

TAMIL NADU ELECTRICITY REGULATORY COMMISSION

Order of the Commission dated this the 19thDay of March2024

PRESENT:

ThiruM.Chandrasekar Chairman
ThiruK.Venkatesan Member
and
ThiruB.Mohan Member (Legal)

M.P. No. 13 of 2022

M/s. Grace Infrastructure Pvt. Ltd.
Rep. by its Chairman & Managing Director
Mr.A.L. Shah
A-5, Industrial Estate
Thattanchavady
Pondicherry – 605 009.

... Petitioner
M/s. Rugan&Arya
Advocate for the Petitioner

Vs.

1. TANGEDCO
Rep. by its Chairman cum Managing Director
144, Anna Salai
Chennai – 600 002.
2. The Directorate of Finance
TANGEDCO
144, Anna Salai
Chennai – 600 002.
3. The Chief Engineer (NCES)
TANGEDCO
144, Anna Salai
Chennai – 600 002.
4. The Superintending Engineer
TANGEDCO
Tirunelveli Electricity Distribution Circle
Tirunelveli – 627 011.

5. The Superintending Engineer
TANGEDCO
Theni Electricity Distribution Circle
Theni – 625 531.
6. The Superintending Engineer
TANGEDCO
Dindigul Electricity Distribution Circle
Dindigul – 624 306.

....Respondents
Thiru.N.Kumanan and
Thiru.A.P.Venkatachalapathy,
Standing Counsel for TANGEDCO

The Miscellaneous Petition No.13 of 2022 filed under the Electricity Act, 2003 to impose penalty upon the Respondents in accordance with Section 142 of the Electricity Act, 2003 for non-compliance of the order of the Commission dated 19.01.2022 in D.R.P. No.7 of 2021 and consequently direct the Respondents to make payments of the entire sum of Rs.28,07,87,731/- together with interest at the rate of 12% per annum to the Petitioner within two weeks from the date of its order failing which cancel their licence and pass such further or other orders as the Commission may deem fit and proper under the circumstances of the case and thus render justice.

This petition coming up for final hearing on 11-01-2024 in the presence of ThiruSrinivasan from M/s. Rugan and Arya, Advocate for the Petitioner and Tvl. N.Kumanan and A.P.Venkatachalapathy, Standing Counsel for the Respondents and on consideration of the submission made by the Counsel for the Petitioner and the Respondents, this Commission passes the following:

ORDER

1. Contentions of the Petitioner:-

1.1. The present petition is filed complaining non-compliance of the order of the Commission dated 19-01-2022 passed in D.R.P. No. 7 of 2021 by the Respondents.

1.2. The Petitioner is in the business of Wind Power Generation and is running several Windmill Units in Tamil Nadu. The entire power generated by these Units is being sold to the above Respondents 4 to 6 under the terms of various wind Power Purchase Agreements (PPAs) executed between the Petitioner and the Respondents 4 to 6, with respect to the Tirunelveli, Theni and Dindigul EDCs.

1.3. The Petitioner herein filed D.R.P. No. 7 of 2021 against the Respondents herein to direct them to forthwith pay to the Petitioner a sum of Rs.17,04, 11,543/- being the deficit amount to be paid to the Petitioner by TANGEDCO for the period from FY 2013-14 to 2017-18 plus interest of Rs.11,03,76,188/- up to 05.07.2021, for the power supplied from the wind generation units of the Petitioner together with interest thereon at 12% per annum and for costs.

1.4. By an order dated 19.01.2022 the Commission directed the Respondents to make payments in compliance with the Commission's order No.1 of 2020 dated 12.11.2020 within one month from the date of the order.

1.5. However, till date the Respondents have not made any payment to the petitioner in sheer disobedience of the Commission's order dated 19.01.2022 in D.R.P. No.7 of 2021. The non-payment of the said amount by the Respondents is causing severe difficulties to the Petitioner in meeting its financial obligations. The Petitioner is constrained to seek the Commission's indulgence to enforce the order dated 19.01.2022.

1.6. The Respondents have not complied with the orders of the Commission and thus have rendered themselves for proceedings and punishment under Section 142 of the Electricity Act, 2003.

