

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.07.2020

Delivered on : 15.07.2020

CORAM :

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.8273 of 2020
and
WMP.Nos.9910 and 9914 of 2020

M.L.Ravi

Vs.

...Petitioner

- 1.The Chief Secretary,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai, TN-600 009.
- 2.The Principal Secretary,
Ministry of Electricity, Tamil Nadu,
Secretariat, Fort St. George,
Chennai, TN-600 009.
- 3.The Chairman,
Tamil Nadu Electricity Commission,
19-A, Rukmini Lakshmipathy Salai,
Egmore, Chennai, TN-600 008.
- 4.The Chairman-cum-Managing Director,
Tamil Nadu Generation and Distribution Corporation
(TANGEDCO) Limited,
10th floor, NPKRR Maaligai,
144, Anna Salai, Chennai, TN-600 002.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus calling for the records of the 4th respondent relating to the impugned order of the 4th respondent unnumbered and dated 04.05.2020, which was subsequently issued as a press release on 05.04.2020, and quash the same and consequently direct the 4th respondent to regenerate the 2 bi-monthly bills for the period

covered under the impugned order, based on units consumed in the previous month billing as one bi-monthly bill and the balance units consumed out of the total presently metered units as another bi-monthly bill, for all the LT Domestic Consumers under the 4th respondent who have had bi-monthly consumption under 500 units in any of the 3 preceding billing cycles prior to the lockdown.

For Appellant : Mr.T.Sivagnanasambandan
For Respondents : Mr.V.Jayaprakash Narayanan for R1 & R2

Mr.Arvinth Pandian,
Additional Advocate General for R4
Assisted by Mr.M.Damodharan

No appearance for R3

O R D E R

M.M.SUNDRESH, J.
AND
R.HEMALATHA, J.

The petitioner has filed this Public Interest Litigation challenging the impugned order of the fourth respondent, Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO). The impugned order of the fourth respondent is dated 4th May 2020. Briefly the order has issued the modalities of calculating the electricity consumption charges for the two bi-monthly periods of March 2020-April 2020 and May 2020-June 2020. This order has necessitated in view of the fact that no reading was possible during April 2020 due to the COVID-19 pandemic and the resultant lockdown from 25th March 2020. It was impossible for the reading to be taken for the first bi-monthly of March-April period as it involved deployment of substantial number of staff to visit households to take down the reading. Therefore, it was decided that the bi-monthly charges for this period for Low Tension(LT) domestic consumers be paid as per the previous month billing(PMC) charges and that the next reading equally divided as two bi-monthly billing for the months of March-April and May-June and the charges would be payable after deducting the amount already paid for the bi-monthly March-April.

2.The impugned press release which brought the aforesaid decision of the fourth respondent to the notice of the consumer is appositely referred below along with its illustrations.

PRESS RELEASE

"KIND ATTENTION OF TANGEDCO's LOW TENSION CONSUMERS
In view of the COVID-19 outbreak, there has been

lock down since 24.03.2020 midnight. Now, the Government of India has announced extension of lockdown for a further period of 2 weeks from 04.05.2020 i.e., upto 17.05.2020. The lockdown has been accordingly continued in Tamil Nadu with some guidelines with effect from 04.05.2020 to 17.05.2020.

In this connection, as per the direction of the Hon'ble Chief Minister of Tamil nadu, the Hon'ble Minister for Electricity and Prohibition, Go TN held a review meeting in TANGEDCO on 04.05.2020 and issued the following instructions:

a) LT Industrial and Commercial consumers who have been billed under Previous Month Billing (PMC) can make payment upto 22.05.2020 based on PMC or by way of revised bill for actual consumption by furnishing the self assessment reading.

b) In case of LT domestic consumers wherever billing is made under PMC due to COVID-19, the next reading will be taken only on the next due date. Hence the billing is to be made for two bi-monthly readings. The payment made for the PMC will be adjusted after ascertaining the reading during the next assessment of the respective CC bills. An illustration is given hereunder.

