

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 08.08.2020

Delivered on 14.08.2020

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

WP.Nos.7678, 7679 & 9141/2020 & WMP.Nos.11144, 11145, 9323 & 9324/2020, WP.No.9312/2020 & WMP.Nos.11370&11377/2020, WP.No.9537/2020 & WMP.Nos.11646 & 11647/2020, WP.No.9538/2020 & WMP.Nos.11649 & 11650/2020, WP.No.9550/2020 & WMP.Nos.11662 & 11663/2020, WP.Nos.10012, 10042, 10044 & 10031, 9825, 9831/2020 & WMP.Nos.12207, 11952, 12174, 11946, 12192, 12194, 12198, 12201, 12181 & 12204/2020, WP.No.10087/2020 & WMP.Nos.12255 & 12257/2020, WP.No.10091/2020 & WMP.Nos.12265 & 12270/2020, WP.No.10110/2020 & WMP.No.12307/2020, WP.No.10164/2020 & WMP.Nos.12361 & 12362/2020, WP.Nos.8852 & 9689/2020 & WMP.Nos.10758 & 11814/2020

WP.No.7678/2020:-

The South India Spinners Association,
[Regd No.157/1991]

Site no.17-19, Teachers Colony,
Goldwins, Civil Aerodrome Post,
Coimbatore 641 014

represented by its Hon.Secretary
G.Venkatesan

... Petitioner

Versus

- 1.The Chairman cum Managing Director
Tamil Nadu Generation & Distribution
Corporation Limited [TANGEDCO]
No.144, Anna Salai, Chennai 600 002.
- 2.The Chief Financial Controller-Revenue
Tamil Nadu Generation & Distribution
Corporation Limited [TANGEDCO]
NPKRR Maligai, 144, Anna Salai,
Chennai 600 002.
- 3.Tamil Nadu Electricity Regulatory Commission
No.19-A, Rukmani Lakshmipathy Road
Egmore, Chennai 600 008.

4.The Government of Tamil Nadu
represented by its Secretary to Government
Energy Department, Fort St George
Chennai 600 009.

.. Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 1st and 2nd respondent or their subordinates to withdraw the maximum Demand Charges of 90% for the months of March and April 2020 for the members of the petitioner Association and assess the same at 20% or to the extent of Recorded demand and also to raise the monthly Bill calculating the Maximum Demand charges at the rate of 20% or to the extent of Recorded Demand for the month of May 2020 charges and to refund the amount collected or to adjust the same in future bill till 17th May 2020 or till the extended period of Lock Down, if any, by the Government of Tamil Nadu and not to levy Power Factor penalty during the lock down period.

For Petitioner : Mr.M.Kamalanathan
For Respondents : Mr.P.H.Aravindh Pandian
Additional Advocate General
assisted by
Mr.N.Damodharan, Standing counsel
for TANGEDCO/RR 1 to 3
Mr.E.Balamurugan, Spl.GP
for State Government/R4

WP.No.7679/2020:-

1.The Tamil Nadu Electricity Consumers' Association [TECA]
represented by its Secretary Mr.C.B.Senthil Kumar,
1st Floor, SIEMA Building, 8/4, Race Course Road,
Coimbatore.

2.M/s.Bluemount Castings Private Limited
HT Service No.039094300367
represented by its Managing Director Mr.C.B.Senthil Kumar
SF.No.481/2, Billichchi Village, Coimbatore North Taluk
Coimbatore 641 019. .. Petitioners

Versus

1.Tamil Nadu Generation & Distribution
Corporation Limited [TANGEDCO]
represented by its Chairman and Managing Director,
144, Anna Salai, Chennai 600 002.

2.The Chief Financial Controller/Revenue
Tamil nadu Generation & Distribution
Corporation Limited [TANGEDCO]
Tatabad, Coimbatore 641 012.

3.The Accounts Officer/Revenue
O/o.The Superintending Engineer
Coimbatore EDC/North, TANGEDCO
Tatabad, Coimbatore 641 012.

4.Tamil Nadu Electricity Regulatory Commission [TNERC]
represented by its Secretary
TIDCO Office Building, No.19-A, Rukmani
Lakshmipathy Salai, Marshalls Road, Egmore
Chennai 600 008. ... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 1st and 2nd respondents, their men, officers, agents, servants, representatives and/or any one claiming through or under them, to strictly comply with the order dated 04.05.2020 passed in Suo Motu Proceedings No.2/2020 by the 4th respondent and Regulation 6[b] of the Tamil Nadu Electricity Supply Code, 2004 in respect of Demand Charges and to further refrain from levying, demanding and collecting any compensation charges, etc., for low PF or for not maintaining the stipulated Power Factor [PF] limit during the lock down and restricted working period imposed by the Governments and to duly refund any such amounts already collected from the HT consumer members of the 1st petitioner.

For Petitioners: Mr.N.L.Rajah, Sr.Counsel assisted
by Mr.Arun Anbumani

For Respondents: Mr.P.H.Aravindh Pandian
Additional Advocate General
assisted by
Mr.M.Vijayamehanth, Standing counsel

WP.No.9141/2020:-

M/s.Aruna Theatres and Enterprises Pvt Ltd
represented by its Director, Mr.K.Shanmugasundaram
No.3, Pillar Road, Ashok Nagar,
Chennai 600 083. .. Petitioner

Versus

1.The Chairman
Tamil Nadu Electricity Board
No.800, Anna Salai, Chennai 600 002.

2.Tamil Nadu Generation & Distribution Corporation Limited [TANGEDCO] represented by its Chairman and MD, 144, Anna Salai, Chennai 600 002.

3.The Chief Financial Controller/Revenue Tamil Nadu Generation & Distribution Corporation Limited [TANGEDCO] 144, Anna Salai, Chennai 600 002.

4.The Accounts Officer/Revenue, O/o.The Superintending Engineer Chennai EDC/South-1, TANGEDCO, Anna Main Road, Chennai 600 078.

5.Tamil Nadu Electricity Regulatory Commission [TNERC] represented by its Secretary, TIDCO office Building, No.19-A, Rukmani Lakshmipathy Salai Egmore, Chennai 600 008. .. Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the entire records pertaining to the issuance of Bill NO.9094000215042001 dated 02.04.2020, Bill No.9094000215052001 dated 02.05.2020 and Bill No.9094000215062007 dated 08.06.2020 all issued by the 2nd respondent herein and quash the same as it violates Regulation 6 of the Tamil Nadu Electricity Supply Code 2014 consequently direct the 2nd respondent to consider the representations dated 27.03.2020 ; 02.04.2020 ; 04.05.2020 ; 14.05.2020 ; 21.05.2020 and 16.06.2020 given by the petitioner within a stipulated time in a manner known to law.

For Petitioner : Mr.C.Umashankar
For Respondents : Mr.P.H.Aravindh Pandian
Additional Advocate General
assisted by
Mr.P.R.DhilipKumar, Standing counsel

WP.No.9312/2020:-

M/s.Kay-EMK Luxury Hotels and Resorts Pvt Ltd represented by its Director Mr.S.Khaja Mohideen Having office at No.1/226, Service Road Vanagaram, Chennai 600095.

.. Petitioner

Versus

- 1.The Chairman & Managing Director
Tamil Nadu Generation and Distribution
and Corporation Limited, 10th Floor,
NPKRR Maaligai, 144, Anna Salai,
Chennai 600002.
- 2.The Chief Financial Controller - Revenue
Tamil Nadu Generation and Distribution
and Corporation Limited, 10th Floor,
NPKRR Maaligai, 144, Anna Salai,
Chennai 600002.
- 3.The Superintending Engineer
Chennai Electricity Distribution Circle/West
110/33KV Thirumangalam, SS Campus
1st Floor, Anna Nagar, Chennai 600 040.
- 4.Accounts Officer - Revenue,
Chennai Electricity Distribution Circle-West
110/33KV Thirumangalam, SS Campus
1st Floor, Anna Nagar, Chennai 600 040. .. Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the entire records of the respondents which culminated in the High Tension Bill [Provisional] for the month of March 2020, in Bill NO.9094061946042001 dated 04.04.2020, the High Tension Bill [Provisional] for the month of April 2020 in Bill No.90940619452001 dated 05.05.2020, the High Tension Bill [Provisional] for the month of May 2020 in Bill No.9094061946062001 dated 02.06.2020, the High Tension Bill [Provisional] for the month of June 2020 in Bill No.9094061946072001 dated 03.07.2020 for Service Connection No.019094061946 issued by the 4th respondent and quash the same insofar as it relates to Demand Charges @ Rs.350 per KVA on 90% of the sanctioned demand and further direct the respondents herein to demand only on the Actual consumption of Electricity in view of the lockdown due to COVID-19 pandemic for the aforesaid four impugned bills and continue to Charge the same until the entire period of Lockdown.

For Petitioner : Mr.V.P.Sengottuvel
For Respondents: Mr.P.H.Aravindh Pandian
Additional Advocate General
assisted by
Mr.P.R.DhilipKumar, Standing counsel

WP.No.9537/2020:-

- 1.Ambur Tanners Association
rep.by its Authorised Signatory
Mr.Mohammed Atharuddin
[A Regd Society bearing Reg.No.356/2011]
Regd. Office at Thuthipet CETP Complex,
Periyavarikkam, Ambur 635 811
Tirupattur District.
- 2.Shafeeq Shameel & Co
HT Service No.089094130023
represented by its Managing Partner
Mr.N.Shafeeq Ahmed
Post Box No.30, Thuthipet,
Ambur 635 811. .. Petitioners

Versus

- 1.Tamil Nadu Generation & Distribution Corporation Ltd
[TANGEDCO], represented by its Chairman &
Managing Director, 144, Anna Salai, Chennai 600 002.
- 2.The Chief Financial Controller/Revenue
Tamil Nadu Generation & Distribution
Corporation Limited [TANGEDCO]
144, Anna Salai, Chennai 600 002.
- 3.The Accounts Officer/Revenue
O/o.The Superintending Engineer
Tirupattur EDC/TANGEDCO
Balammal Colony, Tirupattur,
Tirupattur District 636 601.
- 4.The Tamil Nadu Regulatory Commission [TNERC]
rep.by its Secretary, TIDCO Office Building
No.19-A, Rukmani Lakshmipathy Salai
Marshalls Road, Egmore, Chennai 600 008. .. Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 1st and 2nd respondents, their men, officers, agents, servants, representatives and/or any one claiming through or under them, to strictly comply with Regulation 6[b] of the Tamil Nadu Electricity Supply Code, 2004, in respect of demand charges during the periods of lock down and restricted functioning imposed by the Governments and authorities and to further refrain from levying, demanding and collecting any compensation charges etc., for low PF or for not

maintaining the stipulated Power Factor [PF] limit during the lock down and restricted working period imposed by the Governments and to duly refund any such amounts already collected from the HT consumer members of the 1st petitioner.

For Petitioners : Mr.N.L.Rajah, Senior counsel
assisted by Mr.K.M.Aasim Shehzad
for BFS LEGAL

For Respondents : Mr.P.H.Aravindh Pandian
Additional Advocate General
assisted by
Mr.M.Varun Kumar, Standing counsel
for TANGEDCO

WP.No.9538/2020:-

- 1.South India Shoe Manufacturers Association
represented by its Secretary Mr.Naveed Akber
Ambur Trade Centre, 1st Floor, MC Road
Gangapuram, Ambur 635802
Tirupattur District.
- 2.SSC Shoes Pvt Ltd
HT Service No.089094130081
represented by its Managing Director
Mr.N.Shafeeq Ahmed,
Venkatasamudiram Village, Road, Ambur 635802. ... Petitioners

Versus

- 1.The Tamil Nadu Generation and Distribution Corporation Ltd
[TANGEDCO], rep.by its Chairman & Managing Director,
144, Anna Salai, Chennai 600 002.
- 2.The Chief Financial Controller/Revenue
Tamil Nadu Generation & Distribution
Corporation Limited [TANGEDCO]
144, Anna Salai, Chennai 600 002.
- 3.The Accounts Officer/Revenue
O/o.The Superintending Engineer
Tirupattur EDC/TANGEDCO
Balammal Colony, Tirupattur,
Tiruppattur District 635 601.
- 4.Tamil Nadu Electricity Regulatory Commission [TNERC]
represented by its Secretary, TIDCO Office Building
No.19-A, Rukmani Lakshmipathi Salai
Marshalls Road, Egmore, Chennai 600 008... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 1st and 2nd respondents, their men, officers, agents, servants, representatives, and/or any one claiming through or under them, to strictly comply with Regulation 6[b] of the Tamil Nadu Electricity Supply Code, 2004, in respect of demand charges during the periods of lock down and restricted functioning imposed by the Governments and authorities and to further refrain from levying, demanding and collecting any compensation charges, etc., for low PF or for not maintaining the stipulated Power Factor [PF] limit during the lock down and restricted working period imposed by the Governments and to duly refund any such amounts already collected from the HT consumer members of the 1st petitioner.

For Petitioners : Mr.N.L.Rajah, Senior counsel
assisted by Mr.K.M.Aasim Shehzad
for BFS LEGAL

For Respondents : Mr.P.H.Aravindh Pandian
Additional Advocate General
assisted by
Mr.M.Varun Kumar, Standing counsel
for TANGEDCO

WP.No.9550/2020:-

Sree Jagathguru Textiles Mills [P] Ltd
Unit II, HTSC No.039094390422,
521/1, NH 67, Main Road,
Olappalayam, Vellakovil 638 111
Tirupur District,
Represented by its Authorized Signatory
Shri T.Eswaran .. Petitioner

Versus

- 1.The Tamil Nadu Generation & Distribution Corporation Ltd [TANGEDCO]
rep.by its Chairman & Managing Director
10th Floor, No.144, Anna Salai, Chennai 600 002.
- 2.The Chief Financial Controller-Revenue
TANGEDCO, 7th Floor, 144, Anna Salai,
Chennai 600 002.
- 3.The Superintending Engineer
TANGEDCO
Palladam Electricity Distribution Circle
Palladam, Tirupur District.

4.The Tamil Nadu Electricity Regulatory Commission
19-A, Rukmani Lakshmipathy Salai
Egmore, Chennai 600 008.
rep.by its Secretary.

.. Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondents to demand and collect the minimum demand charges only 20% of the sanctioned demand or to the extent of the actual recorded demand, whichever is higher, instead of 90% of the sanctioned demand followed unilaterally during all the months and not to levy belated payment surcharge, as the bills are themselves contain serious errors in billing , as found under Regulation 12 of Tamil Nadu Electricity Supply Code 2004 and accordingly, direct the respondents to issue revised bills by strictly following Regulation 6[b] of Tamil Nadu Electricity Supply Code 2004 and consequently direct the 1st and 2nd respondents to issue suitable directions to the 3rd respondent the Superintending Engineer, to issue fresh CC Bills for the months of March 2020, April 2020, May 2020 and June 2020 and for all the future periods, if the Lock downs are enforced further and extended in accordance with the Regulatory Provisions under Regulation 6[b] of Tamil Nadu Electricity Supply Code 2004 and also to further direct the respondents to refund the excessively collected demand charges in respect of the payments made under Protest which was collected in contrary to the Regulatory Provisions.

For Petitioner :Mr.Rahul Balaji for Mr.R.S.Pandiyaraj
For Respondents:Mr.P.H.Aravindh Pandian
Additional Advocate General
assisted by
Mr.M.Vijayamehanath, Standing
counsel for TANGEDCO

WP.No.10012/2020:-

Natesan Synchrocones Pvt Ltd
Nellikuppam Road, Karanaipuducherry Village
Chengalpattu Taluk, Kadambur,
Kanchipuram District 603 202
having registered office at
54/4 Paulwels Road, Sripuram Colony
St.Thomas Mount, Chennai 600 016.

.. Petitioner

Versus

1.Tamil Nadu Generation & Distribution
Corporation Ltd., rep.by its Chairman
144, Anna Salai, Chennai 600 002.

2.Tamil Nadu Electricity Regulatory Commission
TIDCO Office Building, No.19-A,
Rukmani Lakshmipathy Salai, Egmore
Chennai 600 008.

3.Government of Tamil Nadu
Energy Department
Fort St George, Chennai.

4.The Accounts Officer/Revenue
O/o.The Superintending Engineer,
Chengalpet EDC, TANGEDCO
Chengalpet.

.. Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for records of the 1st respondent herein in Bill No.9094110841072001 dated 9th July 2020 with respect to service connection No.099094110841 and quash the same and consequently, direct the 1st respondent herein to pass fresh orders, for the period of lock down or such other period where restriction is imposed by the State or Central Government in operating the petitioner's factory in terms of Regulation 6[b] of the TN Electricity Supply Code.

For Petitioner : Mr.Srinath Sridevan
For Respondents : Mr.P.H.Aravindh Pandian
Additional Advocate General
assisted by
Mr.P.Gunaraj, Standing Counsel
for TANGEDCO/RR 1, 2 & 4
Mr.E.Balamurugan, Spl.GP
for State Government/R3

WP.No.10042/2020:-

Natesan Synchrocones Pvt Ltd
No.74, Vadagal Village,
Sriperumbudu, Vadagal,
Kanchipuram 603 109
having registered office at
54/4 Paulwels Road, Sripuram Colony
St.Thomas Mount, Chennai 600 016.

.. Petitioner

Versus

1.Tamil Nadu Generation & Distribution Corporation Ltd., rep.by its Chairman
144, Anna Salai, Chennai 600 002.

2.Tamil Nadu Electricity Regulatory Commission
TIDCO Office Building, No.19-A,
Rukmani Lakshmipathy Salai, Egmore
Chennai 600 008.

3.Government of Tamil Nadu
Energy Department
Fort St George, Chennai.

4.The Accounts Officer/Revenue
O/o.The Superintending Engineer,
Chengalpet EDC, TANGEDCO
Chengalpet.

.. Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for records of the 1st respondent herein in Bill No.9094111251072001 dated 9th July 2020 with respect to service connection No.099094111251 and quash the same and consequently, direct the 1st respondent herein to pass fresh orders, for the period of lock down or such other period where restriction is imposed by the State or Central Government in operating the petitioner's factory in terms of Regulation 6[b] of the TN Electricity Supply Code.

For Petitioner : Mr.Srinath Sridevan
For Respondents : Mr.P.H.Aravindh Pandian
Additional Advocate General
assisted by
Mr.P.Gunaraj, Standing Counsel
for TANGEDCO/RR 1,2&4
Mr.E.Balamurugan, Spl.GP
for State Government/R3

WP.No.10044/2020:-

Natesan Precision Components Pvt Ltd
No.83, Sengundram Village, M.M.Nagar
Municipality, Maraimalai Nagar
Senkuntram, Chengalpattu,
Kanchipuram District 603 204.
Having registered office at
54/4, Paulwels Road, Sripuram Colony
St.Thomas Mount, Chennai 600 016.

.. Petitioner

Versus

1.Tamil Nadu Generation & Distribution
Corporation Ltd., rep.by its Chairman
144, Anna Salai, Chennai 600 002.

2.Tamil Nadu Electricity Regulatory Commission
TIDCO Office Building, No.19-A,
Rukmani Lakshmipathy Salai, Egmore
Chennai 600 008.

3.Government of Tamil Nadu
Energy Department
Fort St George, Chennai.

4.The Accounts Officer/Revenue
O/o.The Superintending Engineer,
Chennai EDC, TANGEDCO
Chennai.

... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 1st respondent in Bill No.9094111206072001 dated 9th July 2020 with respect to service connection No.099094111206 and quash the same and consequently, direct the 1st respondent herein to pass fresh orders for the period of lockdown or such other period where restriction is imposed by the State or Central Government in operating the petitioner's factory in terms of Regulation 6[b] of the TN Electricity Supply Code.

For Petitioner : Mr.Srinath Sridevan

For Respondents : Mr.P.H.Aravindh Pandian
Additional Advocate General
assisted by
Mr.P.Gunaraj, Standing Counsel
for TANGEDCO/RR1,2&4
Mr.S.N.Parthasarathi, GA
for State Government/R3

WP.No.10031/2020:-

Natesan Synchrocones Pvt Ltd
Plot No.124, Developed Plots,
Industrial Estate, Perungudi
Chennai, having registered office at
54/4 Paulwels Road, Sripuram Colony
St. Thomas Mount, Chennai 600 016.

.. Petitioner

Versus

- 1.Tamil Nadu Generation & Distribution Corporation Ltd., rep.by its Chairman
144, Anna Salai, Chennai 600 002.
- 2.Tamil Nadu Electricity Regulatory Commission
TIDCO Office Building, No.19-A,
Rukmani Lakshmipathy Salai, Egmore
Chennai 600 008.
- 3.Government of Tamil Nadu
Energy Department
Fort St George, Chennai.
- 4.The Accounts Officer/Revenue
O/o.The Superintending Engineer,
Chennai EDC/South II, TANGEDCO
Chennai. ... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 1st respondent herein in Bill No.9094010730072003 dated 6th July 2020 with respect to service connection No.099094010730 and quash the same and consequently direct the 1st respondent herein to pass fresh orders, for the period of lock down or such other period where restriction is imposed by the State or Central Government in operating the petitioner's factory in terms of Regulation 6 [b] of the TN Electricity Supply Code.

For Petitioner : Mr.Srinath Sridevan
For Respondents : Mr.P.H.Aravindh Pandian
Additional Advocate General
assisted by
Mr.P.Gunaraj, Standing Counsel
for TANGEDCO / RR1,2&4
Mr.K.Parameshwaran,GA
for State Government / R3

WP.No.9825/2020:-

Natesan Synchrocones Pvt Ltd
225/21A, Laxman Road
Kandanchavadi, having registered office at
54/4, Paulwels Road, Sripuram Colony
St.Thomas Mount, Chennai 600 016.

.. Petitioner

Versus

1.Tamil Nadu Generation & Distribution Corporation Ltd., rep.by its Chairman
144, Anna Salai, Chennai 600 002.

2.Tamil Nadu Electricity Regulatory Commission
TIDCO Office Building, No.19-A,
Rukmani Lakshmipathy Salai, Egmore
Chennai 600 008.

3.Government of Tamil Nadu
Energy Department
Fort St George, Chennai.

4.The Accounts Officer/Revenue
O/o.The Superintending Engineer,
Chennai EDC/South II, TANGEDCO
Chennai.

.. Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 1st respondent herein in Bill No.9094010862072003 dated 6th July 2020 with respect to service connection No.099094010862 and quash the same and consequently, direct the 1st respondent herein to pass fresh orders for the period of lock down or such other period where restriction is imposed by the State or Central Government in operating the petitioner's factory, in terms of Regulation 6 [b] of the TN Electricity Supply Code.

For Petitioner : Mr.Srinath Sridevan
For Respondents : Mr.P.H.Aravindh Pandian
Additional Advocate General
assisted by
Mr.P.Gunaraj, Standing Counsel
for TANGEDCO/RR1,2 & 4
Mr.K.Parameshwaran, GA
for State Government/R3

WP.No.9831/2020:-

Natesan Precision Components Ltd
No.9, Sengundram Industrial Area, CMDA's
Industrial Complex, Maraimalai Nagar
Senkuntram, Chengalpattu,
Kanchipuram District 603 204.
Having registered office at
54/4, Paulwels Road, Sripuram Colony
St.Thomas Mount, Chennai 600 016.

.. Petitioner

Versus

- 1.Tamil Nadu Generation & Distribution Corporation Ltd., rep.by its Chairman
144, Anna Salai, Chennai 600 002.
- 2.Tamil Nadu Electricity Regulatory Commission
TIDCO Office Building, No.19-A,
Rukmani Lakshmipathy Salai, Egmore
Chennai 600 008.
- 3.Government of Tamil Nadu
Energy Department
Fort St George, Chennai.
- 4.The Accounts Officer/Revenue
O/o.The Superintending Engineer,
Chennai EDC, TANGEDCO
Chennai.

... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 4th respondent herein in Bill No.9094110642072002 dated 9th July 2020 with respect to service connection No.099094110642 and quash the same and consequently direct the 4th respondent herein to pass fresh orders, for the period of lockdown or such other period where restriction is imposed by the State or Central Government in operating the petitioner's factory in terms of Regulation 6 [b] of the TN Electricity Supply Code.

For Petitioner : Mr.Srinath Sridevan
For Respondents : Mr.P.H.Aravindh Pandian
Additional Advocate General
assisted by
Mr.P.Gunaraj, Standing Counsel
for TANGEDCO/RR1,2&4
Mr.S.N.Parthasarathi, GA
for State Government/R3

WP.No.10087/2020:-

M/s.A.R.R.Srinivasan Firm
rep.by its Partner S.Ramanathan
Door No.2/94, 2/95, 2/95-1
Meyyanur Road, Salem 636 004.

.. Petitioner

Versus

1. Tamil Nadu Generation & Distribution Corporation Ltd
[TANGEDCO] rep. by its Chairman & Managing
Director, No.144, Anna Salai, Chennai 600 002.
 2. The Accounts Officer/Revenue,
Tamil Nadu Generation & Distribution Corporation Ltd
[TANGEDCO], Salem EDC, KN Colony
Udayapatti, Salem 636 014.
 3. The Superintending Engineer
Tamil Nadu Generation & Distribution Corporation Ltd
[TANGEDCO], Salem EDC, KN Colony
Udayapatti, Salem 636 014.
- .. Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records leading to the issuance of original impugned High Tension Bills [Provisional] issued by the 2nd respondent for the month of April 2020 [Bill 9094240214052001 dated 07.05.2020] and for the month of May 2020 [Bill 9094240214062001 dated 02.06.2020] and for the month of June 2020 [Bill NO.9094240214072001 dated 02.07.2020] pertaining to Service No.049094240214 in violation Regulation 6[b] of the Tamil Nadu Electricity Supply Code, 2004, and quash the same and direct the respondents to raise the monthly bill calculating the Maximum Demand Charges at the rate of 20% as per 6[b] of the Tamil Nadu Electricity Supply Code, 2004 till the extended period of lock down, by the Government of Tamil Nadu and not to levy Power Factor penalty till the lock down is lifted and operation of cinema theater commences insofar as the petitioner is concerned.

For Petitioner : Mr.S.Prem Auxilian Raj
For Respondents : Mr.P.H.Aravindh Pandian
Additional Advocate General
assisted by
Mr.M.Vijayamehanath
Standing Counsel for TANGEDCO

WP.No.10091/2020:-

R.Panneerselvam
Partner of M/s.Rohini Movie Park
residing at No.43, Sarangapani Street
T.Nagar, Chennai 600 017.

.. Petitioner

Versus

- 1.Tamil Nadu Generation & Distribution Corporation Ltd
[TANGEDCO], rep.by its Chairman & Managing
Director, No.144, Anna Salai, Chennai 600 002.
- 2.The Accounts Officer/Revenue
Tamil Nadu Generation & Distribution Corporation Ltd
[TANGEDCO], CEDC/WEST, Thirumangalam
SS, Anna Nagar, Chennai 600 040.
- 3.The Superintending Engineer
Tamil Nadu Generation & Distribution Corporation Ltd
[TANGEDCO], CEDC/WEST, Thirumangalam
SS, Anna Nagar, Chennai 600 040.
- 4.Mrs.P.Jayanthi
- 5.Mr.P.Vinoj P.Selvam
- 6.Tr.Nikilesh Surya
- 7.Tr.Rhevanth Charan ... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records leading to the issuance of the impugned High Tension Bills [Provisional] issued by the 2nd respondent for the month of April 2020, [Bill No.9094062237052001 dated 02.05.2020], for the month of May 2020, [Bill No.9094062237062001 dated 01.06.2020], for the month of June 2020 [Bill No.9094062237072002 dated 01.07.2020] pertaining to Service No.019094062237, in violation Regulation 6 [d] of the Tamil Nadu Electricity Supply Code, 2004 and quash the same and direct the respondents to raise the monthly Bill calculating the Maximum Demand Charges at the rate of 20% as per 6[b] of the Tamil Nadu Electricity Supply Code, 2004 till the extended period of lock down by the Government of Tamil Nadu and not to levy Power Factor penalty till the lock down is lifted and operation of cinema theatre commences insofar as the petitioner is concerned.

For Petitioner : Mr.S.Prem Auxilian Raj
For RR 1 to 3 : Mr.P.H.Aravindh Pandian
Additional Advocate General
assisted by
Mr.P.R.Dhilip Kumar
Standing Counsel for TANGEDCO

WP.No.10110/2020:-

Codissia Intec Technology Centre
CODISSIA Trade Fair Complexes
SF.No.403/1, Vilankurichi Village
G.V.Fair Ground, Avinashi Road
Coimbatore,

represented by its President Mr.M.Kandhaswami .. Petitioner

Versus

1.The Tamil Nadu Generation & Distribution Corporation Ltd
[TANGEDCO], rep.by its Chairman & Managing Director
10th Floor, No.144, Anna Salai, Chennai 600 002.

2.The Chief Financial Controller-Revenue, TANGEDCO
7th Floor, 144, Anna Salai, Chennai 600 002.

