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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2021

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.NO.17806 OF 2017

AND

W.M.P.NOS.19314 & 19315 OF 2017

Jain Cambrae East Flat Owner's Association,
Regn.No.212 of 2009
Avinashi Road, Pellamedu,
Coimbatore - 641 004.
Rep. by its Authorised Signatory
N.Ravi Padmanabhan

...Petitioner

Versus

1.Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Represented by its Chairman and Managing Director,
144, Anna Salai, Chennai- 600 002.

2.The Assistant Executive Engineer,
Coimbatore Electricity Distribution Circle/Metro
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Pelamedu, Coimbatore -04.

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, seeking to call for the records of the second respondent in his impugned order letter No.AEE/O&M/PMDU/F.Theft of Energy/D/No:89 (B)/17-18 dated 15.05.2017 and quash the same as illegal, arbitrary and against the provisions of the Electricity Act, 2003 and the Tamil Nadu Electricity Supply Code, 2004.

For Petitioner : Mr.S.P.Parthasarthy

For Respondents : Mr.Abdul Kalam
Standing Counsel

O R D E R

This Writ Petition has been filed seeking to call for the records of the second respondent in his impugned order letter No.AEE/O&M/PMDU/F.Theft of Energy/D/No:89 (B)/17-18 dated



15.05.2017 and quash the same as illegal, arbitrary and against the provisions of the Electricity Act, 2003 and the Tamil Nadu Electricity Supply Code, 2004.

2.The learned counsel for the petitioner would submit that, the petitioner apartment consists of 8 blocks with 16 flats in each block, a total of 128 flats. All 128 flats are provided with individual LT service connections in the name of its owners. Apart from the above, the apartment consists of 10 common LT service connections for lighting, security, lifts, sump motors, R.O water treatment plant etc., totally there are 138 LT service connection. On 03.05.2017, the second respondent inspected the petitioner's premises and alleged that there was theft of electricity in the usage of power for the R.O plant and lift in common service connection.

3. Further, the learned counsel for the petitioner would submit that, R.O. Plant is situated in the block No.2 of the apartment, which is utilised to supply water for all the residents of the apartment. Since it is situated in block No.2, the respondent wrongly construed that the plant is only meant for block No.2 and it is used for commercial purpose. Therefore, they made a demand notice. In this regard, the petitioner also given a detailed reply to the demand notice, wherein, it had clearly stated that R.O. plant meant for the residents of 128 flats and not for commercial purpose. Without considering the reply given by the petitioner, the second respondent has passed the impugned order dated 15.05.2015.

4.The learned Standing Counsel appearing for the respondents filed a counter affidavits, wherein, they have stated that the petitioner's Association was misusing the service connection and using the same for commercial purpose towards water treatment plant. Therefore, a demand notice was issued to the petitioner's Association.

5.Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondents.

6.From the perusal of the records, it is clear that the R.O. plant is used only for the residential purpose to provide water for the residents of 128 flats. The respondents in his counter has narrated how the provision of assessment order has been issued as per TNEB order dated 11.02.2014, stated as follows:

"10....

Tariff 1A :-

i) In respect of multi tenements/multi-storied flats/residential complexes having both domestic and non-domestic utilities,



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common facilities such as common lighting, common water supply, lift and such other facilities will be charged under this tariff only if the non-residential built up area does not exceeds 25% of the total built up area.

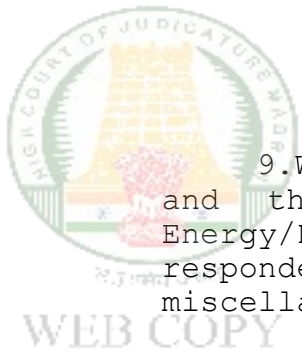
Tariff V:-

In respect of multi tenements/multi storied building/residential complexes where the number of flats/tenements utilized for commercial and other purposes exceeds 25% of the total built up areas, the LT services relating to common utilities such as common lightning, water supply, lift and other facilities shall be charge under this tariff."

11. I submit that based on the above order the petitioner's service connection No.028-003-1231 will fall under commercial category, however, they taken under residential category, on inspection it was found and the provisional assessment order was issued and asked the petitioner to pay extra levy amount of Rs.5,32,954/- along with compounding charges of Rs.32,000/- totalling to Rs.5,64,954/-."

7.It is clear from the above that, tariff -1A is provided for multi tenements/multi-storied, flats/residential complexes having both domestic and non-domestic utilities, common facilities such as common lighting, common water supply, lift and such other facilities will be charged under this tariff only if the non-residential built up area does not exceeds 25% of the total built up area. In the present case, only 10 common LT service connection provided for the common purpose out of 138 connection and even as per the TNERC Rule, out of 128 flats, only 10 flats are used for commercial purpose, which does not exceed 25% of the total built up areas. Therefore, this Court is of the view that, the demand notice issued to the petitioner vide impugned order dated 15.05.2017, was passed with non-application of mind and therefore, the same is liable to be quashed.

8.Further, at the time of admission, this Court directed the petitioner to pay 50% of the demand made by the respondents. The learned counsel for the petitioner submitted that the same was complied with. If any such amount was paid as per the order of this Court dated 13.07.2017, the respondents shall adjust the said deposit made by the petitioner in the future electricity charges.



9. With the above direction, this Writ Petition is allowed and the impugned order letter No.AEE/O&M/PMDU/F.Theft of Energy/D/No:89(B)/17-18 dated 15.05.2017, passed by the second respondent is quashed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IX)

// True Copy //

Sub Assistant Registrar

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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,
Coimbatore Electricity Distribution Circle/Metro
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Pelamedu, Coimbatore -04.

+1cc to M/s.R.S.Pandiyaraj, Advocate SR.No.59169

+1cc to M/s.Abdul Kalam, Advocate SR.No.59190

W.P.No.17806 of 2017
and W.M.P.Nos.19314 & 19315 of 2017

KSM(CO)
RVM(07/12/2021)