



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	31.03.2021
Pronounced On	18.06.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.1447 of 2012
and
M.P.Nos. 3 & 4 of 2012

M/s.Hinduja Foundaries Limited,
Kathivakkam High Road, Ennore,
Chennai - 600 057.

... Petitioner

Vs

1. Tangedco represented by its Chief Engineer,
Non-conventional Energy Sources,
800, Anna Salai, Chennai - 600 002.
2. The Superintending Engineer,
Tangedco, Tirunelveli Electricity Distribution Circle,
Tirunelveli - 627 001.
3. The Board of Audit Department (BOAD)
Tangedco, 800, Anna Salai,
Chennai - 600 002.
4. The Superintending Engineer,
(Tangedco), C.E.D.C, North Circle,
Anna Salai, Chennai - 600 002.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent comprised in the impugned demand in Lr.No.SE/TANGEDCO/TIN/AO/Rev./AS/WM/F.IDC/D.2050/11 dated 29.08.2011 as subsequently confirmed in its communication in Lr.No.SE/TANGEDCO/TIN/AO/Rev./AS/WM/F.IDC/D.2677/11 dated 01.12.2011 and the consequential demand of the 4th Respondent in the impugned current consumption bill dated 24.12.2011 for the Petitioner's H.T Service Connection No.1347 and quash the same as being arbitrary and illegal besides being violative of the provisions of the Electricity Act, 2003 and direct refund of the sum of Rs.26,99,500/- collected from the petitioner through Current Consumption Bill bearing Lr.No.SE/TANGEDCO/TIN/AO/REV/A.3/D.2743/2011 DATED 24.12.2011.

For Petitioner : Mr.Rahul Balaji

For Respondents : Mr.P.R.Dhilip Kumar



ORDER

The petitioner has challenged the impugned demand notice dated 29.08.2011 issued by the second respondent bearing reference Lr.No.SE/TANGEDCO/TIN/AO/Rev./As/WM/F.IDC/D as confirmed in communication dated 01.12.2011 bearing reference Lr.NO.SET/TANGEDCO/TIN/AO/Rev./AS/WM/F. IDC/D.2677/11 and the consequential demand of the fourth respondent in the impugned consumption bill dated 24.12.2011 for the petitioner's HT Service Connection No.1347 seeking to demand an amount of Rs.26,99,500/- as the differential Infrastructure Development Cost/Charge (IDC) on 12 Wind Energy Generators (WEGs), i.e. Windmills purchased by the petitioner from M/s.K.C.P.Limited. These 12 WEGs were commissioned on various dates between 30.09.2004 and 23.12.2004.

2. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents. I have also perused the provisions of the Electricity Act, 2003 and the regulations made there under.

3. The impugned demand has been issued on the strength of the Proceeding dated 21.8.2004 bearing reference Permanent B.P. (FB) No.92 communicated by the Tamil Nadu Electricity Board. Relevant portion of Proceeding dated 21.8.2004 bearing reference Permanent B.P. (FB) No.92 of the Tamil Nadu Electricity Board is extracted as under:-

PROCEEDINGS:

In order to create the required power evacuation facilities, collection of Infrastructure Development Charges (IDC) at the rate of Rs.10 Lakhs per MW was contemplated vide B.P.(FB) No:236, dt.11-8-94. Subsequently, the above charges was enhanced, vide B.P.(FB) No:251, dt.28-10-1996, to Rs.15 Lakhs per MW since new dedicated wind farm sub-stations at 110 KV level were required to be established to evacuate the power generated by the wind mills of the private developers.

The earlier order was issued based on the rates of various materials prevailed during 1996. Now, the cost of material such as Breakers, Structure and Tower Steel Materials, Power Transformers etc., have increased many times and in fact steel materials have become extremely dearer than ever before.

