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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
08.08.2024	10.09.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 20991 OF 2017
W.P. NO. 682 OF 2019
W.P. NO. 14900 OF 2022
AND
W.M.P. NOS. 21876 OF 2017, 747 & 748 OF 2019
W.M.P. NOS. 14109, 14111 & 29298 OF 2022

W.P. NO. 20991 OF 2017

M/s.Sathi Steel Industries Ltd.
Unit-II, H.T.SC No.324
Amaravathi Pattinam Village
Nelvoy – Thirumukkudal Road
Uthiramerur Taluk
Kancheepuram District 631 606
Rep. By its Authorised Signatory
V.Vaigunthan .. Petitioner

- Vs -

1. The Chairman & Managing Director
Tamil Nadu Generation & Distribution
Corporation, No.144, Anna Salai
Chennai 600 002.

2. The Superintending Engineer
Erode Electricity Distribution Circle

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TANGEDCO, No.948, EVN Road
Erode 638 009.

3. The Accounts Officer/Revenue
Erode Electricity Distribution Circle
TANGEDCO, No.948, EVN Road
Erode 638 009. .. Respondents

W.P. NO.682 OF 2019

S.A. Textiles (P) Ltd.
HTSC No.165
S.F. No.37/1, Pulavarapalayam
Naduppati Post, Tiruppur 638 056
Rep. By its Authorised Signatory
A.Sakthi Vignesh .. Petitioner

- Vs -

1. The Superintending Engineer
Kancheepuram Electricity Distribution Circle
TANGEDCO, Kancheepuram 631 502.

2. The Chairman & Managing Director
Tamil Nadu Generation & Distribution
Corporation, No.144, Anna Salai
Chennai 600 002. .. Respondents

W.P. NO. 14900 OF 2022

M/s.Laxmi Rolling & Strips Pvt. Ltd.
HTSC No.089094210322
Hosur-Thally Road
Kalukondapalli Village, Belagondapalli Post
Denkanikotta Taluk, Krishnagiri 635 114
Rep. By its Manager, H.Ramesh .. Petitioner

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- Vs -

1. The Chairman & Managing Director
Tamil Nadu Generation & Distribution
Corporation, No.144, Anna Salai
Chennai 600 002.

2. The Superintending Engineer
Erode Electricity Distribution Circle
TANGEDCO, Krishnagiri. .. Respondents

W.P. No.20991 of 2017 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records pursuant to the impugned letter No.SE/KEDC/KPM/AEEGL/AF2/F.H.T. New/D282/17 dated 29.06.2017 issued by the 1st respondent and consequential demand raised in Item 14 in Bill No.324 dated 1.08.2017 and quash the same as illegal, arbitrary and against the Distribution Code, 2004 and Supply Code, 2004.

W.P. No.682 of 2019 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records pursuant to the impugned letter No.SE/EEDC/ED/AEE/DEV/AE/SDM/F,HT 01 (Addl)/18-119/R.499/18 dated 20.09.2018 issued by the 2nd respondent and the consequential impugned CC Bill No.9094260165121803 insofar as serial No.21

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'Adjustment Charges' (affecting) to a sum of Rs.4,25,133/- alone issued by the 3rd respondent and quash the same as illegal, arbitrary and against the Tamil Nadu Distribution Code, 2004 and Tamil Nadu Electricity Supply Code, 2004.

W.P. No.14900 of 2022 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records pursuant to the impugned letter No.195 SE/KEDC/Kgiri/AEE/DevAE.1/F.Addl HT.SC.No.322(Laxmi) 2022 dated 28.03.2022 and the consequential impugned Demand letter No.388/SE/Kgiri/AEE/Dev/AE.1/F.Addl HTSC 322 (Laxmi)/2022 dated 26.05.2022 issued by the 2nd respondent insofar as the monthly minimum charges of Rs.21,27,890/- from 28.03.2022 to 27.05.2022 alone is concerned and quash the same as illegal, arbitrary and against the Tamil Nadu Electricity Distribution Code, 2004 and Tamil Nadu Electricity Supply Code, 2004 and consequently directing the 2nd respondent to effect additional demand of 2990 KVA vide the petitioner's application 20.07.2021.

