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W.P.no.10069 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2023

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.10069 of 2020
and WMP.Nos.12235 to 12237 of 2020

Tamilnadu Spinning Mills Association,
Registration No.330/ 97,
2, Karur Road,
Modern Nagar,
Dindigul- 624 001,
Tamil Nadu rep by its Chief Advisor,
Dr.K.Venkatachalam.

... petitioner

-Vs-

1. The Tamilnadu Transmission Corporation Ltd
(TANTRANSCO) 10th Floor
No.144, Anna Salai, Chennai-600 002,
Rep by its Chairman.

2. The Tamilnadu Generation and
Distribution Corporation Ltd.
(TANGEDCo) 10th Floor
NO.144 Anna Salai Chennai- 600 002.
Rep by its Chairman Cum Managing
Director.

3. The Superintending Engineer
Commercial Division
SLDC/ TSNTRANSCO
Office of the Chief Engineer / Grid Operation,
144, Anna Salai, Chennai- 600 002.



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4. The Director- Operation,
State Load Despatch Center (SLDC),
144 Anna Salai, Chennai- 600 002.

5. The Director -Finance
TANGEDCO, 7th Floor,
No.144 Anna Salai,
Chennai- 600 002.

6. The Director - Distribution
TANGEDCO,
10th Floor, No.144, Anna Salai,
Chennai-600 002.

7. The Tamilnadu Electricity
Regulatory Commission,
19-A Rukmini Lakshmipathy Salai,
Egmore, Chennai- 600 008,
Rep by its Secretary.

8 . The Secretary
Central Electricity Regulatory Commission
(CERC) 6th and 4th Floor,
Chanderlok Building,
36 Janpath, New Delhi- 110 001.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, for issuance of Writs of Certiorarified Mandamus Calling for the records relating to the issuance of the impugned circular Memo No.CE/ GO/ SE/ Comml. Opn/ EE/ OA/ F. Exchange/ D102/20 dated 17.07.2020 of the 3rd Respondent and quash the same as illegal and not maintainable to law more Specifically to the Regulatory Provisions as available in the CERC (Open Access in Inter -State Transmission) Regulations 2008 and CERC (Open



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Access in Inter State Transmission) Short- Term Open Access in Inter - State Transmission (Bilateral Transaction) procedure for scheduling and all other amendments made thereupon and further direct the respondents to issue the NOC fro the Purchase of Inter-State open Access Power through power exchanges (IEX etc.,) Bilateral Routes, irrespective of the quantum as usual and also strictly in accordance with the CERC Open Access Regulations 2008 & CERC (Open Access in Inter-State Transmission) Shot-Term Open Access in Inter-State Transmission (Bilateral Transaction) procedure for scheduling and the amendments made thereupon and accordingly.

For petitioner : Mr. R.S.Pandiaraj

ORDER

The writ petition has been filed seeking to quash the impugned circular Memo No.CE/ GO/ SE/ Comml. Opn/ EE/ OA/ F. Exchange/ D102/20, dated 17.07.2020 on the file of the 3rd Respondent.

2. It is the case of the petitioner that after the introduction of the Electricity Act, 2003, the Act has provided inter-alia the right of open access for all consumers and relieved the consumers from the clutches of the State Electricity Boards and a paradigm shift was made from Boards regime to Regulators Regime. Based on the main spirit of the Electricity Act, State commissions were directed to introduce suitable Intra-State Open Access



Regulations and accordingly, in Tamilnadu, the Tamil Nadu Electricity Regulatory Commission, has enacted the Intra-State open Access Regulations in the year 2005, with a phasing out program to accommodate the open access power to consumers. Subsequently, the State commission has issued a suo moto proceedings in SMP.No.4 of 2009 on 06.01.2010 and accordingly, made it clear that all consumers in the State are entitled for open access power, irrespective of the connected load. Subsequently, the third respondent has issued the impugned Circular memo dated 17.07.2020 and accordingly, brought in enhanced restrictions and thereby, the availing of inter-State Open Access Power in the State has become a question to all. By way of issuing the impugned circular memo dated 17.07.2020, the respondents are trying to impose the following restrictions:

"i) The Respondents are bringing-in new restrictions with immediate effect to change the entire method of applying for 'NOC' and applying for 'In Principle Approval' and for getting the 'Standing Clearance', from the procedures hitherto maintained historically, without the authority of law, by restricting the quantum of purchase of Inter-State Power, to be placed always above 1 MW, compelling to provide new undertakings and declarations from intending consumers.



