

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.Nos.7698 and 7711 of 2019 and
WMP.Nos.8339, 8342 and 8348 in W.P.No.7698/2019 and
WMP.Nos.8353 to 8355/2019

Jamna Auto Industries Limited
rep. by its SM-Project
Mr.P.Kumar
Having its registered Office at
Jai Springs Road,
Industrial Area, Yamuna Nagar,
Haryana-135 001.

... Petitioner in both W.Ps.

Vs

1. The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
144, Anna Salai,
Chennai - 600 002.
2. The Chief Financial Controller,
TANGEDCO,
144, Annasalai,
Chennai - 600 002.
3. The Superintending Engineer,
TANGEDCO,
Krishnagiri Electricity Distribution Circle,
Krishnagiri.
4. The Accounts Officer,
TANGEDCO,
Krishnagiri Electricity Distribution Circle,
Krishnagiri.
5. Tamil Nadu Electricity Regulatory Commission,
rep. by its Secretary,
No.19A, Rukmini Lakshmipathy Salai,
Egmore, Chennai - 600 008.
6. Chairman,
Tamil Nadu Electricity Board,
No.144, Anna Salai,
Chennai-600 002.

7. M/s.TCP Limited,
TCP Sapthagiri Bhavan,
No.4, Karpagambal Nagar,
Mylapore, Chennai-4.

... Respondents in both W.Ps.

Prayer in W.P.No.7698/2019: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent contained in impugned Letter No.CFC/FC/DFC/AAO.HT/AS.3/REV/D.N.115/13 dated 29.07.2013 and quash the same as arbitrary, illegal and violative of the provisions of the Electricity Act, 2003 and the orders of the TNERC and consequently, direct the respondents 1 to 6 to refund the entire amount of Rs.10,93,182/- that has so far accrued to the petitioner on account of withdrawal of the deemed demand benefit to the petitioner's HT SC No.204 between the period of 14.09.2018 and 31.01.2019 together with subsequent amounts for the subsequent periods till the disposal of the writ petition with interest.

Prayer in W.P.No.7711/2019: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent contained in impugned Letter No.CFC/FC/DFC/AAO.HT/AS.3/REV/D.N.115/13 dated 29.07.2013 and quash the same as arbitrary, illegal and violative of the provisions of the Electricity Act, 2003 and the orders of the TNERC and consequently, direct the respondents 1 to 6 to refund the entire amount of Rs.35,70,000/- that has so far accrued to the petitioner on account of withdrawal of the deemed demand benefit to the petitioner's HT SC No.204 between the period of 14.09.2018 and 31.01.2019 together with subsequent amounts for the subsequent periods till the disposal of the writ petition with interest.

For Petitioner : Mr.Parthasarathy, R.

For Respondents : Mr.S.K.Raameshuwar,
Standing Counsel for R1 to R6

: No appearance for R7

C O M M O N O R D E R

Both these Writ Petitions were taken up together as they are arising out of one and the same issue against the Tamil Nadu Generation and Distribution Corporation Limited.

2. Both the Writ Petitions have been filed challenging the impugned letter of the 2nd respondent in CFC/FC/DFC/AAO.HT/AS.3/REV/D.N.115/13 dated 29.07.2013, quash the same as arbitrary, illegal and violative of the provisions of the Electricity Act, 2003 and the orders of the Tamil Nadu Electricity Regulatory Committee.

3. When the matters are called, it is represented by both sides that the issue raised in these Writ Petitions has already been decided by this Court in W.P.Nos.5916 to 5918/2014 etc. batch dated 14.09.2018 and as against the said order, W.A.Nos.2539 & 2540 of 2018 have been filed and the Division Bench has also passed an interim order directing the petitioners continue to pay 50% of the amount demand within a period of two weeks from the date of each demand. Now the matters are posted in the 3rd week of March for further hearing. Therefore, while allowing these Writ Petitions, the order passed by the Division Bench may also be followed.

4. The issue raised in the present writ petitions is no longer res integra since the same has already been decided by this Court in W.P.Nos.5916 to 5918/2014 etc. batch dated 14.09.2018. The relevant portion is extracted here under:

'17. The learned counsel appearing for the writ petitioners has stated that such an adjudicative process in compliance with the principles of natural justice has been contemplated in the Tamil Nadu Electricity Regulatory Commission conduct of business regulations 2004 clause 16 1 & 2 reads as under :-

16 (1) The Commission may initiate any proceedings suo motu or on a petition filed by any affected or interested person.
(2) When the Commission initiates the proceedings, it shall be by a due notice issued by the Commission. The Commission may give such orders and directions as may be deemed necessary, for serving of notices to the affected parties; for the filing of replies and rejoinders against or in support of the petition in such form as the Commission may direct. The Commission may, if it considers appropriate, issue orders for publication of the petition inviting comments from the public or any class of persons on the issue involved in the proceedings in such form as the Commission may direct.

18. In view of the discussions made in the afore mentioned paragraphs, this Court is of the opinion that the Regulatory Commission has to under take the process of revision either suo-motu or through an application if any filed before the commission and

conduct the adjudicative process by issuing notice to all the stakeholders and after hearing the parties aggrieved, decision shall be taken on merits and in accordance with law. The compliance of principles of natural justice has been contemplated in the business regulations, as stated supra. Thus Electricity Regulatory Commission is bound by that and they have to follow the procedures and thereafter take a decision and pass orders on merits and in accordance with law in respect of the withdrawal of the concession of the Deemed Demand Charges in respect of the writ petitioners. However, it is made clear that the observations made in this judgment will not affect the independent adjudication if any undertaken by the Electricity Regulatory Commission in accordance with the procedures contemplated. The Electricity Regulatory Commission is at liberty to decide the merits and de-merits independently and pass orders without causing undue delay in view of the fact that the concession has been already cancelled in respect of other categories. Accordingly the impugned order passed by the second respondent in letter No.CFC /FC /DFC /AAO.HT /AS.3 /REV/D.N.115/13 dated 29.07.2013 is quashed and these writ petitions are allowed. No costs. Consequently connected miscellaneous petitions are also closed.''

However, as against this order, W.A.Nos.2539 and 2540/2018 have been filed by two of the writ petitioners and the Division Bench of this Court has granted an order of interim stay dated 19.11.2018 subject to the condition that the writ petitioners shall continue to pay 50% of the demand amount by the TANGEDCO, within a period of two weeks from the date of each demand, subject to the result of the Writ Appeals. Following the same, the present Writ Petitions are also liable to be allowed.

5. Accordingly, these Writ Petitions are allowed. The petitioners are directed to pay 50% amount demanded by the TANGEDCO within a period of two weeks from the date of receipt of copy of this order, subject to the result of the Writ Appeals in W.A.Nos.2539 and 2540/2018 pending before the Division Bench of this Court. No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

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To

1. The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited,
(TANGEDCO),
144, Anna Salai,
Chennai - 600 002.
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5. Secretary,
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6. Chairman,
Tamil Nadu Electricity Board,
No.144, Anna Salai,
Chennai-600 002.

+1 CC to Mr.R.PArthasarathy, Advocate sr 23621.

+1 CC to Mr.M.Varunkumar, Advocate sr 25596.

W.P.Nos.7698 & 7711/2019

BS(CO)
SP(09/05/2019)