For Petitioners	:	Mr. R.S.Pandiyaraj, in WP 682/19 & 14900/22 Mr. R.S.Pandiyaraj for Mr.K.Seshadri in WP 20991/17
For RespondentS	:	Mr. I.Syed Sibghatulla in WP 682/19 & 20991/17 Mr. S.Madhusudanan in WP

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14900/22

COMMON ORDER

Questioning the impugned demand notices in and by which demand has been raised on the respective petitioner by the respondents towards monthly minimum charges for the High Tension service supply sought for by the petitioners, the present petitions have been filed assailing the said demand.

2. While the petitioner in W.P. No.20991/2017 is an industry seeking fresh HT service connection, the petitioners in W.P. No.682/19 and 14900/22 are existing high tension consumers, who have sought for additional loads for their respective operation.

FACTS IN W.P. NO.20991/2017 :

3. It is the case of the petitioner that the petitioner intended establishing a steel plant for the manufacture of steel ingots, which is a raw material for the manufacture of TMT rods. Towards the same, the petitioner constructed the buildings suitable for the industry and also installed electric furnace for melting

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of steel scrap and applied for a new HT service connection on 13.2.2017 with a sanctioned demand of 6000 KVA at 33 KV supply. It is the further averment of the petitioner that he paid a sum of Rs.48,00,500/- towards registration charge and earnest money deposit on 5.4.2017 and on the request of the respondent on 30.05.2017, the petitioner paid Rs.23,51,510/- towards development charges, meter caution deposit, estimate cost of consumer portion on 23.6.2017.

4. It is the further case of the petitioner that on 29.6.2017, the 1st respondent issued the impugned letter stating that if the petitioner fails to avail the supply within three months time, a further three months extension will be granted after collecting the monthly minimum charges for the extended period in advance. It is the further averment of the petitioner that if the supply is not accepted within the extended notice period, the application would be treated to have been cancelled, thereby forfeiting all the amounts paid by the petitioner except meter security deposit as per the provisions of the Distribution Code. It is the further averment of the petitioner that as per the notice, a sum of Rs.350/- per KVA per month on the said demand of 6000 KVA will be levied from the date of issue of the letter. It is the further averment of the petitioner that the said

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notice was issued intimating the petitioner to avail the supply from the date of issue of the letter as per the Tamil Nadu Electricity Distribution Code (for short 'Distribution Code').

5. It is the further averment of the petitioner that the 1st respondent has not made the supply available to the petitioner industry and has not installed meter in the premises of the petitioner, the petitioner produced the safety certificate issued by CEIG on 18.7.2017. It is the further averment of the petitioner that HT supply in H.T. S.C. No.324 for Unit II has been effected on 20.07.2017 with sanctioned demand of 6000 KVA at 33 KV supply, which supply has been effected within three months from the date of supply availability notice on 29.6.2017.

FACTS IN W.P. NO.682 OF 2019 :

6. It is the case of the petitioner that the petitioner had established a Textile Mill for the manufacture of Yarn products with a connected demand of 600 KVA in their mills. In view of additional requirement on account of expansion, the petitioner applied for additional power supply of 400 KVA to the

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2nd respondent vide application dated 11.4.2018. The petitioner had paid the necessary fees towards registration, and EMD charges on 1.8.2018 and also the requisite amount towards development charges, meter caution deposit, etc., on 31.8.2018.

7. It is the further averment of the petitioner that the impugned letter was issued by the 2nd respondent with a further direction to the petitioner to avail the supply from the date of issue of the letter on production of necessary safety certificate and signing text report from CEIG. It is the further averment of the petitioner that the 2nd respondent has not made the supply available and not installed the metering set in the premises, though CEIG certificate was produced by the petitioner on 31.12.2018.

FACTS IN W.P. NO.14900 OF 2022 :

8. It is the case of the petitioner that the petitioner had established a steel industry with a demand of 7000 KVA in their mills. In view of additional requirement on account of expansion, the petitioner applied for additional power supply of 2990 KVA to the 2nd respondent vide application dated 20.07.2021. The

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petitioner had paid the necessary fees towards registration, and EMD charges on 02.08.2021 and also the requisite amount towards development charges, meter caution deposit, etc., on 14.03.2022.

9. It is the further averment of the petitioner that the impugned letter was issued by the 2nd respondent with a further direction to the petitioner to avail the supply from the date of issue of the letter on production of necessary safety certificate and signing text report from CEIG. It is the further averment of the petitioner that the 2nd respondent has not made the supply available and not installed the metering set in the premises, though CEIG certificate was produced by the petitioner on 24.05.2022.

10. It is the further averment of the respective petitioners that thereafter, the 1st respondent, in violation of Regulation 31 (2) of the Distribution Code and Regulation 17 (1) of the Tamil Nadu Electricity Supply Code, 2004 (for short 'Supply Code') has raised the impugned demand towards monthly minimum charges as stated in the respective impugned letters. Aggrieved by the said impugned demand notices, the present writ petitions have been filed.

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11. The respective learned counsel appearing for the petitioners submitted that Regulation 31 (2) of the Distribution Code provides the consumer to avail himself of the supply within three months from the date of issuance of supply availability notice. From the above, it is clear that during the notice period of three months, no amount can be claimed from the consumer towards monthly minimum charges. It is the further submission of the learned counsel that only where the intending consumer avails supply during the second notice period, which is issued as per Regulation 31 (3), then Regulation 31 (5) provides for collection of monthly minimum charges from the date of issuance of first notice till the date of availing supply.

12. It is therefore the submission of the learned counsel that there is no provision for levy of monthly minimum charges in case the intending consumer avails the supply within the first three months notice period. It is the submission of the respective learned counsel that the respective consumers had all submitted the requisite CIEG certificate within the prescribed period of three months, which is available to them and supply having been given within the

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prescribed period of three months, no monthly minimum charges could be claimed from the consumers. However, without properly appreciating the aforesaid provisions, the demand notices have been issued, which are *per se* illegal and arbitrary and, therefore, the same deserves to be set aside.

13. In support of the aforesaid submissions, learned counsel for the petitioners placed reliance on the following decisions :-

i) *Sonal Vyapar Ltd. – Vs – The Tamil Nadu Electricity Board (W.P. No.28943/2007 – Dated 07.01.2008);*

ii) *M/s.K.L.Concast Pvt. Ltd. – Vs – The Superintending Engineer (W.P. No.19709/2010 – Dated 03.10.2019);*

iii) *M/s.Arun Smelters (P) Ltd. – Vs – The Superintending Engineer (W.P. No.494/2015 – Dated 29.11.2021);*

iv) *S.L.O. Industries Ltd. – Vs – The Superintending Engineer (W.A. No.3910/2019 – Dated 07.03.2022)*

14. Per contra, learned standing counsel appearing for the respondent submits that electricity is a commodity, which is not storable and once it is generated, it ought to be consumed and the petitioners, having opted for additional supply, which has been affirmatively considered by the respondents,

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the petitioners ought to have availed the supply. It is the further submission of the learned counsel that Regulation 31 (2) of the Distribution Code and Regulation 17 (1) of the Supply Code does not make any distinction between the first and second notice period and the second notice period provided to the consumer is only for the purpose of providing one further opportunity to the consumer to enable him to avail the connection and, therefore, the monthly minimum charges will be collectable from the date on which notice was issued to the petitioner informing him of the availability of the electrical energy and merely because the petitioners have availed it within the first notice period would not absolve them from payment of minimum monthly charges as the minimum monthly charges are leviable from the very date supply is ready to be provided to the consumer.

15. Learned standing counsel for the respondents drew the attention of this Court to Regulation 31 (2) of the Supply Code and Regulation 17 (1) of the Distribution Code to impress upon this Court that what is provided is only a chance to the consumers to get an extended period so that they will not lose the amounts, which have been deposited towards the various deposits and merely

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because the consumers are provided for an extended period cannot be taken to mean that monthly minimum charges are not leviable during the first notice period. In this regard, learned standing counsel placed reliance on the decision of the Apex Court in ***M/s.Raymond Ltd. – Vs – M.P. Electricity Board (CDJ 2000 SC 539)*** to emphasis that the energy generated by the respondents for the use of the consumer cannot be stored and, therefore, it is the duty of the consumer to pay the minimum monthly charges to the respondents towards the generation of the electricity. It is therefore submitted that the demand letters raised by the respondents on the respective petitioner are perfectly in order and the same does not warrant any interference at the hands of this Court.

16. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record, as also the relevant Regulations of the Distribution Code and Supply Code and also the decisions relied on by the respective parties.

17. While the petitioner in W.P. No.20991/17 is seeking fresh supply of HT connection for its industry, the petitioners in W.P. No.682/19 and 14900/2022

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are existing consumers, who are seeking additional capacity over and above the electricity energy, which has already been provided to the petitioners.

