IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.14989 & 14993 of 2020
and
W.M.P.Nos.18649, 18650, 18652 & 18656 of 2020

Delta Electronics India Private Limited,
SEZ Unit,
SF No.16/1B2B (Part) & 16/1B2A (Part) Plot No.1,
Industrial Park,
Kurubarapally Village,
Krishnagiri – 635 115,
Represented by its Authorized Signatory. ... Petitioner in both W.P's

Vs.

1.The Tamil Nadu Generation and
Distribution Corporation Ltd., (TANGEDCO),
Rep.by its Chairman & Managing Director,
10th Floor, No.144, Anna Salai,
Chennai – 600 002.

2.The Chief Financial Controller – Revenue,
TANGEDCO,
7th Floor, 144, Anna Salai,
Chennai – 600 002.

3.The Superintending Engineer,
TANGEDCO,
Krishnagiri Electricity Distribution Circle,
Krishnagiri. ... Respondents in both W.P's

Prayer in W.P.No.14989 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 pertaining to the order by 3rd respondent, culminating in the impugned communication bearing reference Lr.No.SE/Kgiri/AEE/Dev/AE.1/F.New HT (Delta Elec)/D.938 of 2020 dated 28.09.2020 and quash the same and consequently direct the Respondents to condone the delay in receiving supply by the petitioner by accepting monthly minimum charges of 20% maximum demand (MD) charges from 20.02.2020 up to the date of availing supply.

Prayer in W.P.No.14993 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 pertaining to the order by 3rd respondent in Lr.No.SE/Kgiri/AEE/Dev/AE.1/F.New HT (Delta SEZ)/D.493/2020 dated 23.06.2020 to the extent of refusing to grant extension for receiving connection as being wholly arbitrary and illegal and contrary to the provisions of the Distribution Code which allows condonation of delay on specific request from an intending consumer if received before expiry of second notice period and consequently direct the respondents to accord approval to effect supply any day after the date of expiry of second notice of availability of supply without forfeiture of development and other charges and cancellation of application subject to the petitioner paying the monthly minimum charges at 20% of MD charges up to the date of availing supply.

For Petitioners : Mr.Rahul Balaji (in both W.P's)

For R1 to R3 : Mr.S.Madhusudanan
Standing Counsel for TANGEDCO
(in both W.P's)

COMMON ORDER

The payment of monthly minimum charges demanded by the respondent from the petitioner-company in proceedings dated 28.09.2020 is under challenge in the present writ petitions.

2. The petitioner-company who is an intending consumer, submitted an application for HT electricity connections. The petitioner-company admittedly received a notice stating that the Board completed its works for providing connection and further formalities are to be observed by obtaining a certificate on 20.02.2020. When the Covid-19 intervened, petitioner-company was not in a position to utilize the electricity supply from the Board. Since the petitioner-company had not completed the plan works in entirety, the second notice was also admittedly issued.

3. The learned counsel for the petitioner-company, Mr.Rahul Balaji would submit that the concession was extended to the existing consumers during the Covid-19 period to pay 20% of the monthly minimum charges and the petitioner-company submitted a request application to accept 20% of the monthly minimum charges instead of payment of full monthly minimum charges for the entire period. However, the Board disagreed and insisted the petitioner-company to pay the full monthly minimum charges and thus, the present writ petitions came to be instituted.

4. He would further submit that when the concession of 20% payment of monthly minimum charges were extended to the existing consumers, the same benefit is to be extended to the intending consumers also, since they have not consumed electricity for the said period on account of Covid-19 situation. That apart, the monthly minimum charges are demanded considering the petitioner-company as deemed to be the consumer. Therefore, the preposition adopted by the respondent-Board is illogical and therefore, the impugned notice of demand is to be set aside.

5. During the Covid-19 period , the consumers who are actually using the electricity were granted the benefit of payment of 20% monthly minimum charges and that being the admitted position, the said benefit necessarily has to be extended to the intending consumers, who all are yet to consume electricity from the Board. They are in the process of completion of the project and that being so, the decision taken by the Board in the case of the petitioner-company is not falling within the principles established.

