. Karnan, J.—The short facts of the case are as follows:-

The petitioner submits that the Government of India, in the year of 1985 in their letter dated 09.12.1985 had brought into effect a Scheme for power subsidy for small scale units for a period of five years from the date of their going into tapering/marginalizing basis. In the year 1991, the Industrial Department of the Government of Pondicherry issued a notification in G.O. Ms.No.9/91 dated 11.02.1991 whereby all Industries were excluded from the Power subsidy scheme except Small Scale Industries consuming low tension power. However, the large and medium industries having power feasibility certificate issued prior to 01.03.1991 and having taken effective steps as stipulated would continue to be governed by the power subsidy scheme dated 09.12.1985. The petitioner has been carrying on the business of producing steel in pondicherry since September 1987. Its first unit that produced steel ingots had a capacity of 10,000 tonnes per annum. The petitioner was availing of the benefits under the scheme in respect of the said unit.

2. The petitioner additionally added that on 30.06.1987, the petitioner with a view to install fresh capacity on a large scale, obtained power feasibility from the respondent for an additional load. The respondent stated that supply would be made available only after a period of 18-24 months from the date of submission of a firm application. The petitioner had filed its firm application for power on

20.05.1989 itself though the respondent was able to supply the additional power for the new unit only on 14.08.1994. The new unit went into production immediately in the year of 1994. On account of this delay the unit would not go into production though all other requirements had been fulfilled and the unit was otherwise ready to go into production. The petitioner also suffered huge additional interest caused as a result of the said delay. However, as per the Government Order was concerned, the petitioner had completed all the requirements stipulated therein, thereby utility was to the power subsidy under the 1985 scheme, for its new unit with the expanded capacity.

3. But, despite this the respondent did not grant power subsidy to the petitioner for its new unit and kept the matter in abeyance for more than 4 1/2 years. The petitioner therefore filed in W.P. No.15702 of 1997 before this Court seeking a direction to the respondents to sanction all the benefits conferred on new industries in backward areas under the letter dated 09.12.1985 to the petitioner's new unit. The Single Judge concluded that the petitioner was entitled to the benefit of subsidy for the unexpired period of the subsidy policy and whilst calculating the unexpired portion, the time taken by the respondent for energizing will be excluded. Cross appeals against the said order were filed by both the petitioner and the respondent. The petitioner filed in W.A. No.522 of 2001, challenging the order of the Single Judge in restricting subsidy to the "unexpired period" of the subsidy program and sought subsidy for five full years for its new unit. The respondent filed in W.A. No.857 of 2001 on the ground that the petitioner's 2nd unit is a mere expansion and not a new unit and would therefore be entitled to no subsidy at all since the petitioner's old unit had enjoyed subsidy for a full period of five years.

4. Meanwhile, as a result of the subsidy being refused to the petitioner as well as the delay in supplying power, the company became a Sick Industrial undertaking as per the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as SICA). The Board for Industrial and Financial Reconstruction (hereinafter referred to as "BIFR") on 04.12.2001 issued the sanctioned scheme as regards the petitioner that inter alia directed the respondent:

(i) to grant concessions as per existing policy for sick units including waiver of minimum demand charges levied during the period the plant was not in operation, deferment of balance dues if any and exemption from power cuts and to provide uninterrupted power.

(ii) to consider waiver of penal interest (by way of belated payment charges) from October 15, 1997 till date of reconnection.

The above direction from the BIFR is binding on the respondent under the provisions of the SICA and has not been implemented till date.

5. The writ appeals filed by the petitioner and the respondent came up for hearing before this Court and the respondent was asked to clarify on a few issues

by the Bench. The Division Bench also specifically stated that since the issue involved before it pertained only to the subsidy and not any dues, no figures/calculations were required to be given. Despite the above direction, the respondent filed its written submissions inter alia computing certain alleged dues from the petitioner as follows:

(a) That the petitioner had paid the Electricity Consumption charges at normal tariff rate for the period between 1994 and 1999. However, after the disposal of the writ petition on 05.01.2001, the petitioner had not paid any amount and had committed default in payment of the current consumption charges from March 1999 to October 1999 amounting of Rs.5,55,70,094/-.

(b) That the petitioner had to pay minimum charges for the disconnected period from November 1999 to February 2002 amounting to Rs.3,29,04,913/-.

