IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.08.2023

Pronounced on : 01.09.2023

CORAM: JUSTICE N.SESHASAYEE

W.P. No.20891 of 2018 and
W.M.P. Nos.24531 & 24532 of 2018

1.The Executive Engineer, TANGEDCO
Coimbatore Electricity Distribution Circle/North
Tatabad, Coimbatore - 641 012.

2.The Deputy Financial Controller, TANGEDCO,
Coimbatore Electricity Distribution Circle/North
Tatabad, Coimbatore - 641 012.

3.The Executive Engineer, O&M
K.Vadamadurai

4.The Assistant Executive Engineer
MRT/CEDC/North/Coimbatore

5.The Assistant Engineer
HT/MRT/CEDC/North/Coimbatore ... Petitioners

Vs.

1.Consumer Grievance Redressal Forum
Rep. by its Chairperson
Coimbatore Electricity Distribution Circle/North
Coimbatore - 641 012

2.Thiru.R.Krishnan, Vice President
Aquasub Engineering
Thudialur, Coimbatore - 641 017

3.Thiru.P.Kanakaraj, Manager (Electrical)
Aqasub Engineering Foundry 2
Thudialur, Coimbatore - 641 017. ... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India for a writ of certiorari, calling for the records of the 1st respondent in its order dated 03.07.2018 made in Petition No.02/2018-19, quash the same as illegal, arbitrary and without authority of law.

For Petitioner : Mr.P.Wilson, Senior Advocate
Assisted by Mr.L.Jaivenkatesh,
Standing Counsel for TNEB

For Respondents : Mr.N.L.Raja, Senior Advocate
Assisted by Mr.Arun Anbumani
for R2 & R3
No Appearance for R1

ORDER

TANGEDCO is before this court with this petition challenging the majority decision of the Consumer Grievance Redressal Forum dated 03.07.2018.

2. The basic facts that led to the filing of this petition may be briefly bullet pointed:

- On 23.08.2013, the Superintending Engineer of TANGEDCO issued a notice to respondents 2 and 3 requiring it to bring down the harmonics within the specified limit, within a period of three months or to face a 15% compensation of the respective tariff on default. This is in tune with the regulation 4(1) of Tamil Nadu Electricity Code and r/w Regulation 6(1) of the Tariff Order for high tension supply consumers of the same code.
- On 24.12.2014, the officials of the TANGEDCO took field measurement for harmonic distortion and found that it exceeded the prescribed limit of 8% by almost 100%. This was informed to the respondents 2 and 3 by the Superintending Engineer vide his communication dated 11.03.2015, and directed its rectification within three months. Subsequently, vide correspondence dated 01.06.2015, the respondents 2 and 3 informed the Superintending Engineer, that it has commissioned a harmonic suppression equipment and that the harmonic level was brought within limits prescribed. This was followed by a second field inspection on 12.06.2015 during which it

was found that the harmonic distortion is marginally higher than the prescribed limit at 8.086 %, and not within the limit. This is followed by another correspondence of the respondents 2 and 3 dated 20.06.2015, under which it informed the TANGEDCO that it has now successfully brought the harmonic distortion within the prescribed limit. In the third field inspection which took place on 23.06.2015 it was found that the harmonic distortion is brought well below the prescribed limit.

- On 05.04.2018, TANGEDCO informed the respondents 2 & 3, that for the harmonic distortion during the period from 24.12.2014 to 23.06.2015 the consumer would be liable to pay a compensation at 15% on the tariff, in accordance with the notification dated 23.08.2013, and raised a demand for Rs.1,29,34,387/-.
- Aggrieved by the same, the respondents 2 and 3 approached the Consumer Grievance Redressal Forum constituted under Section 42(5) of the Electricity Act. This forum caused an enquiry into the grievance raised by these respondents, and came out with its divided decision vide its order dated 03.07.2018. The two-members of the Commission would find the demand for harmonic charges though is

legal and justifiable, still is not sustainable as it was demanded well beyond the two years period stipulated under Section 56(2) of the Electricity Act. The Chairman of the Commission in a separate order would state that Section 56(2) will not apply.

- According to the petitioner, the expression '*first due*' in Sec. 56(2) denote the date on which the bill is raised.

Since the majority view was against the TANGEDCO, it is now before this court in this petition.

