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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.17536 of 2015
and M.P.Nos.1 to 3 of 2015

Hindustan Coca Cola Beverages Pvt.Ltd.
Pulianthope Madura - Nemam Village
Nemam Post,
Madura - Nemam Village - 602 107
Represented by its Constituted Attorney,
Mr. Gowtham S.

... Petitioner

Vs.

1. Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO)
Represented by its Chairman and Managing Director,
144, Anna Salai Chennai-600002.
2. The Superintending Engineer,
TANGEDCO
Chengalpattu.
3. Central Electricity Authority (CEA)
Rep by its Chairperson
6th Floor, Sewa Bhawan,
R.K.Puram, New Delhi 110 066
4. Tamil Nadu Electricity Regulatory Commission (TNERC),
Represented by its Secretary,
19-A, Rukmini Lakshmipathy Salai
(Marshall's Road), Egmore,
Chennai-600008.

... 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 2nd respondent culminating in the impugned notice bearing No. SE/ CEDC/ CGL/AEE/GL/AE/F.Harmonics/D. No.159/15 dated 13.4.2015 and current consumption bill dt 2.6.2015 charging a Harmonic Compensation Charges of



Rs.18,07,093.73 (Rupees Eighteen Lakhs Seven Thousand and Ninety Three and Seventy Three paise only) quash the same and consequently direct the 1st and 2nd respondents to the receive payment together with late charge if any from the petitioner to the current consumption bill dated 02.06.2015 excluding the harmonic penalty charge of Rs.18,07,093.73 (Rupees Eighteen Lakhs Seven Thousand and Ninety Three and Seventy Three paise only)

For Petitioner : Mr.G.Balasubramanian
for M/s Poovayya and Co.

For Respondents : Mr.L.Jaivenkatesh
for TANGEDCO [R1 & R2]
Mr. T.L.Thirumalaisamy [R3]
No Appearance[R4]

O R D E R

The impugned demand notice passed by the 2nd respondent, dated 13.04.2015 and the current consumption bill dated 02.06.2015 charging a harmonic compensation, is sought to be quashed in the present writ petition and a further direction is also sought to direct the 1st and 2nd respondents to receive payment together with late charges, if any, from the petitioner to the current consumption bill dated 02.06.2015 excluding the harmonic penalty charge of Rs.18,07,093.73/- (Rupees Eighteen Lakhs Seven Thousand and Ninety Three and Seventy Three paise only).

2. The relief sought for in the present writ petition is similar to the relief sought for by the writ petitioners in a batch of writ petitions in W.P.No. 25 of 2015 [M/s.S.Palaniyandi Mudaliar Memorial Hospital v. TANGEDCO], etc. and batch, which was decided by this Court on 05.06.2017.

3. The relevant paragraphs of the said order are extracted hereunder :

"24. In view of the above, since the harmonics have several undesirable effects and affects power quality, on 21.02.2007, the Central Electricity Authority (CEA) introduced a new Regulation and accordingly, its Technical Standards for Connectivity to the Grid Regulations, 2007, came for enforcement. Applicability of the Regulations is provided in Regulation 3, which reads as under:

"3. Applicability of the Regulations -
These Regulations shall be applicable to all



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the users, requesters, Central Transmission Utility and State Transmission Utility."

It is clear from the above that the said Regulation is applicable only to four categories, namely, Users, Requesters, Central Transmission Utility and State Transmission Utility.

25. In this context, let me find out the meaning given under the CEA Regulations, 2007, for Users and Requesters. Section 2(34) defines the meaning of "User", which is given as under:-

"2(34)-- User means a person such as, a Generating Company including captive generating plant or Transmission Licensee (other than the Central Transmission Utility and State Transmission Utility) or Distribution Licensee or Bulk Consumer, whose electrical plant is connected to the grid at voltage level 33kv and above."

Section 2(25) defines the meaning of "Requester", which is given as under:-

"2(25)-- Requester means a person, such as a Generating Company including captive generating plant or Transmission Licensee (excluding Central Transmission Utility and State Transmission Utility) or Distribution Licensee or Bulk Consumer, who is seeking connection of his new or expanded electrical plant to the Grid at voltage level 33kv and above."

A conjoint reading of the above said provisions show that a person such as, Generating Company including captive generating plant or Transmission Licensee or Distribution Licensee or Bulk Consumer, whose electrical plant is connected to the grid at voltage level 33 kv and above. Therefore, it is clear that the above said Regulations are applicable to only those consumers whose electrical plant is connected to the Grid at the voltage level of 33kv and above, hence, the petitioners, who are connected to the Grid at voltage level of 11kv/22kv supply lines, cannot be made applicable under the said Regulations.

26. Again, to be more clear, it is also



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(2) The total harmonic distortion for current drawn from the transmission system at the connection point shall not exceed 8%.

(3) The limits prescribed in (1) and (2) shall be implemented in a phased manner so as to achieve complete compliance not later than five years from the date of publication of these regulations in the official Gazette."

Although Clause 3 of Part IV of the CEA Regulations, 2007, says that the total harmonic distortion for voltage at the connection point shall not exceed 5% with no individual harmonic higher than 3% and that the total harmonic for current drawn from the transmission system at the connection point shall not exceed 8%, the limits prescribed as mentioned above shall be implemented in a phased manner so as to achieve complete compliance not later than five years from the date of publication of these regulations in the official Gazette.

