
(2003) 09 MAD CK 0197
In the Madras High Court
Case No : Writ Appeal No. 701 of 1999

Tamil Nadu Electricity Board and Others	APPELLANT
Vs	
Aruppukottai Sri Jayavilas Ltd.	RESPONDENT

Date of Decision : 26-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Revision of Tariff rates on Supply of Electrical Energy Act. 1978 — Section 4

Citation : AIR 2004 Mad 80 : (2003) 3 MLJ 754

Hon'ble Judges : R. Jayasimha Babu, J;P.D. Dinakaran, J

Bench : Division Bench

Advocate : R. Muthukumarasamy, A.A.G for Srinivasan, for the Appellant; K. Alagirisamy for Navaneethakrishnan and S. Kadakarai, for the Respondent

Judgement

P.D. Dinakaran, J.—The claim for high tension tariff concession for the "B" Unit as a "new industry" under G.O.Ms. No. 102, PW (Electricity) dated 24-1-1992 and G.O.Ms. No. 29, Energy (A2), dated 31-1-1995, notifications issued by the Government of Tamil Nadu by exercising the power u/s 4 of the Tamil Nadu Revision of Tariff Rates on Supply of Electrical Energy Act, 1978 (Act 1 of 1979) (for brevity the "Act"), having been rejected by the Tamil Nadu Electricity Board (for brevity the "Board"), by proceedings dated 10-12-1997, signed on 30-12-1997, was challenged by the respondent-company (for brevity the "Company") in W.P. No. 2389 of 1998 seeking a writ of Certiorarified Mandamus to call for the records of the second respondent therein (second appellant herein) in his proceedings reference letter No. 560/SE/IEMC/ EE(T)/AEE.2/AE.2/95-5, dated 30-12-1997, quash the same and to direct the respondents therein (appellants herein) to grant tariff concession to "B" Unit of the petitioner therein (respondent-Company herein) for the full period of three years from 27-9-1995 to 26-9-1998 as per G.O.Ms. No. 102, Public Works (Electricity), dated 24-1-1992, treating the same as a "new industry". That writ petition having been allowed the Board is in appeal.

2.1 The Company owns a Cotton Spinning Mill located at Melakandamangalam Village, Aruppukottai Taluk, Virudhunagar District, which is known as their "A" Unit, and is provided with high tension service connection bearing H. T. S. C. No. 68. The Company also started another Spinning Mill known as their "B" Unit located at Tamilpadi Village, Thiruchuli Taluk, which is also provided with high tension service connection bearing H. T. S. C. No. 150 and the said "B" Unit was commissioned for commercial production from 1-9-1995.

2.2 The core contention of the Company is that they are entitled to a tariff concession for full period of three years treating their "B" unit, which is 4 Kms. away from their "A" Unit, as a new industry, but not as an expansion of their "A" Unit.

3.1 The Tamil Nadu Essential Articles (Control and Requisitioning) Act, 1949 originally provided for the control of supply, distribution, transport and process of essential articles mentioned in the schedule thereunder, which includes the electrical energy. The Government of Tamil Nadu granted tariff concession by issuing necessary notifications from time to time by exercising the powers conferred under the Tamil Nadu Essential Articles (Control and Requisition) Act, 1949.

3.2 Thereafter, the State Legislature enacted the Act which provides for revision of tariff rates leviable on electrical energy supplied in the State by the Electricity Board with effect from 1-3-1978.

3.3 As per Section 3 of the Act, the tariff rates for the supply of electrical energy was payable as specified in the Schedule to the said Act. The Schedule, apart from providing different rates for supply of high tension and low tension power, also provides for different scales of tariff to different categories of consumers.

3.4 Section 4 of the Act empowers the State Government to amend the provisions of the Schedule by means of notification. By exercising such power conferred u/s 4 of the Act, certain concessions are being extended to the different categories of consumers by appropriate notification issued from time to time.

3.5 The Government, in order to improve industrial growth in Tamil Nadu and to promote establishment of new industries introduced certain subsidies and concessions in different shapes like interest free loan, electricity tariff concession, deferral of sales tax, assignment of lands, export incentives, etc. to the new industries. Thus, the Government of Tamil Nadu, exercising the power u/s 4 of the Act, vide G.O.Ms. No. 102, P.W. (Electricity), dated 24-1-1992, notified the tariff concession rates to the industries.

3.6 The G.O.Ms. No. 102, P.W. (Electricity), dated 24-1-1992, reads as follows:--

(G.O.Ms. No. 102, P.W. (Electricity), 24th January, 1992)

No. II(2)/PWR/339(h) 92.

In exercise of the powers conferred by Section 4 of the Tamil Nadu Revision of Tariff Rates on Supply of Electrical Energy Act, 1978 (Tamil Nadu Act 1 of 1979), the Government of Tamil Nadu hereby makes the following amendment to the Schedule to the said Act.

2. The amendment hereby made shall come into force on the 1st February, 1992.

AMENDMENT :

In the said Act, for the Schedule, the following schedule shall be substituted namely:--

THE SCHEDULE (See Section 3)

Part A-- HIGH TENSION SUPPLY HIGH TENSION TARIFF :--

Registered factories, tea estates, textiles, Railway tractions, fertilizers, Salem Steel Plant, Heavy water project, Caustic Soda, Calcium Carbide, Aluminum and Potassium Chloride and other Industries,

Area Rate per KWH Rate per KVA of maximum demand per month

(1) (2) (3)

In Paise (In Rupee)

Madras Metropolitan Area 150 75

and Non Metropolitan Areas 140 75

Tariff concessions for High Tension Industries coming under High Tension Tariff:--

(1) (a) In the case of New High Tension industries to be set up in the areas, other than the Madras Metropolitan areas, the following concessional tariffs shall be charged for the first three years from the date the consumer is given service connection under High Tension Tariff :--

For the first year : 60 per cent of the High Tension rates: For the second year : 70 per cent of the High Tension rates: For the third year : 80 per cent of the High Tension rates: For the fourth year : Full tariff.

