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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 07.10.2021

PRONOUNCING ORDERS ON : 20.10.2021

CORAM

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

W.P.Nos.19703, 19704, 19705, 19713 and 22929 of 2017
and

WMP Nos.21254, 21255, 21256, 21257, 21258, 21259, 21266, 21267,
24083 and 24084 of 2017

Pariyur Amman spinning Mills (P) Ltd.

Rep. by P.M. Viswanathan its

Executive Director

Polavakkalipalayam Post

Gobichettipalayam 638 476

Erode District.

..Petitioner in W.P.No.19703 of 2017

.Vs.

1. Tamilnadu Generation and Distribution
Corporation Ltd, (TANGEDCO)

Rep.by its Chairman

cum Managing Director

10th Floor, 144, Anna Salai

Chennai 600 022.

2. The Chief Engineer NCES

TANGEDCO, 2nd Floor

144 Anna Salai

Chennai 600 002

3. The Superintending Engineer

Non-Conventional Energy Sources

TANGEDCO, 15, 15A Kumaralingam Road

Udumalpet 642 154.

4. The Superintending Engineer

TANGEDCO, Gobi Electricity Distribution Circle

Gobi.

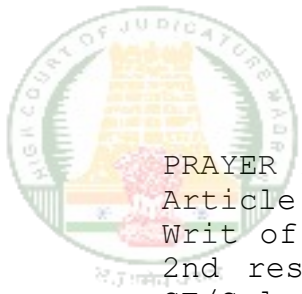
5. Tamilnadu Electricity Regulatory Commission

Rep. by its Secretary

19A Rukumani Lakshmipathy Salai, Egmore

Chennai 600 008

..Respondents in W.P.No.19703 of 2017



PRAYER in W.P.No.19703 of 2017 :- Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent's impugned communication in letter No.CE/ NCES/ SE/Solar/ EE/ SCB/ A2/ F.Solar/ D.135/17 dated 18.2.2017 and the consequential impugned communication in Lr.No.SE/ GEDC/ DFC/ AS/ HT/F.SOLAR/ D.NO.12/2017 dated 21.4.2017 of the 4th respondent and quash the same as illegal arbitrary without the authority of law and against the TNERC's order No.7 of 2014 dated 12.9.2014 TNERC's - Power Procurement from New and Renewable sources of Energy Regulations 2008 and consequently direct the 2nd and 4th respondents to strictly comply with TNERC's Tariff Order No.7 of 2014 dated 12.9.2014 and order No.4 of 2015 dated 1.4.2015 in making payment for the solar energy supplied by the petitioner's Solar Power Plant No.SPG Gobi 003 at Rs.7.01/unit along with interest of 12% per annum from the respective due date to the date of payment as per the EPA.

V.N.V.Builders P.Ltd.,
Rep.by its Managing Director
V.N.Varadharajan
149, Kalaramani, Modachur
Gobichettypalayam-638 476
Erode District.

..Petitioner in W.P.No.19704 of 2017

.Vs.

1. Tamilnadu Generation and Distribution Corporation Ltd, (TANTEDCO)
Rep.by its Chairman cum Managing Director
10th Floor, 144, Anna Salai
Chennai 600 022.
2. The Chief Engineer NCES
TANGEDCO, 2nd Floor
144 Anna Salai, Chennai 600 002
3. The Superintending Engineer
Non-Conventional Energy Sources
TANGEDCO, 15, 15A Kumaralingam Road
Udumalpet 642 154.
4. The Superintending Engineer
TANGEDCO, Gobi Electricity Distribution Circle
Gobi.
5. Tamilnadu Electricity Regulatory Commission
Rep. by its Secretary
19A Rukumani Lakshmipathy Salai
Egmore Chennai 600 008. ..Respondents in W.P.No.19704 of 2017



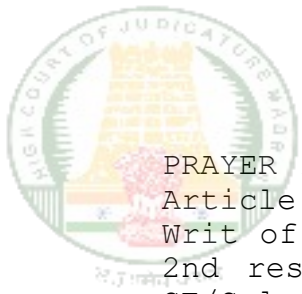
PRAYER in W.P.No.19704 of 2017 :- Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent's impugned communication in letter No.CE/ NCES/ SE/Solar/ EE/ SCB/ A2/ F.Solar/ D.135/17 dated 18.2.2017 and the consequential impugned communication in Lr.No.SE/ GEDC/ DFC/ AS/ HT/F.SOLAR/ D.NO.15/2017 dated 21.4.2017 of the 4th respondent and quash the same as illegal arbitrary without the authority of law and against the TNERC's order No.7 of 2014 dated 12.9.2014 TNERC's - Power Procurement from New and Renewable sources of Energy Regulations 2008 and consequently direct the 2nd and 4th respondents to strictly comply with TNERC's Tariff Order No.7 of 2014 dated 12.9.2014 and order No.4 of 2015 dated 1.4.2015 in making payment for the solar energy supplied by the petitioner's Solar Power Plant No.SPG Gobi 007 at Rs.7.01/unit along with interest of 12% per annum from the respective due date to the date of payment as per the EPA.

