



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2021
Coram

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The Honourable Mr. Justice Krishnan Ramasamy

W.P.No.23736 of 2018
and
W.M.P.No.27688 of 2018

M/s. Sharadha Terry Products Ltd.,
HTSC No.529
Badrakaliamman Koil Road,
Mettupalayam - 641 305.
Coimbatore
rep. by its General Manager -Finance and Company Secretary,

K.Jayaraj.

...Petitioner

Vs.

1. The TANGEDCO,
rep. by its Chairman,
No.800, Anna Salai,
Chennai - 600 002.
2. The Superintending Engineer,
Coimbatore Electricity Distribution Circle/North,
TANGEDCO, Coimbatore.
3. Tamil Nadu Electricity,
Regulatory Commission (TNERC)
rep. by its Secretary,
9-A Rukmani Lakshmipathy Salai (Marshall's Road)
Egmore, Chennai - 600 008.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records of the second respondent's impugned demand notice, bearing Lr.No.SE/CEDC/N/CBE/AAO/HT/A.1/F/HTSC 529/D.520/18, dated 13.08.2018, and to quash the same as illegal, arbitrary, without the authority of law and against Tariff Order dated 20.06.2013, issued by the third respondent.

For Petitioner : Mr.S.P.Parthasarathy

For Respondents : Mr.Abul Kalam
Standing Counsel



O R D E R

This Writ Petition has been filed challenging the impugned demand notice, dated 13.08.2018, passed by the second respondent, as the same is against the Tariff Order, dated 20.06.2013, issued by the third respondent.

2. Mr.S.P.Parthasarthy, the learned counsel appearing for the petitioner submits that, as per the terms of the Tariff Order passed by the third respondent, Industries/Companies, which are connected to the power supply of 33 kv and above, are required to install the equipment called 'Harmonic Filters', for which purpose, the respondent-TANGEDCO have to conduct an inspection and take measurement with regard to the harmonic distortion levels and within three months period from the date of communication of such notice with regard to the first measurement, the Industry/Company have to take steps, for installation of the equipment, failing which, compensation charges for would be levied. Since the petitioner-Company is connected to the power supply of 110 kv, they are required to install the said equipment.

2.1 The learned counsel for the petitioner submits that the respondent-TANGEDCO conducted such inspection and took the first measurement on 04.12.2014. Though the first measurement was taken on 04.12.2014, the same was communicated to the petitioner only on 16.12.2014, and therefore, the said three months' notice period expires only on 15.03.2015. According to the contention of the learned counsel for the petitioner, the petitioner installed the equipment on 18.02.2015, and the same is well within the three months' notice period, and the petitioner communicated the installation of the equipment to the respondent on 23.02.2015. Therefore, it is the duty of the second respondent to conduct and complete second measurement before the expiry of 15.03.2015. However, the respondent has not done so and completed the second measurement only on 15.06.2015. For no fault of the petitioner, the second respondent issued a show cause notice, dated 17.03.2018, demanding 15% harmonic compensation charges, to which, the petitioner submitted a detailed reply, dated 27.03.2018, raising objections. However, the second respondent, without even giving any valid reason, confirmed the demand raised in the show cause notice, dated 17.03.2018, vide impugned notice, dated 13.08.2018. Therefore, the learned counsel contended that the impugned demand notice is illegal and contrary to the Tariff Order passed by the third respondent and is liable to be set aside.

2.2 Further, the learned counsel submitted that, when a challenge was made by the petitioner, who was similarly placed



like that of the petitioner herein, by way of filing W.P.No.23232 of 2016, this Court, vide order, dated 13.07.3016, allowed the Writ Petition and set aside the order passed by the respondent-TANGEDCO. Therefore, the learned counsel for the petitioner submits that said decision is squarely applicable to the present facts of the case also and produced the said decision before this Court for perusal.

3. Heard the learned counsel appearing for the petitioner and perused the materials placed on record. Insofar as the respondent-TANGEDCO is concerned, Mr.Abul Kalam, learned Standing Counsel Mr.Abul Kalam is appearing, however, when the matter is taken up today, he has been represented by his Junior Counsel, who reports no instructions from him, and therefore, she is not in a position to make her submissions.

4. Admittedly, the compliance of installation of harmonic filters has to be within a period of three months from the date of receipt of communication from the respondent-TANGEDCO with regard to the first measurement. In the present case, first measurement was made on 04.12.2014, however, the said three months' notice was issued to the petitioner only on 16.03.2014, and well within three months from the date of receipt of such notice, the petitioner has installed the equipment on 18.02.2015 and informed the same to the respondent-TANGEDCO on 23.02.2015. Therefore, the respondent-TANGEDCO ought to have conducted second inspection immediately before the expiry of the said period, especially, when the petitioner's case is that they have installed the equipment as early as on 18.02.2015. However, the second measurement was done only on 15.06.2015. Thus, it is clear that the petitioner installed the equipment within the stipulated period prescribed by the respondent. Therefore, the respondent is supposed to have completed second measurement on or before 15.03.2015 but they have not done so and lethargically, the respondent, for the reasons best known to them, conducted the second measurement only on 15.06.2015.

4.1 Thus, for the belated action on the part of the respondent-TANGEDCO, the petitioner cannot be slapped with the demand notice, which is arbitrary and illegal and contrary to the tariff order passed by the third respondent on 20.06.2013. Therefore, this Court is of the considered view that the impugned demand notice is liable to be quashed as the same is not sustainable both as per the terms of the Tariff Order issued by the third respondent, dated 20.06.2013 and in the light of the earlier order passed by this Court, in W.P.No.23232 of 2016, dated 13.07.3016, wherein, the similar issue involved in the present Writ Petition as already been settled.



5. Accordingly, this Writ Petition is allowed and the impugned demand notice is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The TANGEDCO,
rep. by its Chairman,
No.800, Anna Salai,
Chennai - 600 002.
2. The Superintending Engineer,
Coimbatore Electricity Distribution Circle/North,
TANGEDCO, Coimbatore.
3. Tamil Nadu Electricity,
Regulatory Commission (TNERC)
rep. by its Secretary,
9-A Rukmani Lakshmipathy Salai (Marshall's Road)
Egmore, Chennai - 600 008.

+1cc to Mr.R.S.Pandiyaraj, Advocate, S.R.No.64650

W.P.No.23736 of 2018

RSV(CO)
CT 06/01/2022