"Now it is considered that the existing power handling system at the 110 KV level may not be adequate to cater to the growing wind power generation and hence, power Evacuation capability could be strengthened and



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connectivity to the new applicants could be considered only if 230 KV sub-stations and required 23(KV lines are established to transmit the wind power generated to the lead centers so that energy could be supplied to various categories of consumers with less line loss."

The additional expenditure involved, in establishing a 230 KV sub-station with required Auto transformers, 230 KV lines and related equipments, has to be augmented now by TNEB, apart from the increase in the existing rate decided earlier based on the cost of materials prevailed then and also the cost of the development of infrastructure facility upto 110KV level only.

Therefore, the present rate of the infrastructure charges to be paid by the wind farm developers at the rate of Rs.15 Lakhs per MV was reviewed and after careful consideration, Tamilnadu Electricity Board as approved the follows:

- i. To enhance the present rate of the infrastructure charges to be paid by the wind farm developers at the rate of Rs.15 Lakhs per MW to Rs.25 lakhs per MW.
- ii. To collect the amount from the wind mill developers prospectively, apart from collecting the usual Registration Charges at the rate of Rs.1000/- per WEG, Consultancy charges at the rate of Rs.10,000/- per application and charges towards the provision of capacitor banks at the rate of Rs.0.75 Lakhs per MW.
- iii. The above rate is applicable from the date of issue of this order.

4. It is the case of the petitioner that the revision in the Infrastructure Development Cost/Charge (IDC) in terms of the aforesaid proceeding was applicable only to new applicants and not to those developers or the owners who had already filed application and had commenced the installation of the WEG before the issue of the Proceeding dated 21.08.2004 bearing reference Permanent B.P.(FB) No.92 communicated by the Tamil Nadu Electricity Board.

5. To understand the case better, it will be useful to bear in mind that the reasons for levy of Infrastructure Development /Charge (IDC) from the Developer and indirectly



from the owners/ investors of Wind Energy Generators (WEGs) like the petitioner.

6. Wind Energy Parks are developed in areas where there are wind pockets and scope for harnessing wind power for generating electricity with Wind Energy Generators (WEGs).

7. Centre for Wind Energy and Technology (C-WET), Chennai is the nodal and a regulatory body in the country under the Ministry of New and Renewable Energy, Government of India. It is responsible for identifying geographical locations where wind energy can be generated in the country with Wind Energy Generators (WEGs). It gives approval to developers to develop Wind Energy Park in the Country and prescribes minimum standards to be complied by manufacturers and developers.

8. Wherever there is scope for tapping wind-energy, the manufacturer of Wind Energy Generators along with their counterparts (Developers) develop Wind Energy Park with necessary infrastructure with the permission of Centre for Wind Energy and Technology (C-WET), Chennai.

9. They buy/block lands from private owners and later transfer such land to investors such as petitioners who invest in these Wind Energy Park by buying a patch of the land and the Wind Energy Generators manufactured by the manufacturers. Ordinarily, the developer also undertakes operation and maintenance of the Wind Energy Park and the Wind Energy Generators once installation, erection and commissioning are completed for the investors.

10. Initially in the late 1980's and early 1990's, when the industry in the generation of electricity through wind energy was at its infancy, small scale operators and developers had experienced difficulty in transmitting and evacuating the electricity generated by them with their Wind Energy Generators (WEGs) to the Tamil Nadu Electricity Board (TNEB) grid in absence of proper infrastructure.

11. Therefore, to evacuate the wind energy, required power sub-stations were developed by Tamil Nadu Electricity Board for the benefit of cluster of developers in a particular geographical area on cost recovery.

12. In Tamil Nadu, the Tamil Nadu Electricity Board (TNEB) took on itself the responsibility of erecting separate sub-stations for the benefit of such small scale WEGs and started collecting Infrastructure Development Charges (IDC) for the expenditure incurred towards erecting such sub-stations from the developers and from WEG owners. As it involves cost, the Tamil Nadu Electricity Board has been charging Infrastructure Development Charges since 1993.