(c) That the petitioner also had to pay supplementary charges for the 110 KV line extension and belated payment surcharges for old arrears paid in installments, amounting to Rs.4,52,774/- and Rs.10,20,343/- respectively.

(d) Therefore, according to the Respondent, the following was the break up of the amounts claimed:

ACCORDING TO THE RESPONDENT:

Further the respondent claimed before the Division Bench that belated payment surcharges at the rate of 12% per month had to be paid on the said outstanding amount as per the terms and conditions of supply of electricity. In addition to the above, it was stated that the petitioner had to pay the Security Deposit of Rs.2,65,85,050/- and Meter Security Deposit of Rs.15,000/-.

6. Pursuant to this, the petitioner filed its response stating inter alia the following:

(a) That the petitioner has, from date of reconnection of electricity in the year 2002 has not defaulted on a single payment. The petitioner has paid all current consumption charges till date without default fully complying with the Division Bench order dated 20.12.2001. The petitioner was in default during the months of March 1999 to October 1999 only due to the failure on the respondent's part to grant the subsidy to the petitioner. The power supply was disconnected on 27.10.1999. The arrears due from the petitioner during this period amounts to Rs.5,53,79,873/- (after deducting 5 days of Minimum Demand charges for the period during which power was disconnected in October 1999) and that the respondent's figure of Rs.5,55,70,094/- did not take into account the period of disconnection.

7. That the minimum demand charges from 27.10.1999 to 26.02.2002 amounting to Rs.3,30,95,134/- during the period when the power was disconnected and until the restoration of power subsequent to the order of this Court, are to be waived as per direction of BIFR dated 04.12.2001 mentioned above. Therefore, the petitioner is neither liable to pay minimum demand

charges during the period the unit was closed nor belated payment surcharges. This contention is further vindicated from the action of the respondent in extending such concessions pursuant to the order of the Appellate Authority for Industrial and Financial Reconstruction to M/s. Pondicherry Papers Ltd., wherein the respondent had waived the minimum demand charges for the years 1987, 1988 and 1989 until reconnection. Further, we had made various representations to the respondent over the years seeking waiver of these charges. However, the petitioner has received no formal reply to these representations till date.

8. That the petitioner had made a representation to the Respondent wherein it had disputed the levies of Rs.4,52,774/- and Rs.10,20,343/-. That the same had been held in abeyance for a decision by the Government. It is pertinent to note that no reply denying the petitioner's averments/calculations had been filed by the respondent. The Division Bench of this Court was pleased to take both the written submissions of the respondent and the reply of the petitioner on record, but however after recording that the petitioner disputes the claim made by the respondent, held at para 73 of the order as follows: Since the issue before us is only in respect of grant of benefit of subsidy to the petitioner company, which we have held against the petitioner company. We do not propose to go into the disputed claim on the charges due and payable by the company. Suffice to note that it is open to the respondents and the Electricity Department, Pondicherry, to take appropriate action against the petitioner company in accordance with law against the petitioner company for recovery of the amount.

9. The following amounts are liable to be deducted from the supposed arrears due. The same have been admitted by the respondent and duly deducted in its written submissions before the Division Bench as well.

(a) A sum of Rs.95,26,059/- towards arrears in two installments dated 15.06.1999 and 20.06.1999;

(b) A sum of Rs.1,42,02,302/- towards revocation of security deposits;

(c) A sum of Rs.36,69,202/- towards demand charges waived and sales tax exemption;

(d) A sum of Rs.1,00,00,000/- that the petitioner paid pursuant to the order of the Division Bench of this Court in C.M.P. Nos.7638,11438 and 12874 of 2001 in W.P. No.857 of 2001 and W.M.P. No.26495 of 2000 in W.P. No.18290 of 2000 dated 03.10.2001 and modified on 20.12.2001 directing the respondent to restore power supply to the petitioner contingent on payment of the said sum by the petitioner. The said order indicates that the Bench saw a prima facie case in favour of the petitioner as it had partially succeeded before the Single Judge in W.P. No.15702 of 1997. It is also pertinent to note that the petitioner had paid the above mentioned amount of Rs.1,00,00,000/- at a time when it was yet to recover from its sickness.

