



W.P.(MD)Nos.10682, 16950, 17085, 9825 of 2013 and 5770 & 5771 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. (MD)Nos.10682, 16950, 17085, 9825 of 2013 and 5770 & 5771 of 2014

and

M.P (MD)Nos.1, 1, 1, 1, 2 of 2013 and 1 & 1 of 2014
(Through Video Conference)

WP (MD) .No. 10682 of 2013

Siva Blue Metals

represented by its Partner R. Ananda Mageswaran.

Tuticorin

... Petitioner

vs

1.Tamil Nadu Electricity Regulatory Commission
represented By its Secretary,
19-A, Rukmini Lakshmipathy Salai, (Marshalls Road),
Egmore, Chennai-600 008.

2.The Chairman,
Tamil Nadu Electricity Board,
144, Anna Salai, Chennai-600 002.

3.The Superintending Engineer,
Tuticorin Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Tuticorin -2.

... Respondents

Prayer in WP (MD) .No. 10682 of 2013 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records of the 3rd respondent in lr. No. 246/SE/TEDC/AO/REV/A3/F.Dkt./2013 dated 19/06/2013 and quash the same towards excess demand and energy charges due to non-fixation of demand and energy quota for the period from 04/2010 to 02/2012 to a sum of Rs. 1,54,35,188/- as illegal, arbitrary, without the authority of law and against the Electricity act 2003.

For Petitioner .. Mr.R.S.Pandiyaraj



For Respondents .. Mrs.M.Rajeswari for
Mr.S.M.S. Johnny Basha
Standing Counsel

WP(MD).No. 16950 of 2013

Aruppukottai Sri Jayavilas Ltd,
represented by its Manager S.Nagarajan
Aruppukottai. ... Petitioner

vs

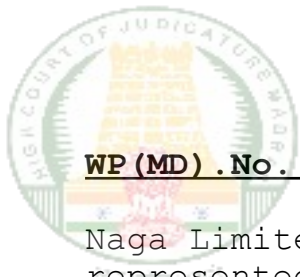
- 1.Tamilnadu Electricity Regulatory Commission
represented by its Secretary
19-A, Rukmini Lakshmipathy Salai, (Marshall's Road),
Egmore, Chennai-008.
- 2.Tamil Nadu Generation and Distribution Corporation Limited
(TANGEDCO),
represented by its Chairman and Managing Director,
144, Anna Salai, Chennai-002.
- 3.The Superintending Engineer,
Virudhunagar Electricity Distribution Circle,
Tamil Nadu Generation and Distribution Corporation Ltd(TANGEDCO).
Virudhunagar ... Respondents

Prayer in WP(MD).No. 16950 of 2013 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records of the 3rd respondent in his impugned notice Lr.No SE/VEDC/VDR/AO/REV/AS/A2/F.BOAB SPL AUDIT/2012 dated 27/09/2012 and consequent letter No. SE/VDR/AO/REV/AS/A.2/F BOAB AUDIT/2012 dated 26/08/2013 and quash the same for the levy of excess charges/penalty for alleged excess demand and energy quota for the period from 04/2010 to 03/2011 as legal, arbitrary, without the authority of law and against the orders of the 1st respondent made in Suo Motu Proceedings No. 1 of 2009 dated 28/10/2009, D.R.P.No. 14 of 2010 dated 14/03/2011 and Honourable APTEL in Appeal No. 51 and 56 of 2012 dated 12/12/2012

For Petitioner .. Mr.R.S.Pandiyaraj

For Respondents .. Mrs.M.Rajeswari for
Mr.S.M.S. Johnny Basha
Standing Counsel



WP (MD) .No. 17085 of 2013

Naga Limited (Foods)

represented by its Manager S.Christopher Muthiah,

Dindigul

... Petitioner

vs

1.Tamil Nadu Electricity Regulatory Commission Rep.By its
Secretary .

