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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.08.2024

Pronounced on: 22.12.2024

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.22000, 23991, 30027, 31282, 31308, 31304, 32145 & 32150 of 2022 and 21742, 28323 & 35843 of 2023, and 920, 1707, 5051, 5057, 6243, 6247, 6248, 7742, 7751, 7746 & 15766 of 2024

and

W.M.P.Nos. 21026, 21029, 28891, 21028, 22970, 22971, 29438, 29440, 30716, 30718, 30720, 30744, 30745, 30746, 30737, 30738, 30739, 31566, 31567, 31568, 31570, 31571 & 31572 of 2022 and 21095, 27845, 27847, 27851, 35830, 35832, 35833 of 2023 and 956, 957, 954, 1756, 1753, 1755, 5552, 5554, 5556, 5561, 5562, 5563, 6936, 6940, 6941, 6928, 6933, 6927, 8656, 8657, 8662, 8671, 8665, 8668, 17171 & 17172 of 2024

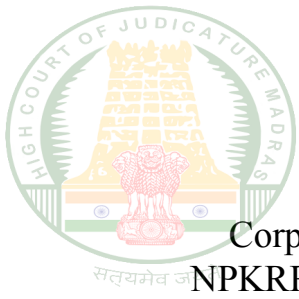
W.P.No.22200 of 2022:

The South India Spinners Association
(Regd. No.157/199)
Site No.17 – 19, Teachers' Colony,
Goldwins, Civil Aerodrome Post,
Coimbatore – 641 014
Represented by its President, J.Selvan.

...Petitioner

Vs.

1.The Chairman cum Managing Director
Tamil Nadu Generation and Distribution



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Corporation Limited (TANGEDCO)
NPKRR Maaligai, 144, Anna Salai,
Chennai – 600 002.

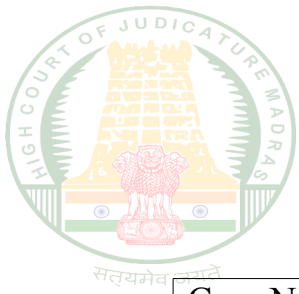
2. The Chief Financial Controller – Revenue
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
NPKRR Maaligai, 144, Anna Salai,
Chennai-600 002.

3. Tamil Nadu Electricity Regulatory Commission,
Represented by its Secretary,
SIDCO Corporate Office Building,
4th Floor, Thiru.Vi.Ka. Industrial Estate,
Guindy, Chennai-600 032.

4. The Government of Tamil Nadu,
Represented by its Secretary to Government,
Energy Department, Fort St. George,
Chennai-600 009.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus forbearing the Respondents 1 & 2 or their subordinates from levying and collecting the network charge from the members of the Petitioner Association with effect from 22.10.2021 retrospectively on the basis of the letter of 2nd Respondent Lr. No.CFC/REV/FC/REV/AO/REV/F: Network Charges/D.294/22 dated 04.04.2022 and consequently refund / adjust, if already collected for Network Charges from Rooftop Solar generation and also not to disconnect service connection for non-payment of Network charges from the members of the Petitioner Association, in pursuance of the Order No.8 of 2021 dated 22.10.2021 passed by the 3rd Respondent.



Case Nos.	For Petitioners	For Respondents
WP.No.22000 of 2022	Ms.AL.Gandhimathi, Senior Counsel for Mr.M.Kamalanathan	Mr.Richardson Wilson
WP.Nos.23991 of 2022 & 35843 of 2023	Mr.Rahul Balaji	Mr.Richardson Wilson
WP.Nos.30027 of 2022, 31282 of 2022, 31304, 31308, 32145, 32150 of 2022, 28323 of 2023, 920 of 2024, 1707 of 2024, 5051 of 2024, 5057 of 2024, 6243 of 2024, 6247, 6248 of 2024, 7742, 7751, 7746 & 15766 of 2024	Mr.S.P.Parthasarathy	Mr.Richardson Wilson
WP.No.21742 of 2023	Mr.G.Mani Prabhu	Mr.Richardson Wilson

COMMON ORDER

This order disposes 22 Writ Petitions, of which one has been filed by the South India Spinners Association and the remaining by individual consumers. All Writ Petitioners challenge demand notices in so far they relate to the component of network charges in respect of the energy produced by Rooftop Solar Generators (in short 'RSG') under Generic Tariff Order No.8 of 2021, retrospectively, with effect from 22.10.2021.

2. The submissions on behalf of the petitioners are by Ms.AL.Gandhimathi, learned Senior Counsel appearing for Mr.M.Kamalanathan, Mr.Rahul Balaji,



Mr.S.P.Parthasarathy and Mr.G.Mani Prabhu and by Mr.Richardson Wilson,

learned counsel for the respondents. Learned counsel have been heard and relevant documents and cases cited at the Bar, have been taken into account in penning this decision.

3. The petitioners are aggrieved by the demand charges that have been levied on HT/LT prosumers at the rate of 0.83 paisa for HT prosumers and Rs.1.27 paisa for LT prosumers on the generation of units from solar plants. They point out that the inference of the respondents that the solar plants work only in tandem with the network is incorrect, since the dependence of the solar plant on the network is minimal.

4. The tariff fixed by the Electrical Inspectorate for consumption of solar energy was 10 paisa as solar rooftop charges. According to the petitioner, nothing further ought to have been imposed over and above the same as they would fall under the category of ‘consumers’ under the relevant Regulations and not ‘prosumers’.

5. According to the petitioners, the demand notices are bereft of any authority as Order No.8 of 2021 (in short ‘Tariff Order’) does not enable the respondents to levy demand charges on the petitioners for the reason that the solar



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power is self-generated and captively used with no involvement of the grid. It is for this reason that they have not found it necessary to challenge Order No.8 of 2021 but challenge only the interpretation of that order in the impugned demand notices.