1.7. The Respondents, being both a Generating company and a Distributing Company ought to function in accordance with the provisions of the Act and in strict compliance of the Commission's directions.

1.8. On failure to do so, the Commission may pass any directions at its discretion to secure such compliance.

2. Affidavit filed by the Fourth Respondent, Tirunelveli Electricity Distribution Circle:-

2.1. The Petitioner has filed a DRP No 7 of 2021 towards REC differential rates for the period 2013-14 to 2017-18 towards the sale of power along with interest up to 05:07.2021. The Commission passed an order dated 19.01.2022 as follows:-.

" 5.6. Order No. 1/2020 dt.12.11.2020, passed by the Commission to implement the directions of the APTEL in A.No.232 of 2017 is applicable to the instant case. TANGEDCO is directed to make payments in compliance with the Commission's Order No 1 of 2020 dt 12.11.2020 within one month from the date of this order'

2.2. Due to non-compliance of the order of Commission dated 19.01.2022 passed in DRP No 7 of 2021, Petitioner has filed a M.P.No.13 of 2022. A Daily Order dated 16.03.2023 was released stating, ".....TANGEDCO is ready to settle the dues to the petitioner but in view of shortage of funds, the dues may be allowed to be settled in six instalments commencing from 1st week of April 2023."

2.3. In accordance with the direction of the Commission, the claim of the petitioner was calculated along with the interest up to 05.07.2021 and an amount of Rs.11,08,91,661/- (Rupees Eleven Crores Eight Lakhs Ninety One Thousand Six Hundred and Sixty One Only) was arrived at, excluding TDS, which is payable by the respondent. The payment has been made in six installments as detailed below:

Sl. No.	No. of Instalments	Amount in Rs.	Payment Date
1	1	18481944	11-04-2023
2	2	18481944	10-05-2023
3	3	18481944	09-06-2023
4	4	18481944	11-07-2023
5	5	18481944	11-08-2023
6	6	18481941	11-09-2023
		110891661	

2.4. Now the petitioner has filed a memo before the Commission claiming interest for the broken period i.e. from the date of commencement of 1st instalment and upto the payment or last instalment.

2.5. The Commission has directed both parties in the daily order dated 07.11.2023 to reconcile accounts and further directed TANGEDCO to file an affidavit in this regard.

2.6. A letter was given to the petitioner on 04.12.2023 asking him to come for reconciliation as per the order of the Commission.

2.7. On 06.12.2023, one Thiru S. Ramasubramanian, Senior Executive (Accounts) came to Tirunelveli EDC office for reconciliation on behalf of petitioner. But the above individual did not show his identity card or any other documents. Further, he also refused to sign in the attendance sheet for having visited Tirunelveli EDC office on behalf of petitioner.

2.8. A letter was received from the petitioner on 13.12.2023 asking the Respondent to pay the interest till the final installment without reconciliation.

2.9. The petitioner has claimed a sum of Rs.1,37,66,492/- towards interest for REC differential amount for the period 06.07.2021 to first installment date of 10.04.2023. In this regard action is being taken by this office to get the funds from HQ. This amount will

be paid to the petitioner very shortly. Further, the petitioner has claimed interest up to last instalment date, which is not correct.

2.10. In this connection, once the final amount is arrived and the payment commenced through instalments, accrual of interest for / between the periods does not arise. In the same analogy, whenever the consumers of respondent TANGEDCO requests instalments for the payment of any arrears/Additional Current Consumption Deposit, etc. TANGEDCO is permitting them to remit in instalments without levy of interest during the schedule of payment as per the provisions of Tamil Nadu Electricity Supply Code. Hence the claim of the petitioner is not as per the law.

3. Affidavit filed by the Fifth Respondent, Theni Electricity Distribution Circle:-

3.1. The Petitioner has filed a DRP No 7 of 2021 towards REC differential rates for the period 2013-14 to 2017-18 towards the sale of power along with interest up to 05:07.2021. The Commission passed an order dated 19.01.2022 as follows:-.