10. The supplementary charges for the extension of the 110KV line

Rs.4,52,774/- refers to the cost of extending the 110KV supply to the petitioner's new unit. The petitioner submitted its HT application on 20.03.1989 and as per the terms and conditions in force, there was no requirement for the petitioner to remit any charges towards extension of 110KV up to its premises. The petitioner had to bear the cost of extending the supply within its boundary which was duly borne. Even though it is not required as per the terms and conditions the petitioner had voluntarily agreed to the request of the respondent to defer the cost to an extent of Rs.10,99,000/- and the same was deposited. The 110KV line connection was undertaken. It is shocking that many years after the 110KV line was energized in 1994, the respondent had added an amount of Rs.4,52,774/- as supplementary charges. The petitioner is not bound to pay the same as per the terms and conditions that were prevailing on the date the line was energized.

11. The belated payment surcharges for the old arrears paid under installments amounting to Rs.10,20,343/- refers to the arrears which had gotten accumulated on account of this Court order granting interim stay on retrospective increase in tariff coupled with a prospective increase in tariff coupled with a prospective increase in the tariff. All High Tension consumers had filed a writ petition and had obtained an order of interim stay from this Court. Thereafter the petitioner withdrew the said writ petition and this Court had vide its final order directed that those who had withdrawn be allowed to pay the arrears in easy installments without belated payment surcharges. This matter was consequently discussed with the Government of Puducherry vide the minutes of a meeting dated 06.12.1995. The petitioner has complied with all the decisions taken at this meeting. In the said minutes it was clearly agreed that the arrears arrived at had to be paid in 15 equal installments without interest. In any event, the petitioner had paid and cleared the arrears well within the said 15 months. Therefore, there was no question of attracting Belated Payment Surcharges or interest and therefore the respondent ought to waive Rs.10,20,343/- computed as interest for the arrears. Further, the respondent had erred in not waiving the minimum demand charges amounting to Rs.7,00,372/-. The same ought to be waived as per the letter of the Labour Department dated 30.09.1999.

12. Further, the petitioner is exempted from paying sales tax on power since, it did not carry on inter-state sales. The respondent had given sales tax exemption for the months of April 1999, May 1999, June 1999 amounting to Rs.10,92,136/-. However, the respondent had not given Sales Tax exemption for the months of March 1999, September 1999 and October 1999 amounting to Rs.6,86,252/-. Sales Tax charged in the bills for the said mentioned months are as follows:

Sales Tax exemption given for the months April, May and June 1999 amounted to Rs.10,92,136/- Sales Tax exemption to be given for the months of March, September and October 1999 amounts to Rs.6,86,252/-. It is respectively submitted that the calculations of arrears according to the petitioner were as

follows:

ACCORDING TO THE PETITIONER:

13. The petitioner respectfully reiterates its calculations submitted before the Division Bench of this Court and denies that the petitioner is due to pay arrears of Rs.5,22,50,561/-. The petitioner also denies that it is liable to pay belated payment surcharges and the amounts towards security deposit and meter security deposit. In pursuant to the said common order dated 12.07.2010 in W.A. Nos.522 of 2001 and 857 of 2001, the respondent had shockingly sent a demand notice on 02.09.2010 that was received by the petitioner on 04.09.2010 stating that the petitioner was required to pay the pending dues to the tune of Rs.5,22,50,561/- within 15 days from the date of the said communication, failing which the petitioner's HT supply will be disconnected. Further the letter stipulated that the petitioner is also liable to pay:

(a) Belated payment surcharges till the date of payment of arrears, as per terms and conditions in force;

(b) Rs.2,65,85,050/- towards security deposit;

(c) Rs.15,000/- for Meter Security Deposit.

14. In light of this, it is shocking that the respondent, despite being aware that the claims are disputed and despite the finding of the Division Bench to that effect, had gone ahead and arbitrarily issued the communication dated 02.09.2010 threatening to disconnect the power supply in the event the supposed arrears are not paid. It is pertinent to note that the respondent has not even made an effort to justify its claims or explain as to how the supposed arrears due had been arrived at. The petitioner had read the same with the written submissions filed by the respondent in the writ appeals to ascertain the break-up of amounts. It is submitted, at the outset that none of amounts claimed by the respondent in the letter dated 02.09.2010 were the subject matter of W.P. No.15702 of 1997 and therefore did not come under the purview of the writ appeals. It is therefore, shocking that all these amounts had been included in a demand notice that was admittedly sent pursuant to the order of the Hon'ble Division Bench dated 21.07.2010. Pursuant to the issuance of such a bald demand notice dated 02.09.2010 demanding the payment of the amounts mentioned above, the petitioner filed in W.P. No.21262 of 2010 challenging the above communication. This Court vide order dated 16.09.2010 in M.P. No.1 of 2010 granted interim stay on condition that the petitioner pays a sum of Rs.3,00,00,000/- within a period of four weeks. The petitioner was ordered to pay the same in two installments. Thereafter the petitioner even under financial distress was able to pay Rs.81,47,843/- as part of the first installments. This was 50% of the petitioner's admitted liability of Rs.1,62,95,686/-. The petitioner thereafter filed a modification petition to the above order in M.P. No.3 of 2010, seeking to permit the petitioner to pay a sum of Rs.81,47,843/- as part of the first installment. This was 50% of the petitioner's admitted liability of