19A, Rukmini Lakshmipathy Salai, (Marshalls Road),
Egmore, Chennai-008,

2.The Chairman,

Tamil Nadu Electricity Board, 144, Anna Salai,
Chennai-600 002.

3.The Superintending Engineer,

Dindigul Elect. Distribution Circle,
Tamil Nadu Electricity Board, Dindigul-2.

4.The Superintending Engineer,

Theni Electricity Distribution Circle,
Tamilnadu Electricity Board, Theni.

... Respondents

Prayer in WP (MD) .No. 17085 of 2013 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records of the 3rd respondent in his impugned demand notice Lr.No. SE/DGL/AO/REV/F.AUDIT/D.No. 001-1/2013 dated 29/08/2013 and the consequential CC bill dated 01/10/2013 insofar as serial No. 14 concerned,toward non collection/Short levy of excess payment of banking units to the tune of Rs.12,09,607/- for the year 2009-2010 quash the same as illegal, arbitrary, without the authority of law and against the orders of 1st respondent .

For Petitioner .. Mr.R.S.Pandiyaraj

For Respondents .. Mrs.M.Rajeswari for
Mr.S.M.S. Johnny Basha
Standing Counsel



WP (MD) .No. 9825 of 2013

M/s. Raju Cotton Mills,
Repd., by its K.Muthulingam,
Virudhunagar

... Petitioner

vs

1.Tamil Nadu Generation and Distribution Corporation Limited
(TANGEDCO)

Represented by its Chairman Cum Managing Director,
144, Anna Salai, Chennai- 002.

2.The Chief Financial Controller,
Tamil Nadu Generation and Distribution Corporation Limited
(TANGEDCO)
144, Anna Salai, Chennai- 002.

3.The Director (Finance)
Tamil Nadu Generation and Distribution Corporation Limited
(TANGEDCO)
144, Anna Salai, Chennai- 002.

4.The Superintending Engineer,
Tamil Nadu Generation and Distribution, Corporation Limited
(TANGEDCO)
Virudhunagar Electricity Distribution Circle,
Virudhunagar, ... Respondents

Prayer in WP(MD) .No. 9825 of 2013 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of certiorari or any other appropriate writ, order or Direction in the nature of a writ calling for the records of the 2nd Respondent in his Lr.No./CFC/FC/DFC/AS.3/D.NO. 84/11 dated 23.11.2011 culminating in the 3rd Respondents circular. memo No. Dir (Fin) / CFC/FC/DFC/AAO. HT/ As.3/D.NO. 86/13 dated 20.2.2013 in so far as the petitioner is concern, and consequently demand Lr.NO. SE/ VEDC/ VDR/AO/REV/AS/Asst. 6/F BOAB AUDIT/ 2013 dated 15.03.2013 issued by the 4th Respondent quash the same as it is in violation or the order dated 12.12.2012 passed by the Hon'ble APTEL and the order dated 29.01.2013 passed by the Hon'ble TNERC.

For Petitioner .. Mr.R.S.Pandiyaraj

For Respondents .. Mrs.M.Rajeswari for
Mr.S.M.S. Johnny Basha
Standing Counsel



WP (MD) .No. 5770 of 2014

M/s. Shri Govindaraja Mills Ltd.,
Represented by its President S. Baskaran
Tamil Padi, Aruppukottai. ... Petitioner