" 5.6. Order No. 1/2020 dt.12.11.2020, passed by the Commission to implement the directions of the APTEL in A.No.232 of 2017 is applicable to the instant case. TANGEDCO is directed to make payments in compliance with the Commissioners Order no 1 of 2020 dt 12.11.2020 within one month from the date of this order'

3.2. Due to non-compliance of the order of Commission dated 19.01.2022 passed in DRP No 7 of 2021, Petitioner has filed a M.P.No.13 of 2022. A Daily Order dated 16.03.2023 was released stating, "*.....TANGEDCO is ready to settle the dues to the*

petitioner but in view of shortage of funds, the dues may be allowed to be settled in six instalments commencing from 1st week of April 2023."

3.3. In accordance with the direction of the Commission, the claim of the petitioner was calculated along with the interest up to 05.07.2021 and an amount of Rs.9,62,88,969/- (Rupees Nine Crores Sixty Two Lakhs Eighty Eight Thousand Nine Hundred and Sixty Nine Only) was arrived at, excluding TDS, which is payable by the respondent. The payment has been made in six installments as detailed below:

Sl. No.	No. of Instalments	Amount in Rs.	Payment Date
1	1	16048162	11-04-2023
2	2	16048162	10-05-2023
3	3	16048162	09-06-2023
4	4	16048162	11-07-2023
5	5	16048162	11-08-2023
6	6	16048159	11-09-2023
		96288969	

3.4. Now the petitioner has filed a memo before the Commission claiming interest for the broken period i.e. from the date of commencement of 1st instalment and upto the payment or last instalment.

3.5. The Commission has directed both parties in the daily order dated 07.11.2023 to reconcile accounts and further directed TANGEDCO to file an affidavit in this regard.

3.6. A letter was sent to the Commission and Standing Counsel vide Lr. No. SE/TEDC/Theni/DFC/AO/Rev/Ast/Wind/F.Grace Infrastructure Pvt. Ltd./D.No.301/2023, dated 22-12-2023.

3.7 In this connection, once the final amount is arrived and the payment commenced through instalments, accrual of interest for / between the periods does not arise. In the same analogy, whenever the consumers of respondent TANGEDCO request instalments for the payment of any arrears/Additional Current Consumption Deposit, etc. TANGEDCO is permitting them to remit in instalments without levying of interest during the schedule of payment as per the provisions of Tamil Nadu Electricity Supply Code. Hence the claim of the petitioner is not as per the law.

4. Findings of the Commission:-

4.1 This petition has been filed to impose penalty upon the Respondents in accordance with Section 142 of the Electricity Act, 2003 for non-compliance of the order of the Commission dated 19.01.2022 in D.R.P. No.7 of 2021 and consequently direct the Respondents to make payments of the entire sum of Rs.28,07,87,731/- together with interest at the rate of 12% per annum to the Petitioner within two weeks from the date of its order failing which cancel their licence and pass such further or other orders as the Commission may deem fit and proper under the circumstances of the case and thus render justice.

4.2. It is seen that by way of Daily Order dated 16-03-2023, the respondent was permitted to settle the dues to the petitioner in six instalments commencing from the 1st week of April 2023. Consequently, the 4th respondent has paid Rs.11,08,91,661/- in six instalments of Rs.1,84,81,944/- each as seen from the affidavit dated 11-01-2024 filed by him. It has been further averred by the 4th respondent that the claim of the petitioner for a sum of Rs.1,37,66,492/- towards interest for the period from 06-07-2021 to 10-04-2023 i.e. the date of 1st instalment will be settled after obtaining funds from headquarters. The 4th respondent has further submitted that the petitioner's claim towards interest upto the last instalment is not sustainable.

4.3. Similarly, the 5th respondent filed a memo dated 11-01-2024 submitting that Rs.9,62,88,967- has been paid towards interest upto 05-07-2021 and settled to the petitioner but the claim of the petitioner for the broken period i.e. from the date of commencement of 1st instalment to the last instalment is not sustainable.

4.4. The sixth respondent has not filed any memo and considering the fact that the issue is common in regard to all respondents, we now proceed to discuss the validity of the claim made in the petition vis-à-vis the submission of the respondents.

4.5. It is seen that the only issue which arises for consideration is whether after the grant of instalments for the interest payable, the interest is liable to be paid continuously even on the original claim for during the period of instalments.