29. It is an admitted fact that the CEA Regulations came into force in the year 2007, however, even after a lapse of 9 years, the TANGEDCO has not published any notification in the official Gazette enforcing the consumers, who are connected with 11kv/22kv supply lines, to install harmonic filters so as to levy harmonic compensation charges.

30. Moreover, when this Court directed the learned Additional Solicitor General of India to get instruction whether the consumers connected to a distribution system irrespective of the capacity of supply they receive including 11kv and 22kv supply lines need to provide harmonic control equipments, as a reply thereto, the Chief Engineer (Legal), Central Electricity Authority, Ministry of Power, New Delhi, in his letter dated 10.08.2015, has clarified that the CEA Regulations, with respect to compensation on account of harmonic distortions, are applicable to only those consumers, who are connected to 33kv or above, namely, only bulk consumers. For better appreciation, relevant portion of the said communication is extracted below:-

"This is reference to your letter dated 07.08.2015 on the above subject. It is to inform that almost 305 case are



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restoration of supply of electricity, tampering, distress or damage to electrical plant, electric lines or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter, entry for replacing, altering or maintaining electric lines or electrical plant or meter.

"Section 86 - Functions of State Commission.-

(1) The State Commission shall discharge the following functions, namely:--

(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State: Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;

(c) facilitate intra-State transmission and wheeling of electricity;

(d) issue licences to persons seeking to act as transmission licensees, distribution licensees and electricity traders with respect to their operations within the State;

(e) promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;



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(f) adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration;

(g) levy fee for the purposes of this Act;

(h) specify State Grid Code consistent with the Grid Code specified under clause (h) of subsection (1) of section 79;

(i) specify or enforce standards with respect to quality, continuity and reliability of service by licensees;

(j) fix the trading margin in the intra-State trading of electricity, if considered, necessary;

(k) discharge such other functions as may be assigned to it under this Act."

Section 50 of the Act dealing with the Electricity Supply Code statutorily provides for the cases, inter alia, with regard to the tampering of electric lines or meter and method of collection of electricity charges. Similarly, Section 86 of the Act empowers the State Commission to determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk and retail within the State. But, till date, it has not provided for setting up of standards for harmonics charges. Therefore, neither Section 50 nor Section 86 of the Act supports respondent TANGEDCO in the matter of levying of harmonic charges on the 11kv/22kv supply line consumers.

34. Likewise, Section 181 gives power to the State Commission to make Regulations consistent with the Act and Rules to carry out the provisions of this Act. By exercising such power, the Tamil Nadu Electricity Regulatory Commission had issued the Tamil Nadu Electricity Supply Code, wherein the Regulation 4(1)(iv) of the Tamil Nadu Electricity Supply Code, which is extracted below, deals with additional charges for harmonic dumping.

"4.Charges recoverable by the Licensee -
The charges, recoverable by the Licensee from the consumers are:-



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xxxx

(1). Tariff related charges, namely, -

(iv). Additional charges for harmonics dumping

Where any equipment installed by a consumer generates harmonics, the consumer shall provide adequate harmonic suppression units to avoid dumping of harmonics into Licensee's distribution system and the Licensee is at liberty to provide suitable metering equipment to measure the harmonic level pursuant to such harmonic. Where the consumer fails to provide such units, he shall be liable to pay compensation at such rates as the Commission may declare from time to time."

In view of Regulation 4(1)(iv) of the Tamil Nadu Electricity Supply Code, although the State has got power to direct the consumers to install harmonic filters irrespective of their voltage connection as stated by learned Additional Advocate General for the TANGEDCO, the same cannot be sustained in view of non-specification of any standard of harmonics for 11kv/22kv/supply line consumers by the CEA, who, being an Apex Body as per Section 73(d) of the Act, has exclusive powers to specify the Grid Standards for operation and maintenance of transmission lines.

35. Thus, for all the reasons stated above, the impugned demands are quashed. Consequently, the writ petitions are allowed. No Costs. Consequently, connected miscellaneous petitions are also closed. "

4. In view of the fact that the case of the petitioner is also similar to that of the cases cited supra, and the petitioner is also entitled to the relief. Accordingly, the impugned demand notice and the current consumption bill are quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

shr/ska



To

1. The Chairman and Managing Director,
Tamil Nadu Generation and Distribution
Corporation Ltd. (TANGEDCO)
144, Anna Salai Chennai-600002.
2. The Superintending Engineer,
TANGEDCO
Chengalpattu.
3. The Chairperson,
Central Electricity Authority (CEA)
6th Floor, Sewa Bhawan,
R.K.Puram, New Delhi 110 066
4. The Secretary,
Tamil Nadu Electricity Regulatory
Commission (TNERC),
19-A, Rukmini Lakshmiipathy Salai
(Marshall's Road), Egmore,
Chennai-600008.

+lcc to M/s Poovayya and Co., Advocate, S.R.No.5549

W.P.No.17536 of 2015
and M.P.Nos.1 to 3 of 2015

MG (CO)
CT 14/02/2022