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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.7.2021
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THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.15471 of 2021
and W.M.P.No.16406 of 2021

Sree Rengaraj Steel & Alloys (P) Ltd.

Rep. By is Authorized Signatory P.Sivakumar

..Petitioner

Vs

1. Tamil Nadu Generation & Distribution Corporation Limited (TANGEDCO),
Rep. by its Chairman and Managing Director,
No.144, Anna Salai, Chennai 600 002.
2. The Chief Financial Controller/Revenue,
Tamil Nadu Generation & Distribution Corporation Limited (TANGEDCO),
144, Anna Salai, Chennai - 600 002.
3. The Superintending Engineer,
Salem EDC, TANGEDCO,
Salem.
4. The Accounts Officer/Revenue,
O/o Superintending Engineer,
Salem EDC, TANGEDCO, Salem.

..Respondents

Prayer:- The Writ Petition is filed under Article 226 of Constitution of India for writ of Certiorarified Mandamus, calling for the records of the fourth respondent's CC Bill No.H4240136062111 dated 7.7.2021 insofar serial No.14 'Compensation for low PF for a sum of Rs.3,74,218/- is alone concern and quash the same as illegal, arbitrary, against the principles of natural justice and contrary to the order passed by this Court in W.P.No.7678 of 2020 dated 14.8.2020 and consequently, directing the respondents to extend the benefit of the order of this Court, dated 14.8.2020 passed in W.P.No.7678 of 2020, in a similar batch matter and to apply the order of this court as per Article 14 of the Constitution of India to the petitioner also during the lock down period.



For Petitioner : Mr.S.P.Parthasarathy
For Respondents : Mr.M.Abul Kalam, TNEB

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O R D E R

The challenge in the writ petition is against the demand made by the respondents insofar as Compensation for low power factor and seeks to extend the benefit of the order of this Court, dated 14.8.2020 passed in W.P.No.7678 of 2020, etc. in a similar batch of cases.

2. The petitioner, who aggrieved over the levy of charges namely Compensation for low Power Factor, by the TANGEDCO, in violation of the order passed by the Tamil Nadu Electricity Regulatory Commission and also in violation of Regulation 6(b) of the Tamil Nadu Electricity Supply Code, 2004, has sought for the aforesaid relief in the present writ petition.

3. The issue involved in this writ petition is already raised in W.P.Nos.7678 of 2020 etc., batch, wherein the learned Judge, after considering the elaborate arguments made by the learned counsels for the parties and also taking into consideration, Regulation 6(b) of the Tamil Nadu Electricity Supply Code, has allowed the said writ petitions, vide common order dated 14.08.2020, with the following directions:

"45 The above discussion leads this Court to the only conclusion that the maximum demand charges and the compensation charges levied by TANGEDCO against the petitioners who are HT consumers, is illegal, unsustainable and in violation of the statutory regulations. Accordingly, the Maximum Demand Charges and the compensation towards low PF that have been questioned in the impugned bills raised by the TANGEDCO for each of the consumers who are parties in these batch of writ petitions, is hereby quashed. The following directions are also issued by this Court:

a) TANGEDCO shall issue a revised bill to the petitioners by applying Regulation 6 (b) of the Supply Code for the entire period when the establishment was under shut down;



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b) If TANGEDCO has already recovered the entire dues from any of the petitioners, the bill shall be reworked in accordance with the direction given in Clause (a) and the excess amount shall be adjusted towards the future bills;

c) If the demand made by TANGEDCO has been adjusted from the security deposit and any of the petitioner has been asked to pay any amount towards additional security deposit on that count, the said claim shall be withdrawn forthwith and the calculation of the additional security deposit shall be independently done under Regulation 5 of the Supply Code and demand/ adjustment shall be done in accordance with the said Regulation;

d) The TANGEDCO shall not levy compensation charges towards low PF from the petitioners during the period of lockdown. Even if such levy is made in future, show cause notice shall be issued to the consumer and an opportunity shall be given to the consumer before levying any compensation under Clause 6.1.1.6 of the Tariff Regulation;

e) If any amount has already been recovered towards levy of compensation charges for low PF from any of the petitioners, the said amount shall be adjusted towards future bills;

f) These directions will apply only for the period during which the establishment was under total lockdown due to the orders issued by the Government and it is made clear that it pertains only to the Minimum Charges payable under Regulation 6(b) of the Supply Code and there is no exemption or concession insofar as the charges payable for the actual consumption of electricity (Energy Charges); and

g) If any of the establishments continue to be under lockdown due to the Government Orders passed in this regard, the minimum charges alone shall be collected till the lifting of the lockdown."



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4. The issue of Compensation for Low power Factor is also specifically discussed by this court in the above said batch of writ petitions at paragraph No.44, which is extracted hereunder:

" 44. It is clear from the above that the TANGEDCO has proceeded to levy compensation for low PF without affording an opportunity to the consumers. It is hard to think that the optimum PF can be maintained when a consumer has been asked to completely shut down his establishments. It is illogical that the TANGEDCO mechanically levied compensation for Low PF even without understanding the basis fact that the establishments were completely shut down and there is no way they can utilize the optimum PF. In any event, the compensation levied is in the nature of penalty and it is now a settled law that penalty cannot be imposed without affording an opportunity, since it involves civil consequences. Therefore, this Court has no hesitation to interfere with the levy of compensation charges for low PF.

5. The learned counsel appearing for the petitioner seeks similar relief as granted by this Court in W.P.Nos.7678 of 2020 etc., batch dated 14.08.2020.

6. The learned Standing Counsel for the respondents Board would submit that they have preferred a Writ Appeal in W.A.No.836/2020 before this Court and the same is pending without any interim orders.

7. In view of the aforesaid common order passed by this Court in W.P.Nos.7678 of 2020 etc., batch dated 14.08.2020, this court has no hesitation to quash the impugned bills issued by the fourth respondent dated 7.7.2021 insofar serial No.14 'Compensation for low PF' alone is concerned.

8. Accordingly, the impugned bill issued by the fourth respondent, dated 7.7.2021 insofar as serial No.14 'Compensation for low PF' alone is quashed and the respondent Board is directed to consider the claim of the petitioner by revising the bill, after providing an opportunity to the writ petitioner and to take appropriate decision and to communicate the same to the writ petitioner, within a period of six weeks



from the date of receipt of a copy of this order. It is also made clear that any decision taken by the respondents Board, will be subject to the outcome of the orders passed in W.A.No.836/2020 filed by the respondent Board.

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9. With the above directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VI)

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Sub-Assistant Registrar

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To

1. The Chairman and Managing Director,
Tamil Nadu Generation & Distribution Corporation Limited
(TANGEDCO),
No.144, Anna Salai, Chennai 600 002.
2. The Chief Financial Controller/Revenue,
Tamil Nadu Generation & Distribution Corporation Limited
(TANGEDCO),
144, Anna Salai, Chennai - 600 002.
3. The Superintending Engineer,
Salem EDC, TANGEDCO, Salem.
4. The Accounts Officer/Revenue,
O/o Superintending Engineer,
Salem EDC, TANGEDCO, Salem.

+1cc to Mr.R.S.Pandiyaraj, Advocate, Sr.No.36358

+1cc to Mr.M.A.Kalam, Advocate, Sr.No.36330

W.P.No.15471 of 2021
and W.M.P.No.16406 of 2021

EV(CO)
KKV/29/07/2021