



TAMIL NADU ELECTRICITY OMBUDSMAN

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BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present : Thiru. A. Dharmaraj, Electricity Ombudsman

Appeal Petition No. 26 of 2016

M/s. Wichitra Auto Limited.,
No.84/3, Sidco Industrial Estate,
Ambattur,
Chennai – 600 098.

..... Appellant
(Rep by Thiru. A. Senthilnathan &
Thiru. R. Srinivasan)

Vs

The Superintending Engineer,
Chennai Electricity Distribution Circle/West,
TANGEDCO (Formerly TNEB)
33/11 KV Thirumangalam SS Complex,
Anna Nagar, Chennai – 600 040.

..... Respondent
(Rep. by Thiru. K. Sekar,
DFC/Chennai EDC/West).

Date of hearing : 9-6-2016

Date of Order : 27-6-2016

The Petition 16.3.2016 filed by M/s Wichitra Auto Limited, Ambattur, Chennai-600 098 has been registered as Appeal Petition No.26 of 2016. The above appeal petition came up before the Electricity Ombudsman for hearing on 9.6.2016. Upon perusing the appeal petition, counter affidavit of the Respondent and after hearing both sides, the Electricity Ombudsman passes the following order.

ORDER

1. Prayer of the Appellant:

The appellant prayed for the following :

- (a) Set aside the levy of Harmonic compensation charges in the CC bill for May 2015 of the complainant.
- (b) Recalculate the compensation charges only for the period from 21.4.2015 to 23.4.2015.
- (c) After adjusting the amount so calculated refund the balance amount calculated in the CC bill of May 2015 either by cash or by adjustment against future CC bills.

2. Brief history of the Case:

2.1 M/s Wichitra Auto Ltd, Ambattur, Chennai 600 098 is a HT consumer of Respondent with a sanctioned demand of 260 KVA. The HT service connection number of the above industry is 1587.

2.2 The Respondent has issued a notice to the Appellant to keep the Harmonics level within the limits within 3 months from the date of notice vide letter 29.11.2014 which was received by the Appellant on 5.12.2014.

2.3 The Harmonics measurement was taken by the Respondent in the Appellant's Industry on 20.1.2015 and found the values are more than the prescribed limit.

2.4 The Appellant provided Harmonics Suppression equipment and intimated the fact to the Respondent vide letter dt.20.4.2015 and the Respondent have conducted test for

the measurement of Harmonics on 23.4.2015 and found to be within the prescribed limits.

2.5 The Respondent levied Harmonics compensation charges of Rs.1,07,482/- for the period from 5.3.2015 to 23.4.2015 in the CC bill for the month of May 2015.

2.6 The Appellant paid the amount under protest and filed a petition before the CGRF for refund of the excess Harmonic compensation charges collected.

2.7 The CGRF of Chennai EDC/West in its order dt.20.2.2016 has ordered that the forum could not take a decision on the issue as cases are pending in the High Court of Madras on the same subject matter.

3. Orders of CGRF :

The CGRF of Chennai EDC/West has issued its order on 20.2.2016. The relevant para of the order of CGRF of Chennai EDC/West is extracted below :

“Findings of the forum :

The petitioner had appeal to the forum to set aside the levy of harmonic compensation charges levied in their CC bill for May 2015.

The Respondent had stated that the levy of harmonics compensation charges had been made only as per the provisions of the tariff orders and the subsequent instructions received from the head quarters. Further, they have submitted that about 300 HT consumers, throughout the State, have filed petitions before the Hon’ble High Court of Madras challenging the issues contained in the circular issued by the TANGEDCO vide Lr. No. CFC/Rev/DFC/AAO/HT/D.673/2014 dated 5.11.2014 with regard to levy of Harmonics charges. The Hon’ble Court of Madras, after hearing both side arguments, has reserved the orders on 6.1.2016. Therefore any orders passed by the CGRF, now, may be contra with the orders of the Hon’ble Court. (W.P.No.34209/2014, W.P.No.21423/2014, W.P.No.1145/2015, W.P.No.10366/2015, W.P.No.14511/2015, W.P.No.16333/2015, W.P.No.28977/2015).

It is noted that many HT consumers have filed petition before the Hon'ble High Court of Madras challenging the issues contained in the circular issued by the TANGEDCO vide Lr.No.CFC/Rev/FC/Rev/AAO/HT/D.673/2014 dated 5.11.2014 with regard to levy of Harmonics charges and the Hon'ble High Court of Madras, after hearing both side arguments, has reserved the orders on 6.1.2016. At this juncture, the Forum could not take a decision on the issues.”