Rs.1,62,95,686/-. The petitioner thereafter filed a modification petition to the above order in M.P. No.3 of 2010 seeking to permit the petitioner to pay a sum of Rs.81,47,843/- before 14.10.2010 and to furnish a bank guarantee for Rs.2,65,83,050/- towards security deposit. This would have ensured that the petitioner would have paid all its admitted liabilities to the respondent while at the same time given the respondent, the security deposit of Rs.2,65,83,050/- as a bank guarantee. Vide order dated 08.10.2010 in M.P. No.3 of 2010, this Court while rejecting the petitioner's request directed the petitioner to pay the balance amount as originally ordered in M.P. No.1 of 2010 in two installments within a further time period of two weeks and four weeks thereafter respectively. The petitioner thereafter paid a sum of Rs.68,52,157/- on 25.10.2010. Hence, the total amount paid by the petitioner was Rs.1.5 Crores, being 50% of the amount as ordered by the Single Judge. The petitioner further paid a sum of Rs.12,65,996/- on 18.11.2010. The total amount now paid by the petitioner amounted to Rs.1,62,95,686/- being the admitted dues of the petitioner. The petitioner also filed in W.A. No.2387 of 2010 challenging the order in M.P.3 of 2010 imposing such an onerous condition and the Division Bench after considering the facts and circumstances was pleased to direct the petitioner vide order dated 14.12.2010 to pay a sum of Rs.1,00,00,000/-. The petitioner has thereafter duly complied with the above direction and paid a sum of Rs.1,00,00,000/- on 20.12.2010.

15. It is pertinent to note that the demand dated 02.09.2010, impugned in W.P. No.21262 of 2010 included a sum of Rs.2,65,85,050/- (Two Crore Sixty Five Lakhs and Eighty Five Thousand and Fifty) towards security deposit and the above writ petition challenging the said demand notice is still pending. The respondent has not even filed a counter to the writ which has been pending. It is further pertinent that the above orders were passed by the Single Judge as well as Hon'ble Division Bench after the respondent contested and rejected the offer made by the petitioner to pay the demanded security deposit separately as a bank guarantee and insisted that a consolidated sum be paid by the petitioner for the purpose of the interim order. Hence, it is respectfully submitted that the petitioner's payments totaling Rs.2,62,95,686/- pursuant to orders passed in W.P. No.21262 of 2010 and W.A. No.2387 of 2010 have all been made to dispose revolving around a demand notice dated 02.09.2010 demanding a total of Rs.7,88,50,611/- that includes a demand of Rs.2,65,85,050/- towards security deposit. It is reiterated that in this regard, the petitioner has already paid a total of Rs.2,62,95,686/-.

16. It is stated that subsequent to the above payments, the respondent further shockingly issued two letters both dated 26.04.2011 to pay an amount of Rs.2,59,54,875/- towards arrears and Belated Payment surcharge. Further vide another letter dated the same day the respondent further claimed Rs.2,65,85,050/- towards security deposit and an amount of Rs.15,000/- as Meter Security Deposit. The petitioner sent a reply letter dated 30.04.2011 advising the respondent that this Court had already granted an interim injunction

restraining the department from disconnecting the power supply. It was also expressly mentioned in the reply letter that, the payment with regards to the orders of this Court dated 16.09.2010, 08.10.2010 and 14.12.2010 amounting to Rs.2,62,95,686/- has already been paid.