6. The issues which was earlier adjudicated by the learned Single Judge of this Court in a batch of Writ Petitions in W.P.Nos.7678 of 2020 etc., dated 14.08.2023 in the case of ***The South India Spinners Association and Others Vs. The Chairman Cum Managing Director, Tamil Nadu Generation & Distribution Corporation Limited and Others*** and the relevant portions are extracted hereunder:

> *"34. The Government started partially lifting the lockdown in a phased manner in certain industries situated in certain parts of the State. Even today certain establishments such as cinema theatres, malls, convention halls continue to be inoperative since the*

lockdown has not been lifted for these establishments and the same is going to continue till the end of this month. It does not require any detailed deliberation to understand this situation and the very Government Orders passed during the relevant period makes it very clear. It is to deal with a situation like this, a proviso has been brought in to Regulation 6(b) of the Supply Code. Under normal circumstances, a certification may be required by each consumer to prove that they were prevented from consuming electricity due to situations beyond their control. In the present scenario, insisting for such a certification itself becomes absurd since a certificate will be insisted upon for a situation about which everyone is aware. Insisting for a certification will be a futile formality in a situation like this.

35. The proviso states that in such a situation, the License namely the TANGEDCO in the present case, will recover from the consumer, Minimum Charges at 20% of the Billable Demand or Recorded Demand, *whichever is higher, besides charges for the actual consumption of electricity. One must clearly understand that a consumer cannot escape from paying for the electricity which it actually consumes and this is a distinct payment apart from the Minimum Charges provided in the Regulation. Therefore, we are not dealing with a case where the HT consumer is asking for any waiver or concession from the payment of charges for the electricity it has actually consumed. The issue in this case pertains only to the payment of Minimum Charges apart from the charges for the actual consumption of electricity and as to whether the HT consumer satisfies the requirement provided under the proviso to Regulation 6(b) of the Supply Code.*

36. There cannot be a better case than the facts of the present case which can be brought within the proviso to Regulation 6(b) of the Supply Code. This pandemic which resulted in complete lockdown of all establishments was a situation which was beyond the *control of the consumer. Before the Regulation was amended it carried the phrase "if the License is satisfied". Even this phrase has been removed after the amendment and the satisfaction of the Licensee is no more a pre-condition for the applicability of the proviso to Regulation 6(b) of the Supply Code. In fact, when the said amendment was carried out, the amendment should also have removed the word "may" and this word independently continuing to be present in the proviso does not mean that a complete discretion is left in the hands of the TANGEDCO. It is more in the nature of a draftsmen's devil.*

....

"45. The above discussion leads this Court to the only conclusion that the maximum demand charges and the compensation charges levied by TANGEDCO against the petitioners who are HT consumers, is illegal, unsustainable and in violation of the statutory regulations. Accordingly, the Maximum Demand

Charges and the compensation towards low PF that have been questioned in the impugned bills raised by the TANGEDCO for each of the consumers who are parties in these batch of writ petitions, is hereby quashed. The following directions are also issued by this Court:

a) TANGEDCO shall issue a revised bill to the petitioners by applying Regulation 6(b) of the Supply Code for the entire period when the establishment was under shut down;

b) If TANGEDCO has already recovered the entire dues from any of the petitioners, the bill shall be reworked in accordance with the direction given in Clause (a) and the excess demand shall be adjusted towards the future bills;

c) If the demand made by TANDECO has been adjusted from the security deposit and any of the petitioner has been asked to pay any amount towards additional security deposit on that count, the said claim *shall be withdrawn forth with and the calculation of the additional security deposit shall be independently done under Regulation 5 of the Supply Code and demand/adjustment shall be done in accordance with the said Regulation;*

d) The TANGEDCO shall not levy compensation charges towards low PF from the petitioners during the period of lockdown. Even if such levy is made in future, show cause notice shall be issued to the consumer and an opportunity shall be given to the consumer before levying any compensation under Clause 6.1.1.6 of the Tariff Regulation;

e) If any amount has already been recovered towards levy of compensation charges for low PF from any of the petitioners, the said amount shall be adjusted towards future bills;

f) These directions will apply only for the period during which the established was under total lockdown due to the orders issued by the Government *and it is made clear that it pertains only to the Minimum Charges payable under Regulation 6(b) of the Supply Code and there is no exemption or concession insofar as the charges payable for the actual consumption of electricity (Energy Charges); and*

g) If any of the establishments continue to be under lockdown due to the Government Orders passed in this regard, the minimum charges alone shall be collected till the lifting of the lockdown."

7. In view of the above facts and circumstances, the impugned orders passed by the 3rd respondent dated 23.06.2020 and 28.09.2020 are set aside and the respondents are directed to workout the monthly minimum charges to be paid by the petitioner-company and adjust the same with the consumption charges due to the Board. The said exercise is directed to completed within a period of six (6) weeks from the date of receipt of a copy of this order.

Accordingly, the Writ Petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

09.01.2024

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Internet : Yes
Index : Yes / No
Speaking order / Non-Speaking Order
Neutral Citation : Yes / No

To

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S.M.SUBRAMANIAM, J.

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