18. In the above backdrop it is material to refer to Regulation 31 (2) of the Distribution Code and Regulation 17 (1) of the Supply Code, which is the basis on which the demand notices have been raised and they are as under :-

"__Regulation 17 (1) of Supply Code__ :-

17. Agreement with respect to supply : Issues on recovery of charges (1) Every consumer shall pay to the Licensee, from the date of commencement of supply till the agreement is terminated, security deposit, minimum monthly charges, fixed charges, if any, and other charges as provided in the Tariff Orders, this Code and any other orders in this regard by the Commission, from time to time. However, any consumer, who has not availed of reconnection even after the expiry of termination of agreement period, the monthly minimum charges 2 [shall be payable upto the date of termination of such agreement].

* * * * * * *

__Regulation 31 (2) of Distribution Code :-__

31 INSPECTIONS , TESTING AND EFFECTING SUPPLY:

(1) After completion of the wiring, notice must be sent to the Engineer by the intending consumer (upon printed test report form obtainable free of cost from the offices of the Licensee) that

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the installation has been completed and tested and that the same is complete and ready for inspection and test by the Engineer. Notice of the Engineer's intention to inspect and test the installation will be sent to the intending consumer who must be present or his/her competent representative at the time fixed to give information that may be necessary concerning the installation. 1 [Upon executing / signing of the test report, a copy of the test report shall be given to the consumer].

(2) The intending consumer shall avail himself of the supply within three months in case of HT and one month in case of LT from the date of issue of notice in writing, informing him that supply is available.

(3) If the intending consumer fails to avail the supply within the above period, a further three months notice in case of HT and one-month notice in case of LT will be sent to the intending consumer to avail the supply. If he does not avail himself the supply during this notice period, the application will be treated as lapsed and cancelled in the case of Low Tension supply and the application shall be treated as cancelled, terminating the agreement, in the case of High Tension supply. The service connection charges and the Security Deposit / development charges, etc. except Meter Caution Deposit will be forfeited. In case the intending consumer could not avail the supply under force majuere conditions, the Security Deposit / development charges and meter caution deposit shall be refunded to the intending consumer.

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(4) However, Licensees of the Distribution are delegated with powers to condone the delay on specific request from them if received before expiry of second notice period and 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 his/her consent to pay monthly minimum charges up to the date of availing supply.

(5) If the intending consumer avails supply during the notice period of availability of supply he shall pay the monthly minimum charges at the notified tariff rate for the period from the date of issue of first notice of supply availability till the date of availing supply. (6) Requisition for supply or additional supply of electricity should be made in the prescribed form obtainable from the local office of the Licensee sufficiently in advance of the date of requirement of supply. Such Forms can also be made available in downloadable mode in the Licensee's website or allowed to be printed by others and made available in open market. The requisition should be made by the owner, or occupier, of the premises for which supply is required, and should indicate his / her full name and address. Any assistance or information required in filling up the form has to be given to the intending consumer at the local offices of the Licensee."

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19. A careful perusal of Regulation 17 of the Supply Code reveals that it deals with issues with regard to recovery of charges, wherein, the consumers are to pay the licenses from the date of commencement of supply till the agreement is terminated, security deposit, minimum monthly charges, fixed charges, if any, and other charges as provided in the Tariff Orders, this Code and any other orders in this regard by the Commission. It is therefore evident that payment will be from the date of commencement of supply till the agreement is terminated. Therefore, upon entering into an agreement in and by which the terms and conditions for supply are accepted, from the date of commencement of supply, till the said agreement is terminated, the charges provided for under Regulation 17 (1) of the Supply Code are to be paid by the consumers.

20. Regulation 31 of the Distribution Code relates to inspections, testing and effecting supply. Clause (1) of Regulation 31 provides that the consumer, after completing the wiring, must inform the Engineer about the completion of installation and call upon the Engineer for testing and inspection, whereinafter, the Engineer will communicate the date for inspection and testing of the installation of the consumer.

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21. Clause (2) of Regulation 31 provides that the intending consumer shall avail himself of the supply within three months in case of HT and one month in case of LT from the date of issue of notice in writing, informing him that supply is available.

22. Clause (3) of Regulation 31 provides that where the intending consumer fails to avail the supply within the above period, a further three months notice in case of HT and one month notice in case of LT will be sent to the intending consumer to avail the supply and if he does not avail the supply during this notice period, the application will be treated as lapsed and cancelled and forfeiture of the deposits, excluding the meter caution deposit will be made. From the said clause, it is implicitly evident that the applicability of the above clause is only where the intending consumer fails to avail the supply even during the extended period.