Sd/- SECRETARY TO GOVERNMENT"

3.7 Thereafter, by notification made in G.O.Ms. No. 29, Energy (A2), dated 31-1-1995, the Government of Tamil Nadu amended the schedule to the Act providing certain tariff concessions to the new industries and the expansion of industry. The portion of the notification dated 31-1-1995 which is relevant for the purpose of the claim of the Company is referred to hereunder :

"NOTIFICATIONS BY GOVERNMENT ENERGY DEPARTMENT AMENDMENT TO THE SCHEDULE TO THE TAMIL NADU REVISION OF TARIFF RATES ON SUPPLY OF ELECTRICAL ENERGY ACT.

(G.O.Ms. No. 29, Energy (A2), 31st January, 1995, Thai 17, Bhava, Thiruvalluvar Anandu 2026.)

No.II(2)/FGY/342(g)/95.

In exercise of the powers conferred by Section 4 of the Tamil Nadu Revision of Tariff Rates on Supply of Electrical Energy Act, 1978 (Tamil Nadu Act 1 of 1979), the Governor of Tamil Nadu hereby makes the following amendment to the Schedule to the said Act.

2. The amendment hereby made shall come into force on the 1st February, 1995.

AMENDMENT

In the said Act, for the Schedule, the following Schedule shall be substituted, namely :--

THE SCHEDULE (See Section 3) PART-A HIGH TENSION SUPPLY

High Tension Tariff I :

Registered factories, tea estates, textiles, railway tractions, fertilizers, Salem Steel Plant, Heavy Water Plant, Caustic Soda, Calcium Carbide, Aluminum and Potassium Chlorate and all other industrial establishments.

Area Rate per KWH Rate per KVA of maximum demand per month

(1) (2) (3)

(In paise) (In Rupees)

Madras Metropolitan..... 250 100

Non Metropolitan..... 240 100

Tariff concession for High Tension Industries coming under High Tension Tariff:--

(a) In the case of new High Tension Industries to be set up in the areas other than the Madras Metropolitan areas the following concessional tariffs shall be charged for the first three years from the date the consumer is given service connection under high tension tariff:--

For the first year : 60 per cent of the High Tension rates; For the second year : 70 per cent of the High Tension rates; For the third year : 80 per cent of the High Tension rates; For the fourth year : Full Tariff.

The above concession shall apply to both unit rates and maximum demand charges. This concession shall not however, be applicable to an industry set up before the 3rd May, 1989. The concession shall not also be applicable to a consumer, who utilises power from his own generating units or makes other arrangements for production purposes and utilises the power supplied by the Board for auxiliary purposes only :

Provided that the High Tension Industries set up in any area (including industrially under developed area, notified as such by the Government) before the 3rd May, 1989 which are availing tariff concessions or reduction under High Tension Tariff I as on the 2nd May 1989, shall continue to avail the said tariff concession or reduction until the expiry of the period of five years from the date the consumer is given service connection under High Tension Tariff I.

Explanation.-- For the purpose of electricity tariff concessions for new Industries the term "new industries" shall mean a new investment by an entrepreneur including by an existing industry in any area other than the Madras Metropolitan area, provided the assets other than cash, of the existing industry, are not transferred and shown as assets of the new industry.

(aa) The tariff concession shall be applicable to expansion of Industry also to be set up in any city, municipality, township or panchayat union limit other than the Madras Metropolitan areas in which the main industry is functioning provided the assets other than cash of the existing industry are not transferred and shown as the assets of the expansion:

Provided that the tariff concession shall be applicable only once, to a new industry or an expansion of the industry in the area comprising the satellite town of Maraimalai Nagar New Town developed by the Madras Metropolitan Development Authority. Irrespective of the fact whether such industry has availed of such concession outside the area of Maraimalai Nagar earlier or not, and also whether such industry is considered new investment or not:

Provided further that the concession for the expansion of industry shall not be applicable to the existing Industry availing the concession for the additional load in the High Tension service for its expanded activity beyond the period of three years or five years, as the case may be. as specified in item (a) and the proviso thereto, respectively.

Explanation.-- The term "expansion" shall mean an increase in production which results in an Increase of 25 per cent or more in the consumption of electricity by the industry with reference to the highest electricity consumption of such industry in the three completed financial years preceding the application :

(ab) A Low Tension Industry converted into a High Tension Industry is not eligible for the concession.

4.1 Placing reliance on the said notifications, the Company requested for tariff concession to their "B" Unit claiming the same as a new industry by their letter dated 27-11-1995 and also sent reminders dated 27-2-1996 and 12-4-1996.

4.2 The Executive Engineer (Distribution) of the Board, by letter dated 2-5-1996, informed the Company that the tariff concession could be made available to the "B". Unit only when 25% of the highest consumption of electricity recorded in the "A" Unit is achieved in the "B" Unit, treating the "B" Unit as an expansion of the "A" Unit.