6. Learned counsel for the petitioners would take me in detail to Tariff Order No.8 of 2021 and the Annexure thereto, which has been passed after examining the views of all stakeholders and authorities. I will presently advert to the specific clauses of the Tariff Order that have been cited by the parties as well Miscellaneous Petition in M.P.No.14 of 2021 dated 21.12.2021.

7. In conclusion, the petitioners argue that the demand of network charges greatly prejudices their operations. The RSP had been set up on the understanding that there would be no burdensome charges in that regard. The petitioners place reliance on the judgement of the Supreme Court in *Khub Chand and others V. State of Rajasthan and others*¹.

8. According to the respondents, the case of the petitioners has absolutely no merit as it was never the intention of the Tangedco not to impose network charges on the petitioners. They refer in extenso to TNERC Notification in TNERC/NCES Regn./16/7 dated 07.01.2010 – 2008 regulation, TNERC Draft Notification No.TNERC/GISS dated 17.08.2021 and TNERC Consultative paper on

¹ AIR 1967 SC 1074



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Generic Tariff Order for GISS. They would maintain that the petitioners are dependent on the services provided by Tangedco to effectively deploy/use the solar power generated by them. It would be impossible for the petitioners to use such power if not for connectivity/conversion facility provided by Tangedco and the impugned charges are a measure of recovering the cost in that regard.

9. Respondents have, in this connection, taken pains to tabulate the expenditure incurred by the State in the provision of infrastructure urging that there is a cost that has to be borne by the recipient of such service.

10. My attention is drawn to agreements entered into with the parties, pointing out that there are pointed safeguards therein that bind the parties in terms of the Tamil Nadu Electricity Regulatory Commission (Grid interactive Solar PV Energy Generating Systems Regulation) 2021 (in short '2021 Regulations') as well as other relevant Regulations, Codes and orders of TNERC.

11. Thus they cannot now turn back and disown the demands that have been legitimately raised. Referring to the definition of 'network charges' under the 2021 Regulations, the respondents would reiterate that the petitioners are 'prosumers' under the Regulations/Tariff Order will all attendant liabilities thereto.



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12. The respondents rely on the following citations in support of their contentions:

- (i) *State of West Bengal v. B.K.Mondal and Sons*²
- (ii) *Babua Ram and others v. State of U.P. and another*³
- (iii) *Federation of Railway Officers Association and others v. Union of India*⁴
- (iv) *Indian Express Newspapers (Bombay) Private Ltd. and others v. Union of India and Others*⁵
- (v) *Tamil Nadu Survey Officers Union (Central), Represented by its General Secretary, No.266-A, Rice Mills Road, Nallavanpalayam Post, Tiruvannamalai-606 603 v. The Government of Tamil Nadu, Represented by the Additional Chief Secretary to Government, Revenue & Disaster Management Department, Fort St.George, Chennai-600 009 and others*⁶
- (vi) *The Maharashtra State Electricity Distribution Co. Ltd. v. Lloyds Steel Industries Ltd.*⁷
- (vii) *Mahinder Kumar Gupta and others v. Union of India (UOI) and Others*⁸
- (viii) *State of Punjab and others v. Dhanjit Singh Sandhu*⁹
- (ix) *Kohinoor Elastics (P) Ltd. v. Commissioner of Central Excise, Indore*¹⁰
- (x) *Andhra Pradesh, Southern Power Distribution Power Company Limited (APSPDCL) and another v. Hinduja National Power Corporation Limited and another.*

13. The Government of Tamil Nadu had notified the Tamil Nadu Solar Energy Policy, 2012 in October, 2012 providing for the promotion of RSG in two modes, the first as a domestic RSG, by way of generation based incentive, and the

² AIR 1962 SC 779

³ (1995) 2 SCC 689

⁴ (2003) 4 SCC 289

⁵ (1985) 1 SCC 641

⁶ WP.No.10465 of 2020 dt. 28.04.2022

⁷ MANU/SC/8261/2007

⁸ MANU/SC/0585/1995

⁹ (2014) 15 SCC 144

¹⁰ (2005) 7 SCC 528



second by way of promotion by the Government. The policy makes it more than abundantly clear that solar power is to be viewed and treated as a preferred form of power generation. The relevant portion of the policy that indicates the thinking of the State to make Tamil Nadu a solar hub is extracted below:

SOLAR ENERGY POLICY – 2012
Government of Tamil Nadu
Energy Department

1. PREAMBLE

Conventional energy sources like coal, oil, natural gas, etc., are limited in quantity, and if these continue to be depleted at the present rate, these will be exhausted in the coming decades. Energy demand is resulting in the creation of fossil fuel based power plants leading to substantial green house gas emissions having an adverse impact on global warming and climate change.

Solar energy offers a clean, climate-friendly, abundant and inexhaustible energy resource to mankind. The costs of solar energy have been falling rapidly and are entering new areas of competitiveness. Solar Thermal Electricity (STE) and Solar Photo Voltaic Electricity (SPV) are becoming competitive against conventional electricity generation in tropical countries. Rooftop SPV in tropical countries can compete with high retail electricity prices. Solar Power installations worldwide are growing rapidly with nearly 18-20 Giga Watt (GW) expected to be installed in 2012.

Tamil Nadu has reasonably high solar insolation (5.6-6.0 kWh/sq. m) with around 300 clear sunny days in a year.

Southern Tamil Nadu is considered to be one of the most suitable regions in the country for the development of solar power



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projects. With substantial solar insolation in the State, the strong commitment of the State Government and rapidly declining Solar Power costs, there are remarkable opportunities in the solar energy domain. This will enhance energy security, making Tamil Nadu the global reference in the solar energy sector.

As on 30.9.2012, India has a total installed capacity of 2,07,876 MW, out of which 20,162 MW is derived from Renewable Energy sources viz., Wind, Biomass, Solar etc.