2. Mr.P.Wilson, learned senior counsel appearing for the TANGEDCO took this court extensively through the judgment of the Hon'ble Supreme Court in ***M/s.Prem Cottex vs. Uttar Haryana Bijli Vitran Nigam Ltd. & Ors. [Civil Appeal No.7235 of 2009 dated 05.10.2021]*** and made two pointed submissions:

(a) The CGRF itself will not have jurisdiction to entertain the grievance, since under Regulation 18 of the Tamil Nadu Electricity Supply Code, only as regards those grievances which fall within Regulations 3 to 17, and not the one falling under Regulation 21;

(b) The decision of the Chairperson of the CGRF is not in consonance with the settled legal position that the phrase '*first due*' in Section 56(2) denotes the date of the bill, and it cannot be related to the date on which the consumer might have defaulted in compliance vis-a-vis the notice informing harmonic distortion.

3.1 Mr.N.L.Rajah, the learned senior counsel for the respondents 2 and 3 made the following submissions:

- Under Section 42(6) of the Electricity Act, 2003, only a consumer who is aggrieved by the Order of the CGRF constituted under Section 42(5), can prefer an appeal to the Ombudsman, and it is not given to the distributing licensee such as the TANGEDCO to prefer an appeal. If it were to be considered otherwise, then it will create a situation where TANGEDCO will be questioning its own authorities constituting the CGRF.
- So far as the contention of the respondents 2 and 3 that these respondents can question any claim of harmonic compensation, since Regulation 4(iv) of Tamil Nadu Electricity Supply Code specifically provides for additional charges for harmonics dumping, and

consequently any dispute involving Regulation 4 is amenable to the jurisdiction of the CGRF.

3.2 Shifting his focus to merits, the learned counsel contended:

a) On merits, Regulation 6(ii) of the Tariff Order details the procedure for levying harmonic compensation. It goes this way: first, it requires that measurement of harmonics by the distributing licensee in the presence of the consumer be taken; (b) a three months time must be given to the consumer to fit the harmonic filter equipment and (c) if the measurement of harmonic dumping is still found to be in excess of the prescribed limit, or to state it differently, if harmonic level is not brought down within the prescribed limit within the stipulated three months period, then, and only then, harmonic compensation can be imposed.

b) So far as the present case is concerned, on 23.08.2013, a general notice was given, which is of no consequence in the context of Regulation 6(2) of the tariff order, since there has to be a measurement of harmonics to ascertain if there is any distortion beyond the limit prescribed. The measurement was taken only on

24.12.2014, when TANGEDCO finds that the harmonic level is in excess of the prescribed limit. It then waited almost for three months, and then issued a notice dated 11.03.2015, requiring the respondents 2 and 3 to bring down the harmonic level within three months. The respondents 2 and 3 almost immediately fitted the harmonic filters, and intimated the same to TANGEDCO vide its communication dated 01.06.2015, and now the TANGEDCO is required to cause a second measurement. It was not done immediately by TANGEDCO but, only on 12.06.2015, and it found that the harmonic dumping was still marginally higher than the prescribed limit of 8%, at 8.086%. The petitioner again fine tuned the same, following which TANGEDCO caused a second inspection on 23.06.2015, and found that the harmonic dumping level has been reduced to 6.35%.

c) Initially TANGEDCO was satisfied with the compliance of its direction issued vide its notice dated 11.03.2015. However, based on an audit objection dated 08.02.2017, it raised a bill of Rs.1,29,34,387/- on 05.04.2018 as harmonic compensation.

d) In terms of Regulation 6(2), the time will start running on the respondents 2 and 3 to fit harmonic filter and to bring down the level of harmonic dumping below the prescribed level, only from the date of issuance of the three months notice by the distributing licensee. Here is a case where TANGEDCO has issued this notice only on 11.03.2015. This implies the petitioner is required to fit in the harmonic filters latest by 10/11.06.2015, but the respondents 2 and 3 had fitted the harmonic filters even by 01.06.2015, well within the three months period and required TANGEDCO to cause a second inspection. This was done only on 12.06.2015, a day or two after the expiry of three months period. Here, TANGEDCO has to take the blame, for it made the second visit some 12 days after the respondents 2 and 3 had given the intimation, and therefore, the respondents 2 and 3 cannot be said to have committed any harmonic distortion after the expiry of the three months period. And ultimately, the respondents 2 and 3 did bring down the harmonic distortion level well below the prescribed limit of 8.1% as could be seen in the final inspection of the TANGEDCO on 23.06.2015.