17. Furthermore, even after the reply letter being duly sent, after three years of deliberations of the petitioner being accepted, the respondent, again sent a letter dated 20.08.2014 seeking for the payment of Rs.5,23,18,000/- as additional security under JERC (Electric Supply Code) Regulation, 2010 and again through a reply letter dated 30.08.2014, the petitioner enlightened the respondent reiterating the orders that were already mentioned in the letter dated 30.04.2011 highlighting the order of the Supreme Court to maintain Status Quo. It is pertinent to note that the order of Status Quo was granted while praying before this Court that the respondent should be restrained from taking any coercive steps against the petitioner pursuant to the order of this Division Bench dated 21.07.2010 in W.A. Nos.522 and 857 of 2010. Despite these explanations, the respondent again, sent a letter dated 10.10.2014 stating that the interim order passed in W.P. No.21262 of 2010 applied only to the claim of subsidy and not in respect of the security deposit. It is pertinent to note that, the interim order covers all the amounts due including but not limited to the arrears and the security deposit. Further, it is relevant that the interim order passed in W.P. No.21262 of 2010 is not in respect of the disputed claim of subsidy. The dispute relating to subsidy is pending in the Hon'ble Supreme Court in Civil Appeal No. 164-165 of 2013 and Civil Appeal No. 166-167 of 2013. The very reasoning and understanding by the respondent in the impugned communication dated 10.10.2014 exemplifies the complete non application of mind in passing the impugned communication.

18. Therefore, it is stated that the petitioner herein, time and again, has acted in a bonafide manner in replying to the letters to the electricity department. Also, it is submitted that interpretation of the order of this Court by the respondent is misleading and establishes the malafide intention of the respondent to tax the petitioner without assigning proper reasons for the same.

19. The 2nd respondent filed a counter statement and resisted the above writ petition. This respondent submits that the petitioner M/s. Sumangala Steels Private Limited, had approached this Court in W.P. No.15702 of 1997, in the matter of seeking power subsidy from the Industrial Department, Government of Puducherry. The writ petition was disposed by a single judge, partially allowing the claim of the petitioners Industry and granting subsidy to the tune of Rs.3.08 Crores. Aggrieved by this order both the petitioner Industry and the Electricity Department prepared appeals in W.A. Nos.522/2001 and 857/2001, before the Division Bench of the High Court of Madras. Both these appeals and connected petitions were heard together and disposed of by a Division Bench of the High Court of Madras vide judgment dated 21.07.2010. The order of the Single Judge in W.P. No.15702 of 1997, was set aside and the Writ Appeal No. 522/2001,

prepared by the petitioner Industry was dismissed. The writ appeal No. 857/2001 was allowed. Aggrieved by the dismissal of the above writ appeal, the petitioner Industry filed a Review Petition No. 5 and 6 of 2011 which was also turned down by the Division Bench. It is against this dismissal the petitioner Industry had filed a special leave petition before the Hon''ble Supreme Court of India. The SLP Nos. 12134 and 12135 of 2011 have been admitted and leave granted for appeal in 166 and 167 of 2013. The appeals are still pending.

20. The 2nd respondent further submits that while dismissing the W.A. No.522 of 2001 preferred by the Petitioner industry against the orders passed in 15702/1997 this Court has categorically stated in Para.73 of the Judgment dated 21.07.2010 that:

Since the issue before us is only in respect of grant of benefit of subsidy to the Petitioner Company, which we have held against the Petitioner Company, we do not propose to go into the disputed claim on the charges due and payable by the Petitioner Company. Suffice to note that it is open to the Respondents and the Electricity Department, Pondicherry to take appropriate action against the Petitioner Company in accordance with law against the Petitioner Company for recovery of the amount.

21. He submits that it is pertinent to note that while ordering notice to the Respondents in SLP filed by the Petitioner Industry, the Hon''ble Supreme Court also had specifically ordered status quo in respect of subsidy alone and not the disputed claims. The Hon''ble Court had ordered that:

DOTH ORDER that the status quo as obtaining between the parties herein on this the 9th day of May 2011, with regard to power subsidy which was the subject matter of dispute before the High Court of Judicature at Madras in Review Petition No. 5 & 6 of 2011 shall be maintained.