4.6. Coming to the correctness of the claim made by the petitioner in its letter dated 19-11-2023, it is noted that the petitioner has categorically denied that interest was calculated only on the principal amount as on 10-04-2003, and no interest on interest was claimed as alleged by the respondents. Hence, we are not going further into the issue given the express and categorical statement made by the petitioner in its letter dated 19-11-2008 and in view of the fact that the same has not been disputed by the respondents.

4.7. But ongoing through the letter dated 13-12-2023 of the petitioner to the Superintending Engineer, Tirunelveli, it is seen that the petitioner has taken a stand at para 3 that the order of the Commission dated 19-01-2022 in the D.R.P. No. 7 of 2021 clearly stipulates the payment of interest till actual date of payment. Hence it is necessary to settle the issue of eligibility to payment of interest until the date of actual payment. Having gone through the said order, we do not find any explicit direction that interest is payable upto the actual date of payment. The operative portion of order dated 19-01-2022 in D.R.P. No. 7 of 2021 is reproduced below for reference:-

“The order No.1 /2020 dt.12.11.2020 passed by the Commission to implement the directions of APTEL in A.No.232 of 2017 is applicable to the instant case. TANGEDCO is directed to make payments in compliance with the Commission’s Order No.1 of 2020 dt.12.11.2020 within one month from the date of this order.”

4.8. However, we agree that a reference has been made by the Commission to Order No. 1 of 2020 which provides for settlement of dues with normal interest at the rates provided in the EPA. The following portions of the order would be relevant:-

“TANGEDCO is directed to make payments to the appellants at the full APPC rate without applying cap for the years 2013-2014 to 2017-2018 together with normal interest thereon at the rates provided in the Energy Purchase Agreement from the date the capped tariff was effected until date of payment to the Appellants.

Even, otherwise, the prayer in D.R.P. No. 7 of 2021 being to direct the payment of dues together with interest at 12% from the date it ought to have been paid and until actual payment thereof, we agree with the petitioner that interest is payable upto the date of payment.

4.9. However, in the same, breath, it is to be observed that the very grant of instalment is due to the inability to pay the dues in time and hence to seek interest on the same will be against the settled commercial principles. If a contrarian view is taken, it would unsettle the arrangement agreed upon by the parties on their own volition and the imprimatur accorded by the Commission to the same. In other words, we cannot set the clock back after a firm commitment has been reached.

In such case, the interest on original claim during the pendency of payment of instalment is impermissible. In view of the finding aforesaid to the effect that seeking interest on instalments will be against the commercial principles when the very grant of instalment arose due to the inability of a party to pay dues and further considering the fact that such grant of instalments is not per se illegal and there is a scheme evolved by the Gol for Discoms across the country, it is hereby held that interest is required to be paid at 10% per annum only on that part of the instalment which was defaulted. To put it otherwise, in order to claim interest upto date, the petitioner ought to have stuck to his

original claim and not agreed to the settlement by way of instalments. Having agreed for settlement by way of instalments, the petitioner cannot complain of non-payment of interest until the date of payment.

4.10. In fine, the following is ordered:-

- (i) The claim for payment of interest upto the date of actual payment is negated in the light of acquiescence on the part of the petitioner to settlement of existing dues by way of instalments.
- (ii) The payments made by way of six instalments commencing from 11-04-2023 to 11-09-2023 are treated as full and final settlement of the dues unless the petitioner proves otherwise that the orders in the Daily Order has not been complied with in any manner or to any extent.
- (iii) The dispute shall be deemed to stand resolved if all the direction in the Daily Orders have been fully complied with.
- (iv) The claim made by the petitioner in the original petition or direction of the Commission in the original order no longer survives and hence can no longer be a matter of compliance in view of the subsequent arrangements agreed to by the parties for settlement by six instalments and the passing of Daily Order confirming the same.
- (v) The Superintending Engineer, Tirunelveli shall pay Rs.1,37,66,492/- to petitioner as admitted in this letter dated 30-12-2023 as being an omission.

- (vi) Any other dues admitted as being within the instalment scheme and lawfully due to the petitioner shall be paid without further reference to the Commission.

With these observations, the petition is disposed of. Parties directed to bear their respective costs.

(Sd.....)
Member (Legal)

(Sd.....)
Member

(Sd.....)
Chairman

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission