



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2021

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CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

W.P. Nos.15041, 15044,15048, 32003, 35065,
15098,15099 and 27742 of 2019
and W.P.Nos.1811 & 5127 of 2020
and W.P.No.351 of 2021

&

W.M.P Nos.32249, 32250, 32251, 32253, 35852, 35856, 15017,
15018, 15019, 15020, 15022, 15024, 15078,
15080 & 15081 of 2019
& W.M.P. Nos.2110, 2113 & 6056 of 2020
& W.M.P. Nos.423 & 424 of 2021

Petitioners :

WP No.15041 of 2019

1.M/s.The Central Park South
Owners Association Elcot Avenue
Sholinganallur, Chennai-600 019.
Repd. by its President Rakesh Ohri

WP No.15044 of 2019

1.M/s.The Central Park South
Owners Association Elcot Avenue
Sholinganallur, Chennai-600 019.
Repd. by its President Rakesh Ohri

WP No.15048 of 2019

1.M/s.The Central Park South
Owners Association Elcot Avenue
Sholinganallur, Chennai-600 019.
Repd. by its President Rakesh Ohri



WP No.32003 of 2019

1.Oceanic Owners Association

Reg No.91/2014 rep. by its President Maj.

Gen Jose Joseph Manavalan

Buckingham Street,

Oceanic House of Hiranandani,

5/63 Rajiv Gandhi Salai, Egattur,

Thalambur Post, Chennai - 600 130.

WP No.35065 of 2019

1.Birchwood Owners Association

Rep. By its Secretary Mrs.Sowmya Canchi

Buckingham Street, House of Hiranandani,

5/63 Rajiv Gandhi Salai, Egattur,

Thalambur Post, Chennai 600 130.

WP No.15098 of 2019

1.M/s.The TCP Lake Front Apartments

Owners Association,

No.496/1A, Model School Road,

Sholinganallur, Chennai - 600019

Rep. By its President T.Ganesh Kumar

WP No.15099 of 2019

1.M/s.The TCP Lake Front Apartments

Owners Association

No.496/1A, Model School Road,

Sholinganallur. Chennai - 600019

Rep. By Its President T.Ganesh Kumar

WP No.27742 of 2019

1.M/s.The Central Park West Members

Association, D-Block,

Central Park West Elcot Avenue,

Sholinganallur, Chennai-600 019.

Rep. by its Senior Executive

Committee Member S.Amarendran



WP No.1811 of 2020

1.Pinewood Owners Association

Rep. By its Secretary Mr.S.Vetrivelan
Buckingham Street, House of Hiranandani,
5/63, Rajiv Gandhi Salai,
Egattur, Thalambur Post,
Chennai - 600 130.

WP No.5127 of 2020

1.Greenwood Owners Association

Rep. by its President Mr.Thilaknath,
Buckingham Street, House of Hiranandani,
5/63, Rajiv Gandhi Salai,
Egattur, Thalambur Post,
Chennai-600 130.

WP No.351 of 2021

1.Seawood Owners Association,

rep.by its secretary, Mr.Ramachandra Rao Pappu,
Buckingham Street, House of Hiranandani,
5/63, Rajiv Gandhi Salai,
Egattar, Thalambur Post,
Chennai - 600 130.

Vs.

Respondents :

1.Tamil Nadu Generation and Distribution

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

2.The Assistant Executive Engineer,

Operation & Maintenance Siruseri,
Chennai South Electricity Distribution Circle II,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Chennai-119.

...Respondents in WP.Nos.15041, 15044,
15048, 15098, 15099 & 27742/2019



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1. Tamil Nadu Generation And Distribution Corporation Ltd.,
Rep. By its Chairman,
10th Floor, NAKKR Maligai,
Anna Salai, Chennai 600 002

2. Tamil Nadu Electricity Regulation Commission,
No. 19-A Rukmani Lakshmipathi Road,
Anna Salai, Egmore, Chennai 600 008.