3.3 It is not a case where the respondents 2 and 3 have left the harmonic distortion level stay above the prescribed 8% by breaching any of the terms of Regulation 6 of the Tariff Order. The respondents 2 and 3 did what it is required to do in terms of the notice, but the TANGEDCO delayed the matter for itself. So far as the present claim is concerned, if at all the TANGEDCO has a right to claim compensation it could be only after 10/11.06.2015, when the petitioner fails to contain the harmonic distortion below the prescribed limit. As stated earlier, the respondents 2 and 3 did, what it could do and intimated the TANGEDCO even on 01.06.2015. The delay was on the part of TANGEDCO as stretched the second inspection beyond the three months limit, and the petitioner cannot be faulted for this.

3.4. In this regard, the time from which harmonic compensation can be charged is clarified by TNERC in Regulation 5.2.2.4 of its 2017 Tariff Order, wherein it says that the penal charges shall be due payable only from the date of completion of the three months period. Therefore, the audit objection has been raised based on certain misconception and the TANGEDCO has mechanically adopted it. Reliance was placed on the following authorities:

1. ***M/s.ATC Ltd., Vs The Chairman and Managing Director,***

TANGEDCO and others *[W.P. No.*23232 of 2016 dated 13.07.2016];

2. ***M/s.Sharadha Terry Produces Ltd., Vs TANGEDCO and others*** [W.P. No.23736 of 2018 dated 06.12.2021];
3. ***RSM Autokast Ltd., Vs TANGEDCO and others*** [W.P. No.1157 of 2018 dated 25.01.2022];
4. ***Shree Sai Hanuman Smelters Pvt. Ltd., Vs TANGEDCO and others*** [W.P. No.22318 of 2014 dated 10.02.2022]*; and*
5. ***Seshasayee Paper and Boards Limited Vs TANGEDCO and another*** [W.P. No.2513 of 215 - dated 17.03.2022].

4.1 In response, Mr.P.Wilson, learned senior counsel appearing for the petitioner submitted that in terms of Regulation 6(2) of the Tariff Order, TANGEDCO has issued a general notice dated 23.08.2013. The respondents 2 and 3 ought to have fitted their harmonic filters within three months from the date of 23.08.2013. Indeed if the leviable period is reckoned from 23.08.2013, then the compensation ought to have been assessed from 23.11.2013 whereas it was done only from 24.12.2014, the date of inspection. When this demand for payment of harmonic compensation was challenged by respondents 2 and 3 before CGRF it has entered a pointed finding that the claim made was not only valid but has also gone on to comment that it should have from 23.08.2013. However, why TANGEDCO had lost the game before the CGRF was not on this issue, but on the issue of limitation where CGRF has gone on wrong by misconstruing the phrase '*first due*' within the meaning of Section 56(2) of the Act and inasmuch as this notice is found to be valid by CGRF, the only question that is required to be decided by the TANGEDCO was to understand the Sec. 56, more specifically, the expression '*first due*'. Respondents 2 and 3 have not challenged the finding of the CGRF, nor the validity of this finding of CGRF vis-a-vis its legality and justifiability of the claim for payment of harmonic compensation.

4.2. Turning to the other part of the contention of the petitioner is that nothing in Section 15(2) falls within the Regulation 21 of the Supply Code and not within Regulation 3(2)(xvii) and hence respondents 2 and 3 could not have gone to CGRF and the learned senior counsel also submitted that none of the authorities relied on by the respondents 2 and 3 decided the issue on the basis of the general notice dated 23.08.2013 and the tariff and the regulation.

5. The rival contentions are carefully examined. The first issue pertains to the maintainability of the writ petition. Sections 42(5) and (6) of the Electricity Act, 2003, are relevant, and they read as below :

> *"(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.*
>
> *(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission. "*

Both Section 42(5) and (6) have created a forum for representing the grievance of a consumer, and not of the distributing licensee, such as TANGEDCO. However, that does not imply that TANGEDCO cannot be without a remedy if the decision of CGRF is against its interest. Here, this court is unable to accept the contention of the learned senior counsel for the respondents 2 and 3 that to let TANGEDCO challenge the order of the CGRF will amount to it questioning the decision of its own authority. The CGRF is a creation of the statute for redressing the grievances of the consumer. The fact that some of the officials of the TANGEDCO also go to constitute the CGRF, does not *ipso facto* imply that whatever these authorities do as members of CGRF is done in their capacity as officials of the TANGEDCO. These authorities perform two different roles, one as a technical person of TANGEDCO, and the other as a statutory authority under Section 42(5) of the Act. When they perform their duty under Section 42(5), they function as quasi-judicial authority, where they perform the job of a Tribunal. However, since TANGEDCO does not have a right to challenge an order of the CGRF before the Ombudsman, it necessarily has to seek judicial review of the action of the CGRF. This cannot be denied to it.