Vs

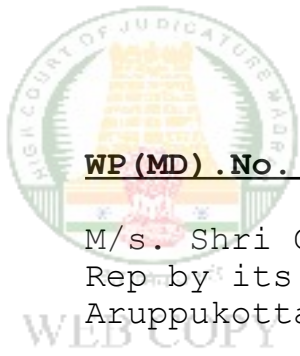
1. Tamil Nadu Electricity Regulatory Commission
Rep. by its Secretary,
19-A Rukmini Lakshmipathy Salai, Egmore, Chennai - 600 008.
2. The Chairman TANGEDCO Ltd.,
144 Anna Salai, Chennai - 600 002.
3. The Director (Finance) Accounts Branch,
Revenue Division, TANGEDCO Ltd.,
144 Anna Salai, Chennai - 600 002.
4. The Superintending Engineer
Virudhunagar Electricity Distribution Circle,
TANGEDCO, Virudhunagar.
5. The Deputy Chief Internal Audit Officer,
Audit Branch, Tirunelveli Region,
TANGEDCO Ltd., Tirunelveli - 11. ... Respondents

Prayer in WP (MD) .No. 5770 of 2014 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records of the 3rd respondent in his Demand Notice Lr. No. Lr. Mo. SE/VEDCO/VDR/AO/REV/AS/ASST 2/F.BOAB AUDIT/14/D No. 133/14 dated 14.02.2014 in so far as it relates to levy of penalty in the form of excess demand and energy charges of Rs.1,78,00,244/- towards audit short levy and quash the same as illegal, arbitrary, without the authority of law and against the orders of the 1st Respondent made in M.P. No. 42 of 2008 dated 28.11.2008, Sou Motu Proceedings No.1 of 2009 dated 28.10.2009, D.R.P. No. 13 & 14 of 2010, M.P. No.6, 9 and 17 of 2010 and DRP No.9 of 2010 dated 07.09.2010, RA No.4/2013 dated 25.02.2013.

For Petitioner .. Mr.S.Karunakar

For Respondents .. Mrs.M.Rajeswari for
Mr.S.M.S. Johnny Basha
Standing Counsel



WP (MD) .No. 5771 of 2014

M/s. Shri Govindaraja Mills Limited Unit II
Rep by its Authorised Signatory S. Baskaran
Aruppukottai.

... Petitioner

vs

1. Tamil Nadu Electricity Regulatory Commission Represented by its Secretary
19 A Rukmini Lakshmipathy Salai Egmore
Chennai 600 008
2. The Chairman Tamil Nadu Generation and Distribution Corporation Limited
144 Annasalai Chennai 600 002
3. The Director (Finance) Accounts Branch Revenue Division
Tamilnadu Generation and Distribution Corporation Ltd
144 Annasalai Chennai 600 002
4. The Superintending Engineer
Virudhunagar Electricity Distribution Circle TANGEDCO Virudhunagar
5. The Assistant Audit Officer
BOAB/Audit Party No 1
Tamil Nadu Electricity Board
Tirunelveli Region, Tirunelveli 11 ... Respondents

Prayer in WP (MD) .No. 5771 of 2014 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to ISSUE A WRIT OF CERTIORARI calling for the records of the 3rd Respondent in his Demand Notice impugned Demand Notices, in Lr No SE/VRED/VDR/AO/Rev/AS / Asst.2/F.BOAB.Audit/2013 dated 22/12/2013 raising a demand of Rs.77,88,362/- and in Lr.No.SE/VREDC/VDR/AO/Rev/AS/Asst.2/F.BOAB.Audit/D.No.14 dated 20/03/2014 raising a demand of Rs.44,11,691/- in so far as it relates to levy of penalty in the form of excess demand and energy charges towards audit short levy and quash the same as illegal, arbitrary without the authority of law and against the orders of the 1st respondent made in MP.No. 42 of 2008 dated 28/11/2008 Sou Motu Proceedings No.1 of 2009 dated 28.10.2009, DRP No.13 & 14 of 2010, MP No.6,9 and 17 of 2010 and DRP No.9 of 2010 dated 07.09.2010, RA.No.4 of 2013, dated 25.02.2013.



For Petitioner .. Mr.S.Karunakar
For Respondents .. Mrs.M.Rajeswari for
Mr.S.M.S. Johnny Basha
Standing Counsel

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COMMON ORDER

These writ petitions have been filed, challenging the respective impugned notices issued by the respective Superintending Engineers, TANGEDCO, calling upon the respective petitioners to pay excess demand and excess energy charges, based on revision of demand quota and energy quota, on account of audit objections.

