



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 26.05.2020

CORAM :

THE HONOURABLE **MR.JUSTICE C.V.KARTHIKEYAN**

W.P(MD).Nos.6162, 6166, 6208 and 6233 of 2020

and

W.M.P(MD).Nos.5353, 5354, 5355, 5359, 5360, 5415, 5416, 5417, 5444,
5445, 5453 of 2020

W.P(MD).No.6162 of 2020

Thiagarajar Mills Pvt.Limited,
Unit III, Nilakottai,
Dindigul-624 208
HTSC No.153,

rep., by its Manager (Administration) ... Petitioner

Vs.

1.The Tamil Nadu Generation and
Distribution Corporation Ltd., (TANGEDCO),
Rep., by its Chairman & Managing Director,
No.144, Anna Salai, Chennai 600 002.

2.The Superintending Engineer,
TANGEDCO,
Dindigul Electricity Distribution Circle,
Dindigul.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari Mandamus, to call for the records comprised in the CC Bill No.9094500153052003 dated 05.05.2020 for HT Sc.No.153 issued to the petitioner, and quash the same in so far as Item No.8 pertaining to demand charges is concerned and consequently direct the second respondent to revise the same in accordance with the order of the Hon'ble Tamil Nadu Electricity Regulatory Commission in Suo Motu Proceedings No.2 of 2020 dated 04.05.2020.

For Petitioner	: Mr.K.Prabhakar
	for Mr.Raguvaran Gopalan
For Respondents	: Mr.P.H.Aravind Pandian
	Additional Advocate General
	assisted by Mr.S.M.S.Johnny Basha
	Standing Counsel



W.P(MD).No.6166 of 2020

Tamil Nadu Spinning Mills Association,
Registration No.330/97
#2, Karur Road,
Modern Nagar, Dindigul 624 001.
rep., by its Chief Advisor,
Dr.K.Venkatachalam

... Petitioner

Vs.

1.The Tamil Nadu Generation and
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 Tamil Nadu Electricity Regulatory Commission,
19-A, Rukumini Lakshmipathy Salai,
Egmore, Chennai 600 008.
Represented by its Secretary.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, to direct the respondents to demand and collect the minimum demand charges only @ 20% of the sanctioned demand or actual recorded demand, whichever is higher, instead of 90% of the sanctioned demand and not to levy belated payment surcharge, as the bills are themselves contain serious errors in billing, as found under Regulation 12 of Tamilnadu 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 also the express orders of the third respondent Commission, in Suo motu proceedings in SMP No.2 of 2020 dated 04.05.2020 and consequently direct the 1st and 2nd respondents to issue suitable directions to all the Superintending Engineers concerned, to issue the fresh CC bills for the months of March 2020 and April 2020 and for all the future periods, if the lockdowns are enforced further and extended, in accordance with the Regulatory Provisions under Regulations 6(b) of Tamil Nadu Electricity Supply Code 2004 and as further confirmed by the order of the third respondent State Commission in Suo Motu proceedings NO.2 of 2020 dated 04.05.2020 and also to further direct the respondents to refund the excessively collected demand charges in respect of all consumers contrary to the Regulatory Provisions and against the orders of the third respondent Commission.



For Petitioner : Mr.R.S.Pandiaraj
for Mr.S.P.Parthasarathy
For Respondents : Mr.P.H.Aravind Pandian
Additional Advocate General
assisted by Mr.S.M.S.Johnny Basha
Standing Counsel

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W.P(MD).No.6233 of 2020

Thiagarajar Mills Pvt.Limited,
Registered Office,
Kappalur, Madurai 625 008.
HTSC No.10,
rep., by its Manager (Administration)

... Petitioner

Vs.

1.The Tamil Nadu Generation and
Distribution Corporation Ltd., (TANGEDCO),
Rep., by its Chairman & Managing Director,
No.144, Anna Salai, Chennai 600 002.