4.3 It is not in dispute that 25% of the highest consumption recorded in the "A" Unit was achieved in the "B" Unit from 27-2-1996 and therefore, the Superintending Engineer of the Board, by letter dated 2-5-1996 granted the benefit of tariff concession to the "B" Unit as under :

I Year .. 27-2-1996 to 26-9-1996 .. 40% II Year .. 27-9-1996 to 26-9-1997 .. 30% III Year .. 27-9-1997 to 26-9-1998 .. 20%

In the said letter dated 2-5-1996, it was also informed that the base consumption of 441800 Units being the 25% of the highest consumption recorded by the "A" Unit was taken into consideration for allowing tariff concession to the "B" Unit and that C.C. bills already rendered without allowing tariff concession for the period from March, 1996 to April, 1996 had been revised duly allowing the tariff concession and the refund amount of March, 1996 tariff concession had been adjusted against the April, 1996 C.C. bill itself and advised the Company to make the payment for the balance amount towards April, 1996 C.C. bill.

4.4 Aggrieved by treating the "B" Unit as an expansion of the "A" Unit and not satisfied with the above concession, the Company, by their letters dated 15-5-1997 and 22-5-1997 explained the Board that their "A" Unit and "B" Unit are two separate industrial units; the "B" Unit is not an expansion of the "A" Unit; and requested tariff concession for the "B" Unit for the full period of three years from the date of commission of production, namely September, 1995, treating the "B" Unit as a new industry by itself.

4.5 However, the Board by their letter dated 10-12-1997, signed on 30-12-1997, finding that the main machinery and the products manufactured in both the units were same, informed the Company that no reconsideration was required in treating the "B" Unit as an expansion of the "A" Unit and rejected the request of the Company to allow the industrial tariff concession for the full period of three years treating the "B" Unit as a new industry.

4.6 Challenging the said letter dated 10-12-1997, signed on 30-12-1997, the Company had preferred the above writ petition claiming tariff concession from the date of commission of production, namely September, 1995, contending that their "B" Unit is a new industry, and that the Board had erred in rejecting the tariff concession to the "B" Unit on the ground that the machinery installed and the products manufactured in both the units are one and the same, inasmuch as the said reason is not found in the notification itself.

4.7 It was also contended that the Board having granted exemption from the levy of additional tax on consumption of electricity treating "B" unit as a new industry for the period of three years from 29-7-1995 to 26-9-1998, ought to have treated the "B" unit as a new industry for the purpose of granting tariff concession also, as the Board, being a statutory body, could not adopt two different standards and scales to the same unit as it would otherwise violate Article 14 of the Constitution of India.

5.1 The Board resisted the claim of the Company that the "B" unit is a new industry, but not an expansion of the "A" unit. The Government is empowered to stipulate conditions for granting and denying the subsidy or incentive or concessional rates of supply and the Company has no inherent or vested right for any concession on tariff rates if the conditions are not fulfilled. The concessional rates are circumscribed by relevant and reasonable conditions that are stipulated in the notification. The benefit of concessional rates, therefore, could be available only to those who satisfy the conditions laid down in the notification.

5.2 It was also contended that the machinery installed, raw materials used and the products manufactured in both "A" and "B" units are same and therefore, "B" unit is not a new industry, but only an expansion of "A" unit.

5.3. The Board also contended that no distinction is made between a new industry or an expansion of an existing industry for the purpose of granting exemption from levy of additional tax on consumption of electricity in G.O.Ms. No. 1084 dated 30-7-1992, which provides for the said exemption, and therefore, the grant of exemption of levy of additional tax to the "B" unit, would not, by itself, be a ground to treat the "B" unit as a new industry.

5.4 The Board, in their additional counter-affidavit filed in February, 1999, also stated that the conditions stipulated for the eligibility of tariff concession as per G.O.Ms. No. 29, Energy (A2), dated 31-1-1995 are not complied with by "B" Unit.

6. The learned single Judge, by order dated 25-2-1999, allowed the writ petition as prayed for on two grounds, namely, (i) the reason for refusing to treat the "B" Unit as a new industry, namely the machinery installed and the products manufactured in both the units are one and the same is not sustainable in law, as no such restriction is stipulated in the notifications; and (ii) the Board having granted exemption from levy on additional tax from consumption of electricity to the "B" Unit, treating the "B" Unit as a new industry, ought to have treated the "B" Unit as a new industry for the purpose of granting tariff concession also, Hence, the above appeal.

7. Both Mr. R. Muthukumarasamy, the learned Additional Advocate General appearing for the Board and Mr. K. Alagirisamy, learned senior counsel appearing for the Company, reiterated the contentions, of either parties that were raised before the learned single Judge, substantiating their respective stand, referred to above, and we have bestowed our careful consideration to the same.

8. The pivotal issue that arises for our consideration in this appeal is whether the "B" Unit of the Company is entitled to the tariff concession as a new Industry or as an expansion of "A" Unit, even though the new industry as well as the expansion of the existing industry are entitled to tariff concession as per G.O.Ms. No. 29. Energy (A2), dated 31-1-1995?

