



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2020

C O R A M

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THE HONOURABLE MR.JUSTICE P.D.AUDIKEVALU

W.P. (MD)No.7049 of 2020

and

W.M.P. (MD)Nos.6485 and 6486 of 2020

Bismi Aquatic Products,
Rep by its Partner,
M.Ashraf Ali,
No.50/1, Pandukavdi Road,
Machur Village,
Vattaram Post,
Thondi, Thiruvadanai,
Ramanathapuram District.

... Petitioner

Vs.

1.The Superintending Engineer,
Ramanathapuram Electricity Distribution Circle,
TANGEDCO, Ramanathapuram.

2.The Executive Engineer (O & M),
TANGEDCO,
Thiruvadanai Taluk,
Ramanathapuram District.

3. The Assistant Executive Engineer,
TANGEDCO,
Thiruvadanai Taluk,
Ramanathapuram District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the First Respondent herein in his proceedings in letter No.SE/Ramnad/EDC/HT/Asst.../FHTC No.059094780052/D609 dated 10.06.2020 and quash the same as illegal and further direct the respondents to collect only usage charges without insisting demand charges in view of Nationwide Covid-19 pandemic lockdown.

For Petitioner : Mr.D.Nallathambi
For Respondents : Mr.M.Rajeshwari
for Mr.S.M.S.Johny Basha
Standing Counsel for TNEB



ORDER

Heard Mr. D.Nallathambi, Learned Counsel for the Petitioner and Mr. M.Rajeshwari, Learned Counsel for Mr.S.M.S.Johny Basha, Learned Standing Counsel, who takes notice for the Respondents through video conference and perused the materials placed on records, apart from the pleadings of the parties.

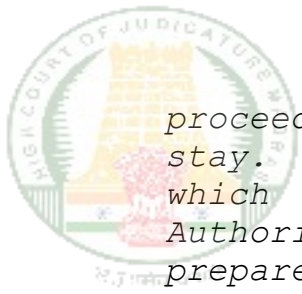
2. It is submitted by the Learned Counsel on both sides that similarly placed persons have filed Writ Petitions in W.P. (MD) No.6162 of 2020 etc.. batch **[Thiagarajar Mills Pvt. Limited vs. The Tamil Nadu Generation and Distribution Corporation Limited and another]**, which have been disposed by order dated 26.05.2020, holding as follows:-

"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 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 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.

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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."

Since the Petitioner is entitled to the same benefit, as accepted by the Learned Counsel for both sides, this Writ Petition is disposed on same terms as in the aforesaid order dated 26.05.2020 in W.P. (MD) No.6162 of 2020 etc., batch passed by this Court. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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.

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26.06.2020

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