Unisum Power
Rep.by its Managing Partner
S.Prassana
Prananna Gas Buildings
124, Mysore Trunk Road
Sathyamangalam 638 402
Erode District.

..Petitioner in W.P.No.19705 of 2017

.Vs.

1. Tamilnadu Generation and Distribution Corporation Ltd, (TANTEDCO)
Rep.by its Chairman cum Managing Director
10th Floor, 144, Anna Salai
Chennai 600 022.
2. The Chief Engineer NCES
TANGEDCO, 2nd Floor
144 Anna Salai, Chennai 600 002
3. The Superintending Engineer
Non-Conventional Energy Sources
TANGEDCO, 15, 15A Kumaralingam Road
Udumalpet 642 154.
4. The Superintending Engineer
TANGEDCO, Gobi Electricity Distribution Circle
Gobi.
5. Tamilnadu Electricity Regulatory Commission
Rep. by its Secretary
19A Rukumani Lakshmipathy Salai
Egmore, Chennai 600 008. ..Respondents in W.P.No.19705 of 2017



PRAYER in W.P.No.19705 of 2017 :- Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent's impugned communication in letter No.CE/ NCES/ SE/Solar/ EE/ SCB/ A2/ F.Solar/ D.135/17 dated 18.2.2017 and the consequential impugned communication in Lr.No.SE/ GEDC/ DFC/ AS/ HT/F.SOLAR/ D.NO.13/2017 dated 21.4.2017 of the 4th respondent and quash the same as illegal arbitrary without the authority of law and against the TNERC's order No.7 of 2014 dated 12.9.2014 TNERC's - Power Procurement from New and Renewable sources of Energy Regulations 2008 and consequently direct the 2nd and 4th respondents to strictly comply with TNERC's Tariff Order No.7 of 2014 and order No.4 of 2015 dated 1.4.2015 in making payment for the solar energy supplied by the petitioner's Solar Power Plant No.SPG Gobi 005 at Rs.7.01/unit along with interest of 12% per annum from the respective due date to the date of payment as per the EPA.

Sri Lakshmi Natrajan Agency
Rep.by its Managing Partner
P.N.Venkatachalam
36 Budhar Street
Erode Main Road
Gobichettipalayam 638 476
Erode District.

..Petitioner in W.P.No.19713 of 2017

.Vs.

1. Tamilnadu Generation and Distribution Corporation Ltd, (TANTEDCO)
Rep.by its Chairman cum Managing Director
10th Floor, 144, Anna Salai, Chennai 600 022.
2. The Chief Engineer NCES
TANGEDCO, 2nd Floor
144 Anna Salai, Chennai 600 002
3. The Superintending Engineer
Non-Conventional Energy Sources
TANGEDCO, 15, 15A Kumaralingam Road
Udumalpet 642 154.
4. The Superintending Engineer
TANGEDCO, Gobi Electricity Distribution Circle
Gobi.
- 5.Tamilnadu Electricity Regulatory Commission
Rep. by its Secretary
19A Rukumani Lakshmipathy Salai
Egmore, Chennai 600 008. ..Respondents in W.P.No.19713 of 2017



PRAYER in W.P.No.19713 of 2017 :- Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent's impugned communication in letter No.CE/ NCES/ SE/Solar/ EE/ SCB/ A2/ F.Solar/ D.135/17 dated 18.2.2017 and the consequential impugned communication in Lr.No.SE/ GEDC/ DFC/ AS/ HT/F.SOLAR/ D.NO.14/2017 dated 21.4.2017 of the 4th respondent and quash the same as illegal arbitrary without the authority of law and against the TNERC's order No.7 of 2014 dated 12.9.2014 TNERC's - Power Procurement from New and Renewable sources of Energy Regulations 2008 and consequently direct the 2nd and 4th respondents to strictly comply with TNERC's Tariff Order No.7 of 2014 dated 12.09.2014 and order No.4 of 2015 dated 1.4.2015 in making payment for the solar energy supplied by the petitioner's Solar Power Plant No.SPG Gobi 006 at Rs.7.01/unit along with interest of 12% per annum from the respective due date to the date of payment as per the EPA.

Unisum Energy India (Pvt) Limited
Rep.by its Managing Director
Having its registered office at
2, Muthuswamy Street
6th Cross, Odakkadu
Tirupur 641 602
Tamil Nadu, India

..Petitioner in W.P.No.22929 of 2017

.Vs.