3.The Superintending Engineer,
TANGEDCO, Coimbatore Electricity Distribution
Circle-Metro, Coimbatore 641 012.

4.The Tamil Nadu Electricity Regulatory Commission
19-A, Rukmani Lakshmipathy Salai, Egmore,
Chennai 600 008. ... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondents to demand and collect the minimum demand charges only 20% of the sanctioned demand or to the extent of the actual recorded demand, whichever is higher, instead of 90% of the sanctioned demand followed unilaterally during all the months and not to levy belated payment surcharge, as the bills are themselves contain serious errors in billing , as found under Regulation 12 of Tamil Nadu Electricity Supply Code 2004 and accordingly, direct the respondents to issue revised bills by strictly following Regulation 6[b] of Tamil Nadu Electricity Supply Code 2004 and consequently direct the 1st and 2nd respondents to issue suitable directions to the 3rd respondent the Superintending Engineer, to issue fresh CC Bills for the months of March 2020, April 2020, May 2020 and June 2020 and for all the future periods, if the Lock downs are enforced further and extended in accordance with the Regulatory Provisions under Regulation 6[b] of Tamil Nadu Electricity Supply Code 2004 and also to further direct the respondents to refund the excessively collected demand charges in respect of the payments made under Protest which was collected in contrary to the Regulatory Provisions.

For Petitioner : Mr.R.S.Pandiyaraj
For Respondents : Mr.P.H.Aravindh Pandian
Additional Advocate General
assisted by
Mr.N.Damodharan
Standing Counsel for TANGEDCO

WP.No.10164/2020:-

N.S.S.Senthilnathan
Licencee of Abhirami Theatres
No.161, EVN Road
Erode 638011.

.. Petitioner

Versus

1.Tamil Nadu Generation & Distribution Corporation Ltd
[TANGEDCO] represented by its Chairman &
Managing Director, No.144, Anna Salai,
Chennai 600 002.

2.The Accounts Officer/Revenue,
Tamil Nadu Generation & Distribution
Corporation Limited [TANGEDCO]
Erode EDC, No.948, EVN Road,
Erode 638 009.

3.The Superintending Engineer
Tamil Nadu Generation & Distribution
Corporation Limited [TANGEDCO]
Erode EDC, No.948, EVN Road,
Erode 638 009.

... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records leading to the issuance of the original impugned High Tension Bills [Provisional] issued by the 2nd respondent for the month of April 2020 [Bill 9094260036052001 dated 07.05.2020] and for the month of May 2020 [Bill 9094260036062002 dated 01.06.2020] pertaining to Service No.049094260036 in violation Regulation 6[b] of the Tamil Nadu Electricity Supply Code, 2004, and quash the same and direct the respondents to raise the monthly bill calculating the Maximum Demand Charges at the rate of 20% as per 6[b] of the Tamil Nadu Electricity Supply Code, 2004 till the extended period of lock down , by the Government of Tamil Nadu and not to levy Power Factor penalty till the lock down is lifted and operation of cinema theater commences insofar as the petitioner is concerned.

For Petitioner : Mr.S.Prem Auxilian Raj
For Respondents : Mr.P.H.Aravindh Pandian
Additional Advocate General
assisted by
Mr.N.Damodharan
Standing Counsel for TANGEDCO

WP.No.8852/2020:-

N.Venkatesh

Licencee of M/s.Woodlands Theatres

New No.25 [Old No.10] West Cott Road

Royapettah, Chennai 600 014.

.. Petitioner

Versus

1.Tamil Nadu Generation & Distribution Corporation Ltd
[TANGEDCO], represented by its Chairman &
Managing Director, No.144, Anna Salai, Chennai 600 002.

2.The Deputy Financial Controller
Tamil Nadu Generation & Distribution Corporation Ltd
[TANGEDCO], CEDC/CENTRAL, MGR Salai
Valluvar Kottam SS Complex,
Nungambakkam, Chennai 600 034.

3.The Superintending Engineer
Tamil Nadu Generation & Distribution Corporation
Limited [TANGEDCO], Chennai [Central]
MGR Salai, Valluvar Kottam SS Complex
Nungambakkam, Chennai 600 034. .. Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records leading to the issuance of the impugned High Tension Bills [Provisional] by the 2nd respondent for March 2020 [Bill No.9094022039042001 dated 04.04.2020], for the month of April 2020 [Bill No.9094022039052001 dated 07.05.2020] and for the month of May 2020 [Bill No.9094022039062002 dated 04.06.2020] pertaining to Service No.019094022039 in violation Regulation 6[b] of the Tamil Nadu Electricity Supply Code 2004 and quash the same and direct the respondents to raise the monthly Bill calculating the Maximum Demand Charges at the rate of 20% as per 6[b] of the Tamil Nadu Electricity Supply Code, 2004 till the extended period of Lock Down, by the Government of Tamil Nadu and not to levy Power Factor penalty till the lock down is lifted and operation of cinema theatre commences insofar as the petitioner is concerned.

For Petitioner : Mr.S.Prem Auxilian Raj
For Respondents : Mr.P.H.Aravindh Pandian
Additional Advocate General
assisted by
Mr.P.R.Dhilip Kumar
Standing Counsel for TANGEDCO

WP.No.9689/2020:-

M/s.Surabi International Pvt Ltd
represented by its Managing Director,
G.Srinivasan, Managing Director,
Having Office at, No.33, Anna Salai
Vellore 632 001. .. Petitioner

Versus

- 1.Tamil Nadu Generation & Distribution Corporation Ltd
[TANGEDCO], represented by its Chairman & Managing
Director, No.144, Anna Salai, Chennai 600 002.
- 2.The Deputy Financial Controller,
Tamil Nadu Generation & Distribution Corporation Ltd
[TANGEDCO], Vellore Electricity Distribution Circle
Gandhi Nagar, Vellore 632 006.
- 3.The Superintending Engineer
Tamil Nadu Generation & Distribution Corporation Ltd
[TANGEDCO], Vellore Electricity Distribution Circle
Gandhi Nagar, Vellore 632 006. .. Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records leading to the issuance of the impugned High Tension Bills [Provisional] by the 2nd respondent for April 2020 [Bill No.9094121287052001 dated 11.05.2020], for May 2020 [Bill NO.9094121287062001 dated 05.06.2020] and for June 2020 [Bill No.9094121287072002 dated 07.07.2020] pertaining to High Tension Service No.089094121287 in violation Regulation 6[b] of the Tamil Nadu Electricity Supply Code 2004 and quash the same and direct the respondents to raise the monthly Bill calculating the Maximum Demand Charges at the rate of 20% as per 6[b] of the Tamil Nadu Electricity Supply Code, 2004 till the extended period of lock down, by the Government of Tamil Nadu and not to levy Power Factor penalty till the lock down is lifted and operation of Hotels commences insofar as the petitioner is concerned.

For Petitioner : Mr.S.Prem Auxilian Raj
For Respondents : Mr.P.H.Aravindh Pandian
Additional Advocate General
assisted by
Mr.N.Damodharan
Standing Counsel for TANGEDCO

COMMON ORDER

1 The petitioners in these batch of Writ Petitions who have filed either as associations or as individual consumers, are High Tension (hereinafter referred to as "HT") consumers who had availed power supply from the Tamil Nadu Generation and Distribution Corporation Limited (hereinafter referred to as "TANGEDCO"). The common grievance of the petitioners in these batch of writ petitions relates to the challenge of the levy of Demand Charges by the TANGEDCO in violation of the order passed by the Tamil Nadu Electricity Regulatory Commission (hereinafter referred to as "TNERC") dt.04.05.2020 as also in violation of Regulation 6(b) of the Tamil Nadu Electricity Supply Code, 2004 (hereinafter referred to as the "Supply Code"). In many of the writ petitions, a challenge is also made to the levy of compensation charges for Low Power Factor (hereinafter referred to as "PF").

2 The petitioners are governed by the HT Tariff fixed by the TNERC. The HT Tariff is a two-part tariff comprising of a) Demand Charges and b) Energy Charges, which are payable to the Generating Company or the Distribution Licensee such as the TANGEDCO. As per the Regulations and the Tariff Order/Regulation of the TNERC, Demand Charges have to be levied on the KVA demand actually recorded in the month or 90% of the sanctioned demand, whichever is higher. The TNERC fixes the Demand Charges and Energy Charges for all categories of consumers, including HT consumers through its Tariff Orders issued from time to time. These charges are collected from the consumers on a monthly basis based on the current consumption bill raised by the TANGEDCO.

3 The HT consumers are also required to maintain a stipulated PF limit, failing which compensation charges in the nature of penalty are to be paid to the Generating Company or Distribution Licensee such as the TANGEDCO. PF is the ratio of the real power absorbed by the load to the apparent power flowing in the circuit. The average PF of the consumer's installation shall not be less than the stipulated limit of 0.90 lag. Compensation Charges will be levied if the same goes below this PF, as per the Tariff Orders fixed by the TNERC.

4 In or around the month of December 2019, the world witnessed the outbreak of a deadly virus, namely, COVID-19. It virtually spread like wild fire across all the countries across the world. The tentacles of this deadly virus touched India in the middle of March 2020. The consequences were disastrous and unprecedented measures had to be taken by both the Central and State Governments. As a first step, the Government of India imposed a national curfew on 22.03.2020. Thereafter, in terms of the provisions of The Epidemic Diseases Act, 1897 and Regulations made thereof as well as The Disaster Management Act, 2005, the Government of Tamil Nadu imposed stringent restrictions from 24.03.2020. A complete lockdown was imposed across the State and all industrial, commercial and private establishments, etc., were asked to temporarily shut down. In short, except essential services, every other establishment was under temporary shut-down owing to the lockdown. The period of this lockdown was extended from time-to-time until 03.05.2020. Later, from 06.05.2020 onwards, this lockdown was slowly relaxed by permitting some industries located outside the corporations/municipal limits to operate with 50% workforce. There was virtually no production or service activity for nearly 42 days between 24.03.2020 and 05.05.2020.

5 During this period, several representations were made by the associations and individual consumers requesting for waiver of the Demand Charges which had to be paid to the TANGEDCO. Representations were also made to levy the Minimum Charges as per Regulation 6 of the Supply Code during the lockdown period. However, the TANGEDCO was not favourably considering the representations due to various reasons, more particularly due to the financial implications of making such a waiver. At this point of time, the TNERC got into the act and considered the representations made by the consumers and also the objections given by the TANGEDCO and passed an order in Suo Moto Proceedings No. 2 of 2020, dt.04.05.2020. The relevant portions of the order are extracted hereunder:

"4) Keeping all these in mind, commission issues the following direction, to TANGEDCO, in respect of billing of HT Services-

The G.O.s of the State of Tamil Nadu- G.O. 152, dt. 23.03.2020, G.O. 172 (Revenue and Disaster Management Department) dt. 25.03.2020 and G.O. 193 (Revenue and Disaster Management Department) dt. 15.04.2020, have notified to close down all the activities such as industrial, commercial, educational institutions, etc., to stay everybody at home, with some

exceptions. The G.O.s are applicable throughout the State. Therefore,

a) i) In the case of HT consumers, whose recorded demand does not exceed the 20% of sanctioned demand during this lockdown period- those HT consumers are to be considered to fall within the proviso of Regulation 6(b) and 20% of the contracted demand or recorded demand whichever is higher can be recovered besides the charges for the actual consumption of electricity. And the above charges are recoverable by the TANGEDCO in addition to the Transformer loss component in case the HT service is connected in LT side of the Transformer.

ii) Even though such HT services are required to be billed under Regulation 6(b) of the Supply Code, as stated in the provision (1) of 6(b) i.e., insisting of the certificate from Labour Officer/ any other revenue authority, by this time, is not at all required, since the lockdown of all the sectors due to epidemic situation have been clearly explained in the above G.O.s 152, 172 and 193. Moreover, approaching of any authority of Revenue Administration, as requested by TANGEDCO, is also impracticable, since those officials were made involved by the State Government in prime task of containment measures of COVID-19.

The above direction to be adopted invariably, during this lockdown period caused due to COVID-19 in their respective area, in the billing of all HT consumers, without insisting of any representation by the HT consumer.

b) Further, the State Government vide above G.O.s, following the guidelines of Government of India, made exception for certain activities such as Government Hospitals, Government offices, TWAD Board, Pharmaceutical industries, oil refining, banks, etc., These services are allowed to function as usual considering its essentiality, therefore the usage of electricity will also be quite normal i.e., more than 20%.

Considering the above circumstances, in the case of any HT consumer, who have been permitted to carry out their business, during this lockdown period- those HT consumers are to be billed under routine billing method as states in the Tariff Order i.e. maximum Demand Charges for this period will be levied on the demand actually recorded in that month or 90% of the sanctioned demand whichever is higher, besides the charges for the actual consumption of electricity. Usual HT billing to be done, as if normal industrial/commercial other activities were carried on by the consumer.

5) After the period specified under Para (1) above, wherever the Government of Tamil Nadu adopts the partial lockdown due to COVID-19, TANGEDCO may accept the permission granted for functioning of such industry/activity by the designated authority (viz., District Collector, Corporation Commissioner, etc.,) as stipulated by the Government time to time; and minimum charges for such HT services may be decided based on the direction under Para 4(a) or (b) as the case may be."

6 As per the above order, the TNERC directed the TANGEDCO to collect 20% of the Contracted Demand or the Recorded Demand, whichever is higher, besides the charges for the actual consumption of electricity. For this purpose, the TNERC relied upon Regulation 6(b) of the Supply Code. The TNERC also made it clear that the TANGEDCO need not insist for any certificate from the concerned authority since inspections cannot be conducted during the pandemic. The TNERC also made it clear that those consumers who were permitted to carry out their business during their lockdown period, are to be billed under the routine billing method as per the Tariff Order, as it is done in the normal circumstances.

7 The TANGEDCO found the order passed by the TNERC unacceptable and hence an appeal came to be filed by the TANGEDCO before the Appellate Tribunal for Electricity at New Delhi. The TANGEDCO also proceeded to levy the Demand Charges as per the regular Tariff Order which is 90% of the Sanctioned Demand or the Recorded Demand, whichever is higher. That apart, compensation charges were also levied for low PF against many HT consumers.

8 The HT consumers filed writ petitions before this Court and also before the Madurai Bench. Initially, an interim order was passed both by the Principal Bench as well as the Madurai Bench directing the TANGEDCO not to take any coercive action.