3. The Assistant Engineer,
Tamil Nadu Generation And Distribution Corporation Ltd.,
O and M Siruseri CEDC / South II,
Chennai 130.

4. The Superintending Engineer,
Tamil Nadu Generation And Distribution Corporation Ltd., CEDC / South II,
Chennai 113.

...Respondents in WP.Nos.32003, 35065/2019,
1811, 5127/2020 & 351/2021

Prayer in WP No.15041 of 2019 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, Calling for the records of the 2nd Respondent in his impugned Letter No.AEE/O&M/SRI/CI/F.MUT/D. /2019-20 dated 15.05.2019 and quash the same as illegal, arbitrary and against the provisions of the Electricity Act, 2003 and Tariff Order No.1 of 2017 dated 11.08.2017 issued by TNERC.

Prayer in WP No.15044 of 2019 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, Calling for the records of the 2nd respondent in his impugned Letter No.AEE/O and M/SRI/CI/F.MUT/D.149/2019-20 dated 15.05.2019 and quash the same as illegal, arbitrary and against the provisions of the Electricity Act, 2003 and Tariff Order No.1 of 2017 dated 11.08.2017 issued by TNERC.



Prayer in WP No.15048 of 2019 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, Calling for the records of the 2nd respondent in his impugned Letter No.AEE/O and M/SRI/CI/F.MUT/D.151/2019-20 dated 15.05.2019 and quash the same as illegal, arbitrary and against the provisions of the Electricity Act, 2003 and Tariff Order No.1 of 2017 dated 11.08.2017 issued by TNERC.

Prayer in WP No.32003 of 2019 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, Calling for the records pertaining to the impugned order dated 11.08.2017 in T.P.No.1 of 2017 passed by the 2nd respondent and the consequential impugned letter dated 14.11.2018 in Lr.No.AE/O and M/m SIR/F-Tariff/D-Camp/18-19 issued by 2nd respondent and quash the same as illegal and arbitrary and consequently direct the 3rd respondent to refund the sum of Rs.2,30,420/- paid by the petitioners association under protest towards excess electricity charges levied under commercial Tariff of Service Nos.1249 and 1250 and further direct the 3rd Respondent to reassess the tariff and apply domestic Tariff Lt AI instead of LM 51 or commercial tariff.

Prayer in WP No.35065 of 2019 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, Calling for the records relating the to the impugned notice issued by way of Bills reflecting Assessment date 04/11/2019 for the service Nos.101,102,892 and 893 issued by the 3rd respondent and quash the same as illegal and arbitrary and direct the 3rd respondent to refund the sum of Rs.2,76,481/- paid by the petitioner under protest towards excess Electricity Charges levied under Commercial Tariff of Service Nos.296006892, 296006893, 296004102, and 296004101 and further direct the 3rd respondent to reassess the Tariff and apply Domestic Tariff LT AI instead of LM 51 or Commercial Tariff.

Prayer in WP No.15098 of 2019 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a

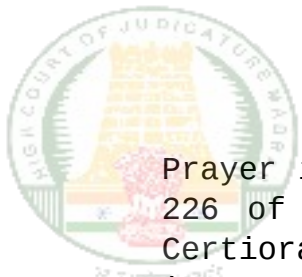


Writ of Certiorarified Mandamus, Calling for the records of the 2nd respondent in his impugned Letter No.AEE/O and M/SRI/CI/F.MUT/D.154/2019-20 dated 15.05.2019 and quash the same as illegal, arbitrary and against the provisions of the Electricity Act, 2003 and Tariff Order No.1 of 2017 dated 11.08.2017 issued by TNERC.

Prayer in WP No.15099 of 2019 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, Calling for the records of the 2nd respondent in his impugned Letter No.AEE/O and M/SRI/CI/F.MUT/D. /2019-20 dated 15.05.2019 and quash the same as illegal, arbitrary and against the provisions of the Electricity Act, 2003 and Tariff Order No.1 of 2017 dated 11.08.2017 issued by TNERC.