Knowing the importance of promoting solar power, the Government of India has launched the Jawaharlal Nehru National Solar Mission (JNNSM) under the National Action Plan for Climate Change (NAPCC). The goal of the Mission is to provide tariff subsidies to increase scale and drive down costs to grid parity for achieving a target of 22,000 MW by 2022 in a phased manner. India has also fixed a self imposed renewable energy obligation with a separate solar energy obligation.

2. VISION OF THE GOVERNMENT OF TAMILNADU

The Honourable Chief Minister Selvi J Jayalalitha has a vision of developing Tamil Nadu as a world leader in Solar Energy by establishing 3000 MW by 2015.

Tamil Nadu is committed to leading the country by generating 3000 MW of Solar Power by 2015 through a policy conducive to promoting solar energy in the State. This Government headed by the Hon'ble Chief Minister Selvi J Jayalalithaa, intends to make Solar Energy a people's movement just as it did earlier in the case of Rain Water Harvesting.

3. TITLE AND ENFORCEMENT

This policy will be known as the "Tamil Nadu Solar Energy Policy - 2012". The Government of Tamil Nadu will undertake a review of this Policy as and when required in view of any technological



breakthrough or any changes taking place in the policy at the National level.

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4. OBJECTIVES

- *To achieve energy security.*
- *To reduce carbon emissions.*
- *To project Tamil Nadu as a Solar Hub.*
- *To generate 3000 MW of Solar Energy by 2015.*
- *To achieve grid parity by 2015.*
- *To encourage indigenous solar manufacturing facilities in the State.*
- *To promote Research and Development in the solar energy sector and hybrid systems.*
- *To create skilled man power and employment in a new industry.*

14. As a policy initiative, net metering was to be allowed and the policy in this regard, states as follows:

22.Policy Initiatives

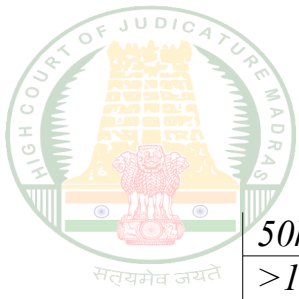
22.1 Net Metering

Net metering will be allowed (at multiple voltage levels) to promote rooftop penetration.

Net metering facility will be extended to Solar power systems installed in commercial establishments and individual homes connected to the electrical grid to feed excess power back to the grid with “power credits” accruing to the Photovoltaic energy producer.

Projects to evacuate power at suitable voltages as suggested below:

Solar PV System size	Grid Connected
<i><10kWp</i>	<i>240V</i>
<i>10kWp to <15kWp</i>	<i>240V/415V</i>
<i>15kWp to < 50kWp</i>	<i>415V</i>



50kWp to <100kWp	415V
>100kWp	11KV

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22.2 Wheeling and Banking Charges

The wheeling and banking charges for wheeling of power generated from the Solar Power Projects, to the desired locations for captive use/third party sale within the State will be as per the orders of the Tamil Nadu Electricity Regulatory Commission.

15. The policy envisaged that by the end of 2023, solar energy of 2500 MW would have been generated towards infrastructure development and the intention was to provide a boost to the private sector that was encouraged to install and use RSGs. The mode of usage was self-generation. The members have drawn a parallel with the diesel generators installed to aid the running of the mills during shortage in electricity supply to illustrate how the energy produced by the solar plants were fed directly to the mill without any loss of the input or grid involvement, similar to how the energy produced from the diesel generators is utilised.

16. The Tamil Nadu Electricity Regulatory Commission (TNERC) had issued Tariff Order No.8 of 2021 touching upon the tariff of the Grid Interactive PV Solar Energy Generating System (GISS). The Order provided for certain benefits, such as voltage improvements, reduction of transmission capacity charges, reduction



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of stress on lines and equipments and deferral of infrastructure upgradation, to name a few.

17. RSGs were introduced as a new and renewable source of power. Regulation 8 states that charges may be imposed by the Commission for the sale of power to distribution licencees, captive use and third party sale of the power generated by the Rooftop Solar Plants.

18. The Tamil Nadu Electricity Supply Code at 2.4.1, Regulation 4(i-a) refers to charges recoverable by a licensee and states as follows:

Regulation 4(i-a) Charges recoverable by the licensee:

*(i-a) The wheeling charges /Network charges shall be payable by the HT/Lt consumer category in accordance with the rates as the Commission may fix time to time for different category of consumers (to recover the cost incurred by the Licensee for **its Distribution wire business**). Provided that the Wheeling charges/Network charges may be denominated in terms of Rs./kWh (or) Rs/KVAh or Rs./kW/month (or) Rs./KVA/month for the purpose of recovery from the Distribution network user or any such denomination as may be stipulated by the Commission.”*

19. The question now raised is as to whether wheeling and network charges would be recoverable by the licensee as a measure of cost incurred for distribution wire business. The petitioners argue that network charges are not liable



to be collected from RSP, as there is no involvement of the grid in any way, in such generation.

20. A 'prosumer' and 'consumer' are defined under Rule 2(m) and Rule 2(f) of the Electricity (Rights of Consumers) Rules, 2020 as follows:

2(m) Prosumer: Prosumer means a person who consumes electricity from the Grid and can also inject electricity into Grid for distribution licensee, using same point of supply.

2(f) Consumer: Any person who is supplied with electricity for his own use by distribution licensee or the Government, or by any other person engaged in the business of supplying electricity public under the Electricity Act 2003 or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a distribution licensee, the Government or such other person, as the case of may be.

21. The petitioners have endeavored to argue that they are 'consumers and not 'prosumers' under the Act. A prosumer is one who both consumes and supplies electricity from and to the grid whereas a consumer is one who only consumes power supplied either by a distribution licensee (such as Tangedco), the Government or any other supplier or whose premises are enabled for the receipt of such power.