13. Some of the States have dedicated separate departments to deal with such infrastructural issues arising on such development. For instance, in the State of Maharashtra, the Maharashtra Energy Development Agency [MEDA] was conceived for not only developing infrastructure but also to collect such charges from developers.

14. These charges were imposed by the Tamil Nadu Electricity Board (TNEB) since 1993 and were continued even after the enactment of Electricity Act, 2003.

15. Earlier, there was also challenge to the aforesaid charges before the Tamil Nadu Electricity Commissioner by operators / developers. The Tamil Nadu Electricity Regulatory Commission (TNERC) held that the Infrastructure Development Cost/Charge (IDC) was invalid on the ground that the same was not contemplated as per the provisions of Section 32 of the Electricity Act, 2003 and that specific permission had not been sought from the Tamil Nadu Electricity Regulatory Commission (TNERC) as per Section 32 of the Act affecting all the stakeholders.

16. The Tamil Nadu Electricity Regulatory Commission (TNERC) by its order dated 19.09.2008 accepted the contention of the petitioner therein and held as follows:-

(i) The BP Nos. 92 dated 21.08.2004 and 146 dated 04.07.2005 are set aside with effect from the date of filing the petition as they are violative of section 32(3) of the Electricity Act, 2003 and the regulations made by the Commission under the said Act and Order No.3 dated 15.05.2006.

(ii) The Respondent Board is restrained from collecting the IDC from the NCES generators and they are permitted to collect only the actual cost of interfacing lines, switch gear metering, protection arrangement and related other equipments upto the inter connection point as stipulated in Order No.3 dated 15.05.2006.

(iii) This Order shall have prospective effect. There would be no refund of any excess amount paid by the NCES generators since they have acquiesced in the payment of IDC and since they have also deposited the IDC and allowed the Respondent Board to execute the works on DCW basis without any protest. With the above observations M.P.No. 27 of 2008 is finally disposed off. There is no order as to costs."



17. On further appeal, the Appellate Tribunal by its order dated 08.01.2010 in Tamil Nadu Electricity Board Vs. Tamil Nadu Electricity Regulatory Commission TIDCO Office Building, 2010 SCC OnLine APTEL 3 : [2010] APTEL 3 reversed the order of the Tamil Nadu Electricity Regulatory Commission (TNERC) and observed that it is not disputed that Infrastructure Development Cost/Charge (IDC) have been collected by the Electricity Board to establish the sub-station, inter connecting lines and transformers etc.

18. It further stated that circular issued in 1993 as well as other circulars issued in the subsequent period and other records would clearly show that only at the request of the wind developers, the Appellant, the Board, erected sub-stations and transformers to provide benefit to the generators. On the basis of these circulars, the payments have been made.

19. Ultimately, the Appellate Authority held as under:-

As indicated above, the mandate of Section 10 (1) of the Act cannot be over looked, since it is the bounden duty of the generating companies to establish, operate and maintain the sub-stations. If the evacuation work after the inter connection point is carried out by the generators as per Section 10 (1) and bring the 110 KV inter connection line or 230 KV inter connection line, as the case may be, to connect the same to the Appellant's 110 KV or 230 KV grid, then the Appellant will have to take care of the evacuation work beyond 110 KV or 230 KV inter connection point by installing a bulk at the inter connection point. In view of the above situation, the expenditure has been incurred by the Appellant for establishing, operating and maintaining the sub-stations on behalf of the generators to do the evacuation work up to the inter connection point. The Generating Company is liable to pay the said expenditure to the Appellant in the name of IDC fixed by the Appellant through various circulars as per the mutual arrangement and mutual agreement between the parties.