A consumer who has been billed under PMC during COVID-19 and the actual reading taken during next assessment month, the manner of detailed billing in such cases is outlined below:

Reading month	Reading	Consumption in Units	Assessment Amount (in Rs.)
December 2019	0	66	
February 2020	0	86	Energy Charges 0-100 Nil 101-200 150 Fixed Charges 20 ----- Billed amount 170 -----
April 2020	PMC billed		170

Reading month	Reading	Consumption in Units	Assessment Amount (in Rs.)
June 2020	1290	430	Bi-monthly consumption for each bi-month 430/2=215 Units for each bi-months. Assessment Calculation for 215 Units for one bi-month: Energy Charges 0-100 Nil 101-200 200 201-215 45 Fixed Charges 30 ----- Billed amount(Rs.)275 ----- Total assessment amounts for two bi-months Rs.275 x 2 = Rs.550 Less: Amount already billed during PMC assessment month = Rs.170 Net amount to be billed for next assessment month = Rs.380 -----

c) Extension of time for payment of all LT and LTCT consumers whose due dates fall between 25.03.2020 to 17.05.2020 shall be granted upto 22.05.2020, without levy of BPSC and DC-RC fees."

3.The Tariff Structure being adopted by the respondents in tune with the Electricity Act, 2003 read with Regulation 10(2) of the Tamil Nadu Electricity Supply Code, 2004, is placed on record for better understanding and appreciation.

"(a) For the consumers whose total usage of energy is less than 100 units bi-monthly, the Energy Charges is Nil.

(b) For the consumers whose total usage of energy is more than 100 but less than 200 units bi-monthly, (i) the Energy Charges is Nil for usage upto 100 units and (ii) Rs.1.50 per unit between 101 and 200 units.

(c) For the consumers whose total usage of energy is more than 200 but less than 500 units bi-monthly, (i) the Energy Charges is Nil for usage upto 100 units, (ii) Rs.2.00 per unit for usage between 101 and 200 units and (iii) Rs.3.00 per unit for usage between 201-500 units.

(d) For the consumers whose total usage of energy is more than 500 units bi-monthly, (i) the Energy Charges is Nil for the usage upto 100 units, (ii) Rs.3.50 per unit for usage between 101 to 200 units, (iii) Rs.4.60 per unit for usage between 201 and 500 units and (iv) Rs.6.60 per unit for usage above 500 units."

Thus, the tariff rate has been fixed on an objective consideration of different categories of consumers. We may note this structure is not put to challenge.

4.The grievance of the petitioner appears to be the deduction of amount paid towards electricity consumption charges for the month of March and April, 2020 on a tentative basis based upon the earlier reading as against the number of units consumed is justifiable or not. The petitioner seeks to espouse the case of a consumer, who consumes between 200 and 499 units bi-monthly. In other words, the petitioner wants the units used for the months of January and February, 2020, which was added on an adhoc and temporary basis and for the months of March and April, 2020 pay accordingly should be the basis towards deduction. If this process is adopted, the petitioner and the similarly placed consumers stand to gain though another set of consumers would get affected.

5.Before venturing into the submissions of the respective counsels, we deem it appropriate to have a cursory look on the provisions governing. Section 45 of the Electricity Act, 2003, deals with the power to recover charges by a distribution licensee for the supply of the electricity. Under Sub Section 2 of Section 45 of the Act, such charges shall be fixed in accordance with the methods and the principles as may be specified by the third respondent. Charges may also include a fixed charge in addition to the charge for the actual electricity supply.

6.Thus, Section 45 gives the power to the third respondent to provide for methodology and guidelines for fixation of charges. Such charges fixed may also include a fixed charge in addition to the charge for actual supply of electricity.

45.Power to recover charges: --- (1) Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of section 43

shall be in accordance with such tariffs fixed from time to time, and conditions of his licence.

(2) The charges for electricity supplied by a distribution licensee shall be -

- (a) fixed in accordance with the methods and the principles as may be specified by the concerned State Commission;
- (b) published in such manner so as to give adequate publicity for such charges and prices.

(3) The charges for electricity supplied by a distribution licensee may include --

- (a) a fixed charge in addition to the charge for the actual electricity supplied;
- (b) a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.

Therefore, while charges are to be recovered by the licensee viz., the fourth respondent, the procedure for fixation and yardstick to be applied lies with the third respondent.

