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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.31037 OF 2013

AND

M.P.NOS.1 & 2 OF 2013

M/s.SKI Carbon Black (India) Pvt. Ltd.,
(Unit: Hi-Tech Carbon,
A Unit of Aditya Birla Nuvo Ltd.,)
K-16, Phase II, Gummidipoondi
Thiruvallur District - 601 201.

... Petitioner

.Vs.

1. The Tamil Nadu Generation and Distribution Ltd.,
Rep. by its Chairman and Managing Director,
144, Anna Salai,
Chennai - 600 002.
2. The Chief Finance Controller/Revenue
TANGEDCO (Accounts Branch),
144, Anna Salai,
Chennai - 600 002.
3. The Director (Finance),
TANGEDCO,
144, Anna Salai,
Chennai - 600 002.
4. The Superintending Engineer,
CEDC/North,
Chennai - 600 002.
5. The Accounts Officer/Revenue,
CEDC/North,
Chennai - 600 002.

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration declaring that the impugned letter received from the 4th respondent Lr.No.SE/CEDC/N/



AEE/Dew/AE/D2/F CPP/D/438/13 dated 25.09.2013 in as much as it seeks to levy charges for startup power from the petitioner and the consequent current consumption bill received from 5th respondent for the month of October, 2013 and subsequent current consumption bills in so far as the startup power charges are concerned as being arbitrary and illegal and to consequently forbearing the respondents from any manner levy, impost, collect or demand start-up power charges from the petitioner.

For Petitioner : Mr.Rahul Balaji

For Respondents : Mr.L.Jai Venkatesh
For TANGEDCO

O R D E R

The Writ on hand has been instituted to declare that the impugned letter dated 25.09.2013 in as much as it seeks to levy charges for startup power from the petitioner and the consequent current consumption bill received from the 5th respondent for the month of October 2013, and subsequent current consumption bills are illegal.

2. The issues raised in respect of levy of charges for startup power have already been considered elaborately by this Court in a batch of Writ Petitions in W.P.Nos.26266 of 2013 etc., dated 27.08.2021.

3. The relevant portion of the said order is extracted hereunder:

"25.Having taken note of the relevant provisions which have been extracted supra, this court will now proceed to set out certain best practices in line with the spirit behind the Electricity Act, 2003 and this court expects TANGEDCO to scrupulously follow the same in future and avoid unnecessary litigations and consequent loss of revenue.

I. TANGEDCO should establish clear policies for immediate implementation of orders issued by the TNERC and the Implementation should commence immediately after the tariff orders are issued.

II. Such implementation should take place by way of appropriate Implementation Circulars for adherence by the jurisdictional officers and the consumers/public.



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III. Prior to issuance of such implementation Circulars, the draft should be placed before the TNERC for approval and on its website for any public comments to be provided directly to the TNERC.

IV. The TNERC shall within a strict timeline, approve such circulars with such modifications or changes as it deems fit after considering all aspects/inputs.

V. The approval of the implementation Circular in as much as it is done on the administrative and regulatory side by the TNERC would not by itself affect the rights of stakeholders, since it is only the orders issued under the Statute and Regulations, which would cover the field and be paramount. However, such best practice is advisable for reasons of transparency and avoiding unnecessary litigation.

VI. In terms of mandate of S.45(2)(b), the implementation circulars or instructions issued by the TANGEDCO to its field officers should mandatorily be made available on the website of the TANGEDCO and be easily accessible to all. This would ensure that all stakeholders are fully aware of the orders and the manner of their implementation.

26. The above discussion leads to the final phase of the order. This court is inclined to transfer all these Writ Petitions to the file of the Tamil Nadu Electricity Regulatory Commission, Chennai by setting out the following issues which requires clarification from TNERC in line with the tariff order passed by TNERC in TP No. 1 of 2013 dated 20.06. 2013.

a. Clarify whether, in case of drawal of start-up power by generators, whether the same should be charged at the rate of energy and energy equated demand charges or whether it should be charged on the basis of two-part tariff and how the charges are to be raised and recovered.

b. Whether, if the drawal of start-up power by generators are to be billed on the basis of two part tariff of 300 Rs./KVA/Month and 9.50 Rs./kWh, the demand charges should be pro-rated to actual



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hours of usage instead of calculating it for the entire month.

c. Whether, if the drawl of start~up power by generators are to be billed on the basis of two part tariff of 300 Rs./KVA/Month and 9.50 Rs./kWh, the demand charges are to be based on actual percentage of maximum demand or on the demand being fixed by TANGEDCO.

d. How different categories of generators are to be treated while determining the startup charges and ;

e. To issue appropriate orders under S.62(6) of the Act, in case of payments to be made to the generators/consumers since the petitioners have deposited charges in compliance with the conditional orders passed by this court.

27. The TNERC is directed to pass final orders within a period of 3 months from the date of receipt of copy of this order after issuing adequate publicity in line with the provisions extracted supra. This will enable all the stakeholders to give their inputs and it need not be confined only to the petitioners. The interim orders passed by this court during the pendency of these Writ Petitions, shall continue to be in force till final orders are passed by TNERC.

28. All the Writ Petitions are accordingly disposed of. The registry is directed to transfer all the Writ Petitions to the file of TNERC, Chennai forthwith. No costs. Consequently, all the connected miscellaneous petitions are closed."

4. In view of the order cited supra, the present Writ Petition stands disposed of on the same terms. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

shr/kan



To

1. The Chairman and Managing Director,
The Tamil Nadu Generation and Distribution Ltd.,
144, Anna Salai,
Chennai - 600 002.
2. The Chief Finance Controller/Revenue
TANGEDCO (Accounts Branch),
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4. The Superintending Engineer,
CEDC/North,
Chennai - 600 002.
5. The Accounts Officer/Revenue,
CEDC/North,
Chennai - 600 002.

Copy To:-

1. The Presiding Officer,
TNERC, Chennai.
2. The Sub Assistant Registrar (Records),
High Court, Madras.

+1cc to Mr.R.Parthasarathy, Advocate, S.R.No.64711

W.P.NO.31037 OF 2013

AD(CO)
PBS/21/12/2021
PBS/05/01/2022