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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-02-2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.40432 of 2016
And
WMP Nos.34482 to 34484 of 2016

M/s.ESKEGI Reclaims Private Limited,
Represented by its Managing Director,
S.F.No.116-2A, Kakkaveri Village,
Rasipuram,
Namakkal - 637 408. .. Petitioner

vs.

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

2. The Chief Financial Controller,
   Tamil Nadu Generation and Distribution
   Corporation Limited,
   144, Anna Salai,
   Chennai - 600 002.

3. The Superintending Engineer,
   Namakkal North Electricity Distribution Circle,
   Erode.

4. Accounts Officer,
   TANGEDCO,
   Namakkal North Electricity Distribution Circle,
   Erode.

5. Tamil Nadu Electricity Regulatory Commission,
   Through its Secretary,
   No.19A, Rukmini Lakshmipathy Salai,
   Egmore,
   Chennai - 600 008.

6. The Chairman,
   Tamil Nadu Electricity Board,
   No.144, Anna Salai,
   Chennai - 600 002.

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7. M/s.Kamachi Sponge and Powder Corporation Ltd.,
Gummidipoondi,
Chennai. .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the second respondent contained in impugned letter No.CFC/FC/DFC/AAO.HT/AS.3/REV/D.N.115/13 dated 29.07.2013 and quash the same as arbitrary, illegal and violative of the provisions of the Electricity Act, 2003 and the orders of the TNERC and consequently direct the first to sixth respondents to refund the entire amount of Rs.36,696.905 that so far accrued to the petitioner on account of withdrawal of the deemed demand benefit to the petitioner's HT SC 346 from September, 2016 together with subsequent amounts for the subsequent periods till the disposal of the writ petition and interest at such rate.

For Petitioner : Mr.Rahul Balaji

For Respondents-1to5 : Mr.L.Jai Venkatesh,
Standing Counsel for TANGEDCO.

For Respondent-6 : No Appearance

For Respondent-7 : Mr.M.A.Mudimannan

O R D E R

The writ petition has been filed aggrieved by the withdrawal of the concession of the deemed demand charges extended to the petitioner by the respondents.

2. This issue was considered by the learned single Judge of this Court and similar impugned orders were quashed by this Court. Aggrieved by the same, the respondents have preferred an appeal and the same is pending in W.A.Nos.2539 & 2540 of 2018.

3. The Division Bench while entertaining the writ appeal directed the concerned parties to pay 50% of the demand made pursuant to the issuance of the impugned order. The relevant portions in the order passed by the Division Bench are extracted hereunder:

'6. This court has carefully

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considered the rival submissions and also perused the materials placed. In the light of the stand taken by the Tamilnadu Electricity Regulatory Commission in the counter affidavit in paragraph No.14 in W.P.No.28256 of 2014 etc., batch of writ petitions, coupled with the decision of the said Commission, vide the order dated 31.03.2016 in R.A.No.6 of 2013, this Court is of the considered view that prima facie case has been made out for grant of interim orders.

7. Hence, there shall be an order of interim stay as prayed for till 17.12.2018. It is also brought to the notice of this Court by the learned Advocate General that during the pendency of the writ petitions interim stay has been granted subject to the condition that the writ petitioners pay 50% of the amount demanded within a stipulated time.

8. Therefore, in the light of the above facts and circumstances, and reasons assigned above, this Court is of the considered view that the same arrangement shall continue till the disposal of the writ appeals for the reason that appellant in the event of success in these appeals may not be able to recover it and there may be possibility of respondents / writ petitioners to wind up operations due to vagaries of business or other reasons. Therefore, without prejudice to the rights and contentions, the first respondents / writ petitioners shall continue to pay 50% of the demand made as per the impugned orders / demand, the subject matter of challenge in the writ petitions, within a period of two weeks from the date of each demand. It is also made clear that the amount collected by virtue of the interim order in the writ petitions as well as in these writ appeals, by the appellant is also subject to the result of these writ appeals, and if the appellant fails, they are liable to refund the Deemed Demand Charges already collected from the first respondents / writ petitioners. Call on 17.12.2018.'

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4. In the light of the above order passed by the Division Bench, the petitioner has been paying the 50% deemed demand charges. Hence, the writ petition is disposed of with a direction to the petitioner to continue to pay 50% of the demand made towards the deemed demand charges till the writ appeal is disposed of by the Division Bench. It is also made clear that the payment made by the petitioner will be subject to the result of the writ appeals and petitioner shall abide by the final orders passed by the Division Bench while disposing of the writ appeals.

5. Accordingly, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Chairman,
   Tamil Nadu Generation and Distribution
   Corporation Limited,
   144, Anna Salai,
   Chennai - 600 002.

2. The Chief Financial Controller,
   Tamil Nadu Generation and Distribution
   Corporation Limited,
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5. The Secretary,
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PMK(CO)
SU(28/02/2022)

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