



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No. 22586 of 2021
and WMP No.23814 of 2021

V.Thangavelu and Sons P Ltd.,
HTSC No.83,
Erode-638 001 Rep.by its Director
T.Karthikeyan

... Petitioner

-Vs-

The Superintending Engineer
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
Mettur Electricity Distribution Circle
Mettur.

... Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records o the respondent's impugned notices bearing Lr.No.SE/MEDC/DFC/AO/REV/AAO/HT/F.HT SC 83/D.89/20 dated 08.06.2020 and Lr.No.SE/MEDC/DFC/AO/R/AAO/HT/F.HT SC 83SD/D.376/21 dated 18.02.2021 and quash the same as illegal, arbitrary, contemptuous and against Regulation 17(8) of the Tamil Nadu Supply Code, 2005 and consequently direct the respondent to give refund of Rs.26,05,397/- towards the security deposit refundable to petitioner in HTSC No.83 and to re-credit Rs.12,87,341/- illegally deducted from the available security deposit petitioner's HTSC No.288.

For Petitioner : Mr.R.S.Pandiyaraj

For Respondents : Mr.M.Abulkalam
Standing Counsel

ORDER

This writ petition has been filed challenging the impugned notice issued by the respondents dated 08.06.2020 and 18.02.2021 and for a consequential direction to the respondent to refund the sum of Rs. 26,05,397 paid towards security deposit in HTSC No.83.



2. Heard Mr.R.S.Pandiyaraj, learned counsel for the petitioner and Mr.M.Abulkalam, learned Standing Counsel for the respondent.

3. The grievance of the petitioner seems to be that in spite of the disconnection of HTSC No.83, the refundable security deposit is sought to be adjusted towards arrears of a sum of Rs.38,92,738/- towards harmonics charges which has already been set aside by this Court. Therefore, according to the petitioner, the petitioner is entitled for the refund of the entire security deposit paid for HTSC No.83 or in the alternative to transfer this amount to the other connection in HTSC No.288 which also stands in the name of the petitioner Company.

4. A similar issue was dealt with by this Court in W.P.No.2742 of 2021 and an order was passed on 06.05.2021. For proper appreciation, the relevant portions in the order are extracted hereunder:

"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



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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.

5.The above writ petition was also a case where the consumer had paid the security deposit for HT service



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connection. Like in the present case, the TANGEDCO raised the harmonic charges against the petitioner and similarly placed persons. The same became a subject matter of challenge before this Court and the said demand was set aside by this Court. In some of the cases, the TANGEDCO has also taken the matter on appeal.

6.This Court while considering such a claim, directed that the entire security deposit will have to be refunded after adjusting the outstanding dues, if any. The same relief will enure in favour of the petitioner.

7.In view of the above discussion, the impugned letters issued by the respondent are quashed. There shall be a direction to the respondent to either refund the sum of Rs.26,05,397/- to the petitioner or transfer the entire amount to HTSC No.288 and add it to the existing security deposit available for the said connection to the tune of Rs.90,92,700/-. The deduction of Rs.12,87,341/- made from the security deposit available in HTSC No.288 shall be reversed and necessary entries shall be made. This process shall be completed by the respondent within a period of four weeks from the date of receipt of copy of this order.

8.In the result, this writ petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IX)

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Sub Assistant Registrar

KP

To

The Superintending Engineer
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
Mettur Electricity Distribution Circle
Mettur.

+1CC to Mr.R.S.Pandiyaraj, Advocate, Sr.No.56587

+1CC to Mr.M.Abul Kalam, Advocate, Sr.No.56823

W.P.No. 22586 of 2021

PM(CO)

SB(17/11/2021)