IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 9/11/2022

C O R A M

THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

Writ Petition No.9783 of 2012
a n d
M.P.No.1 of 2012

1. Indian Wind Power Association
   rep. By its Secretary General
   Door No.E 6th Floor, Shakti Towers - II
   766 Anna Salai
   Chennai 600 002.

2. Powerica Limited
   rep. By its General Manager
   9th Floor, C Wing
   Godrej Coliseum, Sion-Trombay Road
   Sion, Mumbai 400 022.

3. Navamani Wind Farms
   rep. By its Authorised Signatory
   366 Avarampalayam Road
   Sidhapudur
   Coimbatore 641 044.

4. Shree Vigneshwara Foundry
   rep. By its Managing Partner
   Coimbatore 641 307.

5. Mallow International
   rep. By its Managing Director
   Karur.

6. Binaguni Tea Co. Pvt Ltd
   rep. By its Secretarial Executive
   Kolkatta 700 020.

7. KTV Oil Mills
   rep. By its Managing Director
   48 Thambu Chetty Street
   Chennai 600 001.

8. Tirupur Export Knitwear Industrial Complex
   rep. By its President
   Tea Nagar, Tirupur 641 606.

9. Varadaraja Agro Industries Pvt Ltd
   rep. By its Director
   48 Thambu Chetty Street
   Chenai 600 001. ... Petitioners

Vs

1. The State of Tamil Nadu
   rep. By Secretary to Government
   Department of Energy
   Fort St. George
   Chennai 600 009.

2. The Tamil Nadu Generation and
   Distribution Company Ltd
   rep. By its Chairman and Managing Director
   144 Anna Salai
   Chennai 02.

3. Tamil Nadu Electricity Regulatory Commission
   4th Floor, SIDCO Corporation Office Building
   Thiru-vi-ka Industrial Estate, Guindy
   Chennai 600 032, ... Respondents

(R.3 suo motu impleaded, vide order, dated
28/7/2022 made in W.P.No.9783 of 2012
by NAVJ)

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of writ of mandamus to direct the respondents to treat the WEGs on par with other private power producers such as IPPS, Merchant Power Plants, Captive Power plants and consequently direct the respondents to make payments towards outstanding dues to the first petitioner members and the petitioners simultaneously with and inthe same manner as they make payment to such other private power producers.

For Petitioners	...	Mr.Rahul Balaji
For respondents	...	Mr.P.Sathish Additional Government Pleader for R.1 Mr.P.Wilson Senior Counsel for Mr.L.Jai Venkatesh for R.2. Mr.Richardson Wilson for R.3. Mr.N.L.Rajah Senior Counsel Amicus Curiae

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ORDER

This writ petition has been filed to direct the respondents to treat the WEGs on par with other private power producers such as IPPS, Merchant Power Plants, Captive Power plants and consequently, direct the respondents to make payment towards outstanding dues to the first petitioner.

2. The case of the petitioners is that the State of Tamil Nadu is infusing funds to the tune of Rs.10,000 crores which has been received from the Central Government into the TANGEDCO for the purposes of setting outstanding dues payable by TANGEDCO to IPPS and other private generators of power. Unless definite instructions are issued to the respondents to treat the petitioners on par with other power generators such as thermal and gas based private sector generators, there is a real danger of TANGEDCO continuing with its practice of delaying payments to WEGs and preferring other power producers over WEGs such as members of the petitioner association and petitioners 2 to 11. Hence, the petitioners have come forward with the present writ petition praying for the relief, as stated therein.

3. Vide, order, dated 28/7/2022, this Court had appointed Mr.N.L.Rajah, learned Senior Counsel as Amicus Curiae.

4. The learned Amicus Curiae submitted that TANGEDCO themselves have admitted that Agri consumption is accounted based on the units consumed per HP. This is purely theoretical and there are already reports of instances of rampant misuse of Agri connections and in the absence of metering, the end use and misuse cannot be monitored. Misuse, if any, gets accounted as transmission and distribution losses. Similarly, the metering at the distribution transformers is also not complete, without which focused action cannot be taken to reduce the transmission and distribution losses. To reduce the losses, there is a requirement to know where the leakage is and that can be identified only with metering at all points of generation, distribution and consumption.

5. The learned counsel appearing for the second respondent submitted that TNERC had issued tariff order No.1 of 2012 dated 29/3/2012 revising the tariff rates to be collected by TANGEDCO from its consumers with effect from 1/4/2012. The revision of tariff order dated 29/3/2012 will ensure

additional revenue of Rs.7874 crores to the respondent during the financial year 2012 – 13.

6. It is stated in the counter filed on behalf of the second respondent that in view of the huge outstanding dues to the private power producers who are using coal, gas, etc., have been threatening that they will not supply power to the second respondent. One of the generators has made a request to terminate the Power Purchase Agreement and a generator or two have been threatening to initiate Liquidation Proceedings against the TANGEDCO under the Companies Act, 1956 for the purpose of realising the outstanding dues and all of them have been insisting payment then and there so as to buy raw materials. Whereas, in the case of WEGs, the nature (wind) is the raw material sourced at free of cost.

