

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.Nos.13738 of 2019
and
W.M.P. Nos.13816 to 13818 of 2019

TCP Limited,
represented by its Executive Director
TCP Sapthagiri Bhavan,
No.4, Karpagambal Nagar,
Mylapore, Chennai-600 004. Petitioner

Vs

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

Prayer: 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 1st to 4th respondents to refund the entire amount of the loss that has so far accrued to the petitioner on account of withdrawal of the deemed demand benefit to the petitioner's HT SC No.31 till the disposal of the writ petition and interest at such rate as may be decided by this Court.

For Petitioner : Mr.Rahul Balaji

For Respondents: Mr.S.K.Raameshuwar,
Standing Counsel
for R1 to R4

O R D E R

The writ petition has been filed challenging the impugned letter bearing No.CFC/FC/DFC/AAO.HT/AS.3/REV/D.N.115/13 dated 29.07.2013 issued by the Chief Financial Controller, Tamil Nadu Generation and Distribution Corporation Limited, Chennai, the second respondent herein.

2.When the matter is called, it is represented by both sides that the issue raised in this writ petition 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 to continue to pay 50% of the amount demand within a period of two weeks from the date of each demand. Therefore, while allowing this writ petition, the order passed by the Division Bench may also be followed.

3.The issue raised in the present writ petition 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 Petition is also liable to be allowed.

4. Accordingly, in the light of the above, this writ petition is allowed. The petitioner is 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 of 2018 pending before the Division Bench of this Court. No costs. Consequently, connected Miscellaneous Petitions are closed.
vga

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

To

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

+1cc to Mr.R.Parthasarathy, Advocate, SR.No.42745

W.P. Nos.13738 of 2019
and
W.M.P. Nos.13816 to 13818 of 2019

Kak(04/07/2019)