7. Section 50 of the Act empowers the creation of electricity supply code by the third respondent being the Tamil Nadu Electricity Commission. It would include prohibition of electricity charges, intervals for billing of electricity charges and disconnection of supply of electricity, for non payment along with the restoration, if paid. In derogation of power conferred under Section 5, the third respondent has introduced Tamil Nadu Electricity Supply Code, 2004. Regulation 10 deals with another inaccessibility meter for reading. Therefore, when a meter cannot be accessed by the licensee, the fourth respondent herein, then Regulation 10 can be pressed into service. Accordingly, with the approval of the third respondent, the fourth respondent adopted the procedure aforementioned by making a consumer to make the same payment as previous bi-monthly January and February, 2020 and thereafter, introducing two bi-monthly bills for the months of March-April and May-June, 2020. The amount paid for the bi-monthly of March-April on a tentative basis was accordingly deducted. We need not venture much into the factual position as the petitioner does not question the tentative payment for the months of March-April and bi-monthly deduction since his objection is specific to the deduction of amount as against the units.

8. Regulation 10: Inaccessibility of meter for reading.

- (1) When a Low Tension consumer leaves his installation connected to the Licensee's mains but makes it inaccessible for reading by the employees

of the Licensee, the consumer shall, for the first occasion of such inaccessibility, be charged provisionally on the basis of the amount charged on the previous assessment. The employee of the Licensee will leave an assessment slip in the premises, wherever possible.

(2) If, on the next occasion, the meter is accessible for reading, the consumer will be charged for the actual consumption less the amount already charged subject to the minimum monthly charges for both the periods. If, on the other hand, the meter remains inaccessible on the second occasion also, the consumer will be served with a 48 hours notice to open his premises at a fixed time and date to enable an employee of the Licensee to read the meter. If the meter is now made accessible for reading, the consumer will be charged the actual consumption less the provisional amount charged and paid for the first period of inaccessibility subject to the minimum monthly charges for both the periods. If the meter remains inaccessible even after the 48 hours notice, the supply to the premises will be disconnected and for that period also a provisional amount as in the case of previous occasion will be charged.

The petitioner has not chosen to challenge the regulation.

9.Submissions of the learned counsel for the petitioner:

The contention of Mr.T.Sivagnanasambandan, learned counsel appearing for the writ petitioner is that instead of PMC being deducted from the latest bill containing two bi-monthly readings, the units ought to have been deducted as this method would turn out to be much cheaper for the consumers. Thus, the methodology suggested was repeating the previous bi-monthly units for the first bi-monthly March to April period. The remaining units from the total reading to be treated as the second bi-monthly units. In order to substantiate his contention, the petitioner has effected his method of calculation both on the illustration given in the impugned order dated 04.05.2020 as well as his own electricity bill and in both cases, he has shown as to how deduction of the actual units for the previous monthly billing period would be more beneficial than the deduction of the previous monthly charges. He also specified that as per Section 45 (3) of the Electricity Act, 2003, it is the consumed units which should be reckoned for calculating charges.

10.Submissions of the learned Additional Advocate General appearing for R4.

On the other hand, Mr.P.H.Arvinth Pandian, learned

Additional Advocate General assisted by Mr.M.Damodharan, learned counsel appearing for the fourth respondent would contend that the system arrived for calculation of the electricity charges as mentioned in the impugned order does not suffer from any infirmity and that is well known fact that during the pandemic situation, it was not possible for the field staff to visit the households for the purpose of taking the meter reading since total lockdown was in force from 25th March 2020. He further added that the determination of tariff was a legislative function and that even as per Rule 10(2) of the Tamil Nadu Electricity Supply Code, inaccessibility of the meter for reading on the first occasion would be charged provisionally on the basis of the amount charged on the previous assessment and that on the next visit, the consumer will be charged on the actual consumption less the amount already charged, subject to the minimum monthly charges for both the periods. According to him, this system is legal as well as in vogue and therefore, cannot be construed as arbitrary.

11. The petitioner, however, has countered this contention of the fourth respondent by stating that

(a) Inaccessibility due to the consumer's act is different from inaccessibility due to COVID-19 lockdown, in which the consumer is not at fault.

(b) Dividing the total units of four months into two equal parts is not provided for anywhere in the supply code and is an arbitrary exercise of power.