20. The ruling of the Appellate Tribunal has been challenged and the same is said to be pending before the Hon'ble Supreme Court. In the present case, the petitioner has not questioned the levy of Infrastructure Development Cost/Charge (IDC) which was levied on the petitioner's predecessor. The petitioner has merely questioned the differential that was collected. In fact, the petitioner has also paid the aforesaid amount. If the petitioner succeeds in this Writ Petition, it will be entitled for refund of the differential amount paid by it.



21. In Sri. Jagathguru Textiles Mills Ltd., Vs. TNERC, 2011(6) CTC 577, this Court observed that while Infrastructure Development Charges are one time charge for establishment or creation of generating stations, tie-lines, sub-stations and dedicated transmission lines, the Operation and Maintenance Charges are recurring for operation and maintenance of the same.

22. It held that TANGEDCO cannot incur loss. To put it differently, to arrest the loss being incurred in respect of the Petitioners/generating Companies, the TANGEDCO has resorted to collect the O & M Charges, which cannot be found fault with. Since it was the duty of the generating Companies to comply with Section 10(1), the collection of O & M Charges did not fell for consideration of TNERC.

23. It must be remembered that Infrastructure Development Charges (IDC) were conceived with a view to compensate the State Electricity Boards for the expenses incurred by it for putting up dedicated infrastructure namely sub-stations, interconnection lines, transferors, towers etc. for evacuation of power from wind energy parks to avoid wastage of the energy generated for the benefit of the investor in Wind Energy Park. The last estimate for the IDC was made in the year 1996. However, cost had increased over a period time.

24. Petitioner appears to have purchased the 12 WEGs from M/s. K.C.P. Ltd. sometimes in 2006. Since the petitioner purchased about 12 Wind Energy Generators from M/s.K.C.P. Ltd., it also applied for name transfer. Approval for name transfer was granted by an order dated 17.10.2006 subject to the following:-

"Based on documents produced by you and request vide reference (1), the approval is hereby accorded for name transfer of 12x225 KW NEPC make WEGs installed at Irukkandhurai Village, Radhapuram Taluk, Tirunelveli District from M/s.The KCP Ltd., Chennai to your name M/s.Ennore Foundries Ltd., Chennai with effect from the date of execution of revised agreement by incorporating the details given below:-



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Sl. No.	WF.HT .SC.No.	No. of machines Cap. In KW	Total Capacity	SF.NO and Village	Option for utility
1	1018	6x225 KW	1350 MW	1130/1(P), 1119/1, 1117/2B(P), 1130/2(P) and 1116/2A(P) of Irukkunthurai	To wheel the energy generated from the wind mills to their own concern Ht.SC.No.1347 and 1072 of Chennai EDC/North circle.
2	1042	6x225 KW	1350 MW	1138(P), 1132/4, 1128/3, 1131 (P), 1132/1 and 1132/8 of Irukkunthurai	

The above approval is subject to the outcome of the review petition filed by TNEB before TNERC against the order No.3 dated 15.05.2006 and until such time the existing orders in force will be followed.

If wheeling is done from more than one wind farm service to the above industrial service(s), the SE is requested to permit wheeling only of fulfillment of the conditions stipulated vide this office letter No.CE/NCES&R&DSM/EE/WPP/A2/F.Wheel-HT.SC/D.33/05 dated 18.04.2005.

If it is not so, the SE may direct the developer, with the copy marked to this office, to approach this office for revising the surplus energy category accordingly and on revision of the Power Purchase Agreement only, the SE may permit wheeling

It the wheeling is done from one wind farm service along, the SE may allow wheeling straight away and should follow the above instructions if the company approaches for wheeling of additional wind farm service to the



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For taking necessary action and to execute the agreement for the revised arrangement as per the B.P.(FB).No.99, dated 27.09.2001, B.P.(FB).No.20, (Tech.Br.), dated 01.03.2002 and Per B.P.(FB).No.101, dated 09.05.2005."

