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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.2900 OF 2015

AND

M.P.NOS.1 TO 3 OF 2015

Thiru C.Ramasamy, HTSC No.324,
S.F.No.112/H, Annur Village,
Avinashi Taluk,
Annur, Coimbatore - 641 653

...Petitioner

Vs

- 1.Tamil Nadu Electricity Regulatory
Commission repd.by its Secretary,
19-A, Rukmini Lakshmipathy Salai,
(Marshall's Road)
Egmore, Chennai - 600 008.
- 2.Tamilnadu Generation and Distribution
Corporation Limited, (TANGEDCO)
Rep.by its Chairman & Managing Director,
No.144, Anna Salai,
Chennai - 600 002.
- 3.The Superintending Engineer,
TANGEDCO,
Tirunelveli Electricity Distribution Circle/CEDC
Tirunelveli.
- 4.The Accounts Officer/Revenue
TANGEDCO,
Coimbatore Electricity Distribution Circle/North
Coimbatore.

...Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 4th respondent in his impugned CC Bill No.324 dated 01.01.2015 insofar as it relates to the levy of excess demand and energy charges for a sum of Rs.5,13,753/- under Serial No.12(a) 'Add Extra Levy for exceeding limit', quash the same as illegal, arbitrary, without the authority of law and against the Wind Tariff Orders issued



by the 1st respondent and consequently direct the 3rd respondent to give adjustment of the wind energy available in the banking account of the WF HTSC.No.1680, 2388, 2456 and 4238 as per the Energy Wheeling Agreements dated 05.8.2014 and 11.8.2014 respectively and direct the 4th respondent to give refund/adjustment of the amount already collected from the petitioner.

For Petitioner : Mr.S.P.Parthasarthy

For Respondents : R1 - No appearance
R2 to R4 - Mr.L.Jai Venkatesh
Standing counsel
[For TANGEDCO]

O R D E R

The issues raised in the present writ petition had already been adjudicated and decided by the Tamil Nadu Electricity Regulatory Commission in M.P.No.10 of 2012 dated 28.09.2012.

2. The findings of the Commission on the issue in Paragraph No.8 stands extracted hereunder:

"8. Findings of the Commission on the Third issue

On the third issue, it is necessary to traverse to the genesis of R & C Measures. The Commission issued an order in M.P.42 of 2008 on 28-11-2008 approving the Restriction and Control Measures proposed by the erstwhile TNEB which is presently called TANGEDCO. For violation of R & C Measures, levy of excess demand charges and energy charges were proposed by TANGEDCO and the same was accepted in principle by the Commission but approval was given with certain modifications. Thus, R & C Measures is not a new issue. Prior approval of the Commission was sought by TNEB for introducing the R & C Measures in the year 2008 in addition to the approval of the Government of Tamil Nadu. Applying the same analogy, it is but appropriate that prior approval of the Commission ought to have been obtained by TANGEDCO before issue of the circulars levying excess demand and energy charges. This is all the more important in view of the fact that having acquiesced to the jurisdiction of the Commission at the time of introduction of R & C Measure in the year 2008. TANGEDCO cannot turn around and say that such measures can be taken on its own. To put it otherwise, having known that approval of the Commission is mandatory for levying excess demand and energy charges and having done the same without the approval of the Commission, TANGEDCO cannot come up with an



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entirely different interpretation of Regulation 38 of the TN Electricity Distribution Code now. It is true that Regulation 38 empowers TANGEDCO to effect Restriction and Control Measures but as rightly pointed out by Thiru Rahul Balaji, Advocate that the same has to be done after seeking approval of the Commission and the present action of TANGEDCO amounts to tinkering with the provisions of the Electricity Act 2003 and the regulations made thereunder. Further, the said circulars have enlarged the scope of Regulation 38 by providing for excess demand and energy charges without the approval of the Commission. Therefore, the third issue is answered against the petitioner TANGEDCO.

9. Order:

In view of the foregoing findings, we deem it fit and appropriate to set aside the Memos dated 25.02.2012 and 29.02.2012 as the same have been issued in violation of provisions of Electricity Act, 2003 and as well as the orders of the Commission. In the result, the consequential collection of excess demand and energy charges, if any, collected for the period 29.02.2012 to 05.03.2012 shall be refunded. TANGEDCO is directed to ensure that approval of the Commission is obtained beforehand before issue of circulars concerning Restriction and Control Measures. There will be no order as to costs."

3. Against the said order of the Regulatory Commission, a Review application was filed by the TANGEDCO in Review Petition No.4 of 2012, which was also dismissed on 22.09.2014. Thus, the disputes reached finality.

4. The learned counsel for the respondent / Board also not disputed these facts.

5. In this view of the matter, the order impugned in proceedings in CC Bill No.324 dated 01.01.2015 is quashed.

6. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

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To

1. Tamil Nadu Electricity Regulatory
Commission repd. by its Secretary,
19-A, Rukmini Lakshmipathy Salai,
(Marshall's Road)
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2. Tamilnadu Generation and Distribution
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4. The Accounts Officer/Revenue
TANGEDCO,
Coimbatore Electricity Distribution Circle/North
Coimbatore.

+1cc to Mr. R. S. Pandiyaraj, Advocate SR.No. 62780

W.P.No. 2900 of 2015

PL (CO)
RVM(13/12/2021)