9.1 It is true that in the impugned proceedings dated 10-12-1997, signed on 30-12-1997, the Board found that the main machinery installed and the product

manufactured in both the units, viz. "A" and "B" are the same and therefore, "B" unit is only an expansion of "A" unit and consequently, refused to reconsider their earlier decision of treating the "B" unit as a new expansion of "A" unit and rejected the request of the Company dated 20-4-1996 and 15-5-1997 to treat the "B" unit as a new industry for the purpose of tariff concession for the full period of three years from the date of commission of production. It is, therefore, clear that the decision of the Board communicated in the impugned proceedings dated 10-12-1997, signed on 30-12-1997, is only a refusal to reconsider the request of the Company to treat the "B" unit as a new industry. Hence, we are inclined to refer the earlier decisions of the Board communicated to them in their letters even dated 2-5-1996 of the Executive Engineer and the Superintending Engineer of the Board.

9.2. The proceedings of the Executive Engineer, Distribution, Aruppukottai, addressed to the Company, dated 2-5-1996 reads as follows.

"Tamil Nadu Electricity Board Lr. No. EE/APK/DM/F.HT.SC.150/ PR.247/96. dt. 2-5-96.

From Er. M. Gnanavel, B.E., (Hons.), M.B.A., MIE., Executive Engineer Distribution, Aruppukottai.

To

M/s. Sri. Jayavilas "B" Units HT.SC.150 Aruppukottai.

Sir,

Sub : Elec.-KREDC- HT.SC.150 -- Expansion Units Sri Jayavilas Ltd., "B" Units - Tariff concession regarding.

----- I wish to inform that your request for TF. concession could not be considered for the present.

2. However when the production in your expansion "B" unit under subject is stepped up so as to result in recording of Electricity consumption of 4,41,800 KW. Hrs. (being 25% of the highest consumption of 17,67,200 kw hrs. are recorded by the main industry "A" unit during October 93) or more within the period of 3 years reckoned from 27-9-95 to 26-9-98. The fact may be intimated to the Board, and the TF. concession could be considered for the balance period of the above 3 years period.

Yours faithfully, Sd/- Executive Engineer."

9.3 The proceedings of the Superintending Engineer dated 2-5-1996 reads as follows.

"Tamil Nadu Electricity Board Lr. No. SE/KREDC/VDR/RCS/A.1/ F.H.T./150/G. No. /96. dt. 2-5-96.

From Er. N. PREMCHANDRAN, B. E. Superintending Engineer Kamarajar

Electricity Distribution Circle Virudhunagar.

To

M/s. Sri. Jayavilas Mills Limited "B" Unit, Cotton Spinning Mills Tamilpadi-626 101.

Sir,

Sub : Electricity -- KREDC -- HT.SC. 150 M/s. Aruppukottai Sri Jayavilas Limited "B" Unit Tariff concession regarding.

----- Ref : 1. Memo No. 560/SE/IEMC/EE(T)/ AEE.2/AE.2/96-1, dated 27-4-96. 2. Your letter dated 30-4-96.

With reference to the above, you are informed that the benefit of new H. T. Industries T. F. Concession has been granted to your H. T. SC. No. 150 "B" Unit expansion at the following rate of T. F. Concession.

Ist year 27-2-96 to 26-9-96 = 40% IIInd year 27-9-96 to 26-9-97 = 30% IIIrd year 27-9-97 to 26-9-98 = 20% Further it is informed that the base consumption of 441800 units being the 25% of the highest consumption recorded by the main industry has to be taken for allowing tariff concession to your H. T. SC. No. 150.

Accordingly, the C. C. bills already rendered without allowing T. F. Concession for the period from 3/96 to 4/96 have been revised duly allowing T. F. Concession. The refund amount of 3/96 T. F. Concession has been adjusted against the 4/96 C. C. bill itself to make payment of the balance amount towards 4/96 C. C. Charges on the due date.

Sd/- Superintending Engineer."

9.4 A careful reading of the above two proceedings of the Executive Engineer and the Superintending Engineer, even dated 2-5-1996, makes it clear that the Board refused the tariff concession to the "B" Unit from the date of its commission of production finding that the "B" Unit failed to achieve 25% of the highest electricity consumption recorded in the "A" Unit and treating the "B" Unit as an expansion of the "A" Unit. Hence, it may not be proper to come to the conclusion that the Board refused tariff concession to the "B" unit wholly on the ground that the main machinery installed and the products manufactured in both the units, viz. "A" and "B" are the same.

10.1 This leads us to examine whether the "B" Unit is a "new industry" of the Company or an expansion of the "A" Unit of the Company ? While the Company claimed the "B" Unit as a new industry, the Board treated the same as an expansion of the "A" Unit. If the "B" Unit is treated as a new industry, it shall avail the tariff concession for three years from the date of commission of production. If the "B" Unit is treated as an expansion of "A" Unit, it shall avail the tariff concession only on fulfillment of the conditions imposed in the notification issued in G.O.Ms. No. 29, Energy (A2), dated 31-1-1995, namely that

the tariff concession could be made available to the "B" Unit only when 25% of the higher consumption recorded in the "A" Unit is achieved in the "B" Unit. For this purpose, with the risk of repetition, it is apt to refer the conditions that are stipulated in G.O.Ms. No. 29, Energy (A2), dated 31-1-1995 for granting tariff concession rates :

i. For the purpose of electricity tariff concessions for new industries the term "industries" shall mean a new investment by any entrepreneur including by an existing industry in any area other than the Madras Metropolitan areas, provided the assets other than cash, of the existing industry, are not transferred and shown as assets of the new industry.

ii. The tariff concession shall be applicable to expansion of industry also to be set up in any city, municipality, township or panchayat union limit other than the Madras Metropolitan areas in which the main industry is functioning, provided the assets, other than cash of the existing industry are not transferred and shown as the assets of the new industry.

iii. A Low Tension Industry converted into a High Tension Industry is not eligible for the concession and

Explanation : The term "expansion" shall mean an increase in production which results in an increase of 25 per cent or more on the consumption of electricity by the industry with reference to the highest electricity consumption of such Industry in the three completed financial years preceding the application.