22. On a plain reading of the definitions, the petitioners could be either consumers as they are connected to the grid for supply of electricity through regular means, as well as prosumers in cases when the entity injects electricity into the grid as well. Having said so, in my view, nothing much turns on whether are categorised as ‘consumers; or ‘prosumers’ as a detailed study of the usage of the aforesaid terms indicates some lack of uniformity in the usage of these terms in the Regulations.

23. The terms have been used interchangeably in some places and are, thus, of limited use in deciding the matter in issue. I thus do not see the need or necessity to make a categoric determination on whether they petitioners are ‘consumers’ or ‘prosumers’ as the issue relating to imposition of the impugned charges could well be decided de hors this aspect.

24. Clause 1.1.1 of Tariff Order dilates on the importance of the grid connected solar energy generation system in the following terms:

‘1.1 The importance of grid connected solar energy generation system’

1.1.1 The Tamil Nadu Solar Energy Policy 2019 includes a consumer category solar energy target of 3,600 MW by 2023. As of 31st March, 2021, only 9.03% of this target has been achieved. The Tamil Nadu Solar Energy Policy 2019 introduced two metering mechanisms for rooftop/ground mounted solar energy systems; net feed-in and gross



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feed-in, whereby the consumers could opt between the two metering mechanisms.

25. Clause 2 of Tariff Order refers to the relevant provisions of the Electricity Act, 2003 which stresses on the importance of optimal utilization of energy resources, such as coal, natural gas, nuclear substances or materials, hydro and renewable source of energy.

26. The Tariff Order takes into account the tariff determination and components as well as the tariff rate, and in clause 8 thereof specifically refers to network charges in the following terms:

8. Network charges:

8.1 Section 61 of the Electricity Act insists that the generation, transmission, distribution and supply of electricity are conducted on commercial principles. Regulation 4(5) of the Commission's Power Procurement from New and Renewable Sources of Energy Regulation 2008, stipulates that while determining the tariff, the Commission shall adopt appropriate financial and operational parameters.

8.1.1 Grid interactive support is the ingredient component of any grid connected solar system, without which the solar generating system would become non-functional.

8.1.2 While the development of solar has been on the rise in the past decade with isolated investments of individual projects, the supportive Grid on which these solar systems depend on their operation, had been developed with huge investment and being maintained with equally huge recurring expenditure.



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8.1.3 *When a dual investment is made for net work system and solar system collectively in order to make them to co-exist and complement each other to operate in tandem, the substantial investment pertaining to half portion of the system cannot be ignored.*

8.1.4 *Thus the component of the charges pertaining to essential linkage of grid to generate solar power has to be necessarily made a part of the charges to be determined holistically for generic solar tariff.*

8.2 *This network charges shall be applicable to consumers of net-metering and net-billing mechanism for the total units generated by the solar systems. Such charges to be recovered from the prosumers will be covered within the total Aggregate Revenue Requirement as envisaged in the amendment to the Terms and Conditions for Tariff Regulation 2005 as notified vide TNERC/T/5/3 dated 26.05.21.*

8.3 *Network charges shall not be applicable for eligible consumers /generators for gross metering mechanism as it involves direct sale of the units generated by their solar system to be Licensee.*

8.4 *Network charges shall be applicable to all existing and new consumers except for consumers who sell the generated units directly to the Licensee under Gross metering mechanism.*

8.5 *Network charges shall be applicable to the prosumers categorised under net metering or net billing or net feed in mechanism, as determined by the commission under regulation 70 of TNERC (Terms and conditions for determination of Tariff) Regulations 2005, from time to time.*

8.6 *To encourage the growth of solar power in domestic sector, the Commission proposes to levy 20% of network charges for domestic consumers of up to 10KW and 75% of network charges for the domestic consumers of above 10KW.*

8.7 *100% network charges shall be applicable to all other category of consumers / prosumers (except agriculture consumers for which separate orders will be issued) covered under net feed-in mechanism.*



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8.8 The total units recorded in the meter provided to measure the gross generation of solar power shall be reckoned for calculation of network charges.

27. Clause 8.9 states that in determining of network charges, 'the investment made for 'Distribution Network system' is recoverable from the prosumer for availing the support of network system.' (8.9.1) and after taking into account the costing for the licensee and the Commission has approved the network charges in the following terms:

8.94 Considering the Network cost arrived at above, the Commission approves 'Network charges' as shown below.

Sl. No	Details		HT Level	LT Level	Total
1	Ratio of Network cost	(a)	70%	30%	100%
2	Apportioned Network cost (Rs. Crores)	(b)	6406.20	2745.55	9151.84
3	Proportionate Network cost for HT @ Sales ratio (Rs. Crores)	$(6406.29) * (14867 / 77391) = (c)$	1230.66		
4	Remaining Network cost belongs to LT (Rs. Crores)	$(9151.84 - 1230.66) = (d)$		7921.18	
5	Energy sent through (in MU)	(e)	14867	62524	77391
6	Network	$HT Level = (c)/(e)$	0.83	1.27	



charges/kWh
(in Rs.)

LT level = (d)/(e)

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8.9.5 The Network charges towards the Distribution wire business is chargeable to HT prosumers at 83 Paise / kWh and for LT prosumers at Rs.1.27/kWh. The above charges is applicable to all existing and new prosumers as specified under respective category until the 'Network charges' is revised by the Commission in the next Tariff Order or in any other special order.

28. There is detailed analysis on the sanctity of and justification for network charges and in dealing with Regulation 4(i-a) of the Tamil Nadu Electricity Supply Code under the caption Charges recoverable by the licensee, the Commission states in order dated 22.10.2021 as follows:

8.10.4.....The wheeling /network charges stem from the concept of using the electrical network as an indispensable supporting mechanism to generate solar power as well as transmitting the power so generated from generating point to load point destinations.

