



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.28470 OF 2016

AND

W.M.P.NOS.24579 OF 2016

M/s.BHF International,
HT Sc.No.290/Palladam,
SF.No.193,
P.Vadugampalayam Village,
Palladam - 641 664
Rep. by Mr.N.Mahadevan

... Petitioner

.Vs.

1. The Chairman and Managing Director,
The Tamil Nadu Generation and
Distribution Corporation Limited,
144, Anna Salai,
Chennai - 600 002.
2. The Superintending Engineer,
Tiruppur Electricity Distribution Circle,
Tiruppur - 641 603.
3. The Central Electricity Authority (CEA),
Rep. by its Chairman,
6th floor, Selva Bhawan,
R.K.Puram, New Delhi - 110 056.
4. The Tamil Nadu Electricity Regulatory
Commission, [TNERC],
Rep by its Secretary,
19A, Rukmani Lakshmipathy Salai,
Egmore, Chennai - 600 008.

... Respondents

PRAYER:-

Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent culminating the impugned show cause Notice Lr.No.SE/TEDC/TPR/DFC/AO/REV/AAO/HT/F.Harmonics/D/



1748/16/dt...07.2016 for the collection of compensation charges for harmonics dumping and quash the same and consequently forbearing the 1st and 2nd respondents, their men, officers, agents, servants, representatives and or any one claiming through or under them and any other person from in any manner insisting, demanding and or collecting charges towards compensation charges for harmonics dumping from the petitioner for their H.T.Sc.No.290 either through the C.C.Bills or in any other manner, as the petitioner is availing 11 K.V. Supply.

For Petitioner : Mr.P.Kannan Kumar

For Respondents : Mr.M.Abdulkalam
For TANGEDCO
For R1 and R2

O R D E R

The impugned demand notice passed by the 2nd respondent, dated 07/2016, is sought to be quashed in the present writ petition and a further direction is also sought to forbear the first and second respondents from in any manner levying, demanding and/or collecting surcharges for not providing the harmonic controls from the petitioner, who is connected with 11 KV supply line.

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



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

WEB COPY

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 pertinent to refer to Section 34 of the Electricity Act, 2003, dealing with the Grid Standards, which is given as under:-



WEB COPY

"34. Grid Standards.----- Every transmission licensee shall comply with such technical standards, of operation and maintenance of transmission lines, in accordance with the Grid Standards, as may be specified by the Authority."

It is clear from the above that Section 34 of the Electricity Act, 2003, mandates every transmission licensee to comply with such technical standards of operation and maintenance as may be specified by the Authority, which means, as per Section 2(6) of the Act, the Central Electricity Authority (CEA) is the Authority as referred to in sub-section (1) of Section 70. Thus, the CEA, established under Section 70 and whose functions are set forth in Section 73, has the exclusive powers under Section 73(d) of the Act. It is also pertinent to extract Section 73(d) of the Act, which is given as under:-

"(d) specify the Grid Standards for operation and maintenance of transmission lines."

27. In view of the above legal position, the Central Electricity Authority (CEA), being an Apex Body, is the appropriate authority on the issue of Grid Standards and to ensure both National Grid Code and State Grid Code are consistent and there cannot be any inconsistencies of different standards at the State level. This is purely for the purpose of ensuring uniform operation across the country. It is also an admitted fact that the National Grid Code and the State Grid Code do not have any provision with regard to harmonics.

28. In this context, it is relevant to refer to Clause 3 of Part IV of the CEA Regulations, 2007, which is given as under:-

"3. Voltage and Current Harmonics --

(1) The total harmonic distortion for voltage at the connection point shall not exceed 5% with no individual harmonic higher than 3%.

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



WEB COPY

(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 filers 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 filed in the Hon'ble Court by the petitioners having grievances similar to this case. It is to submit that:



WEB COPY

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;

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



WEB COPY

- (g) levy fee for the purposes of this Act;
- (h) specify State Grid Code consistent with the Grid Code specified under clause (h) of sub-section (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:-

xxxx

(1). Tariff related charges, namely, -



WEB COPY

(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, the petitioner is also entitled to the relief. Accordingly, the impugned demand notice is quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

kmm



To

1. The Chairman and Managing Director,
The Tamil Nadu Generation and
Distribution Corporation Limited,
144, Anna Salai,
Chennai - 600 002.
2. The Superintending Engineer,
Tiruppur Electricity Distribution Circle,
Tiruppur - 641 603.
3. The Chairman,
Central Electricity Authority (CEA),
6th floor, Selva Bhawan,
R.K.Puram, New Delhi - 110 056.
4. The Secretary,
The Tamil Nadu Electricity Regulatory
Commission, [TNERC],
19A, Rukmani Lakshmipathy Salai,
Egmore, Chennai - 600 008.

+1cc to Mr.P.Kannan Kumar, Advocate, S.R.No.5133

W.P.NO.28470 OF 2016

SSI(CO)
PBS/21/02/2022