Prayer in WP No.27742 of 2019 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in his impugned Letter No.AEE/O and M/Siruseri/F.MUT/D.No.136/19-20 dated 06.05.2019 and quash the same as illegal, arbitrary and against the provisions of the Electricity Act, 2003 and Tariff Order No.1 of 2017 dated 11.08.2017 issued by TNERC and consequently direct the 2nd respondent to refund or give adjustments in their subsequent month bills for the amount of Rs.4,96,486/- collected illegally from the petitioner.

Prayer in WP No.1811 of 2020 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, Calling for the records relating to the impugned Notice issue by way of Bills reflecting Assessment date 11.03.2019, 25.02.2019, 22.02.2019, 25.02.2019, 25.02.2019 for the Service Nos.296-004-99, 296-004-100, 296-006-888, 296-006-889 and 296-006-890, respectively, issued by the 3rd Respondent and quash the same as illegal and arbitrary and direct the 3rd Respondent to refund the sum of Rs.3,65,781/- paid by the Petitioner under protest towards excess Electricity charges levied under Commercial Tariff of Service Nos.29600499, 296004100, 296-006-888, 296-006-889 and 296-006-890 and further direct the 3rd respondent to reassess the Tariff and apply Domestic Tariff LT AI instead of LM51 or Commercial Tariff.



Prayer in WP No.5127 of 2020 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Notice dated 17.05.2019 Lr.No.AE/0 AND M/SIRUSERI/F-HOH/D.NO.288/2019 issued by the 3rd Respondent and quash the same as illegal and arbitrary and direct the 3rd respondent to refund the sum of Rs.3,50,700/- paid by the Petitioner under protest towards excess Electricity Charges levied under Commercial Tariff of Service No.296006892, 296006893, 296004102 296004101 and 296006660 and further direct the 3rd Respondent to reassess the Tariff and apply Domestic Tariff LT AI instead of LM51 or Commercial Tariff; and

Prayer in WP.No.351 of 2021 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, Calling for the records relating to the impugned letter dated 11.10.2018 leaving Ref.Lr.No.1822/TNERC/PRO/RTI/D.949/2018 issued by the 2nd Respondent and quash the same as illegal and arbitrary and direct the 3rd Respondent to refund the sum of Rs.4,59,991/- paid by the Petitioner under protest towards excess Electricity Charges levied under Commercial Tariff of the Service Nos.296-004-64, 296-004-65, 296-004-86, 296-004-87 and 296-004-88 and further direct the 3rd Respondent to reassess the Tariff and apply Domestic Tariff LT AI instead of LM51 or Commercial Tariff.

For Petitioner in
WP Nos.15041, 15044, 15048,
15098, 15099 & 27742 of 2019 : Mr.R.S.Pandiyaraj

For Petitioner in
WP No.32003 of 2019 : Mr.D.S.Rajasekaran

For Petitioner in
WP Nos.35065 of 2019,
1811 & 5127 of 2020,
and 351 of 2021 : Mr.Rohan Rajasekaran

For Respondents in
all the Writ Petitions : Mr.L.Jai Venkatesh,
Government Advocate



ORDER

The issue involved in all these Writ Petitions are common and hence they are taken up together, heard and disposed of through this common order.

2.All the petitioners have challenged the impugned demand made by the TANGEDCO either by treating the case under theft/misuse of energy or converting the tariff from domestic to commercial usage.

3.The petitioners are Apartment owner's Associations for which the TANGEDCO has provided LT service connections. It seems that during the inspection made by the officers belonging to TANGEDCO, they found that the service connection is being utilised for water treatment plant, common library etc., Hence, the respondents have come to a conclusion that the service connection is being misused for commercial purposes and had proceeded to issue the impugned demand notices. The demand notices have been issued either by bringing the case under misuse of energy or by converting the domestic tariff into commercial tariff.