29. The Commission also states in Clauses 8.10.7, 8.10.9, 8.9.10, 8.10.12, 8.10.14, 8.11.9, 8.11.11, 8.11.15, 9.7, 9.10 as follows:

8.10.7. In case of sale of power to the distribution Licensee, the transmission and wheeling charges are embedded in the preferential tariff. In case of captive transactions, the transmission and wheeling charges alone are collected as there is no supply of power by the generator to the Licensee and hence the Licensee in such cases is a mere carrier. Insofar as the GISS, it is unique in the context that it is neither a case of full-fledged captive generation nor entire sale to Licensee, (barring gross metering category for which wheeling/network charges are not applicable). Therefore it is a mix of captive



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consumption and sale to Licensee but the fact remains that the usage of network essentially required by the GISS for both needs has to be charges for its operation to generate power and inject it to the grid for which it has become necessary to evolve the wheeling/network charges. The Net-metering and Net-Billing modes of GISS are primarily installed/developed for their self-consumption. The excess energy above the self-consumption is exported to the grid.

8.10.9 The GISS essentially needs a reference system voltage to operate. The supporting system is indispensable for the GISS for its coupled operation. When the network is down without power, the couple breaks and the dependent solar system that operates in tandem with the live network, also becomes dead stalling its operation instantly.

8.9.10. If the GISS were to be delinked and operated on its own without relying on the Licensee network as a supporting system, it would have to be established with a massive supportive battery station by the user of GISS with huge investment of their own as an equivalent supporting system to enable the operation. By freely accessing and readily using the Discom's network as a supporting system, the users of GISS saves huge investment, space and O&M charges which otherwise would have to be spent by them towards the supporting battery system.

8.10.12. Using the network therefore is the basic operational parameter that forms the corner stone of the entire subject. While the wheeling charges are mandated to be charged to use the network, the same charges are squarely and automatically applicable for generating the solar power for the same purpose of using the same network.

8.10.14 In the quest of promoting the renewable sources of energy as mandated in Section 61(h) and providing commercial incentives to encourage its growth, the basic and underlying objective of sub section (c) of the same section in governing the efficiency, economical use of the resources, good performance and optimum investments etc., cannot be lost sight of. It is for this reason the wheeling/network charges is sought to be contemplated to ensure a level playing field to serve the interest of all stake holders and fulfil objectives of Section 61 in



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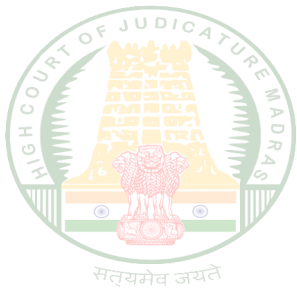
totality. The conjoint reading of section 86(1)(e) and 61(b) makes it clear that there must be a harmonious balancing between promoting the Renewable energy and safeguarding the interest of the Licensee. This fair balancing is entailed by the wheeling/network charges. While the prosumer is replacing the high cost grid power with low cost solar power resulting in considerable saving, (even after payment of marginal network charge), the Licensee is compensated with the network charges.

8.11.9. Now in this Order the Commission has proposed to recover only the Distribution Network cost belonging to Distribution wire business, which has been worked out as Rs.0.83/Unit in respect of HT consumers and Rs.1.27 in respect of LT consumers. Though there is a gap of Rs.3.44 / Unit in fixed cost, the Commission has not proposed for the recovery of entire fixed cost in order to encourage the Renewable power generation and to achieve the target, taking into account of various promotional measures considered in the policies of the Government of India as well as the Government of Tamil Nadu.

8.11.11 If the above exercise of determining Network/Wheeling charges were to be taken up after filing/approval of the ARR of 2020-21 the network charges would still be higher than what has been proposed now based on the 2019-20 figures. However, Commission likes to ensure a balanced approach between the interest of the prosumers and other consumers and hence intends to impose the cost at lower level.

8.11.15. And also, the following benefits are available to a Solar GISS prosumer –

- (i) While a consumer prefer a Solar GISS arrangement, the consumer save Rs.3 to Rs.5 per Unit against its retail supply tariff.
- (ii) A consumer /prosumer / generator
 - a. Not liable to pay the cross subsidy surcharge charged to an Open Access consumer



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- b. *No need to pay the Transmission charges, wheeling charges, Scheduling charges, System operation, charges like a Captive generator / OA consumer.*

(iii) *The prosumer is provided with 24 x 7 back up supply arrangement from the Distribution licensee during every stop / start of supply.*

(iv) *Banking of un-utilised energy / carryover of credit cost throughout the settlement period.*

(v) *20% additional tariff during evening peak hours based on ToD.*

9.7 *Eligible consumers / prosumers / generators of respective categories are eligible to apply for additional loads with total loads not exceeding the sanctioned load/contracted demand or 999 kW whichever is lower, subject to the technical feasibility.*

9.10 *The existing parallel operation mechanism shall be converted in to net feed-in mechanism that shall enable the prosumer to export the excess power to the Licensee Grid and encash them with feed-in tariff. The reverse power relay shall be removed. While the network charges is applicable for the generated power, the parallel operation charges shall cease to exist upon such conversion. The prosumer shall benefitted to export the entire solar power generated during non-production period like holidays besides exporting excess power during normal days.*

30. It is the petitioner's case that the demands towards network charges have been fully passed on to the petitioners even in the tariff fixed that they are remitting regularly. There is no dispute on this score. Hence they say that any demand over and above the amount already billed has not been contemplated by the Regulations. I agree that the cost, if any, to be passed over to the consumer (or



prosumer as the case may be), is expected to be subscribed into the charges payable by that entity.

31. I find support in this regard from Annexure II of Tariff Order No.8 of 2021 contains the list of stakeholders who have offered their views on the fixation of the Tariff and after considering which, the analysis and decision of the Commission is as follows:

5. Parallel Operation:

.....

