

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 11.09.2018

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THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

W.P.No.23692 of 2004
& WMP.No.28697 of 2004

BHEL Suppliers Association
rep. by its President

... Petitioner

Vs

1. State of Tamil Nadu
rep.by its Secretary,
Department of Energy,
Fort St. George,
Chennai 600 009.
2. The Tamil Nadu Electricity Board,
Anna Salai, Chennai 600 002.
rep. by its Chairman
3. The Superintending Engineer,
Tamil Nadu Electricity Board,
Gandhi Nagar, Vellore 632 403.
- 4.The Assistant Executive Engineer (O & M)
Tamil Nadu Electricity Board,
SIPCOT Industrial Estate,
Ranipet.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the first respondent culminating with G.O.Ms.No.3, Energy (A2) Department, dated 07.01.2000 in so far as it imposes a penalty for all in power factor below .85 lag and quash the same.

For Petitioner : Mr.S.Mothilal
For Respondent-1 : Mr.K.Ravikumar, AGP R1
For Respondents 2 to 4 : Mr.M.Varunkumar R2 to 4

O R D E R

The prayer sought for herein is for issuance of a Writ of Certiorari to call for the records of the first respondent, culminating with G.O.Ms.No.3, Energy (A2) Department, dated 07.01.2000 in so far as it imposes a penalty for all in power factor below .85 lag and quash the same.

2. Learned counsel for the petitioner fairly submitted that, the challenge made in this writ petition i.e., the relevant portion of the impugned Government Order, seeking to recover compensation from the consumers of high power tension service connection, if the average power factor of high tension service connection is less than the consolidated unit of 0.85 lag, has already been considered by this Court, in number of cases and the batch of cases in this regard had been decided by the learned Judge of this Court, in W.P.No.7988 of 2001 etc., batch, in the matter of Solaiappa Sami Modern Rice Mills, petitioner vs. The Superintending Engineer, CEDC, West Anna nagar, Tamil Nadu Electricity Board, Chennai 600 040, by order dated 08.09.2006. The learned counsel also would submit that, the matter has gone against the consumers and the relevant portion of the said judgement reads thus:

11. It is contended on behalf of some of the petitioners that it is impossible to maintain the power factor as indicated by the Government/Regulatory Commission. It is obvious that the Government has taken a decision on the basis of the advice of experts. Similarly, subsequent decision taken by the Regulatory Commission, which includes experts in the field, is also apparently on the basis of the opinion of the experts. It is difficult for a writ court to come to any conclusion different from the experts, unless specific materials are put-forth before the court. Since the Regulatory Commission is empowered to consider the matter as an on-going process, it would be always open to the petitioners to bring these aspects to the notice of the Regulatory Commission during its future deliberations and it goes without saying that all the relevant aspects should be taken into consideration by the Regulatory Commission in future and if necessary instructions can be issued modifying the parameters.

12. A contention was raised that no penalty can be levied as there is no wilful violation by the consumer. According to the learned counsel for the Tamil Nadu Electricity Board the maintaining of the power factor at higher levels is itself an incentive as it benefits the consumers in terms of a stable voltage operation and reduces the chances of damage to consumers' equipment due to fluctuations and moreover it also leads to cost savings to the consumers through a lower energy charge. On the other hand, the Tamil Nadu Electricity

Board is required to put up capacitor banks and other infrastructure services to correct the low power factor in the system. Hence, there is justification to charge suitable amount from the consumer, which is more or less compensatory in nature, though described at times as power factor penalty.

In my considered opinion, such submission made by the learned counsel for the Board is acceptable and even though at times such imposition is described as #penalty#, it is apparent that the amount demanded by the authorities is only #compensatory# and should not be considered as penalty in the normal sense such penalty is understood.

13. For the aforesaid reasons, the general contentions in the writ petitions cannot be accepted. However, it is clarified that if there has been any specific complaint / representation by any of the consumer regarding defect in the electronic meter, at any point of time, obviously, such complaint is required to be considered by the appropriate authority. But, assuming that there has been some defect in some meters, for that reason the power to levy low power factor penalty cannot be denied. An individual grievance if any can be considered by the appropriate authority in accordance with law by raising appropriate dispute.

14. Therefore, while upholding the right to levy low power factor penalty, the writ petitions are disposed of with the observation that if there has been or is any individual grievance, such individual grievance is required to be considered, in accordance with law. No order as to costs."

3. In view of the above, the learned counsel appearing for the petitioner would submit that, even though the issue has been decided against the consumers, the liberty was given to the individual consumer to approach the appropriate authority to redress all individual grievances. With the said liberty, a similar order if it is passed by this court, the writ petitioner would be satisfied.

4. I heard Mr.K.Ravikumar, learned Additional Government Pleader appearing for first respondent and Mr.M.Varunkumar, learned Standing Counsel appearing for the respondents TANGEDCO.

5. In view of the said order passed by this Court, where the issue raised in this writ petition has been covered and the issue has been decided in favour of TANGEDCO and against the assessee/ consumer, following the said judgement, this Court is inclined to dismiss this writ petition, however, with the liberty to the petitioner to approach the appropriate authority of the respondent TANGEDCO, to redress the grievance of the petitioner and if such a request is made by the petitioner, the same shall be considered by the respondent, objectively in accordance with law.

6. With these observations and directions, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary, State of Tamil Nadu
Department of Energy, Fort St. George, Chennai 600 009.
2. The Chairman, Tamil Nadu Electricity Board,
Anna Salai, Chennai 600 002.
3. The Superintending Engineer,
Tamil Nadu Electricity Board,
Gandhi Nagar, Vellore 632 403.
- 4.The Assistant Executive Engineer (O & M)
Tamil Nadu Electricity Board,
SIPCOT Industrial Estate,
Ranipet.

- + 1 cc to M/s. Sothilal, Advocate Sr.63167
- + 1 cc to M/s. M. Varunkumar, Advocate Sr.63543
- + 1 cc to Government Pleader Sr.63457

W.P.No.23692 of 2004

VSN-II (CO)
EU(03/10/2018)