7. It is further stated that despite stringent financial position and considering the various parameters, technical as also financial, TANGEDCO has been making payment to every generator on judicious basis keeping in mind the availability of the source of power either in Tamil Nadu or elsewhere the requirement of procurement and continuous power supply to

match the ever growing demand in the State, besides, keeping in mind the larger public interest.

8. The outstanding dues, as on 25th June, 2012 in respect of Wind Energy Generator (WEGs), Independent Power Producers (IPPs) and Captive Power Plants (CPPs) are as follows:-

WEGs	...	Rs.1252 crores
IPPs	...	Rs.2198 crores
CPPs	...	Rs. 403 crores

9. Today, when the matter has come up for hearing, learned Amicus Curiae has produced the Tamil Nadu Electricity Regulatory Commission, with regard to determination of Tariff for generation and distribution for the financial year 2022 – 23 to 2026 – 27, made in Order No.7 of 2022 in T.P.No.1 of 2022, dated 9/9/2022 and the same reads as follows:-

> "1) To file the Tariff Petition / ARR / True-up petition on a timely basis every year, as per TNERC (Terms and Conditions for Determination of Tariff)

Regulations, 2005. The Licensee shall have to file the Tariff petition under MYT concept on or before 30th of November of the last Control period for determination of tariff of next Control period.

2) To assess the quantum of stranded capacity. Recommend an action plan to address the issue to reduce the burden of the Capacity charges and projection of available capacity and requirement to be furnished along with next ARR and Tariff petition.

3) To file the progress of the Capital Expenditure and Capitalisation on a quarterly basis.

4) To study and report on whether TANGEDCO has the potential to earn additional revenue by utilising the vacant land available with them along Highways for setting up of EV charging stations

5) Discom has to submit the MOD stack of actual power purchased from various sources during the month. Any variation from the approved

MoD stack ought to be get approved from the Commission. The MoD stack to be get approved from the Commission even when no Tariff petition / ARR.

6) To take prior approval from the Commission for purchasing energy from unapproved sources.

7) Make necessary arrangement to install Smart meters in the Service connections as stipulated under the CEA Regulations within that time frame. Such meter may be procured with the compatibility for pre-paid option. Priority may be given to such service connections with high consumption in Local body, Government, Commercial, Industrial services, etc., in a phased manner. The progress report on the above have to be submitted to the Commission on a quarterly basis.

8) TANGEDCO is directed to install ABT meters with communication facility in all Feeders and Distribution Transformers by 31.12.2022. Metering of HT services and Generators with communication

facility be completed within a period of 2 months. Data obtained from such metering can be used for conducting of Energy Accounting & Auditing in order to have more accuracy in arriving of T & D losses. The progress report on installation of ABT meters to be furnished on Quarterly basis to the Commission.

9) To conduct a scientific study and furnish report for accurate measurement of T&D loss & unmetered consumption, within a period of 6 months.

10) To fix the ABT based communication facility meters in remaining HT services within a period of 2 months.

11) The Licensee shall purchase power from Renewable Energy sources at the required quantum not less than the percentage as stipulated under TNERC (Renewable Energy Purchase Obligations) Regulations 2010 from time to time. The compliance of the same may be furnished to the Commission on

or before 30th September every year.

12) To file Cost to Serve Report for respective Financial year alongwith the next petition.

13) Implementation of Smart pre-payment meter/ pre-payment meters : The Commission refers to the Electricity (Rights of Consumers) Rules, 2020 notified on 31st December, 2020 and as per this Rule, no connection shall be given without a meter and such meter shall be the Smart pre-payment or pre-payment meter.

14) To make the consumers aware of the Standards of Performance (SoP) prescribed by the Commission and make consumers get prompt services from TANGEDCO. And the Licensee is directed to display the Standards of Performance in all their offices, website, Mobile Apps, etc.,

15) To submit a report to the Commission about its readiness (viz., infrastructure development, kVAh metering & billing procedure, etc.,) in

implementation of kVAh billing within a period of 3 months.

16) To furnish a ToD report based on hourly consumption and cost of power purchase separately for the latest year.

17) To ensure that the Unscheduled Interchange and Under-drawal at high frequency is minimised, in order to optimise the Power purchase cost. The report on the same may be furnished to the Commission within a period of 3 months.

18) To maintain separate accounts in respect of its Distribution and Supply business and further directed to get such accounts audited by its Statutory Auditors. The Licensee is directed to file the Tariff petition for determination of Retail tariff & Network/Wheeling charges based on this segregated audited accounts.

19) To curtail the Electrical Accidents held on both Employees and common Public side. Since the number of accidents found alarming month on

month, necessary Safety programmes, Consumer awareness programmes may be conducted. Electrical Accident prone locations may be identified to take permanent preventive measures and educate the people in this regard.