2.The Superintending Engineer,
TANGEDCO,
Madurai Electricity Distribution Circle,
K.Pudur, Madurai-07

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari Mandamus, to call for the records comprised in the CC Bill No.9094520010052004 dated 05.05.2020 for HT Sc.No.153 issued to the petitioner, and quash the same in so Item No.8 pertaining to demand charges is concerned and consequently direct the second respondent to revise the same in accordance with the order of the Hon'ble Tamil Nadu Electricity Regulatory Commission in Suo Motu Proceedings No.2 of 2020 dated 04.05.2020.

For Petitioner : Mr.K.Prabhakar

For Respondents : Mr.P.H.Aravind Pandian
Additional Advocate General
assisted by Mr.S.M.S.Johnny Basha
Standing Counsel

W.P(MD).No.6208 of 2020

The Southern India Mills' Association,
rep., by its Secretary General
having registered office at 41, Race Course Road,
Coimbatore 641 018 and
Branch office at Rajapalayam Mills Ginning Factory
No.1066, Tenkasi Road,

... Petitioner



Vs.

- 1.The State of Tamil Nadu,
rep., by the Additional Chief Secretary to
the Government Department of Energy
Secretariat,
Fort St.George, Chennai 600 009.
- 2.The Tamil Nadu Generation and
Distribution Corporation Ltd.,
(TANGEDCO)
rep., by its Chairman and
Managing Director, 10th Floor, No.144,
Anna Salai, Chennai.
- 3.The Chief Financial Controller
Revenue, TANGEDCO,
7th Floor, 144, Anna Salai, Chennai 600 002.
- 4.The Superintending Engineer,
Virudhunagar Electricity Distribution Circle,
TANGEDCO, Virudhunagar.
- 5.The Superintending Engineer,
Tirunelveli Electricity Distribution Circle
TANGEDCO, Tirunelveli.
- 6.The Tamil Nadu Electricity Regulatory Commission, 19-A,
Rukumini Lakshmipathy Salai,
Egmore, Chennai 600 008.
Rep., by its Secretary

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, to direct the respondents 1 to 3 to consider the petitioner's representations dated 06.05.2020 and 07.05.2020 and to direct the Superintending Engineers of all circles to revise the monthly current consumption bills for March and April 2020 by calculating demand charges at 20% of sanctioned demand or recorded demand whichever is higher and issue fresh bills as per the order of the Hon'ble Tamil Nadu Electricity Regulatory Commission dated 04.05.2020 in SMP.No.2 of 2020 and Regulation 6(b) of the Tamil Nadu Electricity Supply Code, 2004, with a fresh due date for payment without insisting on payment of belated payment surcharge and forthwith refund any excess payments levied and collected in contravention of the order of the Hon'ble Tamil Nadu Electricity Regulatory Commission dated 04.05.2020 in SMP.No.2 of 2020

For Petitioner : Mr.Rahul Balaji for Mr.R.Parthasarathy
For Respondents : Mr.P.H.Aravind Pandian



Additional Advocate General
assisted by Mr.S.M.S.Johnny Basha
Standing Counsel

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COMMON ORDER

W.P(MD).No.6162 of 2020 and W.P(MD).No.6233 of 2020 have been filed by Thiagarajar Mills Private Limited, W.P(MD).No.6166 of 2020 has been filed by Tamil Nadu Spinning Mills Association and W.P(MD).No.6208 of 2020 has been filed by the Southern India Mills Association.

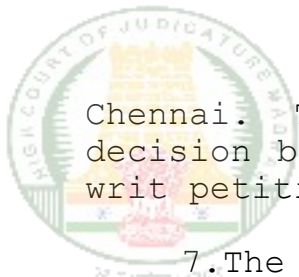
2.Heard arguments in extension through video conferencing from the learned counsels Mr.Rahul Balaji, Mr.S.P.Parthasarathy and Mr.Raghuvaran Gopalan appearing for the petitioners and from Mr.P.H.Aravaind Pandian, learned Additional Advocate General appearing on behalf of the respondents.