2. It is brought to the notice of this Court that the issue raised in these writ petitions, is squarely covered by the decision of the Honourable Supreme Court of India in the case of **Chief Financial Controller / Revenue, Tamil Nadu Electricity Board v. Bannari Amman Spinning Mills Ltd [Civil Appeal No.8215 of 2015 decided on 25.10.2018]**, wherein the Honourable Supreme Court upheld the view taken by the Regulatory Commission and the Appellate Tribunal for Electricity that the decision and methodology for charging excess energy and demand charges adopted by the Distribution Licensee, is correct, but the date of collection of such charges would be from 2010 and not from 2008 when the Restriction and Control Measures were introduced.

3. It is also brought to the notice of this Court that a learned Single Judge of this Court has followed the aforesaid decision of the Honourable Supreme Court in his order dated **07.01.2019** passed in **W.P.No.29245 of 2010 in the case of Suganeswara Spinning Mills (P) Ltd., v. Tamil Nadu Electricity Regulatory Commission and two others.**

4. The learned Single Judge after giving due consideration to the decision rendered by the Honourable Supreme Court referred to supra, has held that the demand as well as interest levied on the petitioner, does not survive and the petitioner is entitled to receive the excess charges paid to the third respondent, pursuant to the demand made against them, in order to avoid disconnection of power supply and allowed the writ petition by setting aside the demand made by the third respondent.

5. The impugned demand notice challenged in W.P.No.29245 of 2010, is similar to the impugned demand notices challenged in the present writ petitions.



6. In the light of the decision rendered by the Honourable Supreme Court, referred to supra, which has been followed by a learned Single Judge of this Court on 07.01.2019 in W.P.No.29245 of 2010, the present writ petitions will also have to be necessarily allowed as the impugned demand notices are identical to the one, which was the subject matter of W.P.No.29245 of 2010.

7. Accordingly, the impugned demand notices issued against the respective petitioners, by the respective Superintending Engineers, TANGEDCO, are hereby quashed and these writ petitions are allowed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

1. The Secretary

Tamil Nadu Electricity Regulatory Commission
19 A Rukmini Lakshmipathy Salai (Marshalls Road)
Egmore, Chennai 600 008

2. The Chairman,

Tamil Nadu Generation and Distribution Corporation Limited
144 Annasalai - Chennai 600 002

3. The Director (Finance) Accounts Branch Revenue Division
Tamilnadu Generation and Distribution Corporation Ltd
144 Annasalai - Chennai 600 002

4. The Chief Financial Controller,

Tamil Nadu Generation and Distribution Corporation Limited
(TANGEDCO)
144, Anna Salai, Chennai- 002.



5. The Assistant Audit Officer
BOAB/Audit Party No 1, Tamil Nadu Electricity Board
Tirunelveli Region, Tirunelveli 11

6. The Deputy Chief Internal Audit Officer,
Audit Branch, Tirunelveli Region, TANGEDCO Ltd., Tirunelveli - 11.

7. The Superintending Engineer
Virudhunagar Electricity Distribution Circle TANGEDCO , Virudhunagar

8 The Superintending Engineer, Tuticorin Electricity Distribution
Circle,
Tamil Nadu Electricity Board, Tuticorin -2.

9. The Superintending Engineer, Dindigul Elect. Distribution Circle,
Tamil Nadu Electricity Board, Dindigul-2.

10. The Superintending Engineer,
Theni Electricity Distribution Circle,
Tamilnadu Electricity Board, Theni.

Common Order made in
W.P. (MD)Nos.10682, 16950, 17085, 9825 of 2013 and
5770 & 5771 of 2014
Dated: 24.11.2020

SRK(CO)
TR(10.12.2020) 9P 11C