9 The Appellate Tribunal passed an interim order on 18.05.2020 staying the order of the TNERC. The writ petitions filed before the Madurai Bench came to be finally disposed of by an order dt.26.05.2020. The relevant portions in the order is extracted hereunder:

"16.I have heard the learned counsels and also the learned Additional Advocate General at length. I am of the view that a quietus must be given to these writ petitions, since an Appellate Authority is in active consideration of Regulation 6 of the Electricity Rules, applicability of which core issue. The further issue is whether the petitioners/members of the two Associations, namely the Tamil Nadu Spinning Mills Association and Tamil Nadu Southern India Mills Association have actually worked during the lock down period. Though it would be obvious that they could not have worked, still TANGEDCO requires certification from the Superintending Engineer on a case by case basis on this aspect. This is their stand taken before the Regulatory Authority at Chennai. It would not be proper on their part to change this stand before the Appellate Authority at New Delhi.

17.Further, a plea had been made that till the Appellate Authority at New Delhi finally disposes the appeal, as an interim measure, the petitioners may be directed to pay 20% of the amount demanded and thereafter, on final adjudication by the Appellate Authority, they would abide by the orders therein subject to any legal recourse taken by either one of the two parties against the any orders passed by the Appellate Authority.

18.The issue of whether this Court can enter into a discussion to restrict payment for 20% of the demand will have to be decided. The Regulatory Commission at Chennai had granted such a concession. They had based their order on Regulation 6.

19.The issue before this Court is when the Appellate Authority had stayed that portion of the order which had stipulated payment of 20% of the demand in suo moto proceedings whether this Court can override that order of stay. It had been pointed out that as between this Court which exercises writ jurisdiction and the Appellate Authority, this Court has superior powers. I am not prepared to enter into a such discussion as to which Court or which authority has superior powers. It is the competency of that particular Court which is primarily important. The Appellate Authority is examining in appeal the order passed by the Regulatory Commission at Chennai. They are the competent Appellate Authority to so examine.

20.They had taken the appeal on file and notices have been issued to the respondents and the petitioners are also aware of such appellate proceedings and can very well joined in those appellate proceedings. This Court directs the Superintending Engineer to collect data with respect to each of the consumers who consume High Tension electricity and whether they have functioned during the lock down or not. With the data on hand, the present petitioners can impress upon the Appellate Authority about the applicability of Regulation 6 and as a corollary seek payment of only 20% of the demand.

21.This Court cannot issue any direction regarding payment of either 20% or 30% or any other percentage when under normal circumstances, they will have to pay 100% of the charges. The petitioners may, either in the course of today or tomorrow ie., 27.05.2020 give a representation to TANGEDCO to extend the period for payment and undertake to pay the charges as stipulated by the Appellate Authority at New Delhi, and participate in the appeal proceedings at New Delhi and at the same time, permit the Superintending Engineer to collect data with respect to whether the individual industries were under lock down as stipulated by the Government or not. Though the answer is obvious that they could not have functioned still, it would always be of assistance to them if they have on record a certificate from the

competent authority namely the Superintending Engineer in that regard.

22.A direction is issued to the respective Superintending Engineers to give necessary certification and also to depute officials to obtain data, on or before 29.05.2020. The petitioners are permitted to give a representation seeking extension of time for payment of the bills. The petitioners and the respondents are relegated back to the Appellate Authority at New Delhi, which shall deal with all the issues based on facts available, particularly, the certificates from the Superintending Engineers and also the representation of the petitioners.

23.This Court in writ jurisdiction, is not prepared to enter into a discussion on facts and cannot lay down a direction that the petitioner should pay a particular percentage of the bill amount, particularly, as this Court cannot substitute itself for the Tribunal.

24.The petitioners herein have also questioned the jurisdiction of the Appellate Authority to hear the appeal. It is pointed out that there are grounds for the same. If, the petitioners succeed before the Appellate Authority and they feel that it would be appropriate to approach this Court again, they are at liberty to file necessary writ petition. These writ petitions are disposed of as on date. The Appellate Authority may dispose of the Appeal pending before it.

25.The petitioners are permitted to raise all grounds before the Appellate Authority including the fact that in some of the cases, particularly in W.P(MD).6162 of 2020 and W.P.(MD).No.6233 of 2020, the bills actually raised by the respondents state that there has been no consumption"

10 By virtue of the above order, the focus shifted to the Appellate Tribunal. Counter affidavits/ reply statements were filed by the TNERC and the consumers. In the meantime, the writ petitions and the miscellaneous petitions came up for hearing

before this Court on 12.06.2020 and this Court took note of the orders passed by the Madurai Bench and passed the following order. The relevant portions of the order are extracted hereunder:

"7. I have considered the rival submissions. I am prima facie unable to concur with the contention of the learned Additional Advocate General regarding the enormity of the situation prevailing as on date. One cannot deny the fact that each and every person, however big he may be, is undergoing very difficult times in view of the threat of the pandemic which looms large over the entire world. Unfortunately for the petitioners have suffered two orders at the hands of the Appellate Tribunal for Electricity though on purely technical grounds and the other at the hands of the Madurai Bench of this Court. A reading of the order of the Appellate Tribunal shows that it was more concerned about the power/jurisdiction of the State Commission and the procedure adopted by the State Commission in granting relief to the High Tension consumers. However, the portion of the order extracted above would show that the Appellate Tribunal has consciously extended the time for payment by postponing the date of issuance of bills to 18/05.2020 i.e. the date of the order. No doubt this court while exercising its constitutional powers under Article 226 of the Constitution of India cannot be said to be bound by the orders of a statutory tribunal. At the same time the fact that a statutory which is competent to decide the issue is ceased of the issue cannot be brushed aside by this court. I am constrained to observe that judicial decorum and discipline requires that this court stays away from interfering with the proceedings before a statutory tribunal.

8. However, as rightly pointed out by Mr. M. Kamalanathan and Mr. N.L. Rajah the question relating to payment of compensation charges for low power factor is not as simple as the levy of demand charges. The compensation charges for low power factor being in the nature of a penalty the same cannot be imposed without a show cause notice and an enquiry being conducted. Therefore, I do not think that these writ

petitions could be disposed of merely on the basis that statutory tribunal is ceased of the matter. I am therefore of the opinion that the petitioners would be entitled to a limited interim order relating to demand and collection of compensation charges for low power factor alone pending disposal of the writ petitions.

9. As regards the payment of demand charges the Madurai Bench of this court has directed the Superintending Engineers of the respondents to issue certificates with reference to the functioning of the members of the petitioner associations. Mr. Arvind Pandian would submit that the inspection cannot be carried on by the Superintending Engineers of the respondents but the same should be done by the revenue authorities. He would also submit that the respondents herein have already filed a review petition before the Madurai Bench to the limited extent of seeking a direction for inspection by the revenue authorities. Therefore, there will be an interim direction to the respondents to cause inspection of the premises of the high tension consumers to ascertain as to whether they had been functioning during the lockdown between 25th of March 2020 and 30th of April 2020. As pointed out by the Appellate Tribunal for Electricity the fact whether the petitioners have functioned during the lockdown or not has to be ascertained. The inspection shall be carried out and completed before 05/07/2020. The necessary certificates should be issued by the authorities concerned to the HT consumers.

10. For the forgoing reasons these miscellaneous petitions are disposed of granting a limited interim injunction in respect of demand and collection of compensation charges for low power factor alone. The petitioner in W.P 8044 and 8045 of 2020 is granted time till 15/07/2020 for payment of the consumption charges for the month of February 2020. Considering the fact that the petitioners has interim protection till date the time for payment of the pending bills is extended till 15/07/2020. Since the pleadings are complete registry is directed to post this writ petitions for hearing immediately after the commencement of physical hearings by courts."

11 The appeal filed by the TANGEDCO came up for hearing before the Appellate Tribunal on 09.07.2020. The Appellate Tribunal passed the following order:

"During the course of hearing, however, it was brought out that the impugned order dated 04.05.2020 in suo moto proceedings of SM No. 2 of 2020 passed by the Tamil Nadu Electricity Regulatory Commission has also come up as subject-matter of writ proceedings before the Madras High Court, firstly by a batch of writ petitions instituted before the Madurai Bench and thereafter by another batch before the Principal Bench at Chennai. The Writ Petitions preferred before the Madurai Bench led by WP (MD) 6162 of 2020 are stated to have been disposed of by order dated 26.05.2020. It appears that the question of validity of the impugned order dated 04.05.2020 of TNERC was not finally answered by the Writ Court in the said order dated 26.05.2020. However, by some directions in the said final order on the said Bench of Writ Petitions the Madurai Bench of Madras High Court gave certain directions for inspections to be carried out by the Superintendent Engineer to collect data regarding consumption of electricity by HT consumers during the relevant period which data has been directed to be presented before us in the present appeal for our consideration. The Writ Court in the said order is also stated to have given liberty to the concerned parties to approach the Appellant (Distribution Licensee) to extend the time for payment of the bills.

The Writ Petitions before the Principal Bench of the Madras High Court at Chennai, however, are stated to be still pending. They are led by WP (MD) 7678 and 7679 of 2020 on which, dealing with an Interim application, the Madras High Court has passed an order dated 12.06.2020. We have been taken through the relevant part of the first of the said Writ Petitions and copy of the said order dated 12.06.2020. What is pertinent to note here is that the order dated 04.05.2020 passed by TNERC in suo moto proceedings No. 02 of 2020 is the subject matter of main prayer in the said pending batch of Writ Petitions though, it must be added that, aside from the reference

to the said order dated 04.05.2020 there is also reliance on Regulations 6(b) of Tamil Nadu Supply Code, the prayer made therein additionally concerning the demand of compensation charges relating to power factor. In the course of disposing of the Interim application by order dated 12.06.2020 the Madras High Court has made certain observations about the pendency of the appeal before us as brought by TANGEDCO which is a party Respondent before the Writ Court. The second Respondent herein is actually one of the prime petitioners in the said pending writ matter, its insistence being that the order dated 04.05.2020 of TNERC in suo moto proceeding is appropriate and valid and needs to be strictly complied with, the prayer made being for mandamus to be issued to TANGEDCO to that effect.

From the above, we find a peculiar situation prevailing. The very same order dated 04.05.2020 in suo moto proceedings No. 2 of 2020 passed by the State Commission is sought to be enforced by mandamus before the Madras High Court under its writ jurisdiction but its validity challenged before us in our appellate jurisdiction under Section 111 of the Electricity Act, 2003. Whilst the writ petitioners before the Madras High Court seek enforcement of the said order dated 04.05.2020 praying that it be strictly complied with, which prayer is resisted by TANGEDCO which is the Respondent in the said proceedings, by questioning its legality before the High Court, the latter (TANGEDCO) is in appeal before us praying for the said order to be set aside which prayer of TANGEDCO, in turn, is resisted before us by the parties who are writ petitioners before the High Court defending its validity, the grounds of challenge or defence of the order being substantially the same before both forums.

Given the fact that in writ proceedings before the High Court and in the statutory appeal before this tribunal, the prime common issue is as to whether the impugned order is lawfully issued by TNERC within its jurisdiction and by following proper procedure. The learned counsel for the Respondents, when called upon to assist vis-a-vis our concern about the possibility of conflicting opinions being rendered by the two

forums referred to certain observations in the Interim order dated 12.06.2020 of the High Court. Though we do find that the High Court had noticed in the said order the fact that our jurisdiction under the Electricity Act, 2003 has been invoked by the TANGEDCO, the fact remains that the Writ Court has actually entertained the main petitions wherein the main prayer seeks enforcement of the same very order, for setting aside of which the present appeal has been brought before this statutory tribunal.

In the above situation, out of deference to the Madras High Court, we feel it inappropriate to proceed with further hearing on the appeal at this stage because the Madras High Court is also seized of the issue concerning validity of the very same order the scrutiny of questions relating to which are to be addressed by us in these proceedings.

For above reasons, we defer the hearing on the appeal."

12 It is clear from the above order that the Appellate Tribunal thought it fit not to proceed further with the hearing of the appeal on the ground that the main issue is pending before this Court which will also incidentally trench upon the powers of the TNERC in passing the orders in the suo moto proceedings. Therefore, the Tribunal wanted to await the orders of this Court in these batch of writ petitions.

13 In the meantime, several writ petitions came to be filed by the consumers with similar grievance and interim orders were passed by this Court by giving time insofar as Demand Charges are concerned and injuncted the TANGEDCO with respect to demand and collection of Compensation Charges for low PF alone. The TANGEDCO also filed counter affidavits in WP. Nos. 7678 and 7679 of 2020 and these two counter affidavits virtually cover the common issues that have been raised in all the writ petitions. On completion of pleadings, this Court thought it fit to hear the writ petitions finally and the counsels appearing on either side also consented for the same. Accordingly, all these writ petitions were taken up for final hearing.

14 The lead arguments were presented by Mr. N.L. Rajah, learned senior counsel assisted by Mr.K.M.Aasim Shehzad, learned counsel appearing on behalf of the petitioners in W.P. Nos. 7679, 9537 and 9538 of 2020. The learned senior counsel made the following submissions:

The TNERC performs three types of functions under the Electricity Act, 2003 (hereinafter referred to as "the Act") and they are the regulatory function, adjudicatory function and advisory function. Regulation 6(b) of the Supply Code was brought into force in exercise of their regulatory function under Section 181(2)(X) read with Section 50 of the Act and the same provides for payment of Minimum Charges. The existing provision was amended in the year 2013. The existing provision and the amended provision are extracted hereunder:

STATEMENT SHOWING EXISTING PROVISION
AND THE PROVISIONS AS AMENDED

Existing Provision (1)	Provision as Amended (2)
6. Minimum Charges The consumer shall pay to the Licensee a minimum charge in respect of every connection as detailed below. The minimum monthly charges are payable even when no electricity was consumed or supply disconnected by orders of Court or when the price of electricity supplied is less than the minimum charges.	6. Minimum Charges The consumer shall pay to the Licensee a minimum charge in respect of every connection as detailed below. The minimum monthly charges are payable even when no electricity was consumed or supply disconnected by orders of Court or when the price of electricity supplied is less than the minimum charges.
(a) Xxxx	(a) Xxxx

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(b) For the HT services disconnected on the request of the consumer, the monthly minimum charges based on the kVA demand shall be the actual recorded demanded (when the disconnection is for part of a month) or such percentage of sanctioned demand declared by the Commission whichever is higher. Provided that where the Licensee is prevented from supplying electricity owing to cyclone, floods, storms, fire, strike or lockout in the Licensees' establishment or other occurrences beyond the control of the Licensee or if the licensee is satisfied that the consumer has been prevented from consuming electricity either in whole or in part for similar reasons, the Licensee may recover from the consumer minimum charges at twenty percent of the billable demand or recorded demand whichever is higher besides charges for the actual consumption of electricity.	(b) For the HT services disconnected on the request of the consumer, the monthly minimum charges based on the kVA demand shall be the actual recorded demand (when the disconnection is for part of a month) or such percentage of contracted demand is declared by the Commission, whichever is higher. Provided that where the Licensee is prevented from supplying electricity owing to cyclone, floods, storms, fire, strike or lockout in the Licensees' establishment or other occurrences beyond the control of the Licensee, or if the consumer is prevented from consuming electricity is either in whole or in part for similar reasons, the Licensee may recover from the consumer a minimum charge at twenty percent of the contracted demand or recorded demand whichever is higher besides charges for the actual consumption of electricity.
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The explanatory statement that was made at the time of amendment is also extracted hereunder:

"EXPLANATORY STATEMENT

The consumer shall pay to the Licensee a minimum charge in respect of every connection. The minimum monthly charges are payable even when no electricity was consumed or supply disconnected by orders of Court or when the price of electricity supplied is less than the minimum charges. It is proposed that owing to force majeure conditions or occurrences beyond the control of the licensee, if the licensee is not able to supply electricity or the consumer is prevented from consuming electricity, the licensee shall recover monthly minimum charges at 20% of the contracted demand or recorded demand, whichever is higher."