(c) The bills raised for Low Tension domestic consumers based on the impugned order will only result in 'unjust enrichment' of the fourth respondent.

(d) The impugned order discriminates between those Low Tension domestic consumers who consumed more than 500 units in bi-monthly billing cycles and those who consume less than 500 units bi-monthly and it adversely affects only the latter category.

(e) The impugned order discriminates between Low Tension Industrial and Commercial Consumers on the one hand and Low Tension Domestic Consumers on the other, by allowing the former to pay based on self-assessment which option was not given to the Low Tension Domestic Consumers.

12.Mr.Arvinth Pandian, learned Additional Advocate General assisted by Mr.M.Damodharan, learned counsel appearing for the fourth respondent replying to these grounds has contended that such grounds presented by the petitioner have no relevance to the present petition. It has been further argued that when the reading for a particular bi-monthly is not taken due to the lockdown, there could be no other method to apportion the units

consumed without affecting the subsidy entitlement of free units. During the lockdown, it is contended that many Chennai residents had to remain indoors, some of them working from home, children staying at home etc. resulting in more power consumption. Therefore, according to him, there could not have been a more reasonable method than dividing the total units for the four months period by two and that the rationale behind this calculation is fully justified and there has to be a uniform procedure in calculation and allowing each consumer to calculate as per his/her own convenience would lead only to chaos was his further contention. It was also contended that the petitioner has claimed that the number of units of previous cycle be reduced from the present bill and not the PMC.

13.Mr.V.Jayaprakash Narayanan, learned Government Pleader for respondents 1 and 2, further added that the petitioner was only trying to divert the attention of this Court by raising grounds like discrimination and such grounds were totally unwarranted. It is further contended that default in payment of PMC did not invite penalty or disconnection.

14.From the submissions made, it is clear that the consumers with usage of more than 500 units, will have to pay more. Similarly, the first 100 units are not charged for all categories. In these circumstances, to enable the consumer to avail the concession, the necessity to divide the four months readings into two bi-monthly billing was essential. The average consumption for the two bi-monthly periods was taken and the calculation was made based on this. As the number of Low Tension Domestic Consumers is huge and having skipped the reading due to the lockdown, the decision by the TANGEDCO to divide the total units into two equal halves was reasonable and justified. Without this, the benefit of 100 units for each bi-monthly cycle would have not accrued for the consumers. Even assuming that there were no free units, the tariff for the second 100 units, subsequent 300 units and the units beyond 500 increased progressively and was not the same. Thus, any other methodology especially the one suggested by the petitioner would not ensure equality.

15.We do not find Regulation 10(2) of the Tamil Nadu Electricity Supply Code being contrary to the provisions of the Act. Section 45 of the Act nowhere says that the methodology as suggested by the petitioner will have to be followed. In fact, what the fourth respondent has followed is by taking into consideration of units alone. Section 45 only speaks about the charges. Similarly, Regulation 10(2) of the Tamil Nadu Electricity Supply Code also deals with the amount charged on the previous assessment. Thus, we have no difficulty in holding that the Regulation 10(2) of the Code is not beyond the rule

making power conferred under Section 50 apart from being followed in Section 45 of the Act.

16. We find that the procedure adopted exhibits an element of fairness. Obviously, one could infer that there has to be an increase in the usage of electricity of home during lockdown. The classification made among the consumer is not in dispute. Apparently, it has been made by taking note of the social economic conditions prevailing in the State. There is a reasonable nexus relatable to the object in having different tariff on the basis of consumption. The petitioner cannot seek a direction to adopt a particular methodology, which is beneficial to one set of consumers. When the classification is different based upon intelligible differentia, Article 14 of the Constitution of India would be pressed into service. It appears that we are dealing with 1.75 crore consumers, out of which, excluding the petitioner, they may very few would have any grievance to the methodology adopted.