1. The Chairman
Tamilnadu Generation and Distribution
Corporation Limited
144, Anna Salai,
Chennai 600 002.
2. The Superintending Engineer
Trichy EDC/Metro
TANGEDCO, Mannarpuram,
Trichy 600 020.
3. The Chief Engineer
NCES, TANGEDCO,
2nd Floor, Eastern Wing
NKKPR Maligai,
144 Anna Salai
Chennai 600 002
4. Tamilnadu Electricity Regulatory Commission
19A Rukumani Lakshmipathy Salai
Egmore, Chennai 600 008.



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5. The Superintending Engineer
NCES, TANGEDCO
2nd Floor, Eastern Wing
No.144 Anna Salai
Chennai 600 002.

6. Director/Generation
TANGEDCO
144, Anna Salai
Chennai 600 002.

7. The Superintending Engineer
Non Conventional Energy Sources
TANGEDCO
15, 115A, Kumaralingam Road
Udumalpet 642 154.

8. The Chief Electrical Inspector
to Government
Thiru-vi-ka Industrial Estate
Guindy, Chennai 600 032.

9. The Executive Engineer
O & M,
Thuraiyur.

..Respondents in W.P.No.22929 of 2017

PRAYER in W.P.No.22929 of 2017 :- Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent's impugned communication in letter No.SE/TEDC/M/TY/DFC/HT/F. SPG TRY 012/D.No.542/2017 dated 28.02.2017 and quash the same as illegal arbitrary without the authority of law and against the TNERC's order No.4 of 2014, TNERC's - Power Procurement from New and Renewable sources of Energy Regulations 2008 and consequently direct the 2nd and 4th respondents to strictly comply with TNERC's Tariff Order No.4 of 2014 and order No.4 of 2015 dated 1.4.2015 in making payment for the solar energy supplied by the petitioner's Solar Power Plant along with interest of 12% per annum from the respective due date to the date of payment as per the EPA.

For Petitioner : Mr.R.S.Pandiyaraj
(In W.P.Nos. 19703, 19704, and S.P.Parthasarathy
19705 and 19713 of 2017)

(In W.P.No.22929 of 2017): Mr.R.Parthasarathy
and Mr.Rahul Balaji



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For Respondents : Mr.J.Ravindaran
(In W.P.Nos. 19703, 19704,
19705 and 19713 of 2017) Additional Advocate General

Asst. by:
Mr.M.Abulkalam
Standing Counsel
for R 1 to R 4

Mr.M.Abdul Saleem
Standing Counsel
for R 5

For Respondents : Mr.J.Ravindaran
(In W.P.No.22929 of 2017) Additional Advocate General

Asst. by:
Mr.L.Jai Venkatesh
Standing Counsel
for R1 to R3, R5 to R7, and R9

Mr.M.Abdul Saleem
Standing Counsel
for R 4 and R 8

COMMON ORDER

The subject matter of challenge in all these Writ Petitions pertains to the impugned communication issued by TANGEDCO in the year 2017, informing the petitioners that they are not entitled for the benefits of the tariff mentioned in the Tamil Nadu Electricity Regulatory Commission (hereinafter called as "TNERC") Order No.7 of 2014 dated 12.09.2014, which fixed the tariff at the rate of Rs.7.01 per unit, on the ground that there was no injection of energy into the grid from the solar plant as on 31.03.2016 and the solar plant had not achieved "Date of Commercial Operation" (hereinafter referred as "COD") and that the petitioners are only entitled to raise bills at the tariff rate of Rs. 5.10 per unit as per Tariff Order No.2 of 2016, dated 28.03.2016.

2. The brief background facts leading to the issuance of the impugned communication by TANGEDCO:

2.1. Electricity generation takes place through various sources. They broadly fall under two categories viz., the conventional sources of electricity from Thermal, natural gas, oil, coal etc., or under non-conventional sources like wind, solar, bio mass etc. All efforts are taken to tap the electricity from all available sources in order to meet the growing demand, both in the domestic front as well as on the industrial front.

2.2. Section 61 of the Electricity Act, 2003 (hereinafter referred as "the Act") deals with the determination of tariff



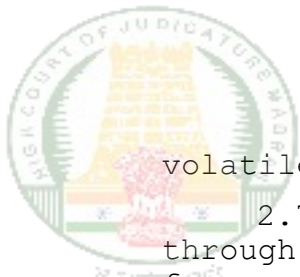
for supply of electricity to generating companies. The TNERC's Terms and Conditions for the Determination of Tariff Regulations, 2005 (hereinafter referred as "the 2005 Regulations") was notified in the Government gazette on 03.08.2005. These regulations were made applicable to generation of electricity from conventional sources. The same is clear from a reading of Regulation 1(6), which categorically states that it is not applicable to co-generation, captive power plants and generation of electricity from renewable sources of energy such as solar, wind etc.

2.3. The TNERC separately issued regulations for power procurement from renewable sources of energy. The notification was issued on 08.02.2008 and it was called as the New and Renewable Sources of Energy Regulations, 2008 (hereinafter referred as "the 2008 Regulations"). A reading of Regulation 1 (3) makes it clear that the regulations will apply to all new and renewable source based generating plants.