After the amendment, the TNERC was completely divested of its discretion. Where the consumer is prevented from consuming electricity due to occurrences beyond their control, the TANGEDCO has to invoke this clause and it can only recover a minimum charge at 20% of the Contracted Demand or Recorded Demand, whichever is higher. This payment is besides the charges for the actual consumption of electricity.

From the middle of March 2020, the government has announced a lockdown and all the industries have been totally shut down and representation was made to the TANGEDCO, bringing to its notice, the relevant regulations. A request was made to the effect that the demand charges be collected as per Regulation 6 (b) of the Supply Code till normalcy is restored and the industries are allowed to function by the Government.

The TNERC which passed the order in the suo moto proceedings did not adjudicate upon any rights and it merely spelt out the scope of Regulation 6(b) of the Supply Code and directed the TANGEDCO to bill the HT consumers in accordance with the same.

Even in the absence of such an order by the TNERC, Regulation 6(b) of the Supply Code which is statutory in nature had to be followed by the TANGEDCO and in the absence of the same, the petitioners are entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution of India, 1950 (hereinafter referred to as "the Constitution") and seek for a mandamus to enforce the same.

The TNERC itself had taken a very specific stand before the Appellate Tribunal, stating that it exercised its powers under Regulation 26(3) of the Supply Code and passed the order in the suo moto proceedings and informed the TANGEDCO of its duty to collect the Minimum Charges. The TANGEDCO has not challenged Regulation 6(b) and it has merely challenged the consequential order of the TNERC which has interpreted the Regulation and stated the correct position.

The TNERC had categorically stated in the counter affidavit before the Appellate Tribunal, that the order was passed only after obtaining the views of the TANGEDCO and that it was an order which merely clarified and interpreted Regulation 6(b) of the Supply Code.

Even when orders were passed by the Madurai Bench, specific direction was given to the Superintending Engineers to give necessary certification and also to depute officials to obtain the data which will enable the TANGEDCO to decide on enforcing Regulation 6(b) with respect to each of the consumers. Till date no Superintending Engineer has undertaken any such exercise and TANGEDCO has only sought for an extension of time to comply with the directions issued by this Court.

An appeal is maintainable before the Appellate Tribunal under Section 111 of the Act only as against the orders passed by the TNERC which are adjudicatory in nature. In the present case, the TNERC has only performed a regulatory function and therefore the TANGEDCO could not have maintained the appeal against the order passed in the suo moto proceedings. In order to substantiate the said submission, the learned senior counsel relied upon the judgment of the Hon'ble Supreme Court in PTC India Ltd. v. CERC reported in (2010) 4 SCC 603. Specific reliance was placed upon paragraph 92 of the said judgement and the same is extracted hereunder:

"92. (i) In the hierarchy of regulatory powers and functions under the 2003 Act, Section 178, which deals with making of regulations by the Central Commission, under the authority of subordinate legislation, is wider than Section 79(1) of the 2003 Act, which enumerates the regulatory functions of the Central Commission, in specified areas, to be discharged by orders (decisions).

(ii) A regulation under Section 178, as a part of regulatory framework, intervenes and even overrides the existing contracts between the regulated entities inasmuch as it casts a statutory obligation on the regulated entities to align their existing and future contracts with the said regulation.

(iii) A regulation under Section 178 is made under the authority of delegated legislation and consequently its validity can be tested only in judicial review proceedings before the courts not by way of appeal before the Appellate Tribunal for Electricity under Section 111 of the said Act.

(iv) Section 121 of the 2003 Act does not confer power of judicial review on the Appellate Tribunal. The words "orders", "instructions" or "directions" in Section 121 do not confer power of judicial review in the Appellate Tribunal for Electricity. In this judgement, we do not wish to analyze the English authorities as we find from those authorities that in certain cases in England the power of judicial review is expressly conferred on the tribunals constituted

under the Act. In the present 2003 Act, the power of judicial review of the validity of the regulations made under Section 178 is not conferred on the Appellate Tribunal for Electricity.

(v) If a dispute arises in adjudication on interpretation of a regulation made under Section 178, an appeal would certainly lie before the Appellate Tribunal under Section 111, however, no appeal to the Appellate Tribunal shall lie on the validity of a regulation made under Section 178.

(vi) Applying the principle of "generality versus enumeration", it would be open to the Central Commission to make a regulation on any residuary item under Section 178(1) read with Section 178(2)(ze). Accordingly, we hold that CERC was empowered to cap the trading margin under the authority of delegated legislation under Section 178 vide the impugned Notification dated 23-1-2006.

(vii) Section 121, as amended by the Electricity (Amendment) Act 57 of 2003, came into force with effect from 27-1-2004. Consequently, there is no merit in the contention advanced that the said section has not yet been brought into force."

The learned senior counsel also relied upon the judgement of the Hon'ble Supreme Court in Reliance Infrastructure Ltd v. State of Maharashtra reported in (2019) 3 SCC 352. The relevant portions of the judgement relied upon is extracted hereunder:

"22. The submission of the Appellant on the maintainability of the proceedings Under Article 226 is that the scope of the appeal before the Tribunal was entirely different from the ambit of the writ petition. The Appellant moved the Tribunal against the order of MERC dated 25 October 2012 which disallowed the prayer for relaxation of the norms Under Regulations 99 and 100 of the Tariff Regulations 2011. The petition challenged the vires of the Regulations before

the High Court and the remedy before the High Court was the only remedy available to challenge the validity of the Regulations.

23. On the maintainability of the petition Under Article 226, the High Court, in our view, has overlooked the position in law established by the judgment of a Constitution Bench of this Court in *PTC India Limited v. Central Electricity Regulatory Commission* in (2010) 4 SCC 603. The Constitution Bench considered whether the Appellate Tribunal for Electricity has jurisdiction to decide upon the validity of the Regulations framed by the Central Electricity Regulatory Commission. CERC has been entrusted with the power to frame Regulations Under Section 178 of the Electricity Act 2003. The Constitution Bench held that the validity of a Regulation framed Under Section 178 can be tested only before the court exercising judicial review. While the Tribunal may decide upon a dispute involving the interpretation of a Regulation, for which an appeal Under Section 111 would be maintainable, no appeal can lie before the Tribunal on the validity of a Regulation. The summary of the findings in the judgment includes, inter alia, the following: (SCC p.650. para 92)

'92....(iii) A Regulation Under Section 178 is made under the authority of delegated legislation and consequently its validity can be tested only in judicial review proceedings before the courts and not by way of appeal before the Appellate Tribunal for Electricity Under Section 111 of the said Act.

(iv) Section 121 of the 2003 Act does not confer the power of judicial review on the Appellate Tribunal. The words "orders", "instructions" or "directions" in Section 121 do not confer the power of judicial review in the Appellate Tribunal for Electricity. In this judgment, we do not wish to analyse the English authorities as we find from those authorities that in certain cases in England the power of judicial review is expressly conferred on the tribunals constituted under the Act. In the present 2003 Act, the power of judicial review of the validity of the Regulations made Under Section

178 is not conferred on the Appellate Tribunal for Electricity.

(v) If a dispute arises in adjudication on interpretation of a Regulation made Under Section 178, an appeal would certainly lie before the Appellate Tribunal Under Section 111, however, no appeal to the Appellate Tribunal shall lie on the validity of a Regulation made Under Section 178.

Hence the conclusion of the Court is in the following terms:

93. The Appellate Tribunal for Electricity has no jurisdiction to decide the validity of the Regulations framed by the Central Electricity Regulatory Commission Under Section 178 of the Electricity Act, 2003. The validity of the Regulations may, however, be challenged by seeking judicial review Under Article 226 of the Constitution of India'..'

24. Though the above principles emerge in the context of Regulations framed Under Section 178 by the CERC, the logic of the judgment extends to the Regulations framed Under Section 181 by the State Electricity Regulatory Commissions. In view of the legal position settled by the Constitution Bench, we are of the clear view that the High Court was not justified in disparaging the Appellant for taking recourse to a constitutional remedy Under Article 226. Indeed, a challenge to the validity of the Regulations framed by the MERC could only lie before the High Court. Hence, the imposition of costs for having adopted the remedy Under Article 226 was unjustified. There was no suppression of fact on the part of the Appellant which had indicated the recourse it had taken in the appeal before the Tribunal, arising from its prayer for relaxation of the SHR norms before MERC. The plea before the Appellate Tribunal was for relaxation of the SHR norms. The plea before the High Court was that the SHR fixed was discriminatory and ultra vires. Undoubtedly, if the Appellant were to succeed before the Tribunal, it would perhaps obviate the challenge in the High Court. The Appellant, as learned

Senior Counsel informed the court, did not press ahead with its plea before the Tribunal. Hence, the writ petition could not have been held not to be maintainable."

The learned senior counsel also placed reliance upon the order passed by the Appellate Tribunal in Appeal No. 92 of 2011, dt. 28.07.2011, wherein, the Tribunal after relying upon the judgement of the Hon'ble Supreme Court, held that the Tribunal cannot interfere with the orders passed by the Commission in exercise of its regulatory powers and appeals can be entertained only against orders passed by the Commission in exercise of its adjudicatory powers.

The low PF compensation is provided under the tariff fixed by the TNERC under Clause 6.1.1.6 and the same is extracted hereunder:

"6.1.1.6 Low Power Factor Compensation: In respect of High-Tension service connections the average power factor of the consumers installation shall not be less than 0.90. Where the average power factor of High-Tension service connection is less than the stipulated limit of 0.90, the following compensation charges will be levied."

Particulars	Dispensation of Power Factor Compensation
Below 0.90 and upto 0.85	One percent of the current consumption charges for every reduction of 0.01 in power factor from 0.90
Below 0.85 to 0.75	One and a half percent of the current consumption charges for every reduction of 0.01 in power factor from 0.90.
Below 0.75	Two percent of the current consumption charges for every reduction of 0.01 in power factor from 0.90.

If the PF goes below the stipulated limit of 0.90 lag, it stipulates for payment of compensation which is more in the nature of penalty.

The HT consumers were not in a position to run/operate the industry due to the lockdown and therefore, they have been unable to maintain the stipulated PF limit during the lockdown period and it is wholly improper on the part of the TANGEDCO to

levy compensation on this ground. Since the compensation is in the nature of penalty, it cannot be imposed without providing an opportunity to the consumers, to be heard. To substantiate the said submission, reliance was placed upon the order of the Appellate Tribunal in Appeal No. 122 of 2010 which explained the logic behind having this system of penalty. For proper appreciation, paragraph 9 of the order is extracted hereunder:

"9. The State Commission passed the original tariff order on 15.03.2003. As part of tariff rationalization measure, the State Commission introduced a system of penalty and incentive for improving the system power factor. As per this order, HT consumers and LT consumers were required to maintain their power factor more than 0.9 lag & 0.85 lag respectively failing which the consumer was required to pay penalty charges to the 1st Respondent Electricity Board. Likewise, whenever power factor of HT services exceeds above 0.95, incentive has to be given to the consumer by the Board. This arrangement encouraged the consumers to install reactive compensation to bring their power factor to near unity. It is to be noted that the metering software installed at the relevant time was not capable of registering leading power factor and leading power factor was being registered as unity. Due to this new arrangement, the consumers have to be given more incentive. Due to over compensation provided by the consumers, the excessive capacitive VAR were pumped into the system which were detrimental to the Electricity Board's Grid."

The learned senior counsel also relied upon the judgement of this court dealing with the same issue in S.A. No. 465 of 2019, dt. 26.03.2019. For proper understanding, paragraphs 7 and 8 of the order are extracted hereunder:

"7. Admittedly, the penalty has been imposed without issuing any show cause notice and without conducting any enquiry whatsoever. The case of the plaintiff is that he was not properly instructed to maintain the power factor. Even assuming that he was properly instructed to maintain the power factor, before imposing any penalty for the alleged violation of non-maintaining the power factor, a show cause notice ought to have been issued to the

plaintiff, and an enquiry should be conducted by the Electricity Board. But, without doing so, the defendants have arbitrarily imposed the penalty.

8. Both the Court below after considering the entire materials on record, have held that without issuing any show cause notice, and without conducting any enquiry, imposing of penalty is not sustainable in law and decreed the suit. I have considered the entire materials available on record, and I do not find any infirmity or perversity in the findings of the courts below, and I do not find any substantial question of law."

The Appellate Tribunal itself felt that it will be appropriate to leave the issue to the High Court and await its orders and therefore this Court dehors the orders passed by the TNERC can independently deal with the application of Regulation 6(b) of the Supply Code and issue appropriate directions to the TANGEDCO.

If TANGEDCO has received the entire amount from some of the consumers who have paid it under protest, the amount received beyond 20% or Recorded Demand, whichever is higher should be adjusted by the TANGEDCO towards the head of Demand Charges that is due and payable by the consumer.

The application of Regulation 6(b) of the Supply Code must be continued and Minimum Charges must be collected by the TANGEDCO either till the period upto which the lockdown continued or until it is lifted.

15 Mr.M.Kamalanathan, learned counsel appearing on behalf of the petitioner in W.P. No. 7678 of 2020, apart from adopting the arguments of Mr. N.L. Rajah, learned senior counsel also made the following submissions:

It is very easy for the TANGEDCO to ascertain the current consumed by the respective consumer through the TOD Meter that is installed in the office of each Superintending Engineer and a physical inspection would not be necessary to ascertain the same.

