IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.Nos.24635 & 24636 of 2017
and W.M.P.Nos.25995 to 26000 of 2017, 29845 & 29862 of 2017

Sri Jayajothi & Co Ltd., HTSC No.315,
70, Alagai Nagar, Rajapalayam-17,
by its Authorized Signatory
B.Seenivasagam .. Petitioner in both the WPs

Vs.

1. Tamil Nadu Electricity Generation and Distribution Company (TANGEDCO),
Rep. by its Chairman and Managing Director,
No.144, Anna Salai, Chennai - 600 002.

2. Director - Finance,
Tamil Nadu Generation and Distribution Corporation Limited, 144, Anna Salai,
Chennai - 600 002.

3. The Superintending Engineer,
Virudhunagar Electricity Distribution Circle,
TANGEDCO, Virudhunagar,

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

5. Chief Financial Controller / Revenue,
TANGEDCO, No.144, Anna Salai,
Chennai - 600 002.

6. Chief Engineer / Non Conventional Energy Sources (NCES),
2nd Floor, NPKRR Malaligai,
144, Anna Salai, Chennai - 600 002.

7. M/s.Maple Renewable Power Pvt Limited,
484, Kamaraj Road,
Upilipalayam,
Coimbatore - 641 015. .. Respondents in both the WPs

Prayer in both the WPs: Writ Petitions have been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent's impugned circular Memo CFC/R/FC/R/ DFC-R1/F,HTLT-

RTI/D.30/2015, dt.03.02.2016, in so far as the para 3(iii) is concern and the consequential 3rd respondent's impugned notice bearing Lr.No.SE/VREDC/VRD/AO/REV/AAO/HT /AS6/ F.HTSC No.315/D.No.782/2017 and 783/2017, dated 25.05.2017 and 24.05.2017 respectively, and quash the same as being arbitrary, illegal, violative of the principles of natural justice besides being violative of the provisions of the Electricity Act, 2003 and the rules framed thereunder and consequently direct the 5th respondent to enforce its circular bearing Circular Memo No.CE/NCES/SE/EE/WPP/AEE2/F, Banking Instruction/D.1342/16, dated 19.07.2016 in accordance with law.

For Petitioner in both the WPs.	:	Mr.S.P.Parthasarthy
For Respondents 1 to 6 in both the WPs	:	Mr.Abul Kalam
For Respondent 7 in both the WPs	:	Mr.R.Parthasarathy

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COMMON ORDER

The writ petitions have been filed challenging the demand made by the third respondent based on the audit objections.

2. Mr.S.P.Parthasarathy, learned counsel appearing for the petitioner submitted that the petitioner purchased power from the 7th respondent as captive consumer and paying charges. Without notice to the petitioner charges were revised periodically and hence the petitioner raised objection for the same. Without considering the objections, now the impugned demand notice has been issued to the petitioner asking him to pay the demand. Challenging the same, the present writ petitions have been filed.

3. Today, when the matter was taken up for hearing, Mr.S.P.Parthasarathy, learned counsel appearing for the petitioner submitted that based on the objections raised by the petitioner, Chief Financial Controller (Revenue) issued clarification in his proceedings dated 14.03.2016 and 01.04.2016. Based on the instructions issued by the Chief Financial Controller (Revenue), the Superintending Engineer may be directed to conduct enquiry and pass orders after giving opportunity of hearing to the petitioner.

4. That apart, the petitioner has also challenged Clause 3 of the Circular issued by the TANGEDCO dated 03.02.2016, issuing guidelines for assessing short levy based on audit objections. As per the above circular, whenever any claim is made relating to earlier assessment period which are raised based on the reports of BOAB, AG Audit, Inspection etc., then such claim has to be scrutinized by the officials concerned for its correctness before claimed from the consumer and the working details of such demand should be communicated to the

consumer so as to enable him to arrange for payment. Apart from that under Clause 3, on such communication to the consumers, it need not be stated that the demand has been raised by BOAB and it should be a communication from the competent authority to levy such demand.

5. It is the contention of the petitioner that without invoking the above said Clause, the concerned officer without issuing a copy of the objections raised by the Audit, straightaway issued the bills to the petitoner without conducting any enquiry whatsoever.

6. I have heard the learned counsel on either side and also pursued the records carefully.

7. Considering the fact that whenever there is any demand made based on audit objections or any other objections, the consumer is entitled to know the objections raised by the Audit and without informing the same to the consumer regarding the actual objections raised by the audit, enabling the consumer to give clarification to the same, the authorities cannot straightaway issue a demand notice on their own. In such circumstances, this Court is of the considered view that in order to satisfy the principles of Natural Justice, whenever any objection is raised by the Audit against the consumer, the authorities are directed to issue show cause notice to the consumer along with a copy of the audit objections, so as to enable the consumer to raise his objections and after conducting enquiry, the concerned authority is directed to pass suitable orders making any such demand. So far as the instant case is concerned, the Superintending Engineer concerned, is directed to serve a copy of the audit objections to the petitioner calling for his objections and on receipt of his objections, based on the guidelines issued by the Chief Financial Controller (Revenue) dated 06.06.2018, pass suitable orders, after hearing the petitioner. This writ petition is disposed of accordingly. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman and Managing Director,
Tamil Nadu Electricity Generation
and Distribution Company (TANGEDCO),
No.144, Anna Salai, Chennai - 600 002.

2. Director - Finance,
Tamil Nadu Generation and Distribution
Corporation Limited, 144, Anna Salai,
Chennai - 600 002.

3. The Superintending Engineer,
   Virudhunagar Electricity Distribution Circle,
   TANGEDCO, Virudhunagar,

4. The Secretary,
   Tamil Nadu Electricity Regulatory Commission,
   No.19A, Rukmini Lakshmipathy Salai,
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RK(CO)
A.SK(16/05/2022)