4. Contention of the Appellant:

- 4.1 In letter No.SE/W/G1/AEE/AE-C/F. Harmonics Notice/D.1396/2014 dated 29.11.2014 (received by us on 5.12.2014), the Superintending Engineer, Tangedco, Thirumangalam SS, Anna Nagar, Chennai-40, informed that as per Clause 4(1)(iv) of the Tamil Nadu Electricity Supply Code, the Complainant is liable to pay additional charges for dumping of harmonics into Tangedco's distribution system more than the permissible limit specified by CEA Regulations. The letter further states that (a) they are liable to pay 15 % compensation on the gross energy consumption charges, on expiry of three months notice period, if the measured harmonic is more than the permissible limits specified by the CEA and (b) the above compensation provision will be implemented by TANGEDCO on expiry of 3 months notice period if the harmonics measured is more than the permissible limits.
- 4.2 The total Current Harmonic Distortion was found in excess of the allowable limit during the inspection of their factory on 20.1.2015, the Appellant took steps to provide harmonic suppression units and vide their letter dated 20.4.2015 informed the same to the office of SE/CEDC West and requested them to take harmonic measurement.

- 4.3 The office of SE, Chennai West EDC made an inspection of the Appellants unit on 23.4.2015 for taking measurement of harmonic suppression and declared that the values of the measured harmonics was within the allowable limit. The Inspection Report dated 23.4.2015 is enclosed.
- 4.4 The Respondent TANGEDCO instead of considering the three months period from the date of first inspection (20.1.2015) considered the three months period from the date of receipt of the Notice (5.12.2014) and levied harmonic compensation charges for the period from 5.3.2015 to 23.4.2015 amounting to Rs.1,07,482/- in their CC Bill for the month of May 2015.
- 4.5 As the compensation charges was included in the CC Bill, the Appellant had no other choice but to pay the CC bill which includes the above demand amount. The said compensation charges was paid Under Protest and requested the TANGEDCO, Chennai EDC, West to refund the same.
- 4.6 Being aggrieved by the action of Chennai EDC (West), the Appellant had filed a complaint before the Consumer Grievance Redressal Forum, Chennai West EDC with a request to refund the harmonic compensation charges recovered from the Complainant.
- 4.7 The CGRF, Chennai EDC West has now passed an Order dated 20th February 2016 stating that many HT Consumers have filed petition before the Hon'ble High Court of Madras challenging the issues contained in the circular issued by the TANGEDCO vide Lr. No.CFC/REV/ FC/REV/

DFC/AAO/HT/D/673/2014 dated 5.11.2014 with regard to levy of Harmonics charges and the Hon'ble High Court of Madras, after hearing both side arguments, has reserved the order on 6.1.2016 and therefore at this juncture the Forum could not take a decision on the issue.

- 4.8 The Respondent/TANGEDCO had not correctly interpreted the CEA Regulations relating to control of harmonics which is applicable only to bulk consumers i.e. HT consumers availing supply through 33 KV line or above.
- 4.9 The Respondent has failed to appreciate that the Central Electricity Authority (CEA) alone is competent to make the Regulation in respect of technical matters and standards as empowered under section 73 of the Electricity Act 2003 and hence the decision of the CEA alone is enforceable.
- 4.10 The Respondent has failed to note that when the CEA who is the actual authority and author of CEA (Technical Standards for Connectivity to the Grid) Regulations 2007 has made it clear that the Regulation towards harmonic control is applicable only to bulk consumers and distribution systems and when the 11/22 KV consumers are not falling under the above categories such consumers would not be mandated to go with the harmonic controls.
- 4.11 Notwithstanding the above contention, as per the Tariff Order dated 20.6.2013 issued by TNERC, the Respondent must implement the compensation provision only after 3 months period from the date of taking measurement of harmonics. The relevant portion of the TNERC Order is extracted below:

TANGEDCO shall give three months clear notice to all consumers under these categories stating that they shall pay 15% compensation charges if the harmonics introduced by their load is not within the limits set by CEA. The TANGEDCO shall implement the compensation provision after three months period from the date of measurement if the harmonics measured is more than the permissible limits"

4.12 It is clear that compensation charges can be levied by the Respondents only after the expiry of 3 months period from the date of the measurement. In the case of the Appellant the measurement was conducted only on 20.01.2015 and hence the 3 months period expires only on 20.04.2015. But the Respondent levied the compensation charges from 5.3.2015 i.e. the date of expiry of three months period from the date of receipt of the notice dated 29.11.2014 issued by the Respondent. If at all the compensation charge is leviable only for the period from 21.4.2015 till 23.4.2015. Any levy of compensation charges before the expiry of the 3 months period from the date of inspection is arbitrary and illegal and liable to be set aside.

