

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 04.01.2021

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THE HON'BLE MR. JUSTICE B.PUGALENDHI

Writ Petition No.19906 of 2020

&

W.M.P.No.24576 of 2020

APA Hotels Pvt. Ltd.,
Rep by its Director Finance Mr.S.Prabhakaran,
115, Thyagaraya Road, T.Nagar,
Chennai - 17.

...Petitioner

Vs.

1.The Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO),
Rep by its Chairman & Managing Director,
10th Floor, 144, Anna Salai,
Chennai - 600 002.

2.The Chief Financial Conroller - Revenue,
TANGEDCO, 7th Floor, 144, Anna Salai,
Chennai - 600 002.

3.The Superintending Engineer,
Chennai Electricity Distribution Circle,
Central TANGEDCO, Chennai.

...Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of mandamus directing the respondents to extend the benefit of the order of this Court dated 14.08.2020, passed in W.P.No.7678 of 2020 to the petitioner as well, without discrimination as guaranteed under Article 14 of the Constitution of India and consequently direct the 2nd and 3rd respondents to revise and issue the fresh CC Bills, in respect of the petitioner's HTSC No.019094022394 for the months of April - 2020 and such other periods falling in the lockdown periods consequential to Government Orders, as ordered by this Court on 14.08.2020 in W.P.No.7678 of 2020 batch, and further direct the respondents to refund the excessively collected demand charges.

For Petitioner : Mr.R.Parthasarathy

For Respondents: Mr.P.R.Dilip Kumar, SC

ORDER

This Writ Petition has been filed seeking enforcement of the regulations concerning payment of demand charges during lockdowns, on account of Covid-19 Pandemic. The learned counsel appearing for the petitioner, by referring to Regulation 6(b) of the Tamil Electricity Supply Code 2004, would submit that in such situation, the TANGEDCO shall collect minimum demand charge at 20% of the sanction demand or recorded demand during events such as lock down.

2.A similar batch of Writ Petitions challenging the levy of 90% of sanction demand during the lockdown period have challenged in a batch of Writ Petitions in W.P.Nos.7678 of 2020 etc., batch and this Court vide a common order dated 14.08.2020 disposed of all the Writ Petitions as follows;

"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 direction 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.

46. All the writ petitions are accordingly allowed. Before parting with this case, this Court wishes to appreciate the efforts taken by each and every counsel who assisted this Court to conduct the entire hearing through video conferencing and particularly on a Court holiday. If not for the cooperation of the learned counsels, this Court would not have been able to decide these batch of writ petitions. This Court wishes that this trend continues and this institution proves itself effective in dispensing justice even during this pandemic situation. No costs. Consequently, the connected miscellaneous petitions are closed."

These petitioners are also similarly issued with a demand charges @ 90% of the sanction demand.

3. The learned counsel appearing for the petitioner submits that the petitioner was a hotelier and totally not permitted to carry out his business but however used for the quarantine facility for the frontline staff. According to him, the petitioner has not consumed regular demand from 27th March, 2020 and was permitted to cater the Doctors who are treating Covid patients, quarantine passengers and travel passengers.

4. In response, Mr. P. R. Dilip Kumar, learned Standing counsel appearing on behalf of the Electricity Board would submit that as against the orders of this Court in the batch of Writ Petitions in W.P.Nos.7678 of 2020 etc., batch, a Writ Appeal has also been filed in W.A.No.836 of 2020 and the same is yet to be taken up for hearing.

5. The learned counsel for the petitioner would submit that the Chief Financial Controller/Revenue, Accounts Branch, Revenue Division, TANGEDCO vide memo No.737 dated 16.10.2020 instructed all the Superintending Engineers of Electricity Distribution Circles, to implement the order of this Court dated 14.08.2020 in W.P.Nos.7678 of 2020 etc., batch without prejudice to the outcome of the appeal filed in W.A.No.836 of 2020. The petitioner is also entitled to adjust the excess amount paid and the demand charges in the future consumption bills.

6. The memorandum issued by the Chief Financial Controller/Revenue, Accounts Branch, Revenue Division, TANGEDCO is extracted hereunder;

"Memo.No.CFC/REV/FC/REV/DFC/AO/D.737/20,
dated 16.10.2020

Sub:TANGEDCO - COVID - 19 - levy of demand charges for the HT consumers during the lockdown period - Hon'ble High Court of Madras order dated 14.08.2020 - Writ Appeals filed - W.A.No.836 of 2020 - compliance of order dated 14.08.2020 without prejudice - instructions issued - reg.

The Hon'ble High Court of Madras has passed an order on 14.08.2020 in W.P.No.7678 of 2020 and others batch and the operative portion of the order is reproduced below:

"45.....

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.

46. All the writ petitions are accordingly allowed..."

3.0 However, TANGEDCO has filed appeals against the above order vide W.A.No.836 of 2020 and etc. before the Hon'ble Division Bench of Madras High Court and the appeals are yet to be heard. Hence, the Superintending Engineer/EDCs are instructed to implement the above order scrupulously without prejudice to the outcome of appeal filed as stated above. The above order may be implemented only to the petitioners and also to those who have obtained similar order in this matter.

(By order of the JMD/TANGEDCO)

Sd/- dated 16.10.2020

Chief Financial Controller/Revenue"

7. In view of the above Memo and orders passed by this Court, the writ petition stands allowed and the respondents shall adjust excess amount paid under the demand charges in the current consumptions of the petitioner by implementing the order of this Court in W.P.Nos.7678 of 2020 etc., batch without prejudice to the appeal filed by the Department in W.A.No.836 of 2020.

8. With the above directions, this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman & Managing Director,
The Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO),
10th Floor, 144, Anna Salai,
Chennai - 600 002.

2. The Chief Financial Controller - Revenue,
TANGEDCO, 7th Floor, 144, Anna Salai,
Chennai - 600 002.

3. The Superintending Engineer,
Chennai Electricity Distribution Circle,
Central TANGEDCO, Chennai.

W.P.No.19906 of 2020

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srg 11/02/2021