23. Clause (5) of Regulation 31 spells out the intention of the intending consumer to avail supply during the notice period of availability of supply and in

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such a case, the intending consumer shall be liable to pay the monthly minimum charges at the notified tariff rate for the period from the date of issue of first notice of supply availability till the date of availing supply.

24. There could be no quarrel with the aforesaid Regulations, as Clause (5) of Regulation 31 of the Distribution Code clearly mandates that where the consumer fails to avail supply during the notice period of availability of supply, the consumer would be required to pay the monthly minimum charges at the notified rate for the period from the date of issue of first notice of supply till the date of availing supply.

25. In the aforesaid backdrop, reference is to be made to Regulation 17 (1) of the Supply Code, which provides for agreement with respect to supply and also with regard to recovery. Therein, there is a clear stipulation that once the supply is commenced and till the agreement is terminated, the tariff and fees, as prescribed are to be paid.

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26. Reading Regulation 17 (1) of the Supply Code along with Regulation 31 of the Distribution Code, it is clear that after inspection and approval, the Board will inform about their intent to provide supply upon production of clearance certificate from CEIG and upon clearance certificate being produced by the intending consumer, the Board would commence supply. For the purpose of the intending consumer obtaining the clearance certificate, the notice issued by the Board informing of its feasibility and availability to provide supply, the intending consumer is provided with three months time, in the case of HT supply and one month time, in the case of LT supply to submit the clearance certificate and avail the supply. Therefore, it is evident that the first notice issued to the intending consumer under clause (1) of Regulation 31 of the Distribution Code, it is for the purpose of putting the intending consumer on notice about the availability of supply and for action from the intending consumer to avail the said supply.

27. In case the intending consumer fails to provide the necessary clearance within the aforesaid period provided under clause (2) of Regulation 31, the intending consumer is provided with the extended period by issuance of notice

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under clause (3) for availing the said supply subject to payment of minimum monthly charges from the date of issue of first notice.

28. Therefore, reading Regulation 17 (1) of the Supply Code harmoniously with Regulation 31 (1), (2) (3) and (5) of the Distribution Code, it clearly transpires that upon entering into agreement by paying the requisite charges for the first time, the intending consumer shall make the necessary infrastructure and intimate the same to the Engineer and upon inspection as provided for under clause (1) of Regulation 31 and on satisfaction, clause (2) of Regulation 31 comes into play, whereby notice is issued to the intending consumer to avail the supply within the period prescribed by obtaining the necessary clearance and failure thereof, the intending consumer is provided with an extended period by issuance of notice under clause (3) and on fulfilment, clause (5) comes into play, where the intending consumer is required to pay the monthly minimum charges from the date of issue of first notice.

29. However, one important aspect that requires to be considered here is that after entering into agreement under Regulation 17 (1) of the Supply Code,

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inspection has to be conducted under Regulation 31 (1) of the Distribution Code and upon obtaining CEIG clearance, the supply will be commenced on filing the appropriate clearance certificate. This scenario would arise only where the connection is availed for the first time, viz., the connection is a fresh connection and is not an additional load over and above what is already being enjoyed by a consumer. Therefore, the question of commencement of supply will arise only for the first time, when supply is provided after submission of CEIG clearance. However, in case the consumer is already an existing consumer, enjoying HT/LT supply as the case may be, provisioning of additional supply sought for would, though would require the submission of a safety certificate, however, the said safety certificate would be an extension of the already submitted safety certificate and would not be a new safety certificate, which requires deeper examination by the certifying body, viz., CEIG.

30. In this regard, it would be apposite to refer to the decision of the Apex Court in *Raymond's case (supra),* wherein the Apex Court has held thus :-

> "*As a matter of general principle, any stipulation for payment of minimum guarantee charges is unexceptionable, in a contract of this nature wherein, the Board which undertakes generation,*