25. Long after the name transfer was completed, the impugned demand was raised by the respondents seeking to demand a differential Infrastructure Development Cost/Charge (IDC) from the petitioner in terms of the amendment effected by a communication of the Chief Engineer/NCES dated 21.08.2004 bearing Ref.No. Permanent B.P.(FB).No.92.

26. The impugned demand has been raised based on the Audit Slip No.15 dated 24.06.2010 at Head-Quarters vide communication dated 06.09.2010 and letter dated 29.08.2011.

27. By a communication dated 01.12.2011 bearing Ref.Lr.No.SE/TANGEDCO/TIN/AO/Rev./AS/2WM/F.IDC/D.2677/11, it has been stated that by letter dated 21.10.2011 bearing Ref.Lr.No.SE/TANGEDCO/TIN/AO/Rev./AS/WM/F.WEG, the Chief Engineer clarified that the connected WEG's in WEG Nos. 1018 & 1042 is 12 x 225 KW, the difference in IDC amount of Rs.69,52,500/- - Rs.42,53,00/- = Rs.26,99,500/- would be collected from the promoter and therefore, the petitioner was requested to remit Rs.26,99,500/- (Rupees Twenty Six Lakhs Ninety Nine Thousand and Five Hundred Only) immediately. The petitioner has also paid the amount under protest on 06.01.2012.

28. The petitioner's predecessor, namely M/s.K.C.P. Ltd. had originally invested in 12 Wind Energy Generators. M/s.K.C.P. Ltd. had paid an Infrastructure Development Cost/Charge (IDC) of Rs.42,53,000/- for 12 numbers of 225 KW Wind Energy Generators (WEGs) in 2004.

29. When M/s.K.C.P. Ltd. was issued with a letter dated 20.02.2004 bearing Ref.Lr.No.SE/WEDC/TIN/F/Item/716/04, it was clearly stated that the difference in the infrastructure facility charges, if any, in force, at the time of commissioning of Wind Energy Generators (WEGs) is to borne by the Developer and 12 numbers of 225 KW Wind Energy Generators (WEGs) will be tied up with the respondents/Board grid through 33 KV network.

30. Vide letter dated 20.02.2004 bearing Ref.Lr.No.SE/WEDC/TIN/F/Item/716/04 of the Chief Engineer/NCES for Member (Generation), it was made clear to the said M/s.KCP Ltd. that "The difference in infrastructure facility charges. If any, in force, at the time of commissioning of wind electric generators is to be borne by the Developer.

31. It further stated that "12 Nos. 225 KW WEGS will be tied up with the Board's grid through 33KV network and connected to the grid only on commissioning of 110/33 KV power



Transformer in the sanctioned Chithambarapuram 110/33-11 KV SS and erection of already proposed NEPC Feeder". An indemnity bond was also obtained from M/s.K.C.P. Ltd.

32. Infrastructure Development Charges that were collected from M/s.K.C.P. Ltd. in terms of the above two letters were subject to the rate prevailing on the date of the commissioning of the Wind Electric Generators (WEGs).

33. The 12 Winding Energy Generators (WEGs) were to be connected to the grid only on commissioning of 110/33 KV power transformer in the sanctioned Chithambarapuram 110/33-11 KV SS, after erection of already proposed NEPC feeder.

34. By another communication dated 09.03.2004, the Chief Engineer/NCES for Member (Generation) informed M/s.K.C.P. Ltd. (the petitioner's predecessor), once again, informed that the 12 Wind Energy Generators were to be connected to the grid only, on commissioning at 110/33 KV power transformer of sanctioned Chithambarapuram 110/33-11, KV SS and erection of already proposed Chithambarapuram NEPC feeder. Relevant portion of the said letter is reproduced below:-

"13. The difference in infrastructure facility charges, if any, in force at the time of commissioning of wind electric generators is to be borne by the Developer."