Analysis and Decision of the Commission:

It is made clear that the captive use of the power generated by GISS shall continue. It is also made clear that in all categories the GISS is allowed up to the sanctioned load/contracted demand as the case may be subject to the capping of 999kW. There is no condition for a separate feeder or a dedicated feeder for the loads up to 999kW. However capacity restriction is necessary for load management and to maintain network parameters within safe limits.

The core intent of the Commission is to replace the parallel operation charges by network charges in view of the fact that it is going to be beneficial both for the prosumer and Licensee.

When the parallel operation mechanism is replaced by the Net billing or Net feed-in mechanism, the reverse power blocking from generator to Grid which is inherent in parallel operation gets removed. There shall not be reverse power relay any more. As a result, the prosumer under Net billing or Net feed-in mechanism is freed from the barrier of reverse power with a leverage to export power during holidays or



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during reduced load conditions of the industry even during normal days and thereby encash the quantum of energy so exported. It will be beneficial particularly for industries and MSME units.

On the other hand, Licensee is suitably compensated with the network charges for the total units generated towards usage of their network by the prosumers for the said power generation.

32. It is thus clear that there has been a concerted examination of network charges and the feasibility thereof in the case of consumers using Rooftop solar power. The Tariff Order has not provided for any separate charge for network provision. On the aspect of grid connectivity or reverse power relay, the Regulator holds that there is no further necessity for such provision. With this, the necessity for the connectivity with grid stands obviated. In any event, the imposition of a separate charge in that regard gets obviated. There admittedly, being no other or further connection established with the grid, the impugned demand notices are clearly contrary to the Regulations.

33. One may also take a cue from the Draft (Grid Solar PV Generating Systems) Regulations, 2024, (yet to be issued or notified), wherein, in the second recital, it is stated that *‘It is decided to repeal the said Tamil Nadu Electricity Regulatory Commission (Grid Interactive Solar PV Energy Generating Systems) (GISS) Regulations, 2021 and notify a revised comprehensive Regulation*



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governing the matters related to Grid Interactive Solar PV Energy Generating System along with the Battery Energy Storage System'.

34. The Explanatory Statement to TNERC draft Notification

No.TNERC/GISS dated 17.08.2021 reads as follows:

Explanatory Statement

In the M.P.No.14 filed by TANGEDCO, the Commission has passed daily order observing that rates for the gross metering have to be fixed and directed TANGEDCO to file components in regard to assessing the network cost. Commission further directed the Registry to webhost the consultative paper in this regard.

2. *The Commission had earlier notified (Notification No.TNERC/TR/5/3 Dated 26-05-21, Gazette notification on 09-06-2021) the enabling provision to recover the network cost from the consumers under Regulation 70 of TNERC (Terms and Conditions for determination of Tariff) Regulations, 2005.*

3. *The Electricity (Rights of Consumers) Amendment Rules, 2021 mandates enactment of Regulation for grid interactive solar generation system for arrangements of net-metering, net billing and gross metering mechanisms.*

4. *The above set of legal requirements constitute the need to determine the tariff for net feed-in and gross metering mechanism coupled with enactment of a regulation of Grid interactive solar generation system along with a consultative paper with required details and statistics for appraisal.*

The proposed draft regulation seeks to fulfil the above requirements.



35. One could thus legitimately argue that such repeal was only to provide clarity that there would be no separate demand of network charges for Rooftop Solar Generators. The Supreme Court in the case of *Khub Chand* (supra), that is to say where the Court considered the impact of the term '*shall*' and state that doubtless under certain circumstances the expression '*shall*' will be construed as '*may*'.

36. Though in ordinary sequence the term '*shall*' would connote a mandate, the construction of the expression would depend on the provisions of a particular Act, the setting in which the expression appears, the object for which the direction has been given and the consequence that would flow from the infringement of that direction among several other considerations.

37. In the present case, the petitioners have been remitting the charges imposed on them which have taken note of all ingredients contained in the Tariff Order including network charges. Hence, there is little justification for any change over and above the same.

38. M.P.No.14 of 2021 had been filed by Tangedco to consider certain revisions in the net metering policy under the revised accounting methodology which they canvassed. According to the petitioners, one of the points raised was in



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regard to whether network charges may be separately collected from consumers using solar power.

39. After considering their contentions as well as the Tariff Order itself and the preceding discussion by the Commission leading to the passing of the Tariff Order, the matter was clarified, by an order dated 21.12.2021 in favour of the petitioners. The relevant portion of the discussion and the operative part of the order reads thus:

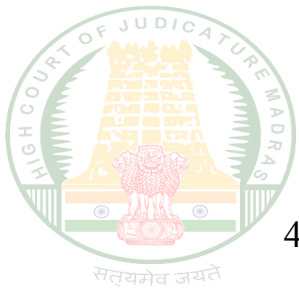
7. Findings of the Commission:-

7.1. Heard the submissions of the petitioner and the impleader. Determination of generic tariff along with operational mechanism and billing methodology have been evolved by the Commission for net-metering, net-billing and gross metering of solar power and notified vide generic tariff order for Grid Interactive PV Solar Energy Generating System (GISS) – Order No.8 of 2021 dated 22-10-2021.

7.2. TNERC (Grid Interactive Solar PV Energy Generating Systems) Regulations, 2021 have been framed by the Commission and notified in line with the Electricity (Rights of Consumers) Rules, 2020 as amended. It also entails various provisions of the Generic Order No.8 of 2021 for implementation of tariff so fixed and all the procedures involved therein.

7.3. In view of the fact that the said tariff order and regulations collectively addresses all the issues raised by the petitioner Licensee, no adjudication in any manner, is required further thus rendering the petition as infructuous.

Accordingly the petition is disposed of as infructuous.'



