



W.P.Nos.6741 & 6852 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.Nos.6741 & 6852 of 2020

and

W.M.P.Nos.8015 & 8163 of 2020

Embassy Residency Apartment
Owners Association,
A Society registered under the
Tamil Nadu Societies Registration Act of 1975,
Having registered office at
No.439, Cheran Nagar,
Saraswathi Rajasekhar Salai,
Perumbakkam, Chennai – 600 100.

... Petitioner in both WPs

Vs.

1. Assistant Engineer,
O & M, TANGEDCO,
Medavakkam, Chennai – 600 100.
2. The Executive Engineer,
O & M, TANGEDCO,
Medavakkam,
Chennai – 600 100.
3. Assistant Executive Engineer,
No.5, Babu Nagar,
III Main Road,
Medavakkam,
Chennai – 600 100.



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4. Tamil Nadu Generation and Distribution Corporation Ltd.,
(TANGEDCO),

Rep. by its Chairman,

10th Floor, NPKRR Maaligai,

144, Anna Salai, Chennai – 600 002.

... Respondents in both WPs

Prayer in W.P.No.6741 of 2020: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent in relation to the levy of arrears of Rs.4,51,722 (Rupees Four Lakhs Fifty One Thousand Seven Hundred and Twenty Two only) in respect of Electric Meters No.09-249-258-1538 (Phase II) and quash the same as illegal and direct the 3rd respondent to change the above service connection to Low Tension 1A.

Prayer in W.P.No.6852 of 2020: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records in relation to the levy of arrears of Rs.9,84,643/- (Rupees Nine Lakhs Eight Four Thousand Six Hundred and Forty Three only) in respect of Electric Meters No.09-249-258-512 (Phase II) and quash the same as illegal and direct the 3rd respondent to change the above service connection to Low Tension 1A.

For Petitioner : Mr.Rohini Ravikumar
(in both WPs)

For Respondents : Mr.L.Jai Venkatesh
(in both WPs) Standing Counsel



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COMMON ORDER

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Since the issue raised in both the writ petitions is one and the same, with the consent of the learned counsel appearing for both sides, these Writ Petitions were heard together and disposed of by this common order.

2. The case of the petitioner is that the petitioner Association is a registered resident welfare association, registered under the provisions of Tamil Nadu Societies Registration Act, 1975, on the file of the Registrar of Societies, Chennai South, Chennai and the members of the Association are the owners of the Embassy Residency Apartment. They were enjoying common facilities like Lift, Gym, Swimming Pool, Club House, Sewage Treatment Plants, Over Head Tanks, Dewatering and sub soil pumps and the same is utilized in a domestic manner. However, the respondents have assessed the electricity charges for Rs.4,51,722/- and Rs.9,84,643/- respectively for Phase II as arrears resulting from a change unilaterally made in the meter tariff, without any notice whatsoever and it is pertinent to note that there was no demand notice issued in this regard. It is seen from the respondents' website that the levy is under the Determination of Tariff for Generation and Distribution Order in T.P.No.1 of 2017 dated



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11.08.2017 effective from 11.08.2017. Thereafter, the petitioner Association made representations dated 22.11.2019 and 09.12.2019 to the third respondent to revert the tariff application on the electric meters to low tension tariff rate 1A. Since there was no reply, the petitioner Association has filed the above writ petitions challenging the demand made by the respondents.

3. The learned counsel for the petitioner submits that, during the pendency of these writ petitions, new tariff Order for the Financial Year 2022 – 23, dated 09.09.2022 was passed and in view of the same, this Court may set aside the demand made by the respondents and remand the matter to the authorities for fresh consideration in terms of the new tariff order and to pass orders within a time frame that may be stipulated by this Court.

4. The learned Standing Counsel appearing for the respondents while concurring with the petitioner submit that, in the view of the new tariff order, dated 09.09.2022, this Court may remit the matter back to the respondents for fresh consideration.



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5. This Court has carefully considered the rival submissions and perused the materials available on record.

6. On an earlier occasion, the respondents passed the impugned order on the ground that the petitioner is not entitled for enjoying the domestic tariff and they should be charged under the commercial tariff for the common facilities enjoyed by them. It is to be pointed out that, this Court, in a catena of decisions, has held that, when the common facilities were enjoyed by the residents of welfare association, it has to be considered as domestic service and not as commercial service.

7. In the case in hand, the members of the petitioner Association are not using the facilities for any commercial purposes and the facilities are utilised only for personal purposes in the common area provided to them. Hence, they should also be classified only under the domestic service connection.

8. Be that as it may. It appears that a new tariff order also been passed in the interregnum and in such a situation, the demand made by the



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respondents warrants interference as it has to be decided in terms with the new tariff order.

9. In the above circumstances, the demand made by the third respondent is set aside and the matter is remanded to the authority for fresh consideration. The respondents are directed to conduct inspection in the premises and pass appropriate orders on merits and in accordance with law as per the new tariff order, dated 09.09.2022. The said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.

10. With the above directions, these Writ Petitions are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

25.04.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp



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To

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M.DHANDAPANI, J.

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