2.4. It is also relevant to take note of the fact that the COD in relation to the conventional and non-conventional sources of power is dealt with differently. Insofar as conventional source of energy is concerned, Regulations 2(m) and 2(n) of the 2005 Regulations specifically provides from when the date of commercial operation will take effect. Whereas, in case of renewable sources of energy, which is dealt with under the 2008 Regulations, there is no reference to the COD and it was left to the commission to fix an appropriate criteria/ parameters/ procedures for each type of new and renewable source. This important difference that was brought out by both the regulations will have a lot of bearing while deciding the main issue that is involved in these batch of Writ Petitions.

2.5. The Government of Tamil Nadu announced the solar energy policy 2012 in G.O.Ms.No.121, dated 19.10.2012. On such announcement, the petitioners wanted to take advantage of the policy and they have all set up 1 MW solar PV power plants.

2.6. The TNERC in exercise of its powers under Sections 181, 61(h), 62 and 86(1)(e) of the Act, r/w the relevant policies, issued Tariff Order No.7 of 2014, dated 12.09.2014, which is a comprehensive tariff order on solar power. This tariff order was issued based on the 2008 Regulations. Clause 6 of the tariff order makes it clear that the tariff fixed in this order will be applicable to all solar power plants "commissioned" during the control period. Clause 10.2 fixes the tariff at Rs. 7.01 per unit for solar PV projects. It is relevant to take note of the fact that the TNERC had taken into consideration various factors while fixing the tariff rate. Clause 11.6 states that the control period of the tariff order is one year. The TNERC fixed the control period as one year after taking into consideration the fact that the capital cost of solar modules was extremely



volatile and was subject to changes within a short time.

2.7. Pursuant to the above tariff order, the TANGEDCO through Proceedings No.452, dated 07.10.2014, gave instructions for processing applications for establishment of solar power plants under the preferential tariff order.

2.8. Regulation 7 of the 2008 Regulations provided for filing the model energy purchase agreement for the approval of the commissioning within one month of the issuance of the tariff order by the commission. Accordingly, the distribution licensee viz., TANGEDCO submitted the model energy purchase agreement and the same was approved by the commission only on 21.01.2015. Therefore, the commission felt that the generator/licensee must be given some more time for execution of the agreements. Accordingly, the control period specified in Tariff Order No.7 of 2014, was extended by an order dated 01.04.2015 and accordingly, the period was extended up to 31.03.2016. The extension order was passed by a majority of 2:1 since one of the member of TNERC dissented from the majority members.

2.9. All the petitioners commissioned solar power generators of a capacity of 1 MW during the control period. All the solar power projects commissioned by the petitioners were issued commissioning certificate effective from 31.03.2016. They have also entered into energy purchase agreement with TANGEDCO in line with the Tariff Order No.7 of 2014 and it is clear from the agreement that the energy charges payable by the TANGEDCO is Rs. 7.01 per unit. It is also an admitted fact that the Superintending Engineer of TANGEDCO had issued approval for the grid tie up of the solar plants of the petitioners well within the control period.

2.10. The petitioners started raising invoices at the rate of Rs.7.01 per unit for the energy injected into the grid. They were also paying the open access charges and meter reading charges for utilising TANGEDCO's grid. This was going on till the beginning of the year 2017 at which point of time, the impugned communication was issued by the TANGEDCO to the effect that the commissioned solar power plants of the petitioners failed to achieve COD on or before 31.03.2016 i.e, within the control period fixed by the TNERC and therefore the petitioners are entitled for tariff at the rate of Rs.5.10 per unit as per the TNERC Order No.2 of 2016, dated 28.03.2016. Aggrieved by the same, all these Writ Petitions have been filed before this Court.

3. The learned counsel for the petitioners made the following submissions:

- The TANGEDCO had unilaterally changed their position after several months after the commissioning of the solar projects by the petitioners and after accepting the fact that the solar power projects



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stood commissioned within the control period of the tariff order on 31.03.2016 and after communicating with the petitioners that the applicable tariff to the solar projects would be Rs. 7.01 per unit

- The relevant date for the applicability of the tariff order is not COD and it is only the date of commissioning the solar plant.
- The fixation of COD as the relevant date is contrary to the regulations, tariff order and the energy purchase agreement which clearly stipulated that the date of commissioning alone would be the relevant date.
- A reading of the 2005 and 2008 Regulations makes it very clear that the concept of COD will apply only for the conventional energy and not for renewable sources of energy. In fact, the 2008 Regulations did not even use the term COD.
- The Tariff Order No.2 of 2016, came into force from 01.04.2016 and it applied only to solar power plants commissioned on and from 01.04.2016. In the case of the petitioners, the solar power plants were commissioned on 31.03.2016 and the same was also admitted by TANGEDCO and hence the subsequent tariff order will not apply to the petitioners.
- The impugned action on the part of TANGEDCO is a clear after thought to deny the entitlement of the petitioners for a tariff of Rs.7.01 per unit and the same is vitiated by arbitrariness.
- TANGEDCO was attempting to add the term "should achieve COD" on or before 31.03.2016 after the term "commissioned" which was nowhere found either in the Regulations or in the Tariff Order or under the power purchase agreement.
- There is no requirement to approach TNERC, since it does not involve a dispute with TANGEDCO and it only involves the interpretation of the Regulations, Tariff Order and the Power Purchase Agreement.

