IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 29.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.15718 of 2021 and
WMP No.16618, 16620 of 2021

M/s AASCAR Entertainment Pvt. Ltd.,
rep. by its Managing Director,
Mr.V.Ravichandran, No.9, 10th Avenue,
Ashok Nagar, Chennai 600 083. ... 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 Accounts Officer/Revenue,
   (TANGEDCO), Salem EDC, K.N.Colony,
   Udayapatti, Salem 636 014.

3. The Superintending Engineer,
   (TANGEDCO), Salem EDC, K.N.Colony,
   Udayapatti, Salem 636 014. .... Respondents

Prayer:

Writ petition filed under Section 226 of the Constitution of India seeking to issue a writ of Certiorarified Mandamus calling for the records leading to the issuance of the original impugned High Tension Bills (Provisional) issued by the second respondent for the month of May (Bill No.H4240345052111 dated 02.06.2021) and for the month of June, 2021 (Bill No.H4240345062111 dated 02.07.2021) pertaining to Service No.049094240345 in violation Regulation 6(b) of the Tamil Nadu Electricity Supply Code 2004 and quash the same and direct the respondents to raise the monthly Bill calculating the Maximum Demand Charges at the rate of 20% as per 6(b) of the Tamil Nadu Electricity Supply Code, 2004 till the extended period of Lock Down, by the Government of Tamil Nadu and not to levy power fator penalty till the lock down is lifted and operation of cinema theatre commences in so far the petitioner is concerned.

For petitioner : Mr.S.Prem Auxilian Raj

For respondents : Mr.M.Abul Kalam, TNEB for R1 to R3.

ORDER

This writ petition has been filed by the petitioner to quash the impugned High Tension Bills issued by the Electricity Board for the month of May 2021 and June 2021 and direct the respondents to raise the monthly bill calculating the Maximum Demand Charges at the rate of 20% as per 6(b) of the Tamil Nadu Electricity Supply Code,2004, till the extended period of Lock Down, by the Government of Tamil Nadu and not to levy Power Factor Penalty till the lock down is lifted and operation of cinema theatre commence in so far the petitioner is concerned.

2. The petitioner, who aggrieved over the levy of two charges namely i) Demand charge and ii) 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 the above said relief in this writ petition.

3. The issues 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;

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."

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 seek 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 second respondent for the month of May 2021 and June 2021.

8. Accordingly, the impugned bills issued by the second respondent for the month of May 2021 and for the month of June 2021 are quashed and the respondent Board is directed to consider the claim of the petitioner by revising the bills, as per the directions issued by this Court in W.P.Nos.7678 of 2020 etc., batch dated 14.08.2020, by taking note of the lockdown notification issued by the State Government from time to time 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.

9. With the above direction, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO-IV)

//True Copy//

Sub Assistant Registrar

mst

To

1. The Chairman and Managing Director,
   Tamil Nadu Generation & Distribution
   Corporation Limited (TANGEDCO),
   No.144, Anna Salai, Chennai 600 002.

2. The Accounts Officer/Revenue,
   (TANGEDCO), Salem EDC, K.N.Colony,
   Udayapatti, Salem 636 014.

3. The Superintending Engineer,
   (TANGEDCO), Salem EDC, K.N.Colony,
   Udayapatti, Salem 636 014.

+1cc to Mr.M.Abul Kalam, Advocate, S.R.No.37068

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PL(CO)
CT(23/08/2021)