10.2 It is, therefore, clear that a low tension industry converted into a high tension industry is not eligible for the tariff concession. In other words, a conversion of low tension industry into a high tension industry is not considered either as a new industry or an expansion. Both in the case of a new industry or an expansion, such new industry or expansion should not be within the Madras Metropolitan area. In both cases, namely a new industry or an expansion, the assets other than the cash of the existing industry, should not be transferred as the assets of the new industry.

10.3 For the purpose of Identifying a new industry and an expansion, it is relevant to refer condition (i) and the explanation to the term "expansion". Condition (1) defines a "new industry" as a new investment by any entrepreneur including by an existing industry. The term "expansion" shall mean an increase in production which results in an increase of 25 per cent or more on the consumption of electricity by the industry with reference to the highest electricity consumption of such industry in the three completed financial years preceding the application.

10.4 A comparative analysis of the terms "new industry" and "expansion" helps us to note that the words "new Investment by any entrepreneur including by an existing Industry" employed in the definition for the term "new industry" Is explicitly missing while defining the term "expansion". The legislature having

specifically employed the words "new investment by any entrepreneur including by an existing industry" for the purpose of defining "new industry" distinguished the same from the term "expansion". The usage of such words cannot be lightly disregarded.

10.5 Certain observations of Lord Denning in *Seaford Court Estates Ltd. v. Asher* reported in (1949) 2 All ER 155, which is also quoted in his "Discipline of Law" would be apposite to be referred to in this context:

"Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the Judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the legislature. That was clearly laid down by the resolution of the Judges in *Heydon's case*, and It is the safest guide today. Good practical advice on the subject was given about the same time by Plowden. Put into homely metaphor it is this : A Judge should ask himself the question : If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A Judge must not alter the material of which it is woven, but he can and should iron out the creases."

10.6 It is one of the settled rules of construction that the legislature is deemed not to waste its words or to say anything in vain vide *Quebec Railway, Light, Heat and Power Co. v. Vandry* reported in AIR 1920 PC 181. It is again a rule of interpretation that as on the one hand, it is not permissible to add words or to fill in a gap or lacuna, on the other hand effort should be made to give meaning to each and every word used by the legislature. As held by Patanjali Shastri, C.J., in *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, that it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, , *Jagannadhadas, J.*, held that it is incumbent on the Court to avoid a construction, if reasonably permissible on

the language, which would render a part of the statute devoid of any meaning or application. Again, the Apex Court as observed by Das Gupta, J., in *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others*, held that the Courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect.

10.7 The Apex Court in a recent decision in *Nasiruddin and Others Vs. Sita Ram Agarwal*, , held that,

"The Court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the Court can iron out the creases but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used."

10.8 In yet another case in *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, , the Apex Court held as under :

"Recourse to construction or interpretation of statute is necessary when there is ambiguity, obscurity, or inconsistency therein and not otherwise. An effort must be made to give effect to all parts of the statute and unless absolutely necessary, no part thereof shall be rendered surplusage or redundant."

10.9 Looked at from this standpoint, a duty is cast on us to give effect to the intention of the legislature for having used the words "new investment by any entrepreneur including an existing industry" for testing whether the "B" unit is a new industry or an expansion of the existing industry.

10.10 An entrepreneur is someone who is in effective control of a business enterprise, i.e., the owner of a business. Economics adds a couple of additional dimensions to the term. The entrepreneur is someone who has the ability to shift resources, successfully, out of lower into higher yielding assets. This puts a qualitative dimension to the term "entrepreneur". In other words, all the owners are not necessarily entrepreneurial and they need not have this innate ability to put resources to best use. Also, by implication the process involves taking a chance on the outcomes of the choices made and therefore a third dimension, one of an ability to take risks also emerges. Put altogether, an entrepreneur is one who effectively controls the business, namely the owner of the business, one who has the ability and intuitive skill in putting and shifting the resources to the best use and one who has the ability to take risks. To substantiate the above qualities, namely, effective control of the business, ability of the owner to put and shift resources, intuitive skill in taking risks in establishing new industry, are all relevant material factors to qualify the new industry and to that extent, the

machinery installed and the products manufactured in both the units also become relevant to test whether the "B" Unit is a new industry or an expansion, of the "A" Unit. In our considered opinion, the machinery installed and the products manufactured in both the units also become incidentally relevant for the purpose of testing whether the "B" Unit is a new industry of any entrepreneur, namely the Company. Therefore, it may not be proper to come to the conclusion that the Board had erred in refusing the tariff concession to the "B" Unit treating the same as an expansion of the "A" Unit, on the ground that the machinery installed and the products manufactured in both the units are one and the same, merely for the reason that no such restrictions are stipulated in the notification itself.

10.11 Consequently, to test whether the "B" Unit is a new industry started by way of a new investment by any entrepreneur including by an existing industry, namely the Company, the qualities of the entrepreneur, referred to above, become relevant to be satisfied, as otherwise the usage of the words "new investment by any entrepreneur including by an existing industry" found in defining the term "new industry" would become redundant. Therefore, the detailed investigation into the relevant material facts to qualify the ingredients of a new industry, namely new investment by any entrepreneur including an existing industry is inevitable.