4. Per contra, Mr.J.Ravindran, learned Additional Advocate General made the following submissions:

- The Writ Petitions are not maintainable since the petitioners have an efficacious alternative remedy under Section 86(1)(f) of the Act.
- The Power Purchase Agreement has defined the term COD to mean COD as defined under Regulation 2(m) of the 2005 Regulations.



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- Mere commissioning of a solar power plant does not entitle the petitioners to take advantage of the Tariff Order No.7 of 2014. There is a difference between commissioning of a unit and commissioning of a plant and only when the commissioning of the unit takes place and the power is injected into the grid, the COD is achieved and the relevant tariff order becomes payable. In all these Writ Petitions, the actual injection into the grid took place only from 01.04.2016 and hence only Tariff Order No.2 of 2016, dated 28.03.2016, will apply and the petitioners are entitled only at the rate of Rs.5.10 per unit.
- The learned Additional Advocate General in order to substantiate his submissions relied upon one of the orders passed by the Central Electricity Regulatory Commission and also the practice followed in Uttar Pradesh wherein the emphasis is on COD and not mere commissioning.
- Clause 9 of the Power Purchase Agreement makes it very clear that the agreement shall be valid for 25 years subject to COD and expiry date. The expiry date is defined under Clause 1(f) of the agreement as the date occurring after 25 years from the COD.
- The word commissioning has not been defined anywhere and it should only be construed as the date of COD since mere commissioning of a plant does not result in injection of the power into the grid.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. The only issue that requires an answer of this Court is as to whether the petitioners are entitled for tariff at the rate of Rs.7.01 per unit as per Tariff Order No.7 of 2014 on the basis of the commissioning certificate issued by TANGEDCO effective from 31.03.2016 or whether the petitioners are entitled only for Rs. 5.10 per unit as per the Tariff Order No.2 of 2016 based on COD.

7. The learned Additional Advocate General has raised the issue of the maintainability of the Writ Petitions on the ground of availability of alternative remedy before TNERC under Section 86(1)(f) of the Act. Therefore, this Court will take up this issue for consideration before going into the merits of the case. It is true that the availability of an efficacious alternative remedy is a ground for this Court not to exercise its jurisdiction under Article 226 of the Constitution of India. In the present case, the issue involved, does not pertain to adjudication of a dispute between the petitioners and TANGEDCO. If that is the case, this Court would have referred the parties



before TNERC. However, the present case involves only an interpretation of the Tariff Regulations, Tariff Orders and Power Purchase Agreement and therefore, there is no requirement to send the parties to the TNERC and the issue that has been raised can be decided by this Court in the present Writ Petitions. Therefore, the preliminary objection raised by the learned Additional Advocate General on the maintainability of the Writ Petitions is hereby rejected.

8. Before entering into the issue involved in the present case, it becomes relevant to understand how solar energy works in generation of electricity. Solar energy is a known renewable source of energy which falls under the non-conventional category. A solar plant converts sun light into electrical energy either through photo voltaic panels (as in the present case) or through mirrors that concentrate solar radiation. This energy can be used to generate electricity or it can be stored in batteries or thermal storage. It is therefore clear that solar radiation is light, which is also known as electromagnetic radiation that is emitted by the sun. Solar technology captures this radiation and turn it into useful forms of energy.

9. It is therefore clear that the availability of sunlight is a sine qua non for generating electricity. This fundamental factor must be kept in mind before going into the issue raised in the present case.

10. The power tariff order has been passed based on the New and Renewable Sources of Energy Regulations, 2008. Before going into the 2008 Regulations, it will be relevant to take note of the 2005 Regulations, which deals with conventional sources of energy. Regulation 1 (6) of the 2005 Regulations is extracted hereunder:

1. Short Title, Applicability and Commencement

(6) They shall not be applicable to co-generation, captive power plants and generation of electricity from renewable sources of energy including mini hydro projects (covered) under Non-Conventional Energy Sources), which will be covered by a separate regulation to be specified by the Commission under clause (e) of sub-section (1) of Section 86 of the Electricity Act 2003 for promotion of such generation.