4.The respondents have filed counter affidavits in all these Writ Petitions and a stand has been taken to the effect that the petitioner Associations were misusing the service connection and using the same for commercial purpose towards water treatment plant, sewage treatment plant etc., A further stand has been taken in the counter affidavit to the effect that there is an appellate remedy provided to the petitioners and without exhausting the same, the present writ petition has been filed before this Court.

5.Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondents.

6.In the considered view of this Court, the action taken by the respondents has to be characterized as hasty without any basis. It is clear from the tariff order in T.P. No.1 of 2017, dated 11.08.2017 issued by the Regulatory Commission that the LT Tariff 1-A is made applicable to all those categories falling under Clause 6.2.2.1. For the sake of convenience, Clause 6.2.2.1 (h) and (i) are extracted hereunder:



(h) In respect of multi tenements/residential complexes supply used for common lighting, water supply, lift provided only to the residents alone shall be given a separate connection and in case of more than one block in a premise, only one service shall be given for each block for common lighting, water supply and lift provided only to the residents.

(i) In respect of multi tenements/multi-storey flats/residential complexes having both domestic and non-domestic utilities, common facilities such as common lighting, common water supply, lift will be charged under this tariff only if the non-residential built up area does not exceed 25% of the total built up area.

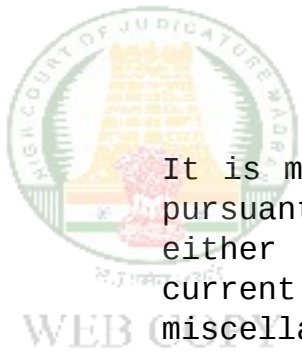
7. It is clear from the above that the tariff order has clearly provided for LT connection even for multi-tenements or residential complexes and it has been made clear that the same will not apply only where the non-residential built up area exceeds 25% of the total built up area. Only under those circumstances, LT Tariff V will apply and those cases are covered under Clause 6.2.13.2 of the tariff order.

8. In the present case, all the petitioners are governed under clause 6.2.2.1 and there is absolutely no basis for the respondents who have come to the conclusion that the petitioners have misused the energy supplied to them or that the petitioners have put the energy supplied to them for commercial usage. The impugned demand made by the respondents is completely contrary to the tariff order issued by the Regulatory Commission.

9. In the present case, it is quite unfortunate that the associations had given a detailed explanation after receipt of the provisional assessment order and even this was not taken into consideration by the TANGEDCO before issuing the final order and making the demand from the associations.

10. In view of the above discussion, there are absolutely no grounds to sustain the impugned demands raised by the respondents and it is a clear abuse of process of law and misuse of power which was used against the innocent residents in a residential complex.

11. As a result, all the impugned demands are hereby quashed and accordingly all these writ petitions are allowed.



It is made clear that if the associations have made the payment pursuant to the demand made by the respondents, the same shall either be refunded or adjusted towards the future payment for current consumption. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar (CS)

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Sub Assistant Registrar

ssr/mka

To

- 1.The Chairman and Managing Director,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
144, Anna Salai, Chennai-600 002.
- 2.The Assistant Executive Engineer,
Operation & Maintenance Siruseri,
Chennai South Electricity Distribution Circle II,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Chennai-119.
- 3.The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited,
10th Floor, NAKKR Maligai,
Anna Salai, Chennai-600 002.
- 4.Tamil Nadu Electricity Regulation Commission,
No.19-A, Rukmani Lakshmipathi Road,
Anna Salai, Egmore,
Chennai-600 008.
- 5.The Assistant Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited,
O and M, Siruseri CEDC / South II,
Chennai - 600 130.



6.The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited,
CEDC / South-II,
Chennai-600 113.

+1cc to Mr.L.Jaivenkatesh, Advocate Sr.No.47050

+3ccs to Mr.R.S.Pandiyaraj, Advocate Sr.No.47390, 47392 & 47393

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& W.M.P. Nos.423 & 424 of 2021

PA(CO)
RVM(11/10/2021)