5. Contention of the Respondent:

5.1 The Tamil Nadu Electricity Regulatory Commission had issued two tariff orders (Tariff Order No.1 of 2012, dt.31.03.2012 & SMT Tariff Order No.9 of 2014, dt.11.12.2014) which came into force on 01.04.2012 and 12.12.2014 respectively. Based on the above, instructions had been issued by the TANGEDCO to the Distribution Circles to levy the harmonic compensation charges vide Lr.No.CFC/FC/REV/AAO/HT/D.673/2014 dated 05.11.2014. The

extract of the said instructions with regard to levy of Harmonics is reproduced below:

“2.0 In this connection it is clarified that the TANGEDCO has to issue a (general) three months clear notice to all such consumers informing them that if, on measurement (on expiry of such notice period), the harmonic dumping level is found exceeding the limit prescribed by the CEA, they have to pay 15% compensation charges of the respective tariff.

2.1 Therefore, the SE/EDCs are requested, in the first instance, to confirm whether the 3 month notices have been issued to all the HT consumers (HT tariff I and III) with regard to levy of harmonics compensation charges. If not, the arrangements may be made immediately to issue 3 months notice to all the HT consumers (only HT tariff I & HT tariff III) intimating that the measurements will be made after three months from the date of receipt of the notice and to obtain acknowledgement for having served the notices.

2.2 On expiry of such (general) three months clear notice period the measurement shall be made and if the measurement is found beyond the limit as specified by the CEA, then the notice may be issued to the HT consumers that they are liable to pay the compensation charges @15 % of the respective tariff from the date of measurement itself. Such levy has to be calculated on the gross energy consumption charges i.e. recorded energy and recorded demand charges of the respective tariff and it shall be continued till the HT consumer suppresses the harmonic dumping within the limit as specified by the CEA. ”

5.2 It is not in dispute that as per above tariff order provisions, the petitioner is liable to pay the harmonics compensation charges at 15 % of the respective tariff if, the harmonic dumping level is found to be in excess of the limit prescribed by the CEA.

5.3 As per the above instructions, the petitioner's industry had been served three months notice, received by the petitioner on 05.12.2014. Subsequently the measurement has been made on 20.01.2015 and found that the harmonic

dumping level was beyond the limit as prescribed by the CEA. As the measurement had been made before the expiry of three months of general notice, the levy of compensation charges had been implemented only w.e.f.05.03.2015 (i.e. from the date of completion of three months from the date of receipt of general notice by the petitioner). Therefore the levy of harmonics compensation charges had been made only as per the regulations and instructions.

5.4 Further it is submitted that more than 300 HT consumers, throughout the State, have filed petitions before the Hon'ble High Court of Madras challenging the levy of Harmonics charges. The Hon'ble Court of Madras, after hearing both side arguments, has reserved the orders on 06.01.2016. Therefore any orders passed by this Hon'ble Electricity Ombudsman, now, may be contra with the orders of the Hon'ble Court of Madras. (W.P.No.34209/2014, W.P.No.21423/2014, W.P.No.1145/2015,W.P.No.10366/2015,W.P.No.14511/2015,W.P.No.16333/2015 W.P.No.28977/2015).

6. Hearing held by the Electricity Ombudsman:

6.1 To enable the Appellant and the respondents to putforth their arguments in person, a hearing was held before the Electricity Ombudsman on 9-6-2016.

6.2 Thiru. A. Senthilnathan, and Thiru. R. Srinivasan have attended the hearing on behalf of the Appellant and putforth their arguments.

6.3 Thiru. K. Sekar, Deputy Financial Controller has attended the hearing on behalf of the Respondent.

7. Arguments putforth by the Appellant's Representative on the hearing date :

7.1. The Appellant's representative Thiru. A. Senthilnathan reiterated the contents of the Appeal Petition.

7.2 He argued that they have installed the Harmonics suppression units on 20.4.2015 and the Harmonics were measured on 23.4.2015 and found to be within limits.