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transmission and supply of electrical energy has to, in order to fulfil its obligation lay down lines and install the required equipment and gadgets and constantly keep them in a state of good repair and condition to render it possible for the consumer to draw the supply required at any and all times. These commitments are irrespective of the capacity of the Board to generate at a given point of time or during a relevant period the total quantum required for the consumption of all consumers of various categories or even during the days of breakdown envisaged or staggering necessitated on account of orders of Government regulating the distribution and consumption of energy as well as during periods when for reasons personal or peculiar to the consumers or even beyond their control the consumption is not and could not be of the mutually agreed extent. The Board undertakes to generate and supply energy, in public interest also at concessional rates of varying nature and it cannot be stated that the rates so fixed invariably are to meet the expenditure incurred by the Board for generation and supply of energy, to the last pie. Consequently, if either in the general conditions and terms of supply or the contract or the tariff rates as the case may there be any stipulation, in clear and unmistakable terms that the liability relating to the payment of guaranteed minimum charge could or will be enforced irrespective of the actual consumption rate of the consumer or even dehors the capacity or otherwise of the Board to supply even the minimum of the contract demanded energy, there could be no

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valid objection in law for any such stipulation being made and the consumer will be bound to honour such commitment. The contract for the supply of electrical energy cannot be treated on par with any other contacts of mutual rights and obligations, having regard to the peculiar problems involved in the generation, transmission and supply which invariably depend upon the vagaries of monsoon as well short supply to them of the required coal and oil in time and similar other problems over which the Board cannot have any absolute control. The recurring commitments relating to constant and periodical maintenance of supply lines and other installations cannot be anytheless even during such times and such onerous liabilities cannot be left to fall exclusively upon the Board and it is only keeping in view all these aspects, payment of minimum guaranteed charges is necessarily in built in the tariff system of the Board and the reasonableness or legality of the same cannot be considered either in the abstract or in isolation of all these aspects. It is for this reason that all over and the consumer is also made to share the constraints on Boards economy even during such periods. In fact the tariff inclusive of such a provision for payment of a minimum guaranteed sum irrespective of the supply/consumption factor appears to be the consideration for the commitments undertaken by the Board as a package deal and it is not possible or permissible to allow the consumer to wriggle out of such commitments merely on the ground that the Board is not able to supply at any point of time or period the required or agreed quantum of supply or even supply

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up to the level of the minimum guaranteed rate of charges. Tinkering with portions of contracts for any such reasons, merely on considerations of equity or reasonableness pleaded for and vis-a-vis one party alone will amount to mutilation of the whole scheme underlying the contract and render thereby the very generation and supply of electrical energy economically unviable for the Board. Consumers, who enter into such commitments openly and knowing fully well all these hazards involved in the generation, transmission and supply, will be estopped from going behind the solemn commitment and undertaking on their/its part under the contract. The High Court does not seem to have properly appreciated the ratio of the several decisions noticed except merely referring to them in extenso, and yet ultimately just, arrived at a conclusion merely for the reason that the court considered it to be `more equitable, just and reasonable to do so."

31. Applying the ratio laid down in the aforesaid decision, it is to be pointed out that the infrastructure already being in place, including the safety measures, the provisioning of additional load would not require any inspection, as all the infrastructure are already in place and only the safety aspect has to be gone into and, therefore, there arises no necessity for inspection and resultantly, the initial notice period informing the availability of the supply will is a matter of routine and in case an intending consumer does not receive the supply,

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definitely, the decision of the apex Court in *Raymond's case (supra)* would stand squarely attracted.

32. However, where the supply is requisitioned for the very first time by entering into an agreement under Regulation 17 (1) of the Supply Code by paying the requisite fees and other charges, necessarily, following it up, Regulation 31 (1) of the Distribution Code would come into play, where the Engineer of the Board has to mandatorily inspect the infrastructure of the intending consumer and CEIG clearance certificate has to be obtained and submitted by the intending consumer, which would consume time, as upon inspection, infrastructural inspection of the equipment and machinery will be conducted by CEIG and then the suitability certificate would be issued. Only to satisfy the said period, Regulation 31 (2) has provided for the period of one month/three months notice in case of LT/HT supply to provide time to the intending consumer to obtain the certificate and submit the same, whereinafter, supply will be provided by the Board, though the provisional sanction of supply had been informed to the intending consumer.

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33. From the discussion made above, it follows suit that where the supply is a fresh supply, the three months period provided under Regulation 31 (2) of the Distribution Code cannot be taken into consideration for the purpose of computing minimum monthly charges so long as the supply is taken within the period mandated under Regulation 31 (2) of the Distribution Code and only when the supply is not taken within the period prescribed under Regulation 31 (2), application of 31 (5) would come into play, when even the fresh consumer would have to pay the minimum monthly charges for even the initial notice period.