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ii) Restricting to stall the initiatives of Inter-State Open Access Consumers, from purchasing of Inter-State Open Access Power, which was hitherto permitted, to be at any quantum, not below 0.1 MW, as per the Hon'ble CERC Regulations on Open Access and also as per the Bye Laws and Business Rules of Energy Exchanges as approved by the Hon'ble CERC and also as per the Contract specifications, for Day Ahead Market, as approved by the Hon'ble CERC.

iii) The Respondents are attempting to restrict the quantum to 1 MW and above only always and such an attempt Is a gross violation of the Hon'ble CERC Regulations and the Bye Laws and Business Regulations of Energy Exchanges, as approved by the Hon'ble CERC.

iv) Further to the same, the Respondents, are attempting to bring in a new levy, in the name of additional surcharges as proposed in their impugned communication in Para (c), even without the approval of the 7th Respondent the State Commission which Is of a Tariff nature.

v) By pushing the Inter-State Power sourced from Energy Exchanges / Bilateral Routes, to least in priority, from the existing practice of providing 1st priority, as it has a cost element on it. This will lead to a situation for lapsing of the Inter-State Power so sourced by paying a cost to the Energy Exchanges, to the benefit of the Respondents and the consumers would be forced to make double payment, one for the Exchanges and other for the TANGEDCO, for the same power



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they sourced from the Exchanges / Bilateral Routes by making it to lapse. This amounts to unjustifiable enrichment on the part of the Respondents, over the power, on which they are not the owners.

vi) The Respondents are attempting to bring in a new levy by way of 'Excess Demand Charges', when there is an excess of consumption beyond the approvals provided, which is not a legal course, as long as the consumers maintain the consumption within their sanctioned demands. Any excess demand charges can be levied on a consumer, only when the consumer goes beyond the sanctioned demand. Irrespective of any source of power a consumer avails, if the total quantity of power, is not going beyond the sanctioned demand, attempting to levy excess demand charges, is highly arbitrary and not approved by any Canons of Law. Even assuming, not actually admitting, such a levy can be brought in by the 7th Respondent State Commission after following the due process of law, in introducing such a new levy.

vii) The Availability Based Tariff (ABT) Regime and the 15 Minutes Time Slot Regulations, by way of Deviation Settlement Mechanism (DSM) are still not come in to force in the State of Tamilnadu, as the concerned Regulations have not come in to full force In the State. Therefore, attempting to regulate the ABT Regime and the 15 Minutes Time Slot adjustment, exclusively for the Inter-State Open Access Consumers, who source their power from Energy Exchanges /



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Bilateral Routes, Is highly discriminatory and opposed to the principles of equity and fairness, as enshrined under the Constitution of India. "

3. Challenging the validity of the impugned circular memo, the present writ petition has been filed.

4. When the matter is taken up for hearing, the learned counsel for the petitioner submitted that as against the impugned memo passed by the original authority, there is an appeal remedy available before the Tamil Nadu Electricity Regulatory Commission. Hence, this Court may permit the petitioner to approach the Commission. Till such time, this Court may extent the interim order dated 03.08.2020 in WMP.No.12236 & 12237 of 2020 for a further period of four weeks.

5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. In view of the limited request made by the learned counsel for the petitioner, this Court permits the petitioner to make an appeal before the 6th



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respondent/Tamil Nadu Electricity Regulatory Commission within a period of four weeks from the date of receipt of a copy of this order and the interim order already granted by this Court is extended for a period of four weeks.

7. With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

19.06.2023

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