22. The 2nd respondent submits that it is in this backdrop of the Judgment dated 21.07.2010, pronounced by the Division Bench of this Court, which declined to go into the issue of dispute regarding claims, that the Petitioner Industry preferred a fresh Writ Petition in 21262/2010 seeking to quash demand raised by the Electricity Department. While the claim of the Department as submitted both before the Hon''ble Division Bench of this Court and before the Single Judge in W.P. No.21262/2010 was that, as on 30.06.2010, a total sum of Rs.5,22,50,561/- was said to be due from the Petitioner Industry apart from Security Deposit of Rs.2,66,85,050/- and Meter Security Deposit of Rs.15,000/- which were payable by the Petitioner Industry. According to the Petitioner Industry the amount due was only Rs.1,76,82,320/-. It is to be noted that, the Petitioner Industry did not dispute the demand raised by the Department in respect of Security Deposit and Meter Security Deposit. Hence the interim order in W.P. No.2126220/2010 directing the Petitioner industry, to deposit an amount of Rs.3 Crores, only mean to be the amount ordered to be paid against the claim of Rs.5,22,50,561/- and against the admitted plea of Rs.1,76,82,320/-,

specifically.

23. Following the Interim order dated 16.09.2010 passed in M.P. No.1/2010 in WP.21262/2010, the Petitioner Industry filed M.P. No.3/2010, seeking extension of time and rescheduling of payment which was granted vide Order dated 08.10.2010. Aggrieved by the Order, the Petitioner Industry filed another W.A. No.2387/2010. Wherein, this Court while disposing the Appeal, was pleased to order payment of one crore against the balance of the disputed amount payable by the Petitioner Industry.

24. The respondent submits that to put it in a nutshell, from the above, it is clear that the issue that was, before the Division Bench of this Court and that is, before the Hon"ble Supreme Court of India is only regarding the Subsidy and not the claim made or demand raised by the Department. The issue of claim and counter claim on the demand raised by the department is pending before this Court in W.P. No.21262/2010. The Interim Order passed in M.P. No.1 of 2010 in WP.No.21262/2010, is only in respect of disputed claim and not in respect of the security deposit payable which is a prerequisite for supply of electricity under the provisions of Electricity Act, 2003, as stated above.

25. The respondent submits that as per the provisions contained in Section 47 of the Electricity Act, 2003, empowering the Licensee to collect security deposit and to refuse to give or continue to give power supply, in default of payment of security deposits, which reads as follows:

Section 47. (Power to require security): --- (1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him reasonable security, as may be determined by regulations, for the payment to him of all monies which may become due to him.

a. in respect of the electricity supplied to such persons; or

b. where any electric line or electrical plant or electric meter is to be provided for supplying electricity to person, in respect of the provision of such line or plant or meter, and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply of electricity or to provide the line or plant or meter for the period during which the failure continues.

(2) Where any person has not given such security as is mentioned in subsection (1) or the security given by any person has become invalid or insufficient, the distribution licensee may, by notice, require that person, within thirty days after the service of the notice, to give him reasonable security for the payment of all monies which may become due to him in respect of the supply of electricity or provision of such line or plant or meter.

(3) If the person referred to in sub-section (2) fails to give such security, the distribution licensee may, if he thinks fit, discontinue the supply of electricity for the period during which the failure continues.

(4) The distribution licensee shall pay interest equivalent to the bank rate or more, as may be specified by the concerned State Commission, on the security referred to in sub-section (1) and refund such security on the request of the person who gave such security.

(5) A distribution licensee shall not be entitled to require security in pursuance of clause (a) of sub-section (1) if the person requiring the supply is prepared to take the supply through a pre-payment meter.

26. The respondent further submits that as per the Act and also the 6.10 of the Joint Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2010, the respondents have done their statutory duty in demanding the Security Deposit. Particularly the petitioner company who is a defaulter, is consuming an average of 4857133 units per month, in Rupees the consumptions charges would come around Rs.2.30 crores p.m. The present demand is made in accordance with the stipulations mandated by the JERC and the method of calculation done before passing the impugned is also based on the guidelines issued under JERC norms. As per the Code the respondents are bound to review the security deposits every six months in respect of each consumer and this procedure has been adopted in the case of the petitioner also and there is no violation or deviation of any rule or statutory provisions. Since the petitioner is consuming the energy at the rate of Rs.2.30 crores per month, the respondents are correct in their calculation in demanding a sum of Rs.5,23,18,000/- the said demand was arrived on the review of the energy consumption for the last six months running from January 2014 to June 2014 and the respondents have every right to demand the security deposit.