7.3 As per the tariff order dt.20.6.13 TANGEDCO shall implement the compensation provision after three months period from the date of measurement if the Harmonics measured is more than the permissible limits. The Harmonics was measured on 20.1.2015 by the licensee and total current Harmonics Distortion is 13.11 % as against the permissible limit of 8%. Hence, the compensation clause could be effected from 21.4.2015. But, the licensee has levied the compensation from 5.3.2015 (ie) on expiry of the 3 months notice issued on 5.12.2014. Hence, the levy is not as per the tariff order issued by the Hon'ble Commission and has to be set aside.

7.4 Further he has also argued that as per CEA Regulation, the Harmonics control is applicable only to bulk consumers who are connected to 33KV and above. As they are connected with 11 KV network they are not falling under the above category and are to be exempted from levy of Harmonics compensation charges.

8. Arguments putforth by the Respondent's Representative on the hearing date :

8.1 Thiru. K. Sekar, Deputy Financial Controller, who has represented the Respondent reiterated the contents of the counter affidavit.

8.2 The DFC argued that they have issued a notice dt.29.11.2014 to the Appellant and requested them to measure the Harmonic level in their industry and provide suitable Harmonic suppression filter, if the Harmonic measured exceeds the prescribed limit. They have also been informed that compensation will be implemented on expiry of the 3 month notice. Hence, the compensation claim is in order.

8.3 The Respondent's representative also furnished the written argument on the hearing date. In the written argument the following has been stated.

(i) In the counter affidavit it has been cited that nearly about 300 HT consumers had been filed petitions before the Hon'ble Court of Madras challenging against the levy of Harmonic Compensation charges and the Hon'ble Court, after hearing both side arguments, had reserved the orders on 6.1.2016.

(ii) It is submitted that the above writ petitions had been filed before the Hon'ble High Court of Madras on two aspects viz., Applicability to category of consumers (whether only to bulk consumers or to all consumers) and the commencement of levy of compensation charges in the event of exceeding harmonic limits as prescribed by CEA.

(iii) The Hon'ble Court, in its interim orders, had granted conditional orders, in most of the cases, directing the petitioners to remit @ 50% of the demand to 25% of the demand in different petitions.

(iv) It is respectfully submitted that a similar case (W.P.No.14511 of 2015) as like the appellant is pending before the Hon'ble High Court of Madras for the above issue. In brief, M/s Sundaram Fastners Limited (HT SC NO.1620) had been served three months general notice on 5.12.2014 and the measurement had been made on 30.1.2015. But, the levy has been commenced from 5.3.2015 after expiry of three months from the date

of such notice. In the above petition, the Hon'ble Court had granted unconditional interim stay stating that the petitioner had not been served 3 months notice after measurement.

(v) Therefore, it is prayed that in view of pendency of similar issue before the Hon'ble High Court of Madras, the Hon'ble Electricity Ombudsman may be pleased to dismiss the appeal petition as devoid any merit and thus render justice.

8.4 The DFC also argued that as cases are pending in the same subject matter before the High Court, the Electricity Ombudsman cannot entertain the petition citing regulation 17(4)(d) of the Regulations for CGRF and Electricity Ombudsman.

9. Findings of the Electricity Ombudsman:

9.1 On a careful reading of the arguments putforth by the Appellant and Respondent, the issue here is whether the Electricity Ombudsman can entertain the above petition as a similar case on the same subject matter is pending in the Hon'ble High Court of Madras judicature.

9.2 The Respondent argued that about 300 HT consumers filed petitions before the Hon'ble High Court of Madras challenging against the levy of Harmonics compensation charges and the Hon'ble Court after hearing both sides had reserved the orders on 6.1.2016. In the above cases, the applicability of Harmonics compensation charges to all the HT Consumers and the date of commencement of levy of compensation charges in the event of exceeding the limits as prescribed by CEA have been raised as issues.

9.3 The Respondent also argued that a similar case W.P.No.14511 of 2015 as in the case of the Appellant is pending before the Hon'ble Court of Madras and the court has granted unconditional interim stay stating that the petitioner had not been served 3 months notice after measurement. In the said case W.P.No.14511, M/s Sundaram

Fastners Ltd (HT SC No.1620) had been served three months general notice on 5.12.14 and the measurement was taken on 30.1.2015. But the levy has been commenced from 5.3.15 after expiry of 3 months from the date of such notice. The Respondent has also furnished a copy of judgment dt. 13.5.2015 and the affidavit of M/s Sundaram Fastners Ltd., in support of the above argument. Citing the above, the Respondent's representative argued that Electricity Ombudsman can not entertain the above petition as similar case on the same subject matter is pending before the Hon'ble High Court of Madras.