11. It is clear from the above that the 2005 Regulations contemplated separate Regulation for non-conventional energy sources. The 2005 Regulations specifically deals with Date of Commercial Operation or COD under Regulations 2(m) and 2(n) and for easy reference, the same is extracted hereunder:



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2. Definitions

(m) 'Date of Commercial Operation' or 'COD' in relation to a unit means the date declared by the generator after demonstrating the Maximum Continuous Rating (MCR) or Installed Capacity (IC) through a successful trial run, after notice to the beneficiaries, and in relation to the generating station the date of commercial operation means the date of commercial operation of the last unit of the generating station;

(n) 'Date of Commercial Operation' or 'COD' in relation to transmission system means the date of charging the project or part thereof to its rated voltage level or seven days after the date on which it is declared ready for charging by the transmission licensee. but is not able to be charged for reasons not attributable to the transmission licensee, its suppliers or contractors.

Provided that the date of commercial operation shall not be a date prior to the scheduled date of commercial operation mentioned in the implementation agreement or the transmission service agreement or the investment approval, as the case may be, unless mutually agreed to by all parties.

12. A casual reading of the above terms shows that in case of conventional energy, there is a process whereby the generating unit has to establish that the generating station is ready to meet the required maximum level. Only after the successful trial run and the commencement of energy generation into the grid, the COD commences. There is absolutely no difficulty in understanding COD when it comes to conventional sources of energy.

13. When the 2008 Regulations were notified on 08.02.2008, this regulation was consciously issued under Section 61(h) of the Act. These regulations were made applicable to all new and renewable source based generating plants. Solar power plants will fall under these regulations as per the definition found under Regulations 2(1)(g). Insofar as the determination of tariff is concerned, Regulation 4 gives an exhaustive list of items to be taken into consideration. The regulation also speaks about a model energy purchase agreement under Regulation 7 which requires the approval of the commission. As observed by this Court supra, the term COD is completely absent in the 2008 Regulations and that gives a clear indication that COD may not be a determining factor for availing tariff fixed in the tariff order for a particular control period.



14. When the comprehensive tariff order was issued in Tariff Order No.7 of 2014, Clause 6 of the order deals with the applicability of the proposed order and the same is extracted hereunder:

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6. Applicability of the proposed order

6.1. The Order shall come into force from the date of its issue. The tariff fixed in this order shall be applicable to all solar power plants commissioned during the control period of this Order. The tariff is applicable for purchase of solar power by Distribution Licensee from Solar Power Generators conforming to this order. The open access charges and other terms and conditions specified in this Order shall be applicable to all the Solar energy generators, irrespective of their date of commissioning.

15. The above clause in no uncertain terms states that the order shall be applicable to all solar power plants "commissioned" during the control period of this order. Therefore, the applicability of the tariff order is based on commissioning and the above Clause does not mandate COD.

16. Clause 10. 2 of the order fixes the tariff at Rs.7.01 per unit for solar PV projects. The control period was initially set for one year and later through order dated 01.04.2015, it was extended up to 31.03.2016. The reason for the extension of the control period has also been elaborately stated in the extension order.

17. It is pursuant to the above order, the petitioners entered into energy purchase agreement with TANGEDCO. Since the learned Additional Advocate General relied upon certain Clauses in the Energy Purchase Agreement, this Court will deal with the same. The relevant Clauses relied upon by the learned Additional Advocate General are extracted hereunder:

1. Definitions

In this agreement -

(c) "Date of Commercial operation" or "COD" means COD as defined in the regulation 2(m) of the TNERC (Terms and Conditions for the Determination of Tariff) Regulations 2005.

(e) "Effective Date" means the date of execution of agreement between the distribution licensee and the solar power developer and the date on which the agreement shall come into effect.



(f) "Expiry Date" means the date occurring after 25 years from the COD.

9. Terms of the Agreement:

(a) This agreement shall come into effect from the "Effective Date".

(b) The actual period of sale/purchase of power by the SPG/Distribution licensee under this agreement shall be valid for twenty five (25) years subject to COD and Expiry date.

(c) The parties to the agreement shall have the option to terminate the agreement for violation of any of the clauses of the agreement after serving a notice of three months on the other party.

11. Settlement of Disputes:

If any dispute or difference of any kind whatsoever arises between the parties relating to this agreement, it shall, in the first instance, be settled amicably, by the parties, failing which either party may approach the Commission for the adjudication of such disputes under section 86 (1) (f) of the Electricity Act, 2003 in accordance with the Conduct of Business Regulations 2004 and Fees and Fines Regulations 2004 of the Commission. This agreement shall be governed by the laws of India and the Courts at Chennai alone shall have jurisdiction.

18. The energy purchase agreement is a consequence of the 2008 Regulations and the tariff orders passed by TNERC. Therefore, while reading the agreement, the same has to be understood in terms of the regulations and tariff orders and the agreement cannot go beyond that.