35. By another communication dated 21.08.2004 signed by the Chief Engineer/NCES for Member (Generation) of Technical Branch bearing reference B.P. (FB) No.92, it was specifically opined that the existing power handling system at the 110 KV level may not be adequate to cater to the growing wind power generation and hence, power Evacuation capability could be strengthened and connectivity to the new applicants could be considered only if 230 KV sub-stations and required 23(KV lines are established to transmit the wind power generated to the lead centers so that energy could be supplied to various categories of consumers with less line loss."

36. In the said communication, it was further stated that the additional expenditure involved in establishing a 230 KV sub-station with required Auto transformers, 230 KV lines and related equipment's, which was to be augmented by TNEB, apart from the increase in the existing rate decided earlier based on the cost of materials prevailed then and also the cost of the development of infrastructure facility upto 110KV level only.

37. All the 12 Winding Energy Generators (WEGs) of the petitioner were commissioned on various dates starting from 30.09.2004 and ending with 23.12.2004, i.e. after the communication of letter dated 21.08.2004 of the Technical Branch bearing reference B.P. (FB) No.92 which signed by the Chief Engineer/NCES for Member (Generation). It is in this communication, the rates were revised.



38. In the proceeding dated 21.08.2004 bearing reference Permanent B.P. (FB) No.92 of the Chief Engineer/NCES for Member (Generation), it was clearly stated that the existing power handling system at the 110 KV level may not be adequate to cater to the growing wind power generation and hence, the power evacuation capability could be strengthened and connectivity to the new applications could be considered only if 230 KV sub-stations and required 230 KV lines are established to transmit the wind power generated to the load centers so that energy could be supplied to various categories of consumers with less line loss.

39. Since the amount that was originally collected from M/s.K.C.P. Ltd. towards Infrastructure Development Charges (IDC) in term of letter dated 20.02.2004 bearing Ref. Lr.No.SE/WEDC/TIN/F/Item/716/04 of the Chief Engineer/NCES for Member (Generation) and letter dated 09.03.2004 of the Chief Engineer/NCES for Member (Generation) was provisional amount, the petitioner cannot question the impugned demand as on the date of commission of WEG's IDC had increased which was not paid by M/s.K.C.P. Ltd.

40. The increase in the Infrastructure Development Charges (IDC) was on account of increase in the number of WEG's in the vicinity and increase in the cost. It was therefore decided to strengthen the power Evacuation capability and therefore, there was a need to increase the cost of Infrastructure Development Charges (IDC).

41. Therefore, to augment the cost, apart from the increase in the existing rates as decided earlier based on the cost of materials prevailed then and also the cost of the infrastructure facility development upto 110 KV level only, it was decided that the present rate of infrastructure charges to be paid by the wind farm developers at the rate of Rs.15,00,000/- per MW was being reviewed and after careful consideration, it was decided to enhance the present rate of the infrastructure charges to be paid by the wind farm developers at the rate of Rs.15,00,000/- per MV to Rs.25,00,000/- per MV.

42. This increase in the infrastructure charges applied not only to existing applicants whose WEGs were to be commissioned later but also to new applicants.

43. There are no merits in the challenge to the impugned demand. The petitioner is therefore liable to pay the amounts demanded in the impugned communication.



Therefore, this Writ Petition is liable to be dismissed. Accordingly, it is dismissed. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

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//True Copy//

Sub Assistant Registrar

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To

1. The Chief Engineer,
TANGEDCO,
Non-conventional Energy Sources,
800, Anna Salai, Chennai - 600 002.
2. The Superintending Engineer,
TANGEDCO, Tirunelveli Electricity Distribution Circle,
Tirunelveli - 627 001.
3. The Board of Audit Department (BOAD)
TANGEDCO, 800, Anna Salai,
Chennai - 600 002.
4. The Superintending Engineer,
(TANGEDCO), C.E.D.C, North Circle,
Anna Salai, Chennai - 600 002.

W.P.No.1447 of 2012 and
M.P.Nos. 3 & 4 of 2012

PCH(CO)
B.VC(22.07.2021)