17. The contention of the petitioner that inaccessibility was not caused by the consumers is untenable. COVID-19 pandemic is an unfortunate tragedy which is unprecedented and has caused total disruption of normal life. The contention that the TANGEDCO made an unjust enrichment out of it is also unacceptable. Such accusations are unwarranted. While the welfare of the general public is important and the difficulties they have undergone due to the pandemic is serious, the role of the Government in tackling the crisis and the resources required for the same is not a trivial issue to be brushed aside. The need to pay taxes and other statutory obligations on time becomes paramount to keep the Government active and helpful. The method of calculation has to be uniform and acceptable to all and also in tune with the Electricity Supply Code. It cannot be according to one's own 'whims and fancies'. It is not the contention of the petitioner that the free units of 100 per bi-monthly has not been accounted for. It is also not his contention that the PMC has not been reduced from the total bill for four months. The fourth respondent has acted in all fairness when ensuring that the consumers are not deprived of the subsidy of 100 units per bi-monthly cycle. Therefore, the system of calculation stipulated in the impugned order cannot be faulted with. In fact, the fourth respondent provides for payment of advance amount which would be adjusted against the future bills. Such convenience is provided to enable public who may go on a long holiday and who do not want to default in payment of charges. Similarly, the comparison between Low Tension Domestic Consumers and Low Tension Industrial Consumers is also irrelevant. Low Tension Domestic Consumers are very large in number in comparison to the Low Tension Industrial Consumers. The tariff for Low Tension Industrial Consumers is

much on the higher side as it is commercial in nature. Allowing self assessment for the Low Tension Domestic Consumers as suggested by the petitioner would have resulted in chaos. Even assuming that it is allowed, we do not comprehend as to how it would have helped the petitioner.

18. Thus, looking from any perspective, we do not find any valid reason to find the impugned order as arbitrary. It is sound in reasoning and has benefited the consumers. The Public Interest Litigation has no merits and is dismissed. However, in case of any alleged irregularity leading to higher charges, the consumer can always work out the remedy in the manner known to law. No costs. Consequently, connected writ miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

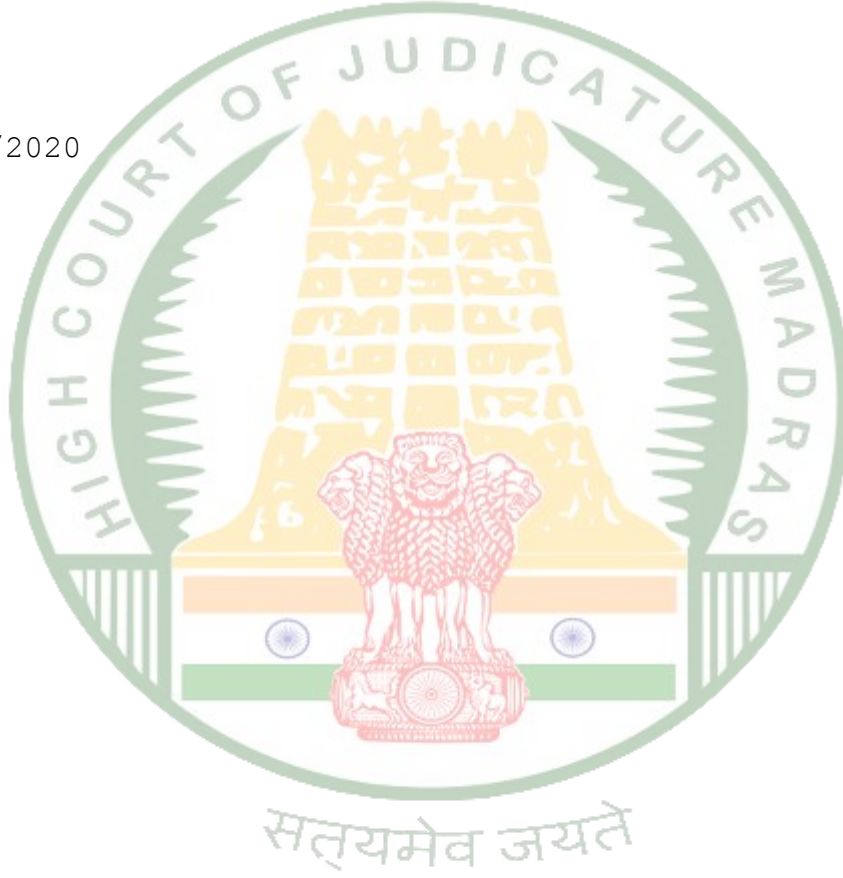
To

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