The term "Maximum Demand" is defined under Clause 29(n)(b) of the Tamil Nadu Electricity Distribution Code. The definition is extracted hereunder:

"29.(n) Demand

..... (b) "Maximum Demand" in a month means the highest value of the average Kilovolt-amperes in case of HT services and KW in case of LT services, delivered at the point of supply of the consumer during any consecutive thirty/fifteen minutes in a month depending on the nature of the load."

The highest value of the average Kilowatt Ampere delivered at the point of supply of the consumer during any consecutive 30/15 minutes in a month, can be easily ascertained by the Superintending Engineers from their respective offices.

The situation created by the pandemic is beyond the control of the consumer and the present situation squarely falls under Regulation 6(b) of the Supply Code and therefore, the TANGEDCO ought to have billed the consumers only for the Minimum Charges and even in this case, the Recorded Demand can be easily ascertained by the Superintendent Engineer from his/her office itself.

The learned counsel by pointing out to the counter affidavit filed by the TANGEDCO specifically relied upon the stand taken by it and the same is extracted hereunder:

"(b) In G.O.(Ms.) No. 152 dated 23.03.2020 of GOTN's Health and Family Welfare (P1) Department, the Exempt Services/ Activities have been listed out. The HT services regarding exempt services/ activities as per the above G.O. or otherwise can be ascertained only at the field level. Those HT services which are exempted will be functioning and may not be covered under the above regulation. However, if the HT services are not functioning due to COVID-19 lockdown, the respective Superintending Engineer/EDCs shall arrange to raise the HT bills and decide on the levy of 20% demand charges during lock down period as per provisions of Regulation 6(b) of Tamil Nadu Supply Code based on the actual field condition."

The TANGEDCO having taken such a stand, cannot now ask the consumers to pay the Maximum Demand which is 90% of the Sanctioned Demand or the Recorded Demand, whichever is higher.

The TNERC under Regulation 16 of the Conduct of Business Regulations, 2004 is entitled to initiate suo moto proceedings and in exercise of this power, the order was passed in the suo

moto proceedings wherein the Commission merely clarified the purport of Regulation 6(b) of the Supply Code to collect the Minimum Charges from the consumers.

16 Mr. V.P. Sengottuvel, learned counsel appearing on behalf of the petitioner in W.P. No. 9312 of 2020, substantially adopted the above submissions and placed the following submissions which are peculiar to the facts involved in this writ petition.

The HT connection was granted to the petitioner who was constructing a hotel. Before the completion of the construction work, the petitioner was forced to stall the work due to the pandemic. Despite the fact that the hotel has not yet become functional owing to the pandemic and the lockdown thereof, Maximum Demand has been levied on the petitioner.

The State of Gujarat has struck a balance by granting concessions to consumers during the pandemic crisis and the Electricity Charges have been directed to be collected as per the consumption till normalcy is restored and the same formula can be adopted in by the State of Tamil Nadu also and the TANGEDCO can be directed to collect the recorded demand till normalcy is restored.

17 Mr.C.Umashankar, learned counsel appearing on behalf of the petitioner W.P. No. 9141 of 2020, apart from adopting the arguments stated supra, made the following submissions:

The petitioner is a cinema theatre owner and as everyone knows, the theatres have not been allowed to function since March 2020 till date and it is highly improper to collect the Maximum Demand from the theatre owners.

On the one hand, the government has passed orders strictly restricting the theatres from operating and on the other hand the TANGEDCO is levying Maximum Demand without taking into consideration the situation faced by the theatre owners.

The TANGEDCO has gone to the extent of deducting the entire Demand Charges from the available security deposit and it has directed the theatre owners to make the additional security deposit for this year.

18 Mr.R.S.Pandiaraj, learned counsel appearing on behalf of the petitioner in W.P. No. 10110 of 2020, apart from adopting the arguments stated supra also made the following submissions:

The TNERC in exercise of its powers under Regulation 4(1)

(II) and 5(2)(I) read with the Tariff Order dt. 11.08.2017 has fixed the Billable Demand under Clause 6.1.1.7 of the Tariff Order and it provides for the Maximum Demand Charges that can be levied on a consumer on the kVA demand actually recorded in that month or 90% of the contracted demand, whichever is higher. This will apply when the industries are functioning normally.

The pandemic situation and the orders passed by the Government directing a lockdown had virtually prevented the industries from operation and in the present case, the petitioner who owns convention halls where functions and events are being conducted has not been able to open the halls for bookings or events till date. Therefore, Regulation 6(b) of the Supply Code automatically comes into operation and the TANGEDCO can only levy the Minimum Charges.

This position was perfectly understood by the TANGEDCO and the same is very clear both in the response made to the TNERC as well as the counter filed in the writ petition and in spite of the same, without any reasons or basis, they have chosen to levy the Maximum Demand.

19 Mr. Rahul Balaji, learned counsel appearing on behalf of the petitioner in W.P. No. 9550 of 2020, made the following submissions:

The Supply Code is in the nature of delegated legislation and has been notified in exercise of the powers conferred under Section 50 read with Section 181 of the Act.

The other relevant aspect is the applicable Tariff Order. Consumer Tariff Orders are passed in exercise of powers available under Section 61 read with Section 62 of the Act and the Regulations governing the same are issued under Section 61 read with Section 181 of the Act, and are titled Tamil Nadu Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2005.

A reading of the Supply Code and the Tariff Order throws clarity upon aspects with respect to tariff collection from a HT consumer. Under normal circumstances, the Billable Demand in case of HT Consumers, will be the Maximum Demand Charges for any month which will be levied on the kVA demand actually recorded in that month or 90% of the contracted demand, whichever is higher. In the event where Regulation 6(b) of the Supply Code comes into play, the Licensee may recover from the consumer, a Minimum Charge at 20% of the Contracted Demand or Recorded Demand, whichever is higher, besides charges for the actual consumption of electricity. Thus, the charges in the event of a government-imposed lockdown or force majeure conditions would be:

- a) the minimum charge payable under the Supply Code at 20% of Contracted Demand or Recorded Demand, whichever is higher as opposed to the Tariff Order specified charge of demand actually recorded in that month or 90% of the Contracted Demand, whichever is higher; which is during normal situation alone.
- b) The charges for electricity would be the charge for actual consumption in the energy meter.
- c) Thus, the Regulations that are in the nature of a delegated legislation binding on parties, already provide for this precise situation. The TANGEDCO has sought to ignore this.

The stand of the respondent that the Supply Code vests the discretion upon the TANGEDCO whether or not to apply and recover 20% of the Demand Charges or recover full Demand Charges is entirely without merit since the same is contrary to the express provisions as set out in the Supply Code. Such discretion and subjective satisfaction which was earlier available has been expressly deleted by an amendment. Regulation 6(b) of the Supply Code was amended during the year 2013 through a Notification bearing No. TNERC/SC/7-32 dt. 12.09.2013 and the words "the licensee is satisfied" have been omitted from the said proviso.

The attempt of the TANGEDCO to rely upon the word 'may', found in the provision, to claim that it has been vested with the discretion to levy full charges is wholly incorrect as the word 'may' in the provision is not for purposes of allowing any determination to be made, but is an allowance granted to the Licensee, as in 'the Licensee may recover 20%'. It does not mean, as is sought to be claimed by TANGEDCO, that the Licensee 'may recover from the consumer, a minimum charge at 20% of the Contracted Demand or Recorded Demand, whichever is higher, besides charges for the actual consumption of electricity but may, if it so determines, also recover the full Demand Charges or Minimum Consumption Charges irrespective of use, if it so determines.' The manner in which the licensee is seeking to confer a discretionary power of determination on itself is not available to it under the provision and the interpretation it is seeking to give, would amount to adding words to the provision which is contrary to the canons of statutory interpretation, inasmuch as, when the words are clear and unambiguous additional words cannot be supplied.

The submission of the TANGEDCO that the impugned order impinges upon the amount of revenue which the TANGEDCO had to rely upon for its day-to-day operation is without basis. In fact, the Regulations provide that even in case of non-utilization of power by the consumer even due to force majeure conditions, in order for the TANGEDCO to sustain its operations, it will be entitled to Minimum Consumption Charges which has

been fixed at 20%. It would thus be clear that the Regulations themselves provide for a situation of non-utilization due to force majeure and have fixed recovery at 20%. Thus, while the consumer has not utilized the facility at all, it is still required to pay Minimum Charges and the Consumer Associations' request for full waiver has not been acceded to. The TANGEDCO has not challenged this Regulation which allows for recovery at 20% and cannot now be seen to be complaining about it. In any event, if it does want to challenge it, the law mandates that the same can be done only by way of a writ petition. Therefore, the TANGEDCO continues to be bound by the Regulation. In order to substantiate this submission, reliance was placed on the judgement of the Hon'ble Supreme Court in PTC India Ltd. v. Central Electricity Regulatory Commission reported in (2010) 4 SCC 603.

The stand of the TANGEDCO that electricity being an essential service, it has to be maintained and costs incurred, is without basis. The TANGEDCO is being paid both a Minimum Charge as part of fixed costs and the actual charges with respect to Energy Charges. Therefore, it is not out-of-pocket as it is claiming. In fact, the consumers pay Minimum Charges though they were never allowed to consume. It is for the reason that the TNERC even in its regulatory directive recognized that while operating units would always have to pay necessary charges, and that the Regulations are framed in such manner. Having accepted the Regulations for so many years and having not challenged the Regulation, the TANGEDCO cannot make such a claim. The stand is thus a clear after-thought in order to ignore the binding regulation and directives of the TNERC to make unreasonable gains at the cost of innocent HT consumers who are paying the mandated Minimum Charges even when they have not used the electricity.

Finally, by operation of the Regulations, the TANGEDCO is in no manner prejudiced. If the continued lockdown has any impact on its revenue leading to lack of returns, it can file an appropriate petition before the TNERC which will consider all the data and provide payment of appropriate tariff. However, without even filing such a petition, the TANGEDCO cannot claim such right. Regulations 69 and 70 of the Determination of Tariff Regulations, 2005 specifically provides for the same and after 2017, TANGEDCO never took such an effort to revise the tariff.

20 Mr.S.Prem Auxilian Raj, learned counsel appearing on behalf of the petitioner in W.P. Nos. 9689, 8852, 10087, 10091 and 10164 of 2020, adopted the above arguments made by the respective counsel. The petitioners herein are the owners of cinema theatres and hotels.

21 Mr. Srinath Sridevan, learned counsel appearing on behalf of the petitioner in W.P. Nos. 10012, 10042, 10044, 10031, 9825, 9831 of 2020, appeared for the Automotive Industries. The learned counsel substantially adopted the arguments of Mr. N.L. Rajah, Senior Counsel and Mr. Rahul Balaji. He also made the following submissions:

Section 51(b) of The National Disaster Management Act, 2005 provides for penal consequences if any person violates the Prohibitory Orders and Government Orders passed under the said Act. Therefore, the consumers could not have carried on with the operation in violation of the Government Orders. This clearly results in a situation where the consumer is prevented from consuming electricity and therefore, Regulation 6(b) of the Supply Code automatically comes into operation.

The learned counsel relied upon the judgement of the Hon'ble Supreme Court in Uttar Pradesh Avas Evam Vikas Parishad v. Uttar Pradesh Power Corporation Limited reported in 2011 10 SCC 223. Specific reliance was placed on para 23 of the said judgement and the same is extracted hereunder:

"23. The Electricity Supply Code, 2002 which has statutory trappings was formulated to carry out functions earlier assigned to the U.P. Electricity Regulatory Commission under Section 10 of the U.P. Electricity Reforms Act, 1999 (already extracted above). This is apparent from the order of the U.P. Electricity Regulatory Commission, reproduced hereunder:

'Electricity Supply Consumers Regulation, 1984, formulated by the erstwhile U.P. State Electricity Board covers the conditions of supply of electricity to retail consumers. After the enactment of U.P. Electricity Reforms Act, 1999, the U.P. Electricity Regulatory Commission has been assigned functions under Section 10 of the Act to regulate the distribution, supply, utilization of electricity, issue licenses to regulate the working of the licensees and to set the standards of services for the consumers as well as standards for the electricity industry in the State.'

Since the provisions of the Electricity Supply Code, 2002, has statutory trappings, the same would override and supersede the stipulations contained in the office memorandum dated 17.1.1984, which has the force of merely an administrative order."

The learned counsel by relying upon the judgement, submitted that the Supply Code has a statutory trapping and that the TANGEDCO must comply with the same. If the same is not complied with, the consumer can always approach this Court seeking a mandamus to direct the TANGEDCO to perform its statutory duty. This right is available even if the TNERC has not passed an order in this regard.

This Court being a Constitutional Court, the proceedings before the Appellate Tribunal will not have any bearing on this Court and that is the reason why the Tribunal thought it fit to wait for the pronouncement of this Court on the scope of Regulation 6(b) of the Supply Code. In order to substantiate his submission, the learned counsel referred to the judgement of the Hon'ble Supreme Court in L. Chandrakumar v. Union of India reported in AIR 1997 SC 1125. Paragraph 78 of the judgement is extracted hereunder:

"78. The legitimacy of the power of Courts within constitutional democracies to review legislative action has been questioned since the time it was first conceived. The Constitution of India, being alive to such criticism, has, while conferring such power upon the higher judiciary, incorporated important safeguards. An analysis of the manner in which the Framers of our Constitution incorporated provisions relating to the judiciary would indicate that they were very greatly concerned with securing the independence of the judiciary. These attempts were directed at ensuring that the judiciary would be capable of effectively discharging its wide powers of judicial review. While the Constitution confers the power to strike down laws upon the High Courts and the Supreme Court, it also contains elaborate provisions dealing with the tenure, salaries, allowances, retirement age of Judges as well as the mechanism for selecting Judges to the superior courts. The inclusion of such elaborate provisions appears to have been occasioned by the belief that, armed by such provisions, the superior courts would be insulated from any executive or legislative attempts to interfere with the making of their

decisions. The Judges of the superior courts have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence. The constitutional safeguards which ensure the independence of the Judges of the superior judiciary, are not available to the Judges of the subordinate judiciary or to those who man Tribunals created by ordinary legislations. Consequently, Judges of the latter category can never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation. We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Articles 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded."

The learned counsel further submitted that the Government of India by its Notification dt.19.02.2020 has already declared the pandemic situation to be covered under the force majeure clause. Therefore, the situation faced by the industry will automatically trigger the operation of Regulation 6(b) of the Supply Code.

The Maximum Demand levied by the TANGEDCO is unconscionable and it has been done in a situation where the TANGEDCO knew that the industries were not functioning due to the lockdown.

22 Per contra, Mr.P.H.Aravindh Pandian, learned Additional Advocate General assisted by the respective learned Standing Counsels appearing on behalf of the TANGEDCO, made the following submissions:

Similar relief was sought for as against the Maximum Demand Charges and the Madurai Bench has disposed of the writ petition leaving the issue to be decided by the Appellate Tribunal.