19. Insofar as reliance placed on Clause 11 of the agreement, this Court has already answered that question by holding that there is no dispute between the parties and the present case only involves the interpretation of the Regulations, Tariff Order and Energy Purchase Agreement. Therefore, the alternative remedy provided before the commission is of no consequence in the present case. Before going into the definition of COD, the context in which it has been used in the agreement must be understood. For this purpose, Clause 9 in the agreement assumes significance. This Clause provides for the total period of the agreement from the effective date till the expiry date. While defining the expiry date, it is stated that it is a date occurring after 25 years from the COD. It is very important to bear in mind that reference to COD is made only for the calculation of the total period of the agreement and not for



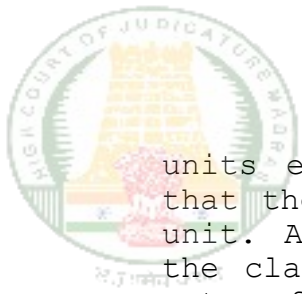
cases technical defects were notified by the Chief Engineer with a direction to rectify the same. When the entire plant was ready, letter was issued granting for approval to the grid tie up of petitioner's plant subject to conditions. Around 29th of March, 2016, safety certificate was issued by the Chief Electrical Inspector to the Government for energising the installations and powerplant. This was carried out under the Regulation 43 of Central Electricity Authority (measures relating to safety and electric supply) Regulations, 2010. A careful reading of the certificate shows that the solar generating plants of all the petitioners was ready in all respects and it was in a state of readiness to be commissioned.

24. Based on the above safety certificate, the Chief Engineer has energized/synchronised to TANGEDCO's grid. On completion of this work, the commissioning certificate was also issued recording that the petitioner's 1 MW solar PV plant has been satisfactorily commissioned on 31.03.2016 and tied up to the grid and TANGEDCO sub-station.

25. The step-by-step process that was undertaken by the TANGEDCO till the commissioning certificate was issued to the petitioners clearly demonstrates the fact that everyone had understood till that point of time that commissioning of the plant duly certified within the control period will entitle the petitioners to charge Rs. 7.01 per unit as per Tariff Order No.7 of 2014. The attempt made by the learned Additional Advocate General to explain that the minimum meter reading that was recorded during this time pertains to the TANGEDCO energising the solar plant, has absolutely no significance since COD was not the determining factor to claim the tariff rate at Rs. 7.01 per unit.

26. The reliance placed by the learned Additional Advocate General on the order/notification passed/issued by the Central Electricity Regulatory Commission will have no relevance to the present case since it pertains to thermal power which falls under the conventional energy category. It will be relevant to take note of two of the notifications of Central Electricity Regulatory Commission dated 17.04.2017 and 23.06.2020 wherein, there is absolutely no reference to COD and these notifications specifically relates to renewable energy sources. Therefore, when it comes to renewable energy, there is consistency in understanding the scope of applicability of the tariff order. The reliance placed upon the commissioning procedure for solar PV power projects at Uttar Pradesh, will have no relevance in Tamil Nadu since no such procedure has been prescribed or followed in this State.

27. It is even more significant to assess as to how the TANGEDCO was dealing with the invoices raised by the petitioners. The meter reading of TANGEDCO recording the total



units exported by the petitioners from May 2016 onwards shows that the total amount was calculated at the rate of Rs.7.01 per unit. At no point of time in the year 2016, TANGEDCO disputed the claim made by the petitioners for payment of tariff at the rate of Rs.7.01 per unit. The only consistent factor that is seen is that TANGEDCO never settled any of the invoices to the petitioners and they were only seeking for invoice details for the power generated by the petitioners.

28. It is at this point of time during February to April 2017, the impugned communication came to be issued to the petitioners by informing the petitioners that they are only entitled for the tariff rate of Rs. 5.10 per unit in accordance with the TNERC order in Order No. 2 of 2016 dated 28.03.2016.

29. The comprehensive tariff on solar power Order No. 2 of 2016 provided as follows:

6. Applicability of this order

6.1 This order shall come into force from 01-04-2016, the date succeeding the date of expiry of the control period of the last Tariff Order No.7 of 2014 dt.12.9.2014 read with order No.4 of 2015 dt. 01.04.2015 on Solar power. The tariff fixed in this order shall be applicable to plants commissioned during the control period of this order. The tariff is applicable for purchase of solar power by Distribution Licensee from Solar Power Generators conforming to this order. The open access charges and other terms and conditions specified in this order shall be applicable to all the Solar energy generators, irrespective of their date of commissioning.

10. Solar Power Tariff

10.1 The levelised Solar power tariff is computed with reference to the determinants above. The tariff works out to Rs.5.10 per unit for Solar PV projects and Rs.11.12 per unit for Solar Thermal projects without AD benefit. The AD benefit component of the tariff is Rs.0.54 per unit for solar PV and Rs.1.17 per unit for Solar Thermal. The tariff for the developers / generators availing AD benefit will be the tariff arrived at after deduction of AD benefit from the tariff as determined above. The respective working sheets are enclosed in Annexure IA and IB.