20) To file petition for determination of provisional tariff for new generating stations six months prior to the expected COD. Likewise the petition to be filed for determination of final tariff for new generating stations within six months after the COD.

21) TANGEDCO is directed to take swift action to reprogramme the meters for implementation of ToD in HT/LT categories since the compliance of ToD tariff in various categories is mandatory for scoring/ranking of the Licensee under the Aathma Nirbar Bharat Scheme. In this connection, TANGEDCO is directed to furnish its progress report every quarter to the Commission.

22) The power factor of the Agricultural

pumpsets may be improved by installing the appropriate capacity capacitors so as to reduce the line loss and to have better voltage profile. The Return on investment in this scheme can be easily achieved within a period of 6 months. Hence, it shall be taken up on priority basis and completed early.

23) The Commission directs the Petitioner to maintain the record of the scheme-wise actual capital expenditure incurred and actual capitalization done for each Generating Station separately and submit the same to the Commission at the time of next Tariff Petition furnishing details of loan, grant and own funding for each scheme. The Commission will approve the actual Capital expenditure and actual capitalization based on this information, subject to prudence check.

24) The Commission directs the Petitioner to file the Petitions for approval of provisional tariff for new Generation projects in line with the provisions of

the TNERC (Terms and Conditions for Determination of Tariff) Regulations, 2005. The Commission will take a final view on the time overrun and related cost overrun and IDC component for individual projects, after the new generation projects are commissioned, and the actual audited capital cost including IDC are submitted to the Commission with due justification for the increase in capital cost.

25) The Commission directs the Petitioner to maintain the record of the scheme-wise actual capital expenditure incurred and actual capitalisation done for each Distribution Circle separately and submit the same to the Commission at the time of next Tariff Petition. The Commission will approve the actual Capital expenditure and actual capitalisation based on this information, subject to prudent check.

26) The Commission further directs the petitioner to submit the CIP in future category wise (Capital, improvement, individual reforms schemes

like RDSS, IDPS, Uday, ADB etc) Capex and Capitalisation for the entire State, in addition to the circle wise data. The cumulative total of category wise expenditure for all circles shall tally with the corresponding consolidated category wise data of the State.

27) The petitioner shall ensure that the DT metering / feeder metering/ boundary metering already carried out shall not be replaced but continued with required improvement, if needed any.

28) The petitioner shall ensure that each and every capital work planned shall give proper return on investment.

29) TANGEDCO is directed to complete provision of Capacitors in all Agricultural service connection for effective AT&C loss reduction and optimum utilization of available equipment (both Distribution Transformers and Power / Auto transformers).

30) The solar generation is consistently on

the rise. It is available abundantly during daytime. At the same time the demand is more in peak hours especially during the evening/ night slot of non-solar hours i.e 6PM- 10PM. In order to balance the consumption pattern between solar and non-solar hours and flatten the load curve by running their pump sets during daytime solar hours and restrict the usage during morning/night peak hours , the agricultural consumers may be requested to shift their usage from non-solar night hours to solar day hours.

31) Further, the public shall be advised to prefer their vehicle charging during solar hours rather than night hours."

10. Whereas, Mr.Rahul Balaji, learned counsel appearing for the petitioner submitted that as per Section 66 of the Electricity Act, the Appropriate Commission shall endeavour to promote the development of a market (including trading) in power in such manner as may be specified and shall be guided by the National Electricity Police referred to in Section 3. However, there is no mechanism followed in distribution and payment of

money. Therefore, it is his contention that there should be a direction to TNERC to make a transparent mechanism prayer for purchase and payment and that will take care of many power purchaser like petitioner Association.

11. Mr.Wilson, learned Senior Counsel submitted that they will implement the TNERC guidelines with letter and spirit.

12. Submission of the learned Senior Counsel, appearing for the second respondent is recorded.

13. In such a view of the matter, this writ petition is disposed of. The guidelines issued by the TNERC shall be strictly enforced by the authorities, in Tamil Nadu. Besides Tamil Nadu Electricity Regulatory Commission also exercise the power under Section 86 of the Act, to regulate electricity purchaser 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.

14. TANGEDCO is directed to follow 31 fresh directives, issued by

the TNERC, without any deviation. If there is any violation of non-compliance of the directions, TNERC is directed to act strictly in accordance with law and take punitive action, as per Section 142 of the Electricity Act. No costs. Consequently, the connected Miscellaneous Petition is closed.

9/11/2022

Index : Yes / No
Internet: Yes
Speaking/non speaking order

mvs.

N. SATHISH KUMAR, J

mvs.

To

1. The Chairman
   Tamil Nadu Electricity Board
   800 Anna Salai
   Chennai 600 002.

2. The Superintending Engineer
Udumalpet Electricity Distribution Circle
Udumalpet.

W.P.No.9783 of 2012

9/11/2022