Similarly, when the present writ petitions came up for hearing, this Court while passing interim orders, had also taken into consideration the order of the Madurai Bench and has left the final decision to the Appellate Tribunal. Consequently, all the avenues have been closed insofar as the issue of Maximum Demand Charge is concerned and this Court should leave it to the final decision of the Appellate Tribunal by falling in line with the earlier orders passed by this Court.

The Appellate Tribunal has merely deferred the matter and it is yet to decide the issue and the interim order passed by the Appellate Tribunal staying the order of the TNERC is in force and therefore, all these writ petitions must be dismissed insofar as the issue of Maximum Demand is concerned by leaving it open to the petitioners to put forth their contentions before the Appellate Tribunal.

Without prejudice to the above contention, the learned Additional Advocate General submitted that Regulation 6(b) of the Supply Code has consciously used the word "may" and therefore, discretion is left to the TANGEDCO to come to a decision as to whether the Maximum Demand will be levied or it will resort to levying Minimum Charges and it cannot be mandated that the TANGEDCO collects only Minimum Charges.

This stand of the TANGEDCO has been made very clear both in the appeal filed before the Appellate Tribunal as well as in the counter filed before this Court. This stand was also made clear when the reply was submitted to the TNERC and thereby the TANGEDCO never went back on its stand regarding the availability of the discretionary power.

The TNERC has unilaterally given a statutory interpretation for Regulation 6(b) of the Supply Code and it is in the nature of adjudication. Hence, appeal was filed under Section 111 of the Act before the Appellate Tribunal and the same is maintainable. To substantiate this submission, the learned Additional Advocate General relied upon PTC India Ltd. (cited supra) and particularly paragraph 92(v) of the said judgement. The learned Additional Advocate General also relied upon Reliance Infrastructure (cited supra) and more particularly paragraph 23 of the said judgement.

The issue regarding Maximum Demand must be relegated to the Appellate Tribunal and it should not be adjudicated in the present writ petitions.

The compensation towards low PF is done in accordance with Regulation 4(III) of the Supply Code read with Clause 6.1.1.6 of the Tariff Order dt.11.08.2017 and therefore, the TANGEDCO cannot be found fault with for levying this compensation.

A representation has already been made to the TNERC to decide this issue and therefore, the interim injunction granted by this Court with regard to the collection of compensation towards low PF can be continued till a final decision is taken by the TNERC.

23 In reply to the submissions made by the learned Additional Advocate General, the learned senior counsel/ counsels appearing on behalf of the petitioners submitted that there is a change in circumstance after the earlier orders passed by this Court and the Appellate Tribunal itself has thought it fit to await the decision of this Court and therefore, there is no embargo upon this Court to proceed further to decide the issue with regard to the applicability of Regulation 6(b) of the Supply Code. It was further submitted that this Court need not even take note of the orders passed by the TNERC and that this Court can independently decide on the application of Regulation 6(b) of the Supply Code and issue directions to the TANGEDCO. Without prejudice to this submission, it was also made clear that the issue between a Distribution Licensee and a Consumer can never be a subject matter of adjudication before the TNERC and that the TNERC can only adjudicate disputes between Generators and Licensees. Therefore, the order passed by the TNERC is not adjudicatory in nature and it is merely regulatory in nature wherein, the Commission has only clarified the purport of Regulation 6(b) of the Supply Code. In any event, a consumer will have no say, insofar as the dispute pending before the Appellate Tribunal is concerned since it is a dispute between the TNERC and the TANGEDCO. Therefore, the only forum where the consumers can seek their relief is before this Court. Hence, the pendency of the appeal before the Tribunal will have no bearing upon this Court exercising its jurisdiction under Article 226 of the Constitution.

24 This court has carefully considered the submissions made on either side and the materials available on record.

25 The Judiciary is going to be flooded with a lot of challenges in the post pandemic scenario from various dimensions. This unprecedented pandemic situation apart from throwing a lot of challenges to the entire humanity, is also going to have a very great impact in the justice delivery system. The present issue that has arisen for consideration before this Court is only a tip of the iceberg. Interestingly, the entire arguments were heard by this Court through video conferencing. This Court wanted to treat this case as a test

case and see if Batch Matters involving common issues can be heard and disposed of through video conferencing. The effective hearing started on 7 August 2020 and could not be completed on that day. This court suggested to the counsels appearing on either side as to whether the hearing can be continued on 8 August 2020 since the same fell on a Saturday which was a Court holiday. The learned counsels readily consented to the suggestion made by this Court. Upon necessary orders passed by the Hon'ble Chief Justice, the matter was listed for continuation of arguments on 8 August 2020. The arguments went on from 11:30 am to 05:00 pm and it culminated on the same day. Every counsel had the opportunity to make their submissions to their fill. Throughout the proceedings, there were at least twenty-five to thirty counsels who were participating in the proceedings. This Court was also able to listen to them patiently without any interruption. The citations and other relevant documents were exchanged through e-mails and the hearing was made very effective by every counsel who presented their case before this Court. Upon hearing the counsels, this Court now proceeds to render its judgement. This case is an indicator that video conferencing is going to open up new vistas in the justice delivery system even during normal court functioning. Cases which can be conveniently conducted through video conferencing must be identified and it can be heard in a relaxed manner even on a holiday when everyone is sitting at their own residence or office, provided that all the counsels involved in the case consent for such a hearing. This scenario was unthinkable before March 2020. Virtual hearing has now come here to stay and this institution must take full advantage of it, of course, upon ensuring that the stakeholders are fully equipped to get to the next level. With this prelude, this Court will now quickly get into the issue involved in the present case.

26 The common grievance that has been expressed by all the petitioners is with regard to the levy of Demand Charges and Compensation Charges by the TANGEDCO during the period of lockdown on account of the prohibitory orders and directions issued by the Government from 24.03.2020. In some cases, there was a partial lifting after sometime and in other cases like cinema theatres, convention halls, etc., the lockdown continues till date. This pandemic situation has been recognized by the Government of India through its Office Memorandum dt. 19.02.2020 to fall within the term "force majeure". This situation obviously is something beyond human control. The government had to take certain drastic steps to control the situation and therefore orders were issued from time to time under The Epidemic Diseases Act, 1897 and Regulations made thereof as well as The Disaster Management Act, 2005. Stringent restrictions

were imposed from 24.03.2020 and a complete lockdown was imposed across the State and all industrial establishments, commercial and private establishments were asked to close down. The only exception that was given by the Government was with regard to the essential services.

27 The petitioners herein, fall under the category of HT consumers. The Tamil Nadu Electricity Supply Code, 2004 is in the nature of a delegated legislation and it has come into force by virtue of the Regulations issued by the TNERC in exercise of its powers conferred under Section 50 read with Section 181 of the Act. The consumer Tariff Orders are passed by the TNERC in exercise of its powers under Sections 61 and 62 of the Act and the Regulations governing the same are governed by the Tamil Nadu Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2005. The HT Tariff is a two-part tariff comprising of a) Demand Charges and b) Energy Charges. In the present case, this Court is concerned with the Demand Charges. Under normal circumstances, the Billable Demand as provided under Clause 6.1.1.7 of the Tariff Order, will be the Maximum Demand Charges for any month which will be levied on the kVA demand actually recorded in that month or 90% of the Contracted Demand, whichever is higher. The charges recoverable by the TANGEDCO is covered under Clauses 4(1)(II) and 5(2)(I) read with the Tariff Order dt. 11.08.2017. There is absolutely no controversy with regard to this position which prevails during the normal situation.

28 Based on the representations made by the consumers, the TNERC has proceeded to pass orders in the suo moto proceedings, dt. 04.05.2020 and has directed the TANGEDCO to collect the Minimum Charges as provided under Regulation 6(b) of the Supply Code. Aggrieved by the orders passed by the TNERC, the TANGEDCO has proceeded to file an appeal under Section 111 of the Act. Even though the appeal was entertained by the Tribunal and interim order was passed staying the order passed by the TNERC, the Tribunal after taking into consideration, the pending writ petitions, thought it fit to defer the proceedings for some time and await the decision of the High Court. The same is clear from the order passed by the Tribunal on 09.07.2020.

29 The learned Additional Advocate General submitted that the order passed by the Madurai Bench and the subsequent interim order passed by this Court indicates that the issue with regard to the demand charges was left open to be decided by the Appellate Tribunal. Therefore, it was submitted that this Court should not go into the said issue in the present batch of writ

petitions and the parties must be relegated back to the Appellate Tribunal. This Court would have readily accepted this submission if not for the order passed by the Appellate Tribunal on 09.07.2020. In order to maintain judicial discipline and consistency, this Court would not have gone into the issue of Demand Charges. However, due to the latest order passed by the Appellate Tribunal, the ball has now come back to this Court and this Court is of the firm opinion that the consumers must know where they stand at the earliest point of time and this shunting of the issue from one forum to another must come to an end. Therefore, this Court proceeds to decide the issue of Demand Charges in the present batch of writ petitions.

30 Even otherwise, the issue pending before the Appellate Tribunal is between the TNERC and the TANGEDCO. When it comes to the adjudicatory function of the Commission under Section 86 of the Act, the Commission can only adjudicate between Generators and Distribution Licensees and not an issue between the Distribution Licensee and a Consumer. This is the reason why the counsel appearing on behalf of the petitioners submit that the orders passed in the suo moto proceedings is only regulatory in nature explaining the purport of Regulation 6(b) of the Supply Code and that it is not adjudicatory. On that ground, it was submitted that the appeal itself is not maintainable under Section 111 of the Act, before the Appellate Tribunal. This Court does not wish to render any findings with regard to the nature of the order passed by the TNERC, that is, whether it is adjudicatory or regulatory and it is beyond the scope of these batch of writ petitions. This court while deciding these batch of writ petitions, also does not wish to make any collateral findings or observations with regard to the maintainability of the appeal before the Appellate Tribunal against the orders passed by the TNERC.

31 All the petitioners in these batch of writ petitions have come before this Court only seeking for the enforceability of Regulation 6(b) of the Supply Code. They either want the order of the TNERC to be implemented in this regard or they want this Court to direct TANGEDCO to implement Regulation 6(b) of the Supply Code. This Court need not be really concerned with the orders passed by TNERC in the suo moto proceedings or the appeal pending before the Appellate Tribunal and this Court can independently look into the grievance of the HT consumers and see if Regulation 6(b) of the Supply Code will apply to the present situation and if so, the TANGEDCO can be directed to raise the bill in line with Regulation 6(b) of the Supply Code. In other words, dehorsthe order passed by TNERC and the pending appeal before the Appellate Tribunal, this Court can

independently go into the issue of the applicability of Regulation 6(b) of the Supply Code. If this Court chooses to follow this path, the proceedings before the Appellate Tribunal will be of no consequence to a Constitutional Court exercising its jurisdiction under Article 226 of the Constitution and it has wider powers to enforce a statutory duty. This Court is neither bound by a decision of a Tribunal nor should it wait for a Tribunal to take a decision. A Tribunal is only a creature of statute and that position has been made clear by the Hon'ble Supreme Court in L. Chandra Kumar case (referred supra). This court while exercising its jurisdiction under Article 226 of the Constitution normally puts certain self-imposed restrictions where this Court finds that there is an efficacious alternative remedy. Similarly, this Court will restrain itself when a similar issue is tried by a Tribunal. That is the reason why this Court on the earlier two occasions decided to relegate the parties to the Appellate Tribunal. However, now the Appellate Tribunal has itself made it clear through its order dt.09.07.2020 to await the decision of this Court. Therefore, this Court is not in agreement with the preliminary objection raised by the learned Additional Advocate General and this Court proceeds to decide these batch of writ petitions on both the issues regarding demand charges and compensation charges by taking note of the relevant Regulations.

32 Regulation 6(b) of the Supply Code deals with Minimum Charges. The existing provision and the amended provision have been extracted supra. The minimum monthly charges are payable even when no electricity is consumed or even where supply has been disconnected or even when the electricity supplied is less than the Minimum Charges. For every HT consumer, there is an infrastructure that is created by the Licensee and that has to be maintained and therefore, irrespective of the fact as to whether electricity is consumed or not, these Minimum Charges provided under Regulation 6 has to be paid by a consumer. This Minimum Charge will come into operation when a case falls under the proviso to Regulation 6(b) of the Supply Code. The first proviso, consists of two limbs each covering a different situation altogether. The first limb covers a scenario where the Licensee is prevented from supplying Electricity due to various factors mentioned therein which are beyond the control of the Licensee. The second limb pertains to a scenario where the consumer is prevented from consuming electricity due to reasons beyond his control. It is very clear from the arguments advanced by the counsel appearing on behalf of the petitioners that they want to bring this case within the second limb of the first proviso to Regulation 6(b) of the Supply Code.

33 In the present case, this Court has to take judicial notice of the situation prevailing from the middle of March 2020. As stated earlier, Government Orders were passed ordering a complete lockdown of all establishments except essential services. This situation went on till 05.05.2020 for nearly 42 days. Therefore, there was no question of opening any establishment during this period and everyone had to strictly comply with the orders failing which it had very serious consequences including registration of a criminal case. During this period, the HT consumers were prevented from consuming electricity for reasons beyond their control.

34 The Government started partially lifting the lockdown in a phased manner in certain industries situated in certain parts of the State. Even today, certain establishments such as cinema theatres, malls, convention halls continue to be inoperative since the lockdown has not been lifted for these establishments and the same is going to continue till the end of this month. It does not require any detailed deliberation to understand this situation and the very Government Orders passed during the relevant period makes it very clear. It is to deal with a situation like this, a proviso has been brought in to Regulation 6(b) of the Supply Code. Under normal circumstances, a certification may be required by each consumer to prove that they were prevented from consuming electricity due to situations beyond their control. In the present scenario, insisting for such a certification itself becomes absurd since a certificate will be insisted upon for a situation about which everyone is aware. Insisting for a certification will be a futile formality in a situation like this.

35 The proviso states that in such a situation, the Licensee namely the TANGEDCO in the present case, will recover from the consumer, Minimum Charges at 20% of the Billable Demand or Recorded Demand, whichever is higher, besides charges for the actual consumption of electricity. One must clearly understand that a consumer cannot escape from paying for the electricity which it actually consumes and this is a distinct payment apart from the Minimum Charges provided in the Regulation. Therefore, we are not dealing with a case where the HT consumer is asking for any waiver or concession from the payment of charges for the electricity it has actually consumed. The issue in this case pertains only to the payment of Minimum Charges apart from the charges for the actual consumption of electricity and as to whether the HT consumer satisfies the requirement provided under the proviso to Regulation 6(b) of the Supply Code.