30. The above tariff order came into force from 01.04.2016, and the rate was fixed at 5.10 per unit. The TANGEDCO wants to take advantage of this tariff order and pay less to the



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petitioners. It is significant that even this tariff order speaks about "commissioning" of solar power plants on and from 01.04.2016. Even this tariff order does not speak about COD. Admittedly, the solar power plants of all the petitioners were commissioned effective from 31.03.2016, much before the Tariff Order No.2 of 2016 came into effect.

31. It is quite unfortunate that the TANGEDCO has attempted to apply a subsequent tariff order to a previously commissioned solar power plant covered under Tariff Order No. 7 of 2014. This Court does not find any bonafides in the claim made by TANGEDCO. When the tariff order is passed by the TNERC, the commission takes into consideration various factors including the capital investment which is one of the most important parameters for tariff determination. The commission has adopted a capital cost of nearly Rs.12 crores per MW. The capital cost of solar modules is extremely volatile and that is why the control period is prescribed for availing the tariff order. The value of the capital assets drops rapidly and that is the reason why the tariff that was fixed at the rate of Rs 7.01 per unit as on 31.03.2016, drops drastically to Rs.5.10 per unit with effect from 01.04.2016. If TANGEDCO is going to take advantage of the subsequent tariff order, the stakeholders will be put to irreparable loss and hardship and they may not even be able to break even and ultimately, they may have to close down the solar plant. This is not the spirit behind which the Government of Tamil Nadu announced its solar policy in the year 2012. This attitude will in fact discourage investment in solar power plant and it will go against public interest.

32. The respondents are trying to create a myth and thereby want to deprive the petitioners the tariff that was fixed by the TNERC in Tariff Order No. 7 of 2014. The attempt made by TANGEDCO to introduce COD as a criteria for claiming the tariff gets defeated since even in the 2016 tariff order, the fixation of tariff is clearly relatable to the commissioning date alone. In fact, the 2016 tariff order clearly exposes the arbitrariness on the part of TANGEDCO in issuing the impugned communication to the petitioners.

33. At the risk of repetition, this Court wants to once again emphasize that the concept of COD cannot be made applicable for a solar power plant. In the present case, the authorities belonging to TANGEDCO were dragging on with the procedure till 31.03.2016 when they ultimately issued the commissioning certificate which proved that the solar plant has been tied up to the grid and TANGEDCO sub-station. If this work was over by late evening, and the sun had gone down by then, obviously there will be no generation of electricity. The COD as understood in conventional energy will not apply in case of renewable energy since it is subject to the vicissitudes of nature which is not within the control of a human being. It will



depend upon wind or upon the sun light or it may also depend upon water in cases of hydro projects. That is why in renewable sources of energy, commissioning of plant is the determining factor. Once the plant is ready and nature cooperates, energy is generated. This was perfectly understood by TANGEDCO till the beginning of the year 2017 and all of a sudden, they have turned around and applied the concept of COD for solar power plants. The stand taken by TANGEDCO is illegal, arbitrary and it cannot stand the test of law.

34. In view of the above discussion, the impugned communication issued to the petitioners are hereby quashed as illegal, arbitrary and without any authority of law and there shall be a direction to the respondents to strictly comply with the Tariff Order No.7 of 2014 dated 12.09.2014 and Tariff Order No. 4 of 2015 dated 01.04.2015 passed by the TNERC and make payment for the solar energy supplied by the petitioners at the rate of Rs.7.01 per unit. If the respondents have paid the petitioners at the rate of Rs. 5.10 per unit for the solar energy supplied by the petitioners, the balance amount shall be paid with interest at the rate of 6% per annum from the date it became due and payable till the date of actual payment. If the respondents have committed default even insofar as the payment of tariff at the rate of Rs.5.10 per unit, the entire amount at the rate of Rs. 7.01 per unit shall be paid with interest at the rate of 6% per annum from the date it became due and payable till the date of actual payment.

35. In the result, all the Writ Petitions are allowed with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Chairman cum Managing Director
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2. The Chief Engineer NCES
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5. The Secretary,
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7. The Superintending Engineer,
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Chennai - 600 002.
8. The Director / Generation
TANGEDCO,
No.144, Anna Salai, Chennai - 600 002.
9. The Chief Electrical Inspector to Government,
Thiru-Vi-Ka Industrial Estate,
Guindy, Chennai - 600 032.
10. The Executive Engineer,
O & M, Thuraiyur.

+4cc to Mr.R.S.Pandiyaraj, Advocate, S.R.No.53618

+2cc to Mr.L.Jaivenkatesh, Advocate, S.R.No.53648

W.P.Nos.19703, 19704, 19705, 19713 and 22929 of 2017

CP(CO)

RGA(29/10/2021)