40. The above clarification fortifies my conclusion that network charges stand subsumed in the fixation of tariff itself even at the inception and there is simply no justification in any additional charges which will constitute double jeopardy on the same account.

41. The petitioners have also referred to letter dated 05.01.2024 issued by the Superintending Engineer, Erode Electricity Distribution Circle to Senthilkumar Textile Mills Private Limited, where that Mill has been asked to provide, at their own cost, a Generation Meter of necessary capacity to measure the energy generated in the energy generating system which would be used to calculate solar network charges.

42. In this regard, useful reference may be made to clause 13.7 of Order 8 of 2021 dated 22.10.2021 where the responsibility of installation of meter falls on the licensee. Clause 13.7 states that wherever the meter for measuring the gross generation of solar units is not available at present, the same shall be arranged to be installed by the licensee for loads above 10KW till such time the units and demand recorded in the inverter will be accounted for the purpose. It is however an admitted position that no such meters have been installed in any of the petitioners' premises by Tangedco.

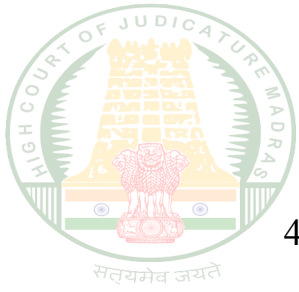


43. The respondents have referred to several Notifications, TNERC/NCES Regn./16/7 dated 07.01.2010 – 2008, TNERC Draft Notification No.TNERC/GISS dated 17.08.2021 and TNERC Consultative paper on Generic Tariff Order for GISS to set their arguments in context and pointing out that the petitioners have contracted to be bound by the applicable Regulations. Undoubtedly so. However, it is the interpretation of those agreements by Tangedco that is, in my view, flawed.

44. The definition of network charges is set out in clause (y) of sub-regulation 2.1 in GISS Regulation 2021 as follows:

“Network charges” means and includes all charges besides incidental charges incurred by the Licensee for creating, developing and maintaining the network for its functions and operations that includes providing the essential grid support to the Grid interactive Renewable Energy Systems for its dependent parallel operation without which such Grid interactive system cannot operate independently.’

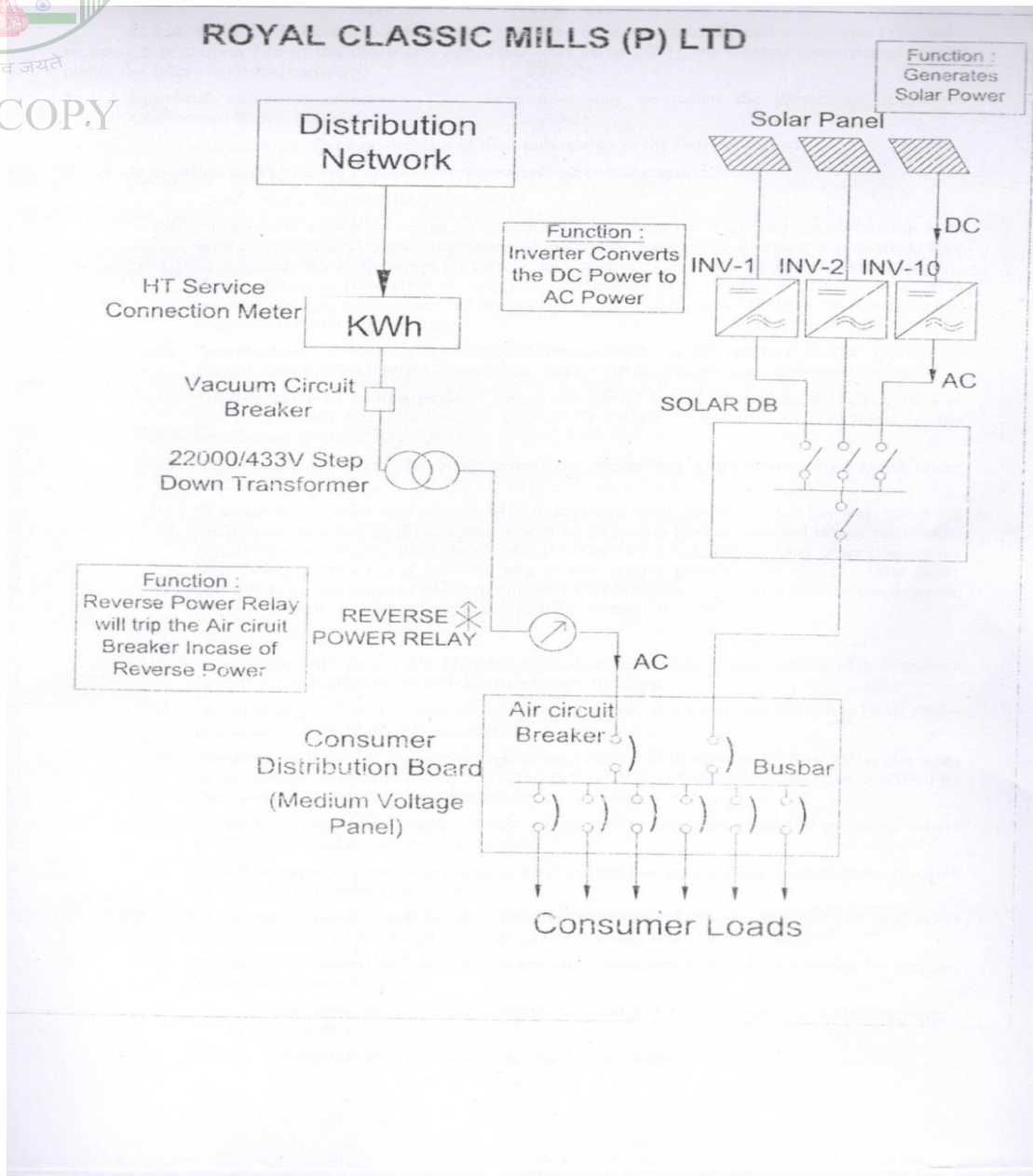
45. Under letter bearing No.Lr.No./TNERC/DDE2/ADSA/F.GISS/D.No.502/2024 dated 10.04.2024, the authorities refer to the above definition in support of their submission that network charges represent the charges for providing essential grid support to the GISS. It does not discriminate and does not single out either ‘prosumers’ or ‘consumers’ treating them all equally, as long as the GISS operates with grid support.