3.W.P(MD).No.6162 of 2020 came to be filed first in this Court. The grievance raised by the petitioner was that they had the benefit of an order dated 04.05.2020 passed by the Tamil Nadu Electricity Regulatory Commission, which is a Commission established by the State Government and the further grievance was that the Commission had taken *suo motu* note of Regulation 6 of the Electricity Rules more particularly, Rule 6 (b) in conjunction with the COVID-19 pandemic situation, and inspite of the same, the respondents had issued bills for March-2020 and April-2020 and are seeking payment of 100% of the Electricity charges.

4.It is the case of the petitioners that the Regulatory Commission had taken up *suo motu* the COVID-19 situation and had issued notices and had invited the parties including the respondents/TANGEDCO to give submissions in writing and had placed a direction on the respondents to collect only 20% of the charges raised and demanded.

5.It is however the grievance of the learned Additional Advocate General on behalf of the respondents that in the *suo motu* proceedings, personal opportunity of being heard was not granted though a drastic decision has been taken to reduce the charges from 100% to 20%. It was stated that under the Regulatory Commission had exceeded its power by passing such an order.

6.In the first instance, this Court had passed an order directing that no coercive steps should be taken. When on notice the respondents appeared, it was informed that TANGEDCO had taken up on appeal before the Appellate Tribunal at New Delhi, the order passed in the *suo motu* proceedings by the Regulatory Commission at



Chennai. This Court had subsequently, adjourned the case awaiting a decision by the Appellate Authority. In the meantime, three other writ petitions came to be filed.

7.The learned Additional Advocate General pointed out with respect to W.P(MD).No.6166 of 2020 and W.P(MD).No.6208 of 2020 that both the writ petitions have been filed by two Associations seeking a blanket order with respect to its members and seeking protection without a finding of fact whether individual members or institutions who consume high tension electricity, have actually functioned during the lock down period or did not work during the lock down period.

8.It is pointed out by the learned counsels for the petitioners that the companies or factories were actually under closure by orders of the Government and consequently, there was no possibility of any manufacturing activity being carried on and much less, electricity being consumed at the rates as demanded by the respondents. It is also pointed out by the learned counsels that even otherwise the respondents have a deposit of two months advance bill amount with them and therefore, the respondents are protected. Much stress has been placed on Regulation 6 and it had been stated that the COVID-19 pandemic is a situation which can be brought come under the Regulation No.6.

9.A cursory glance of Regulation No.6 shows that if an establishment is not able to function owing to, for example labour dispute like layout or strike then, the Labour Inspector should issue necessary certificate that the industry was actually not functioning. Then demand on their bills could be reduced to 20%.

10.In the present situation, lock down has been encouraged by the Government, so that there could be no social mixing of the workers and this would to a large extent prevent the spread of Corono virus among the workers. As a matter of fact, lock down was announced as a national policy and every industry, every shop, every individual was strictly directed to adhere to the conditions of the lock down. It was pointed out by the learned counsels in one voice that therefore, there was no possibility of the industries carrying on manufacturing activities.

11.To go back to the order of the Regulatory Commission, which had restricted the bills to be paid to 20%, in the written submission given on behalf of the TANGEDCO, they had committed to the fact that if 20% is to be collected as claimed by the industrial units, then necessary certification from the Superintending Engineer is required. It has also been stated in the written submissions that on such certification on case by case basis, the respondents would take an appropriate decision.



12.It is pointed out by the learned counsels that written submissions are alone generally invited by the Commission as a matter of course. However, when a policy decision is taken by the Regulatory Commission, it would only have been appropriate that the views of the Standing Counsel for TANGEDCO was taken into account apart from the written submission. Be that as it may, it is not for this Court to examine what had already occurred or to even pass a judgement on the procedure adopted by the Regulatory Commisison at Chennai.