27. The respondent additionally submits that the respondent being a supplier of energy based on the agreement entered with the consumers and this is purely a contractual obligation borne out by the terms and conditions of the agreement entered at the time of availing the electricity connection. The demand of the respondent towards security deposit is stipulated in Clause 9 of the terms and conditions itself, having full knowledge about those things the petitioner cannot turn around and now say that the respondents are not correct in demanding additional security deposit, by citing the earlier court orders, wherein the issue regarding the demand of security deposit was not at all an issue.

28. The respondent submits that the main contention of the petitioner regarding the availability of the earlier deposits made towards security is concerned, the security deposit made earlier was adjusted towards outstanding towards consumption charges, which were detailed in the tabular column shown below, wherein the energy consumption in units and the amounts were all mentioned for better appreciation and to elucidate the method and manner of calculation of the demand.

29. The respondent submits that the security deposit is a mandated for each and every one of the consumer and it is not the one called for from the petitioner

alone. Both the Electricity Act, JERC Code and the terms and conditions mandates collection of security deposit and also it does not provide for any opportunity of hearing before making demand for security deposit. The petitioner who is already a defaulter and who is still having dues to the tune of Rs.2,59,54,875/- cannot approach the court and question the demand towards security deposit. The demand is legal and proper and the writ petition is liable to be dismissed.

30. The highly competent Senior counsel Mr.P.S. Raman, appearing for the petitioner submits that the impugned communication ignores the fact that the amount paid by the petitioner a sum of Rs.2,62,95,686/- pursuant to orders passed in M.P. Nos.1+3 in W.P. No.21262 of 2010 and in W.A. No.2387 of 2010 were passed in by being challenged to a consolidated demand notice claiming arrears, disputed arrears, security deposit and meter security deposit. This Court did not specify the head under which the amounts paid by the petitioner should be appreciated. However, the petitioner paid a sum of Rs.1,62,95,686/- towards admitted dues. The balance amount of Rs.1,00,00,000/- paid by the petitioner cannot be appreciated by the respondents towards the disputed arrears which is the main issue in the pending writ petition No. 21262 of 2010. Therefore, the amount as added by this Court and paid by the petitioner were consolidated amount with respect to the consolidated demand notice and cannot be appreciated by the respondent towards the disputed areas and has treated the payments towards security deposit as nil. This is not only a grave error but also in contempt of the orders passed by this Court in Writ Appeal No. 2387 of 2010 and in writ petition No. 21262 of 2010. Further the impugned communications calculates the security deposit without taking into account the amount of Rs.2,66,95,686/- as already been paid by the petitioner through the orders passed in W.P. No.21262 of 2010 and writ appeal No. 2387 of 2010 were the demand notice under challenge wherein demanding a total of Rs.7,88,50,611/- contains a demand of Rs.2,65,85,050/- towards security deposit. The petitioner's payment include payments towards security deposit and the present impugned communication completely ignores this issue.

31. The very competent counsel further submits that by issuing the communication, the respondent is in contempt of Court for violating the order passed in Writ Petition No. 21262 of 2010 and Writ Appeal No. 2387 of 2010, as such the impugned order is not fit for operation any further. The respondent passed the said impugned order in an arbitrary manner. The impugned communication demands Rs.5,22,50,561/- as additional security deposit the demand is based on a reading of the past two months consumption average, but fails to disclose the exact sum that was arrived at in the meter reading and what is the sum that has been subtracted by the respondent towards existing security deposit before arriving at the total demand of 5.22 Crores. The fact that the impugned commutation says that the demand is towards additional security deposit shows that the respondent has retained certain sums towards security deposit but wontedly failed to mention any of the details in the impugned order.

32. The very competent counsel Mr.T.S. Raman, further submits that when the writ petition No. 21262 of 2010 is pending and the respondent has been restrained by an order of interim injunction from disconnecting the power supply to the petitioner, under these circumstances the respondent has issued the demand notice purely to harass the petitioner. Further, the petitioner issued a letter dated 26.04.2011 wherein demanding a claim of Rs.2,65,85,050/- as security deposit and another letter dated 26.11.2011 demanding Rs.2,59,54,875/-. These two demand notices runs against the impugned injunction granted by this Court in W.P. No.21262 of 2010. Therefore the petitioner had initiated contempt proceedings when the respondent accepted not to demand any sum till disposal of the W.P. No.21262 of 2010. While, so the respondent now issued a demand notice dated 10.10.2014 which is not justifiable. The connected matter is pending before the Hon''ble Supreme Court by way of Civil Appeals, wherein Status Quo has been granted. The learned Senior Counsel further submits that about 500 workers are working in the petitioner's Company. The petitioner had sent detailed letter dated 30.08.2014 and 04.09.2014 and revealed the factual position of the earlier writ petition and also appeals which are pending on the file of the Hon''ble Supreme Court. The respondent had issued a demand notice on 26.04.2011 and demanded a sum of Rs.2,65,85,050/- towards a security deposit and also demanded Rs.15,000/- towards meter security deposit and the same has been challenged before this Court.