36 There cannot be a better case than the facts of the present case which can be brought within the proviso to Regulation 6(b) of the Supply Code. This pandemic which resulted in complete lockdown of all establishments was a situation which was beyond the control of the consumer. Before the Regulation was amended it carried the phrase "if the Licensee is satisfied". Even this phrase has been removed after the amendment and the satisfaction of the Licensee is no more a pre-condition for the applicability of the proviso to Regulation 6 (b) of the Supply Code. In fact, when the said amendment was carried out, the amendment should also have removed the word "may" and this word independently continuing to be present in the proviso does not mean that a complete discretion is left in the hands of the TANGEDCO. It is more in the nature of a draftsman's devil.

37 In view of the same, this Court is not in agreement with the submissions made by the Additional Advocate General to the effect that the discretion is left with the TANGEDCO for deciding the applicability of the Minimum Charges even in a case which fulfils the requirements of the proviso to Regulation 6(b) of the Supply Code. In fact, if such wide discretion is allowed in the hands of the TANGEDCO, it will only lead to arbitrariness. Therefore, once a case fits in to the first proviso to Regulation 6(b) of Supply Code, the provision becomes operational without leaving any discretion to the Licensee/TANGEDCO.

38 It becomes necessary to take into consideration the stand taken by the TANGEDCO in its reply given to the TNERC, grounds taken before the Appellate Tribunal and the counter filed before this Court. The TANGEDCO has correctly understood the scope of Regulation 6(b) of the Supply Code and the only mistake committed by the TANGEDCO was to assume that it will have a further discretion even in a case that falls within the ambit of Regulation 6(b) of the Supply Code. Except for this mistaken impression, even the TANGEDCO had correctly understood the scope of Regulation 6(b) of the Supply Code.

39 Insofar as the applicability of the second proviso to Regulation 6(b) of the Supply Code is concerned, the same will not apply to the facts of the present case since it deals with a completely different situation like lockout, strike, temporary closure, etc. This is a situation which is consumer specific. Today, we are dealing with a situation of lockdown imposed by the Government across the board for all establishments and therefore it will not fall under the second

proviso and the requirement of producing a certificate from the labour officer is not even contemplated for this situation. The facilities that are available with the TANGEDCO clearly establish the fact that a TOD Meter is available in every office of the Superintending Engineer and they can ascertain the meter reading by sitting in their offices even without going and physically inspecting the meter reading in an establishment. In fact, the bill itself is raised based on those meter readings. This is one more added factor to conclude that a certification by a Superintending Engineer may not even be required since the data is readily available in the office of the Superintending Engineer and whatever electricity is consumed/recorded by the consumer, is known to the Superintending Engineer. However, on abundant caution, a Superintending Engineer may choose to make a physical verification also at the establishment of a consumer.

40 In view of the above discussion, there is absolutely no doubt in the mind of this Court that the situation faced by the establishments clearly fulfilled the requirements of Regulation 6(b) of the Supply Code. Therefore, once the representation is made to the TANGEDCO, it should have applied Regulation 6(b) of the Supply Code and collected the minimum charges. This is more so since there was no discretion available to TANGEDCO once the facts of a given case fulfills the requirements of Regulation 6 (b) of the Supply Code.

41 An attempt has been made by TANGEDCO to portray as if there will be a huge revenue loss for the TANGEDCO if they are made to collect the Minimum Charges. This claim made by the TANGEDCO is without any substance. The TANGEDCO is aware of the fact that the Minimum Charges are paid as a part of fixed cost and the actual charges are paid with respect to energy charges. Therefore, TANGEDCO is not actually losing any revenue towards consumption of electricity. The TANGEDCO having accepted the regulations, cannot now turn around and complain that they will be incurring revenue losses if they collect Minimum Charges. After 2017, TANGEDCO never took any efforts to get the tariff revised. Regulations 69 and 70 of the Determination of Tariff Regulations specifically provides for the revision of tariff and it is for the TANGEDCO to approach TNERC and seek for revision of tariff in accordance with the regulations. TANGEDCO cannot be allowed to collect the Maximum Demand Charges by completely disregarding Regulation 6(b) of the Supply Code even in a case satisfying the requirements of regulations, only on the ground that TANGEDCO will incur loss. This claim made by TANGEDCO has no legs to stand and it can never be a ground to deny the right available to a consumer to pay Minimum Charges under Regulation 6(b) of the Supply Code. In view of the same, the Maximum Demand

Charges levied by TANGEDCO on the consumers during the lockdown period is declared to be illegal.

42 The HT consumers were actually caught between the devil and deep sea. On the one hand the government asked them to shut down their establishment and on the other hand TANGEDCO was levying the Maximum Demand from the consumers. If this is allowed to be continued, it will virtually lead to permanent shutting down of the industries. The financial crunch that is being faced by almost all industries due to the lockdown and the huge challenge they are going to face post the pandemic is now made worse by TANGEDCO by levying the Maximum Demand Charges. TANGEDCO must understand that its attitude will kill the industries and closing down of industries will ultimately have a financial implication on TANGEDCO also. And TANGEDCO was virtually killing the goose that was laying the golden eggs.

43 This Court will now venture to decide the next issue with regard to the compensation levied against the consumers towards low PF. The low PF compensation is dealt with under Clause 6.1.1.6 of the Tariff Order. The average power factor of the consumers installation should not be less than 0.90 lag. If it goes below that number, compensation charges are fixed under the Regulations. This PF is fixed to ensure that the consumer consumes the optimum power without interruptions or impediments. It is possible to maintain a healthy power factor limit only when the establishment is able to operate its electrical equipment and infrastructure with the power supplied by the Licensee/ TANGEDCO. During the pandemic, the establishment has been shut down and therefore there is no effective utilization of power at the consumer's end. Any measured power factor can only be the incoming PF from the Distribution Licensee. The levy of compensation charges for low PF is in the nature of penalty. A close reading of the order passed by the Appellate Tribunal in Appeal No.122 of 2010 dt. 04.10.2011 extracted supra shows that whenever the HT consumer fails to maintain the PF and it comes below 0.90 lag, what is levied is a penalty. The judgment of this court in S.A. No. 465 of 2019, referred supra also reiterates the same position and this Court has held that before imposing such penalty, the consumer must be given an opportunity to explain the reason for such fall in PF and if the same is not done, it will be violative of the principles of natural justice.

44 It is clear from the above that the TANGEDCO has proceeded to levy compensation for low PF without affording an opportunity to the consumers. It is hard to think that the optimum PF can be maintained when a consumer has been asked to

completely shut down his establishments. It is illogical that the TANGEDCO mechanically levied compensation for low PF even without understanding the basic fact that the establishments were completely shut down and there is no way they can utilize the optimum PF. In any event, the compensation levied is in the nature of penalty and it is now a settled law that penalty cannot be imposed without affording an opportunity since it involves civil consequences. Therefore, this Court has no hesitation to interfere with the levy of compensation charges for low PF.

45 The above discussion leads this Court to the only conclusion that the maximum demand charges and the compensation charges levied by TANGEDCO against the petitioners who are HT consumers, is illegal, unsustainable and in violation of the statutory regulations. Accordingly, the Maximum Demand Charges and the compensation towards low PF that have been questioned in the impugned bills raised by the TANGEDCO for each of the consumers who are parties in these batch of writ petitions, is hereby quashed. The following directions are also issued by this Court:

- a) TANGEDCO shall issue a revised bill to the petitioners by applying Regulation 6(b) of the Supply Code for the entire period when the establishment was under shut down;
- b) If TANGEDCO has already recovered the entire dues from any of the petitioners, the bill shall be reworked in accordance with the direction given in Clause (a) and the excess amount shall be adjusted towards the future bills;
- c) If the demand made by TANGEDCO has been adjusted from the security deposit and any of the petitioner has been asked to pay any amount towards additional security deposit on that count, the said claim shall be withdrawn forthwith and the calculation of the additional security deposit shall be independently done under Regulation 5 of the Supply Code and demand/ adjustment shall be done in accordance with the said Regulation;
- d) The TANGEDCO shall not levy compensation charges towards low PF from the petitioners during the period of lockdown. Even if such levy is made in future, show cause notice shall be issued to the consumer and an opportunity shall be given to the consumer before levying any compensation under Clause 6.1.1.6 of the Tariff Regulation;
- e) If any amount has already been recovered towards levy of compensation charges for low PF from any of the petitioners, the said amount shall be adjusted towards future bills;
- f) These directions will apply only for the period during which the establishment was under total lockdown due to the orders

issued by the Government and it is made clear that it pertains only to the Minimum Charges payable under Regulation 6(b) of the Supply Code and there is no exemption or concession insofar as the charges payable for the actual consumption of electricity (Energy Charges); and

g) If any of the establishments continue to be under lockdown due to the Government Orders passed in this regard, the minimum charges alone shall be collected till the lifting of the lockdown.

46 All the writ petitions are accordingly allowed. Before parting with this case, this Court wishes to appreciate the efforts taken by each and every Counsel who assisted this Court to conduct the entire hearing through video conferencing and particularly on a court holiday. If not for the cooperation of the learned counsels, this Court would not have been able to decide these batch of writ petitions. This Court wishes that this trend continues and this institution proves itself effective in dispensing justice even during this pandemic situation. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

- 1.The Chairman and Managing Director
Tamil Nadu Generation & Distribution
Corporation Limited [TANGEDCO]
144, Anna Salai, Chennai 600 002.
- 2.The Chief Financial Controller/Revenue
Tamil adu Generation & Distribution
Corporation Limited [TANGEDCO]
Tatabad, Coimbatore 641 012.
- 3.The Accounts Officer/Revenue
O/o.The Superintending Engineer
Coimbatore EDC/North, TANGEDCO
Tatabad, Coimbatore 641 012.

- 4.The Secretary
Tamil Nadu Electricity Regulatory Commission [TNERC]
TIDCO Office Building, No.19-A, Rukmani
Lakshmipathy Salai, Marshalls Road, Egmore
Chennai 600 008.
- 5.The Chairman
Tamil Nadu Electricity Board
No.800, Anna Salai, Chennai 600 002.
- 6.The Accounts Officer/Revenue,
O/o.The Superintending Engineer
Chennai EDC/South-1, TANGEDCO,
Anna Main Road, Chennai 600 078.
- 7.The Chief Financial Controller - Revenue
Tamil Nadu Generation and Distribution
and Corporation Limited, 10th Floor,
NPKRR Maaligai, 144, Anna Salai,
Chennai 600002.
- 8.The Superintending Engineer
Chennai Electricity Distribution Circle/West
110/33KV Thirumangalam, SS Campus
1st Floor, Anna Nagar, Chennai 600 040.
- 9.Accounts Officer - Revenue,
Chennai Electricity Distribution Circle-West
110/33KV Thirumangalam, SS Campus
1st Floor, Anna Nagar, Chennai 600 040.
- 10.The Superintending Engineer
TANGEDCO
Palladam Electricity Distribution Circle
Palladam, Tirupur District.
- 11.The Secretary to Government,
Government of Tamil Nadu
Energy Department
Fort St George, Chennai.
- 12.The Accounts Officer/Revenue
O/o.The Superintending Engineer,
Chennai EDC/South II, TANGEDCO, Chennai.
- 13.The Accounts Officer/Revenue
O/o.The Superintending Engineer,
Chennai EDC, TANGEDCO
Chennai.

14. The Superintending Engineer,
TANGEDCO, Coimbatore Electricity Distribution
Circle-Metro, Coimbatore 641 012.
15. The Chief Financial Controller-Revenue, TANGEDCO
7th Floor, 144, Anna Salai, Chennai 600 002.
16. The Accounts Officer/Revenue
O/o. The Superintending Engineer
Tirupattur EDC/TANGEDCO
Balammal Colony, Tirupattur,
Tirupattur District 635 601.
17. The Deputy Financial Controller
Tamil Nadu Generation & Distribution Corporation Ltd
[TANGEDCO], CEDC/CENTRAL, MGR Salai
Valluvar Kottam SS Complex,
Nungambakkam, Chennai 600 034.
18. The Superintending Engineer
Tamil Nadu Generation & Distribution Corporation
Limited [TANGEDCO], Chennai [Central]
MGR Salai, Valluvar Kottam SS Complex
Nungambakkam, Chennai 600 034.
19. The Deputy Financial Controller,
Tamil Nadu Generation & Distribution Corporation Ltd
[TANGEDCO], Vellore Electricity Distribution Circle
Gandhi Nagar, Vellore 632 006.
20. The Superintending Engineer
Tamil Nadu Generation & Distribution Corporation Ltd
[TANGEDCO], Vellore Electricity Distribution Circle
Gandhi Nagar, Vellore 632 006.
21. The Accounts Officer/Revenue,
Tamil Nadu Generation & Distribution
Corporation Limited [TANGEDCO]
Erode EDC, No.948, EVN Road,
Erode 638 009.
22. The Superintending Engineer
Tamil Nadu Generation & Distribution
Corporation Limited [TANGEDCO]
Erode EDC, No.948, EVN Road,
Erode 638 009.

23.The Accounts Officer/Revenue
O/o.The Superintending Engineer,
Chengalpet EDC, TANGEDCO
Chengalpet.

24.The Accounts Officer/Revenue,
Tamil Nadu Generation & Distribution Corporation Ltd
[TANGEDCO], Salem EDC, KN Colony
Udayapatti, Salem 636 014.

25.The Superintending Engineer
Tamil Nadu Generation & Distribution Corporation Ltd
[TANGEDCO], Salem EDC, KN Colony, Udayapatti, Salem 636 014.

+2 cc to Mr.Kamalanathan, Advocate,sr.26634

+1 cc to Mr.S.Prem Auxilian Raj, Advocate,sr.26813

+1 cc to Mr.C.Umashankar, Advocate,sr.26765

+2 cc to M/s.BFS Legal, Advocate,sr.26756

+6 cc to Mr.Srinath Sridevan, Advocate,sr.26683

+1 cc to Mr.P.Gunaraj, Advocate,sr.26631

+1 cc to Mr.M.Varunkumar, Advocate,sr.16640

+1 cc to Mr.N.Damodharan, Advocate,sr.26629

+4 cc to Government Pleader,sr.27005, 27006, 26844, 26845.

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WP.Nos.7678, 7679 & 9141/2020, 9312/2020,
9537/2020, 9538/2020, 9550/2020 , 10012, 10042,
10044 & 10031, 9825, 9831/2020, 10087/2020,
10091/2020, 10110/2020, 10164/2020, 8852 & 9689/2020

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