



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.03.2021

Delivered on : 06.05.2021

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THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P.No.2742 of 2021

and

W.M.P.No.3078 of 2021

M/s.Superfine Bleaching Company Ltd.,
HTSC No.130,
No.175, Kalaimagal Street,
Post Box No.169, Komarapalayam - 638 183,
Rep. by its Authorized Signatory,
N.A.Rajagopal

...Petitioner

vs.

1.Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Rep. by its Chairman and Managing Director,
144, Anna Salai, Chennai - 600 002.

2.The Superintending Engineer,
Mettur, Electricity Distribution Circle,
Mettur Dam.

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent's impugned notice bearing Lr.No.SE/MEDC/DFC/AO/R/AAO/HT/F.HTSC.130/D.332/20 dated 07.12.2020 and quash the same as illegal, arbitrary and against the Principles of Natural Justice and consequently, direct the respondent to give refund of the CC Deposit and meter caution deposit to a sum of Rs.38,21,461/-.

For Petitioner : Mr.R.S.Pandiyaraj

For Respondents: Mr.N.Damodharan
Standing Counsel

ORDER

The petitioner, a private limited company said to have closed down its operation due to the COVID-19 and various other reasons, has applied for surrender and disconnection of their HT Service Connection on 17.11.2020. The petitioner has also sought for refund of their security deposit available with the respondents in the account of the petitioner's HT Service



Connection No.130. The respondents approved the petitioner's application for permanent dismantling of HT Service Connection and confirmed that a sum of Rs.44,28,923/- is available as security deposit in the name of the petitioner's company in the said service connection. However, vide the impugned letter in No.SE/MEDC/DFC/AO/R/AAO/HT/F.HTSC.130/D.332/20, dated 07.12.2020, the 2nd respondent has informed the petitioner that the petitioner is having arrears to the tune of Rs.34,50,193/- towards harmonics charges, which is the subject matter in a writ appeal and the balance security deposit of Rs.3,71,268/- alone would be given to the petitioner. This letter dated 07.12.2020 is impugned in this writ petition.

2. Mr.R.S.Pandiyaraj, learned Counsel appearing for the petitioner submitted that the demand on harmonics has already been decided by this Court in W.P.No.11811 of 2016, etc., batch, on 05.06.2017, that the TANGEDCO is not entitled to demand charges on harmonics and by referring the same, he would contend that the 2nd respondent is not justified in withholding the security deposit of this petitioner, which is available in their HT Service Connection No.130. The learned Counsel has also relied upon the orders passed by this Court in similar circumstances in W.P(MD).No.7472 of 2018, dated 23.04.2018 and in W.P.No.20024 of 2019, dated 22.11.2019, wherein, this Court has held that the respondents are not justified in retaining the security deposit amount by referring to a pending court case.

3. Mr.N.Damodharan, learned Standing Counsel took notice on behalf of the respondents and sought time to get instructions. At his request, the matter was adjourned. But then, there was no proper response.

4. The petitioner has applied for disconnecting their HT Service Connection No.130, by application dated 17.11.2020. The same has been accepted and the service connection has been disconnected with effect from 20.11.2020. The 2nd respondent in the impugned letter has admitted that the security deposit available in the HT Service Connection No.130, as on 31.03.2020, is Rs.44,28,923/-, however, she claimed certain arrears on harmonics and taken a stand that the security deposit available with them would be adjusted and the balance would be refunded upon the final verdict of the appeal filed by the TANGEDCO as against the order passed by this Court in W.P.No.11811 of 2016.

5. It appears that the TANGEDCO has raised harmonics charges from the HT service holders as a compensation of 15%, if the consumer fails to provide adequate harmonic suppression equipment to avoid dumping of harmonics beyond the limits as specified by the CEA Regulations. A demand on harmonics has been issued by the respondents to the writ petitioner and various



other HT service holders and the same were challenged before this Court in W.P.No.11811 of 2016, etc., batch. By common order dated 05.06.2017, this Court allowed the batch of writ petitions and quashed the demand notice for harmonics. Though the respondents Board have referred in the impugned letter that as against this order dated 05.06.2017, made in W.P.No.11811 of 2016, they have preferred an appeal, there is no reference about the appeal number anywhere in the impugned communication. Be that as it may, this Court is of the view that the respondents can claim the harmonics charge, based on the outcome of the pending writ appeal, if any. If the writ appeal ends in their favour, they are at liberty to seek for such payment. They cannot withhold the refund amount sine die, citing the pendency of an appeal, in the absence of any interim orders therein.