11.1 When an identical question, namely whether an industry is a new industry or not and whether the industry is entitled to a mandamus to direct the Board to bill in accordance with the concessional tariff rates, came up for consideration, Ramaprasada Rao, J., by order dated 18-11-1971 in W.P. No. 1907 of 1970, held as follows :

". . . The point is whether the petitioner -industry is a new industry or not.

It is not in dispute that the concessions, exemptions or privileges contemplated under G.O. 1798 dated 14th October, 1969 are only applicable to new industries. If this basic fact, which alone can entitle a person to the concessional tariff rates etc., is disputed, then the question arises as to whether this Court can issue a writ of Mandamus as asked for.

The Writ of Mandamus is not a Writ of right or Writ of course; but it is one issued against a person who fails to perform a public duty and sought by a person who has a legal right in his favour. In the instant case the legal right if at all, which the petitioner could project is based on the establishment of a fact viz., whether his industry is a new one or not. in the absence of such a foundation from which only he can spring the legal right and on which alone he, could rest his relief for a writ of Mandamus, this Court is not obliged to enter into an investigation into facts and find whether an industry is a new one or whether a quondam industry consuming low tension power converted into one seeking for high tension power would still be a new industry in the common parlance, It is for the petitioner to seek other effective remedies to establish that his industry, in the circumstances

stated above, should be characterised as a new industry. This question requires an investigation of material facts; but I am not inclined to undertake such an investigation, as the petitioner has other alternative and effective remedies open for the determination of such a fact.

As a matter of fact, Veeraswami, J. as he then was, under similar circumstances pointed out in the Management of the Coimbatore Pioneer Mills Ltd., Coimbatore v. The Madras State Electricity Board, Madras and 2 Ors. (W.P. No. 51 of 1960) as follows :

"The point in controversy between the parties is rather whether the concern in question is a new or an old one. On that question the second respondent recorded a finding on the basis of the materials produced before him by the petitioner. That question is essentially one of fact and the propriety correctness or otherwise of that finding is really a matter for trial and decision on evidence."

I respectfully adopt the views in the above case. The rule nisi is discharged and the writ petition is dismissed."

11.2 Following the said judgment of Ramprasada Rao, J. dated 18-11-1971 in W.P. No. 1907 of 1970, Nainar Sundaram, J. in W. P. No. 9466 of 1985 (M/s. Ashok Leyland Ltd. v. Tamil Nadu Electricity Board), by order dated 25-9-1985 took a similar view holding that whether an industry is a new unit or an expansion of an existing industry cannot be gone into in writ proceedings.

11.3 Mohan, J., as he then was, took a similar view in W. P. No. 2536 of 1983, dated 9-8-1983 (M/s. Prathibha Engineering Industries Pvt. Ltd. v. Govt. of Tamil Nadu and others), observing :

"Looked at from that point of view, once it is held that the petitioner is the sister concern of Swiss Welded Mesh Company Private Limited and which cannot be disputed because what I have stated above, I do not think the petitioner can claim the benefit of the notification at all. The very object of the notification is to make available the energy at concessional rate to those persons who start new industries. Sister concern is very much like a branch excepting that it is not called as a branch."

11.4 There is also a judgment of K.M. Natarajan, J. in W.P. Nos. 12571 of 1985 and 8664 of 1986 (Sri Nataraj Ceramic and Chemical Industries Ltd. v. Tamil Nadu Electricity Board) where the learned Judge has rejected both the pleas of promissory estoppel as well as the plea of new industrial undertakings. Learned Judge followed the earlier judgments and had directed that the plea regarding a new industrial undertaking should be established only in a Civil Court. Thus, there is a long line of cases and the Courts have taken a uniform view that a consumer who wants to establish that he is a new industrial undertaking and not a branch unit has to institute a suit and establish his case by adducing evidence.

11.5 Answering a similar question again raised in The English Electric Company of India Ltd., Rep. by Its Secretary v. Tamil Nadu Electricity Board, Madras

reported in 1996 Writ LR 31 : 1995 AIHC 2917, J. Kanakaraj, J., following the earlier decisions, referred to above, held as follows :

"17. on the question of the petitioner, unit which had availed of the tariff concessions branch unit or a new industrial undertaking the disputes raised by the petitioner can be resolved only by filing a civil suit. Therefore, the petitioners cannot approach this Court under Article 226 of the Constitution of India to hold that the petitioners units are new industrial undertakings and therefore, eligible for the concessions."

11.6 When the above, view, namely the question whether the petitioner industry is a new industry or expansion of an existing industry cannot be gone into in a writ proceeding, was challenged before a Division Bench of this Court in W. A. No. 920 of 1983, which was preferred against the order dated 9-8-1983 in W. P. No. 2536 of 1983 (Prathibha Engineering Industries Pvt. Ltd. v. Govt. of Tamil Nadu and Ors.) of Mohan, J., as he then was, referred to supra, the Division Bench of this Court by judgment dated 2-11-1995 held as follows :

"7.We are of the opinion that the question involved in these proceedings cannot be decided under Article 226 of the Constitution, as it requires investigation of several facts, which are not at present available on record. One question that will have to be decided is, whether the appellant is a sister concern of M/s. Swiss Welded Mesh Company Private Limited as pointed out by the respondents and the second question would be, whether the appellant is a new industry within the meaning of the relevant notification in order to claim the benefit of the same.

