



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.09.2020

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THE HONOURABLE **MR.JUSTICE G.R.SWAMINATHAN**

**W.P. (MD)No.9643 of 2020**

Sree Snehavalli Textiles (P) Ltd.,  
Sangarapuram,  
Karaikudi - 630 005,  
Sivagangai District,  
represented by its Director.

... Petitioner

Vs.

1. The Superintending Engineer,  
Tamil Nadu Electricity Generation  
and Distribution Corporation Ltd.,  
Sivagangai Distribution Circle,  
Sivagangai.

2. The Executive Engineer,  
Tamilnadu Electricity Generation  
and Distribution Corporation Ltd.,  
Karaikudi.

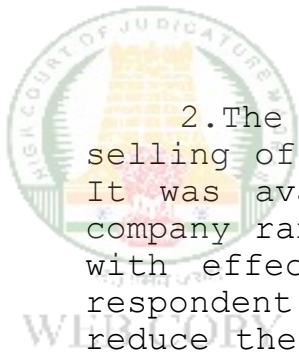
... Respondents

**Prayer :** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings No.Ka.En.Me.Po/SiMiPaVa/Siva/ ThuNiKaA/ Ka.A/Ka.Me/OoMiEe No.36/Aa.No.975/18 dated 11.10.18 (received on 30.10.18) passed by the 1<sup>st</sup> respondent and quash the same as illegal and consequently direct the 1<sup>st</sup> respondent to refund the Current Consumption Deposit of Rs.19,77,644/- along with interest within the period that may be stipulated by this Court.

For Petitioner : Mr.M.E.Ilango  
For Respondents : Ms.M.Rajeswari  
for S.M.S.Johny Basha  
Standing Counsel

**ORDER**

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.



2.The writ petitioner was engaged in the manufacture and selling of yarn and was having his manufacturing unit at Karaikudi. It was availing HT service from TANGEDCO. The business of the company ran into rough weather. The company was temporarily closed with effect from 09.10.2011. The petitioner informed the first respondent vide letter dated 01.11.2011, calling upon TANGEDCO to reduce the billing to the minimum tariff rate. The petitioner was placing reliance on the proviso to Regulations 6(b) of the Tamil Nadu Electricity Supply Code. The said Regulation reads as under :

*"6.Minimum Charges:*

*(a)-----*

*(b) For the H.T. 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 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:*

*Provided further that where the consumer has been prevented from consuming electricity.-*

*(i)the consumer shall produce a certificate from the Labour Officer to that effect, indicating the period of lockout or strike or temporary closure and the date on which it was called off.*

*(ii)the consumer shall give prompt intimation of the commencement of the lockout or strike so that the Maximum Demand meter can be reset. In the case of temporary closure the consumer shall give intimation of the closure. The consumer shall give intimation to the Licensee immediately after lifting of the strike, lockout or temporary closure.*

*Provided also that, in the case of steel industries having more than one electric furnace in a HT service and when one or more electric furnaces are under total strike/closure, then the benefit of billing on the actual recorded demand or the percentage as may be notified by the Commission from time to time of the sanctioned demand less*



*the KVA load of the furnaces under total strike or closure whichever is higher shall be given. This provision is not applicable when there is lockout."*

3. There can be no dispute that the petitioner's establishment was facing a situation akin to lockout. The petitioner wrote to the Labour Inspector, Ramanathapuram, informing him that the operations of the petitioner's unit stood suspended with effect from 09.10.2011 and there will not be any production activity or employment of workmen. Vide letter dated 14.11.2011, the petitioner requested the said authority to issue them a certificate, so that the same can be produced before the Electricity Board authority for appropriate billing.