6. The second significant point canvassed by the petitioner/TANGEDCO is that inasmuch as CGRF has found that the notice demanding harmonic compensation from 24.12.2014 is valid in law, in fitness of things, respondents 2 and 3 ought to have challenged it before the Ombudsman, and that it was not done, and hence that finding has to be accepted. This contention also does not find favour with this court. At the end of the day, no appeal will lie unless a person is aggrieved thereby. Here is a situation

the CGRF, though entered a finding against the petitioner regarding the legality of the levy of harmonic compensation, still it absolved the respondents from paying the liability based on its understanding of Sec. 56(2) of the Act. The consumer who is successful before the CGRF cannot be considered as a person aggrieved and cannot approach the Ombudsman in appeal under Section 42(6) of the Act.

7.Turning to the merit of the matter, the petitioner claims that the general notice dated 23.08.2013 as the starting point for reckoning the terminus quo for imposing harmonic compensation. This is also the line of reasoning of the CGRF. This court, however, considers that both the view of the CGRF and the reliance placed by the petitioner on this finding of CGRF runs tangentially to Regulation 6(ii) of the Tariff Order. In terms of this provision, before issuing a three months notice directing the consumer to fit harmonic filters, measurement has to be taken by the distributing licensees. This is a condition precedent, for only when the harmonic distortion exceeds the prescribed limit there will arise a need for giving a direction to fit the harmonic filters. The responsibility to measure the harmonic distortion is on the TANGEDCO, which it must take in the presence of the consumer.

Therefore, till TANGEDCO first completes the first requirement of measuring the harmonic distortion, and finds a need to issue a three months notice, there is no obligation on the respondents 2 and 3 to fit the harmonic filters. The general notice dated 23.08.2013 merely makes a statement on the broad aspects of harmonic compensation, and when it has to be paid. The time however may run only from 24.12.2014, when the measurements were actually taken, which showed that harmonic distortion level exceeded the level prescribed under Regulation 6(ii). Now it becomes obligatory for TANGEDCO to have followed it up with the service of a three months notice on the respondents 2 and 3 herein, with a direction to the latter to fit harmonic filters. This is the second condition contemplated. But TANGEDCO did not issue any such notice immediately, but had taken another three months time since it measured the harmonic distortion on 24.12.2014, and chose to issue a notice only on 11.03.2015. The time therefore, will and can start running only from 10.03.2015 for the respondents 2 and 3 to fit the harmonic filters and this time was available to the respondents 2 and 3 till 10/11.06.2015. Here the respondents 2 and 3 admittedly have fitted a harmonic filter even prior to 01.06.2015, and informed the petitioner about it on that date. Now TANGEDCO took another 12 days to inspect and make a second measurement, and this was fine tuned and the final result was found to be well below the prescribed limit.

8. If these facts are carefully analysed, TANGEDCO was in fault when it did not choose to measure harmonic distortion vis-a-vis HT connection of respondents 2 and 3 immediately after 23.08.2013, and secondly when it did not follow with a three months notice as contemplated in Regulation 6(ii) immediately after it took the measurement on 24.12.2014, and thirdly when it delayed the second inspection after intimation given by the respondents 2 and 3 on 01.06.2015. TANGEDCO, therefore, cannot shift the effect of its default on respondents 2 and 3, and its attempt is both morally and legally unsustainable.

9. Turning to the interpretation of the expression 'first due' is concerned, this court is in agreement with the petitioner. However, it has lost all its sheen since the court has found that the respondents 2 and 3 are not liable, and the very notice issued on these respondents 2 and 3 are unsustainable.

10. It may be that the respondents 2 and 3 might not have independently challenged this notice before this court, but what this court does is a judicial review of the order of the CGRF, and finds that its very finding that the impugned demand notice is legally sustainable itself is arbitrary and not consistent with Regulation 6(ii).

11. In the result, this petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

01.09.2023

Index : Yes / No
Internet : Yes / No
Speaking order / Non-speaking order
Asr

N.SESHASAYEE, J.

Asr

Pre-delivery order in
W.P. No.20891 of 2018

01.09.2023