13.The position as on date is that TANGEDCO had taken up the order in appeal before the Appellate Authority at New Delhi and, the Appellate Authority had granted stay of the said order. In effect, this would imply that the benefit granted to pay 20% of the charges has been stayed. The Appellate Authority had also stated that it should be taken as if the bills were generated on the date of the order of the Appellate Authority, namely 18.05.2020. Subsequently, a communication had also been issued by the TANGEDCO to all the consumers that it is to be taken that the bills have been generated on 18.05.2020. It is informed that normally 7 working days is granted for payment of the bills. By any mathematical calculation from 18.05.2020, if 7 days is calculated, then the period had ended yesterday ie., 25.05.2020. It is also stated that since yesterday (25.05.2020) was a holiday, the last date for payment of the bill is today ie., 26.05.2020.

14.In this connection my attention is drawn to an order passed by the Division Bench in the Principal Bench at Madras in two writ petitions in W.P.No.7573 of 2020 and W.P.No.7455 of 2020. The issue raised therein do not relate to high tension consumers. The first writ petition is with respect to low tension consumers and the second writ petition relates to the general public at large.

15.In those writ petitions, the learned Additional Advocate General had stated that the last date for payment of consumption charges is likely to be extended to the first week of June-2020. It has been submitted that therefore, the same benefit should also accrue to the petitioners herein.

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 State 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.

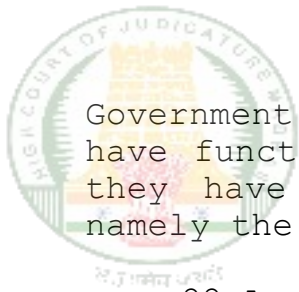
17.Further, a plea had been made that till the Appellate Authority at New Delhi finally disposes the appeal, as an interim measure, the petitioners may be directed to pay 20% of the amount demanded and thereafter, on final adjudication by the Appellate Authority, they would abide by the orders therein 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 motu* 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 consumers in the various areas 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.

26.With these observations, these Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

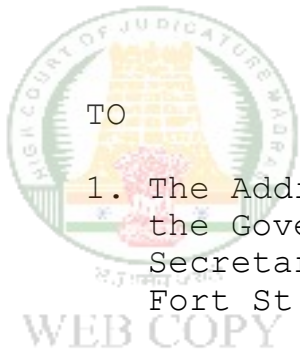
Sd/-

Assistant Registrar (AD II)

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Sub Assistant Registrar(CS)



TO

1. The Additional Chief Secretary to
the Government Department of Energy
Secretariat,
Fort St.George, Chennai 600 009.
- 2.The Chief Financial Controller-Revenue
TANGEDCO,
7th Floor, 144, Anna Salai,
Chennai-600 002.
- 3.The Secretary,
The Tamil Nadu Electricity Regulatory Commission,
19-A, Rukumini Lakshmipathy Salai,
Egmore, Chennai 600 008.
4. The Chairman and
Managing Director,
The Tamil Nadu Generation and
Distribution Corporation Ltd.,
(TANGEDCO)
10th Floor, No.144,
Anna Salai, Chennai.
- 5.The Superintending Engineer,
TANGEDCO,
Dindigul Electricity Distribution Circle,
Dindigul.
- 6.The Superintending Engineer,
TANGEDCO,
Madurai Electricity Distribution Circle,
K.Pudur, Madurai-07
- 7.The Superintending Engineer,
Virudhunagar Electricity Distribution Circle,
TANGEDCO, Virudhunagar.
- 8.The Superintending Engineer,
Tirunelveli Electricity Distribution Circle
TANGEDCO, Tirunelveli.

W.P(MD).Nos.6162, 6166, 6208 and 6233 of 2020
26.05.2020

KK/27.05.2020/ 10P- 9C