9.4 As the Respondent has cited regulation 17(4)(d) of the Regulations for CGRF and Electricity Ombudsman, the same is extracted below :

17. No complaint to Electricity Ombudsman shall lie unless ;

xxx xxx xxx

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx

(d) The complaint does not pertain to the same subject matter for which any proceedings before any court is pending or a decree or award or a final order has already been passed by any competent court; and

(e) xxx xxx xxx

9.5 On a careful reading of the said regulation 17(4)(d) of the Regulations for CGRF & Electricity Ombudsman, it is noted that Electricity Ombudsman shall not entertain a petition if the complaint pertain to the same subject matter for which any proceedings before any Court or decree or award or final order has already been issued by any competent Court.

9.6 The order issued in W.P.No.14511/2015 is extracted below :

“Order : These petitions coming on for orders upon perusing the petitions and the respective affidavits filed in support thereof and upon hearing the arguments of M/s

Satish Parasaran, Advocate for the petitioner in both the petitions and of Mr. P. R. Dilip Kumar, Senior Counsel, TNEB, on behalf of the Respondents in both the petitions, the court made the following order :

As per clause 6.1. of tariff order, TANGEDCO has given three months clear notice to all consumers stating that they shall pay 15% compensation charges if the harmonics introduced by their load is not within the limits set by CEA. The TANGEDCO shall implement the compensation provision after three months period from the date of measurement if the harmonics measured is more than the permissible limits.

2. In the instant case, no notice was given to the petitioner. In the matters of similar nature, this court has granted stay. The learned counsel appearing for the petitioner also produced a copy of the order dated 6.3.2015 made in M.P.Nos 2 and 3 of 2015 in W.P.No.6398 of 2015. In view of the same, there shall be an order of interim stay till 18.6.2015.

9.7 It is noted that the Hon'ble Court has granted interim stay upto 18.6.2015 and the case is still pending.

9.8 As a similar case in the same subject matter is pending in the High Court of Madras Judicature in W.P.No.14511 of 2015, the Electricity Ombudsman cannot entertain the appeal petition No.26 of 2016 for passing an order as per regulation 17(4)(d) of the Regulations for CGRF and Electricity Ombudsman

9.9 In this regard, I would like to mention that in a similar case in A.P.No.101 of 2015, the Electricity Ombudsman has ordered that he cannot entertain the appeal petition as a case in the same subject matter is pending in the Hon'ble High Court of Madras.

10. Conclusion :

10.1 As a similar case in the same subject matter is pending in the Hon'ble Court of Madras Judicature in W.P.No.14511 of 2015, the Electricity Ombudsman cannot

entertain the above the appeal petition No. 26 of 2016 for passing an order as per regulation 17(4)(d) of the Regulations for CGRF & Electricity Ombudsman.

10.2 With the above findings, the A.P.No.26 of 2016 is finally disposed of by the Electricity Ombudsman. No Costs.

(A. Dharmaraj)
Electricity Ombudsman

To

1) M/s. Wichitra Auto Limited.,
No.84/3, Sidco Industrial Estate,
Ambattur,
Chennai – 600 098.

2) The Superintending Engineer,
Chennai Electricity Distribution Circle/West,
TANGEDCO (Formerly TNEB)
33/11 KV Thirumangalam SS Complex,
Anna Nagar, Chennai – 600 040.

3) The Chairman,
(Superintending Engineer),
Consumer Grievance Redressal Forum,
Chennai Electricity Distribution Circle/West,
TANGEDCO (Formerly TNEB)
33/11 KV Thirumangalam SS Complex,
Anna Nagar, Chennai – 600 040.

4) The Chairman & Managing Director,
TANGEDCO,
NPKR Malaigai,
144, Anna Salai, Chennai – 600 002.

5) The Secretary
Tamil Nadu Electricity Regulatory Commission
No.19A, Rukmini Lakshmipathy Salai
Egmore, Chennai – 600 008.

6) The Assistant Director (Computer) - **FOR HOSTING IN THE TNEO WEBSITE PLEASE**
Tamil Nadu Electricity Regulatory Commission,
No.19-A, Rukmini Lakshmipathy Salai,
Egmore, Chennai – 600 008.