6. In similar circumstances, this Court, in M/s.Sree Vadivambigai Textile Mills Private Limited, Sivagangai v. Tamil Nadu Generation and Distribution Corporation Ltd (TANGEDCO) and Others [in W.P.(MD)Nos.7472 & 7473 of 2018 dated 23.04.2018], has held as follows:

"4. Learned standing counsel for the respondents submitted on instructions, that they are willing to effect permanent disconnection. She further submitted that since a report given by the respondents state that, the levy of harmonic compensation charges prepared by the respondents is pending in a Writ Appeal, the security deposit may not be directed to be returned to the petitioner and it can be retained in the petitioner's deposit, till the disposal of the Writ Appeal.

5. I am not in agreement with the submission made by the learned standing counsel for the respondents. If at all, the respondents succeed in the Writ Appeal, entitling them to collect Harmonic consumption charges, it is always open to seek for such payment and since permanent disconnection has now been sought for by the petitioner, the Department may not be justified in holding the security deposit after effecting the disconnection.

6. In view of the submissions made by the learned standing counsel for the respondent, that they are willing to effect permanent disconnection, there will be a direction to the third respondent to effect permanent disconnection to the petitioner's service connection in HTSC No.29 within a period of two weeks from the date of receipt of a copy of this order. While effecting such disconnections, the third respondent is at liberty to adjust the outstanding dues in HTSC No.29 and pay the balance to the petitioner."



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7. In yet another decision in Midhunam Spinners P Ltd., Tiruchengodu, Namakkal District v. Superintending Engineer, Tamil Nadu Generation and Distribution Corporation Ltd., (TANGEDCO), Namakkal Erode Electricity Distribution Circle, Namakkal and another [in W.P.No.20024 of 2019, dated 22.11.2019], this Court has held as follows:

"14. In view of the above discussion, this Court hold that in the impugned order in Lr.No.SE/NEDC/NKL/DFC/AS/BF.170/D.024/19, dated 30.04.2019, demanding Traffic Concession Charge and Belated Payment Surcharge (BPSC) is bad and illegal. For the present, the 1st respondent / Superintending Engineer, Namakkal cannot claim these two amounts. After getting the undertaking affidavit from the petitioner on 20.11.2017, the respondents should have waited for the verdict in W.A.No.1478 of 2017 and only thereafter, can demand Traffic Concession Charge and Belated Payment Surcharge (BPSC) that too only if the respondents succeed in the W.A.No.1478 of 2017. Therefore, this Court partially struck the impugned demand notice dated 30.04.2019, in so far as demand of Traffic Concession Charge and Belated Payment Surcharge (BPSC).

15. In the result, the Writ Petition is Partly Allowed. The demand of Traffic Concession Charge and Belated Payment Surcharge (BPSC) made in the impugned notice, dated 30.04.2019 is quashed. The respondents are at liberty to claim and recover any other money due and payable by the petitioner. The HTSC No.170 shall be disconnected permanently and dismantle the unit as requested by the petitioner, without waiting for the verdict in W.A.No.1478 of 2017."

8. In the light of the above decisions and in view of the foregoing discussions, the impugned letter in No.SE/MEDC/DFC/AO/R/AAO/HT/F.HTSC.130/D.332/20, dated 07.12.2020, is set aside. The second respondent is directed to consider the refund of security deposit to the petitioner, after adjusting the outstanding dues, if any, in the light of the orders discussed supra, within a period of eight weeks from the date of receipt of a copy of this order.

9. In the above terms, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is also closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar



To

1.The Chairman and Managing Director,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
144, Anna Salai, Chennai - 600 002.

2.The Superintending Engineer,
Mettur, Electricity Distribution Circle,
Mettur Dam.

W.P.No.2742 of 2021

KV(CO)
SP(16/07/2021)