8. On our direction, the appellant has given particulars and details of the shares held by the shareholders of the two companies. It is seen that during the relevant years, CT. Alagappan was holding 2,400 shares and his wife Saradhal Achi was having 600 shares in Swiss Welded Mesh Company. In the subsequent years, Saradhal Achi's shares were reduced to 594 and the remaining 6 shares were divided among their children. In the appellant-Company, during the relevant years, Saradhal Achi had 2,998 shares and the remaining two shares were owned by one Nagarathinam, who is said to be a stranger. The shares of Saradhal Achi was later reduced to 2,990 and the remaining eight shares were distributed among her husband and children. Thus, the particulars indicate prima facie that the two concerns are owned by the same family and thus sister concerns. But, we are not giving any opinion on that question at this stage and we referred the particulars only to point out that investigation is necessary to decide the question involved.

9. The notification reads that the concessional tariff will be for the first five years after the commencement of production. The appellant has admittedly started the production with L.T. Supply in 1967. It had started manufacturing wire earlier and later, it had started manufacture of welded mesh and welded wire fabric from 1974 after getting H.T. Supply. According to learned counsel for the

appellant, at that time new machinery was installed for the purpose of manufacturing new products and that would make the industry a new one. According to her, it would be new industrial undertaking, which did not have the benefit of concessional tariff and therefore, it would fall within the notification. On the other hand, the contention urged by the respondents is that Note No. 1 of the notification will cover this case. According to them, the words "expansion" or "diversification of production" would include change of manufacturing products. According to them, Just because the previous supply was L.T., that would not mean that the industry is a new industry. At any rate there is nothing on record to prove installation of new machinery.

10. These are matters which require investigation of facts, which cannot be gone into in a proceeding under Article 226 of the Constitution.

11. This view was taken by this Court consistently in several cases. In W.P. No. 51 of 1960 (The Management of Coimbatore Pioneer Mills Ltd., Coimbatore v. The Madras State Electricity Board, Madras), Veeraswami, J. (as he then was) held that the question is essentially one of fact and really a matter of trial and decision on evidence. Following the said ruling Ramprasad Rao, J. (as he then was) decided W.P. No. 1907 of 1970 on 18-11-1971 holding that suit will be a proper remedy for deciding the question. This judgment has been referred to by the learned single Judge in the order under appeal. In our opinion, the view which was consistently taken by this Court that the dispute should be decided only in a regular suit and not in a writ petition under Article 226 of the Constitution, is correct and we uphold the same."

11.7 We do not find any reason to deviate from the law enunciated from the above decisions. Therefore, it may not be proper for this Court to go into such issue, namely whether the "B" Unit is a new investment by any entrepreneur, viz., the "A" Unit, or an expansion of the "A" Unit, in a writ proceeding invoking Article 226 of the Constitution of India, as such issue requires scrutiny of the relevant material facts to qualify the conditions that the "B" unit came into existence by the new investment of the entrepreneur including the existing industry, as the same could be gone into only in an appropriate civil proceedings before the competent Civil Court.

11.8 That apart, it is trite law that when a prima facie triable issue as regards the very availability of the relief sought for on the merits is raised, the Court should ordinarily refuse to issue the writ of Mandamus, as held by the Larger Bench of the Apex Court in State of Madhya Pradesh Vs. Bhailal Bhai and Others, .

12.1 Of course, then the question would arise whether we can go into the maintainability of the writ petition at this stage suo motu, when the same was not questioned by the Board either before the learned single Judge or before us. In our considered opinion, there is no bar to go into the question of maintainability of the relief sought for suo motu, particularly when the company

seeks the relief invoking Article 226 of the Constitution of India.

12.2 A full Bench of the Apex Court in *Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another*, , while considering the High Court's power for issuance of Mandamus, held as follows (para 17 of AIR) :

".....it appears that the Constitution empowers the High Court to issue writs, directions or orders in the nature of habeas corpus, mandamus, prohibition quo warranto and certiorari for the enforcement of any of the rights conferred by Part III and for any other purpose under Article 226 of the Constitution of India. It is, therefore essentially, a power upon the High Court for issuance of high prerogative writs for enforcement of fundamental rights as well as non-fundamental or ordinary legal rights, which may come within the expression "for any other purpose". The powers of the High Courts under Article 226 though are discretionary and no limits can be placed upon their discretion, they must be exercised along the recognised lines and subject to certain self imposed limitations. The expression "for any other purpose" in Article 226, makes the jurisdiction of the High Courts more extensive but yet the Courts must exercise the same with certain restraints and within some parameters. One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior Courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (*Kalyan Singh v. State of U.P.*, AIR 1962 SC 1183). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law."

Therefore, before granting the relief of mandamus as prayed for, there is a constitutional mandate on us to satisfy ourselves as to the legal right of the Company and the corresponding statutory duty imposed on the Board, which could be arrived at only by appreciation of material facts that are relevant to decide the, compliance of conditions imposed in the notification, viz. G.O. Ms. No. 29, Energy (A2), dated 31-1-1995, referred to above.

12.3 When the very existence of the legally enforceable right of the company to seek tariff concession for the "B; unit, as per the notification made in G.O.Ms. No. 29, Energy (A2), dated 31-1-1995 itself is based on the fact whether the B; unit came into existence by new Investment made by any entrepreneur including the existing industry, which could be gone into only in an appropriate civil proceedings before the competent civil Court, we are of the considered opinion that it may not be proper either to quash the impugned proceedings dated 10-12-1997, signed on 30-12-1997, or to issue a mandamus as prayed for.