34. Where the consumer is an existing consumer, who had sought for additional load, the notice issued under Regulation 31 (2) on harmonious reading with Regulation 17 (1) of the Supply Code, would lead to the unambiguous position that the supply having already commenced and what is sought for is only an additional supply, the payment of minimum monthly charges would start from the date on which the initial notice is given, as CEIG clearance is a matter of routine, which would already have been obtained, as the issue of inspection under Regulation 31 (1) would not arise. Therefore, the commencement of supply, being ready at the hands of the Board, the consumer not taking the

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supply immediately, cannot be put against the Board, as the Board having generated the electrical energy, which cannot be stored and would be a waste, it is the duty of the consumer to compensate the Board for the generation of the supply, by payment of minimum monthly charges.

35. From the above, it is clear that where the intending consumer avails of the supply within the mandatory notice period of one month or three months as the case may be in respect of LT/HT connection, the consumer being a fresh consumer, the payment of minimum monthly charges would start only when the consumer fails to take the supply within the mandatory notice period by applying Regulation 31 (5) and not otherwise; but for already existing consumers, Regulation 31 (5) would come into play the very minute the Board issues notice under Regulation 31 (2) informing of the availability of the supply from which time, the consumer would be entitled to compensate the Board by paying the monthly minimum charges till such time the consumer gets ready to receive the approved supply.

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36. The only way clauses 17 (1) of the Supply Code and 31 (1), (2), (3) and (5) of the Distribution Code could be harmoniously read and interpreted could only be in the fashion, as aforesaid, as interpretation in any other manner would have detrimental effect both on the consumer as also on the service provider, viz., the Board.

37. Applying the ratio laid down by this Court in paragraphs 34 and 35, to the respective case of the petitioners, it is to be noted that all the petitioners have availed the supply within the period of three months provided under Regulation 31 (2). However, what is material to be noted here is that while the petitioner in W.P. No.20991/2017 is a fresh consumer, having sought for fresh HT connection, the petitioners in W.P. Nos.682/2019 and 14900/2022 are existing consumers, who already hold existing HT connection in their name and have sought for additional load from the Board. That being the case, while the petitioner in W.P. No.20991/2017 would not be entitled to pay any amount during the mandatory period of notice as provided for under Regulation 31 (2) of the Distribution Code, the petitioners in W.P. No.682/2019 and 14900/2022, being existing consumers, they would be required to pay the monthly minimum

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charges, as provided for under Regulation 31 (5) of the Distribution Code till such time they take requisite steps to receive the additional load as sought for by them.

38. Though the learned counsel for the petitioners have placed decisions in support of their contentions, however, it is to be pointed out that the said decisions are not applicable to the facts and circumstances of the present case, as the facts and the relative circumstances involved therein are diametrically opposite to the case as placed before this Court and, therefore, this Court is not dealing with the said decisions.

39. In the aforestated scenario, while the demand notice issued by the respondents in W.P. No.20991/2017 cannot be allowed to survive, there is no material infraction with the issuance of demand notice on the petitioners by the respondents in W.P. Nos.682/2019 and 14900/2022.

40. For the reasons aforesaid, while W.P. No.20991/2017 is allowed by quashing the impugned demand notice, W.P. Nos.682/2019 and 14900/202 are

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dismissed confirming the impugned demand notices issued by the respondents. Consequently, connected miscellaneous petitions are dismissed. There shall be no order as to costs.

10.09.2024

Index : Yes / No

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To

1. The Chairman & Managing Director
Tamil Nadu Generation & Distribution
Corporation, No.144, Anna Salai
Chennai 600 002.

2. The Superintending Engineer
Erode Electricity Distribution Circle
TANGEDCO, No.948, EVN Road
Erode 638 009.

3. The Accounts Officer/Revenue
Erode Electricity Distribution Circle
TANGEDCO, No.948, EVN Road
Erode 638 009.

4. The Superintending Engineer
Kancheepuram Electricity Distribution Circle
TANGEDCO, Kancheepuram 631 502.

5. The Superintending Engineer
Erode Electricity Distribution Circle
TANGEDCO, Krishnagiri.

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M.DHANDAPANI, J.

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PRE-DELIVERY ORDER IN
W.P. NO.20991 OF 2017
682 OF 2019 & 14900 OF 2022

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Pronounced on
10.09.2024

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