33. The very competent counsel Mr.A.Tamilvanan, appearing for the state of Pondicherry submits that the petitioner was called for to pay additional security deposits. On an earlier occasion the petitioner had filed a writ petition No. 15720 of 1997 in the matter of seeking power subsidy from the Industrial Department, the said writ petition was partly allowed and granting subsidy a sum of Rs.3.08 Crores. Aggrieved by the said order the petitioner's Industry and the Electricity Department have prepared writ appeals in W.P. Nos.522 and 857 of 2001 before the Division Bench respectively. The Hon''ble Division Bench dismissed the appeal filed by the petitioner's Industry and allowed the appeal which has been filed by the Electricity Department. Consequently, the single Judge order passed in writ petition No. 15702 of 1997 was set aside.

34. Thereafter, the petitioner had filed Review Application which were dismissed by the Division Bench and aggrieved by the said order the petitioner has filed appeals before the Hon''ble Supreme Court. Now, the appeal is pending and Status Quo order was passed in respect of subsidy alone. Further, the petitioner has prepared writ petition No. 21262 of 2010, seeking to quash the demand raised by the electricity department, a total sum of Rs.5,22,50,561/- was set to be due from the petitioner's Industry apart from security deposit Rs.2,66,85,050/- and meter security deposit of Rs.15,000/- which are payable by the petitioner's Industry. The petitioner's Industry did not dispute the demand raised by the department in respect of security deposit and meter security deposit. The learned counsel vehemently pointed out that the issue is now before

the Hon^{ble} Supreme Court is only regarding subsidy and not in respect of the security deposit payable and which is a pre-request for supply of electricity under the provisions of the Electricity Act 2003. The impugned order has been passed on the basis of guideline maintained by the Department. Since, the petitioner is consuming the energy at the rate of Rs.2.3 Crores per month. Considering, the Department is demanding the said amount. Further, there is no existing security deposit in the name of the petitioner's Company. The security deposit is compulsory for each and every one consumer. Additionally the petitioner is a defaulter who is still having dues to the tune of Rs.2,59,54,875/-. As such, the petitioner cannot challenge the impugned order by the respondent.

35. From the above discussion, this Court is of the view that the respondent herein has directed the petitioner to remit an amount of Rs.5,23,18,000/- towards security deposit. On an earlier occasion the respondent directed the petitioner by this letter dated 02.09.2010 and demanded a distributed claim of Rs.5,22,50,561/- along with belated payment of surcharges of Rs.2,65,85,050/- towards security deposit and Rs.15,000/- for meter security deposit, the same now under challenge. Under the circumstances, the respondent had directed the petitioner to remit an amount of Rs.5,23,18,000/- towards security deposit. Therefore, proper clarification is necessary regarding the previous demand of Rs.2,65,85,050/- towards security deposit and as per earlier communication on 02.09.2010 and the present communication dated 10.10.2014 and again demanding Rs.5,23,18,000/- towards security deposit, therefore, the impugned order is not suitable for execution against the petitioner until a proper clarification is indicated.

36. On considering the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the impugned order of the respondent and the view on clarity mentioned above, this Court is inclined to allow the above writ petition. Consequently, the order of the 1st respondent dated 20.08.2014 bearing No. 144/ED/HT/SAO-I/2013-14/230 as affirmed in its communication dated 10.10.2014 bearing No. 144/ED/HT/SAO-I/2014-15/307 on the file of the 2nd respondent is quashed. Consequently, preventing the respondents from disconnecting the power supply to the petitioner's unit bearing consumer code No. 144, in pursuance of the above communication.

37. In the result, the above writ petition is allowed with the above observations. Consequently, Connected miscellaneous petitions are closed. Accordingly ordered.