13.1 One another point that remains to be answered is whether the mere grant of exemption from levy of additional electricity tax based on G.O. Ms. N. 1084 dated 30-7-1992, by itself would confer any right on the petitioner to claim "B" unit as a new industry?

13.2 It is true that the Board, by proceedings dated 17-6-1993, granted exemption from levy of additional electricity tax from 30-7-1992. The grant of exemption from the levy of additional electricity tax to the new industry is based on the Board proceedings No. 119 dated 17-6-1993, made with reference to G.O.Ms. No. 1084 dated 30-7-1992. The proceedings of the Board dated 17-6-1993 reads as under :--

TAMIL NADU ELECTRICITY BOARD (ABSTRACT)

ELECTRICITY -- Levy of 4% Additional Electricity Tax from 1-9-1991 under Tamil Nadu Electricity (Taxation on Consumption) Act -- Exemption from the Levy of Electricity Tax for New Industries -- Procedure to be adopted -- Orders issued.

Permanent B.P. (F.B.) No. 119 Dated : 17-6-1993. (Technical Branch) Aani 3, Srimuga Thiruvalluvar Aandu 2024. Read the following : 1. G.O. Ms. No. 1084, P.W.D. Dated 30-7-1992

2. From Chief Electrical Inspector to Government, Madras, Letter No. 45295/IA/92 dated 25-11-92.

PROCEEDINGS :

1. The Government of Tamil Nadu have introduced Additional Electricity Tax at 4% on the price of energy on all electricity consumers except domestic, huts and agricultural consumers by an amendment to Electric (Taxation on Consumption) Act. Accordingly electricity tax at the prescribed rate is being collected and remitted to Government by the Board.

2. In the G.O. first read above, the Government of Tamil Nadu have exempted the New Industries established in Tamil Nadu from the payment of above said tax for a period of three years from the date of commencement of the manufacture or production of the principal product. The above ex-emption from payment of electricity tax is made applicable by the Government from 30-7-1992 (i.e. date of the G.O.).

3. The Chief Electrical Inspector to Government in the letter second read above

has issued instructions to the Superintending Engineers of Distribution Circles to send the applications of the Industrialists for the exemption from payment of Electricity Tax to him for his examination and issue of orders. Many High Tension Industrial -- Consumers have represented that the exemption from the payment of Electricity Tax for their New Industries are not being allowed though the Government have ordered the exemption in July 1992. -

4. The Government of Tamil Nadu in the Tariff Notification issued u/s 4 of the Tamil Nadu Revision of Tariff Rates on Supply of Electrical Energy Act 1978 has defined new H.T. Industries as Indicated below for the purpose of extending concessional tariff for a period of 3 years.

"New Industries shall mean a new Investment by any entrepreneur including by an existing industry in any area other than Madras Metropolitan area provided the assets other than cash of the existing industry, are not transferred and shown as assets of the new industry".

According to the above classification of new H.T. industry, the Board is allowing concessional tariff rates to the new H.T. industries eligible for such concessional tariff rates.

5. As the Government has defined new industries as above in respect of industries availing H.T. Supply, the Board after careful consideration orders as indicated below for giving exemption from payment of additional electricity tax to the New Industries availing H.T. supply only.

a. all the new H.T. industries as defined in the Tariff Notification issued by the State Government u/s 4 of the Tamil Nadu Revision of Tariff Rates on Supply of Electrical Energy Act 1978 and who have availed H.T. Supply on or after 30-7-1992 may be allowed the Additional Electricity Tax exemption for a period of 3 years from the date of commencement of manufacture or production of the principal product.

b. In respect of now H.T. industries who have availed H.T. supply prior to 30-7-1992 but not completed 3 years as on 30-7-1992 such new H.T. Industries may be allowed exemption from payment of additional Electricity tax for the balance period from 30-7-92 to the date of completion of 3 years. For this purpose, the 3 years period may be calculated from the date of commencement of manufacture or production of the principal product.

c. In respect of new H.T. industries eligible for additional tax exemption, the electricity tax already paid by them for the eligible period may be refunded to such of the new H.T. Industries through current consumption bills and the electricity tax amount refunded may be deducted from the consolidated electricity, tax payable by the Board for that month and the balance remitted to Government.

6. In respect of New Industries who have availed L.T. supply, the applications of the L.T. new Industrial consumers may be sent to Chief Electrical Inspector to

Government, Madras and based on the orders of the Chief Electrical Inspector to Government the electricity tax exemption may be allowed.

(BY ORDER OF THE BOARD)"

13.3 A closer reading of the above proceedings makes it clear that no distinction between the new industry or an expansion of existing Industry is made out for the purpose of granting exemption from levy of additional electricity tax. Therefore, the grant of exemption for the purpose of levy of additional electricity tax cannot automatically be relied upon to claim that "B" unit of the Company is a new industry for the purpose of tariff concession also, as the claim of the Company that the "B" unit is a new industry has to be satisfied by the Company, as contemplated in the notification made in G.O. Ms. No. 29, Energy (A2), dated 31-1-1995, referred to above.

14. For the above reasons, the order of the learned single Judge dated 25-2-1999 made in W.P. No. 2389 of 1998 (reported in 1999 AIHC 3267) is set aside and the writ petition stands dismissed. However, without prejudice to the right of the company to approach the civil Court, if they are so advised.

In the result, the writ appeal is allowed. No costs. Consequently, CMP Nos. 6929 and 9026 of 1999 are closed.