46. Thus, it all boils down to whether the solar rooftop consumers are actually depending on grid support or otherwise. To aid in the course of understanding of how a solar plant would operate, a visual depiction was sought for and has been provided by the petitioners as follows:



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47. As the respondents point out, there is, undoubtedly, a connection to the grid through the Discom, as may be seen from the diagram provided. In my understanding, the Discom is an indispensable feature in the mechanism for



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generation of electricity as, without that feature, or its equivalent, it would be possible to use the power generated, captively. The feature essentially provides the facility of converting raw power to power in a form that is usable by the consumer and is a facility necessary for any captive generator to possess in order to use/deploy the power captively generated. However, this would not, in my view, lead to the conclusion that there is an enabling facility provided by the respondents to warrant an unanticipated charge, that too, one already passed on.

48. The argument advanced by the State is that such a feature, a Discom or equivalent thereof, could well have been obtained by the generator themselves, and having not done so, would expose them to the charges. The cost of a Discom is stated to be prohibitively high and the petitioners submit that this would be beyond their means.

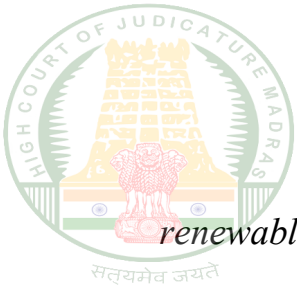
49. This issue also be seen in the context of the object and reason why the State had promoted solar power in the first place. It is the vagaries of conventional sources of power that had prompted the State to encourage persons/industries to explore alternate sources of power. Thus, having encouraged them to explore alternate power sources the State cannot impose an unfair burden on them for so complying.



50. The Respondents have taken pains to illustrate the substantial expenditure incurred by them to put in place the infrastructure for transmission of power as well as various additional responsibilities and costs. This may well be so. While the budgeting of expenditure is certainly a matter of importance and the State/Respondents cannot be faceted at a policy level, to expect the consumers to share the same, this is a case where the Tariff Order and Regulations referred to above would conclusively establish that such expenditure has, in fact, been factored into the determination of tariff as a hidden cost. The respondents have failed in their attempt to seek modification of the Tariff Order, and the order in the Miscellaneous Petition as well as subsequent proposals (in draft form) clearly establish this position.

51. Hence, there is no sanctity in the impugned demands. If at all the respondents believed that there should have been an additional component of cost, then the proposal should have been made and finalized in a transparent manner enabling the petitioners to take an informed decision as to whether they are interested in exploring the solar policy at all. This was never done.

52. Moreover Section 86(1)(e) of the Electricity Act, 2003 states that ‘*The State Commission shall promote cogeneration and generation of electricity from*



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renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee.'

53. Notwithstanding the statutory responsibility casts on the respondents, I believe that they have already enriched themselves to the extent of costs that have been passed on to the petitioners as part of the tariff. To do so, once more by way of the impugned additional demands would thus contrary to not just the spirit of the State Policy and vision but the Regulations and the statutory directives as well.

54. In such circumstances I have no hesitation in setting aside the impugned demands and allowing these writ petitions and I do so. Connected Miscellaneous Petitions are closed. No costs.

22.12.2024

Index: Yes

Speaking order

Neutral Citation: Yes

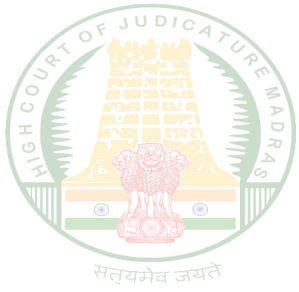
sl

Note: Full cause title to be typed.



To
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- 1.The Chairman cum Managing Director
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
NPKRR Maaligai, 144, Anna Salai,
Chennai – 600 002.
- 2.The Chief Financial Controller – Revenue
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
NPKRR Maaligai, 144, Anna Salai,
Chennai-600 002.
- 3.Tamil Nadu Electricity Regulatory Commission,
Represented by its Secretary,
SIDCO Corporate Office Building,
4th Floor, Thiru.Vi.Ka. Industrial Estate,
Guindy, Chennai-600 032.
- 4.The Government of Tamil Nadu,
Represented by its Secretary to Government,
Energy Department, Fort St. George,
Chennai-600 009.



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W.P.No.22200 of 2022 et



DR. ANITA SUMANTH, J.

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W.P.Nos.22000, 23991, 30027, 31282, 31308,
31304, 32145 & 32150 of 2022 and 21742, 28323
& 35843 of 2023, and 920, 1707, 5051, 5057, 6243, 6247,
6248, 7742, 7751, 7746 & 15766 of 2024
and
W.M.P.Nos. 21026, 21029, 28891, 21028, 22970,
22971, 29438, 29440, 30716, 30718, 30720, 30744, 30745,
30746, 30737, 30738, 30739, 31566, 31567,
31568, 31570, 31571 & 31572 of 2022 and 21095,
27845, 27847, 27851, 35830, 35832, 35833 of 2023
and 956, 957, 954, 1756, 1753, 1755, 5552, 5554,
5556, 5561, 5562, 5563, 6936, 6940, 6941, 6928, 6933, 6927,
8656, 8657, 8662, 8671, 8665, 8668, 17171 & 17172 of 2024

22.12.2024