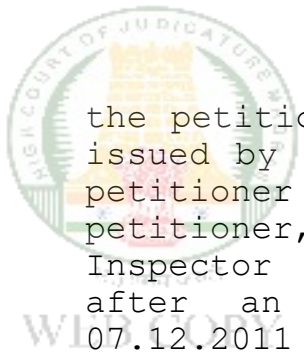
4. It appears that based on the request of the petitioner, the HT connection was permanently disconnected with effect from 13.10.2012. Though, the petitioner was billed only at 20% minimum demand charges initially, the petitioner was later called upon to pay 100% of the minimum demand charges. The petitioner, however, did not comply with the said demand. After the HT service connection was permanently disconnected, the question of refund arose. The petitioner's security deposit was lying with the authorities. While refunding Security Deposit to the petitioner, this disputed amount got adjusted and only a sum of Rs.3,54,059/- was ordered to be paid. This stand of TANGEDCO is reflected in the impugned communication dated 11.10.2018. It is this, that is under challenge in this writ petition.

5. The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition. The learned Standing Counsel appearing for the respondents submitted that the impugned order does not warrant any interference.

6. The contention of the learned Standing Counsel is that the writ petitioner did not produce any certificate from the Labour Officer, prior to the closure of the petitioner's account. The learned Standing Counsel would further argue that the petitioner is obliged to produce certificate from the Commissioner of Labour.

7. I have no hesitation to reject both these contentions. When the Regulation employs the expression 'Labour Officer', the authority cannot be heard to contend that it meant the Commissioner of Labour, who occupies the apex position in the Department. In the case on hand, the petitioner had produced certificate from the Assistant Commissioner of Labour, who is certainly an officer above the rank of the Labour Officer. The facts do not appear to be really in doubt.

8. The learned Standing Counsel would state that the petitioner failed to produce the appropriate certificate before the closure of



the petitioner's account. But then, a mere look at the certificate issued by the Assistant Commissioner of Labour would show that the petitioner had made a request way back in the year 2011 itself. The petitioner, in any event, had produced a certificate from the Inspector of Factories, Sivagangai and that the said authority, after an inspection, had vide letter Na.Ka.No.Aa1563 dated 07.12.2011 categorically stated that the petitioner's unit had not been functioning since 09.10.2011. The materials on record clearly show that the petitioner's unit remained closed with effect from 09.10.2011.

9.Now the question that arises for my consideration is as to how the petitioner could have been billed for the period from 09.10.2011 till the HT service for the petitioner's unit was permanently disconnected on 13.10.2012. I have no doubt whatsoever in my mind that the petitioner's case falls within the proviso Regulation 6(b) of the Tamilnadu Electricity Supply Code. The petitioner was prevented from consuming electricity solely for the reason that was akin to lockout. Therefore, the respondent could not have called upon the petitioner to pay 100% of the minimum demand charges. The proviso clearly indicates that the consumer can be directed to pay only at 20% of the billable minimum demand. The petitioner had produced convincing materials to show that the factory remained closed with effect from 09.10.2011. In any event, the petitioner had also produced a certificate from the Assistant Commissioner of Labour subsequently.

10.Therefore, the order impugned in the writ petition is quashed to the extent the respondents have adjusted the petitioner's refund amount at the rate of 100% of the minimum demand charges. The first respondent is directed to re-assess the charges payable by the petitioner for the aforesaid period from 09.10.2011 to 13.10.2012, at the rate of 20% of the minimum demand charges, as contemplated in the aforesaid proviso and pay the balance amount to the petitioner as early as possible, in any event, within a period of 16 weeks from the date of receipt of a copy of this order. The refund will carry the statutory rate of interest.

11.This Writ Petition is allowed on these terms. No costs.

Sd/-

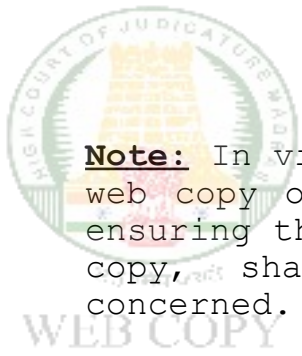
Assistant Registrar (A.S)

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Sub Assistant Registrar(CS)

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**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 Superintending Engineer,  
Tamil Nadu Electricity Generation  
and Distribution Corporation Ltd.,  
Sivagangai Distribution Circle,  
Sivagangai.
2. The Executive Engineer,  
Tamilnadu Electricity Generation  
and Distribution Corporation Ltd.,  
Karaikudi.

**W.P. (MD)No.9643 of 2020**  
**25.09.2020**

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