

**TAMIL NADU ELECTRICITY REGULATORY COMMISSION**  
**(Constituted under section 82 (1) of the Electricity Act, 2003)**  
**(Central Act 36 of 2003)**

**PRESENT:-**

Thiru.M.Chandrasekar	.... Chairman
Dr.T.PrabhakaraRao	.... Member
and	
Thiru.K.Venkatasamy	.... Member (Legal)

**S.M.P. No.3 of 2014**

Coimbatore Consumer Cause  
Represented by ThiruKathirmathiyon  
41, Government Arts College Road  
Coimbatore – 18.

... Petitioner  
(ThiruKathirmathiyon  
Party-in-Person)

Vs.

The Chief Engineer / Commercial  
The Superintending Engineers / Coimbatore North  
The Superintending Engineers / Coimbatore South  
The Superintending Engineers / Coimbatore Metro EDC

..... Respondents  
(Advocate M.Gopinathan  
Standing Counsel for the  
Respondents).

**Dates of hearing:** 23-06-2014; 24-09-2019 and 15-10-2019

**Date of Order:** 29-10-2019

IN THE MATTER OF CONTRAVENTION OF REGULATION 22 OF THE TNERC  
DISTRIBUTION STANDARDS OF PERFORMANCE REGULATIONS BY  
TANGEDCO, THE DISTRIBUTION LICENSEE IN THE STATE OF TAMIL NADU

The above proceedings, namely, SMP 3 of 2014 which was initiated consequent upon a complaint made by a consumer organisation by name Consumer Cause represented by ThiruKathirmathiyon came up for final hearing before the Commission on 15-10-2019 in the presence of the petitioner ThiruKathirmathiyon who appeared as Party-in-Person and ThiruGopinathan, the counsel for the TANGEDCO and upon perusing the affidavit, additional affidavit and written submission of the petitioner and the respondents and after hearing both the oral and written arguments of both sides, the Commission passes the following order:

### **ORDER**

The facts of the case lie in a narrow compass and hence it is not necessary to set out the contents of entire material records placed before the Commission and it would suffice if the crux of the issue i.e , the alleged violation of the Regulation 22 of the TNERC Distribution Standards of Performance Regulations is examined with reference to the material records placed before us. However, for the sake of understanding the issue in a better perspective, we deem it appropriate to set out the prayer and gist of the contentions of the petitioner and the respondent before proceeding to render our findings thereon,

#### **1. Prayer of the Petitioner:-**

The prayers of the petitioner in his complaint, which has set in motion the present proceedings are four-fold

- (i) to direct the distribution licensee to pay compensation to all eligible consumer in Coimbatore Region ( for the period from 01-01-2007 to 31-08-2007) as directed earlier, with interest for the delayed period
- (ii) to direct the licensee to pay compensation with interest to all eligible consumers in the entire state.

- (iii) to impose penalty for deliberate disobedience of the Commission's order
- (iv) to pass any such further orders as the Commission deems fit and proper to enforce its own rules and authority and to safeguard the interests of the consumers and render justice.

## **2. Contentions of the petitioner:-**

2.1. It is the contention of the petitioner that there was inordinate delay in effecting service connection for want of meters and as such compensation has become payable to the consumers as per Regulation 22 of the TNERC Distribution Standards of Performance Regulations and despite the specific order of the Commission to pay compensation vide its order in TNERC/D(E)/2007/DD(E)/AD/SA/F.DSOP.PAY/D 591/2007 dated 2.8.2009, TANGEDCO, the distribution licensee has failed to pay compensation.

2.2. It is further stated by the petitioner that the provisions of Right to Information Act 2005 was invoked to ascertain the action taken on the order of the Commission to which TANGEDCO replied on 14/12/2017 that the amount of compensation for 8 months in 2007 in the Coimbatore Region alone was Rs.91.90 lakhs. For the purpose of the present proceedings, we are not inclined to delve into the actual total compensation payable across the state as the sole question which comes up for consideration is whether there was violation of the regulations of the Commission and whether such violation warrants penalty under section 142. The petition under section 142 of the Electricity Act, 2003, which we are now seized of, came to be filed on 9/7/2012 reiterating the earlier complaint on non-effecting of service connections in time and claim for resultant compensation. Thus, focal point of the complaint of the

petitioner is that there is violation of Regulation 22 of the DSOP Regulations warranting payment of compensation which, however, has not been paid inspite of the orders of the Commission

### **3. Contentions of the Respondent:-**

On a perusal of the response of the Distribution Licensee to the allegations of the petitioner made through affidavit and additional affidavit and written submissions it is seen that the defence of TANGEDCO, rests primarily on the following grounds:

3.1. That there is no provision in the Electricity Act, 2003 for payment of automatic compensation and that the Act permits the licensee to determine the compensation and then pay compensation to the affected consumers.

3.2. That despite the huge financial crisis, TANGEDCO has taken every effort to effect service connection as per DSOP Regulations and that TANGEDCO is always ensuring payment of compensation to the affected consumers as per DSOP based on individual claims

3.3. That in view of the power crisis that existed then, TANGEDCO had to accord more priority on overcoming power crisis which affected the entire public at large and the power crisis coupled with the meter shortage was the reason for the non-adherence to DSOP Regulations.

3.4. In the written submission, the respondent relied upon the opinion of the Attorney General of India who has opined that there cannot be any regulation

providing for automatic compensation and hence such regulation is ultra vires the provisions of section 57(2) read with section 181(2) (za) of the Electricity Act, 2003

3.5. That most of the SERCs do not have provision for automatic compensation and even the regulations of APERC, KERC, GERC and MERC which have such provisions, only provide that such compensation is payable upon claim by the affected consumers.

#### **4. Findings of the Commission:-**

4.1. We find that the above extracts of the pleadings of the petitioner and the respondent are sufficient to form an opinion for the limited purpose of arriving at a finding as to whether there was violation of Regulation 22 of the TNERC DSOP Regulations on the part of TANGEDCO, We now proceed to examine the merits of the petitioner in the light of the defence set up by the respondent.

4.2. Before proceeding to examine the merits of the complaint, it is to be seen whether the Commission has jurisdiction and powers to entertain the present complaint. It may be noted that Commission has power under section 142 of the Electricity Act, 2003 to entertain a complaint from any person in regard violation of the provisions of the Electricity Act, 2003, the rules and regulations made thereunder any direction or order issued by the Commission. The Commission also has powers to initiate proceedings either on suomotu basis or upon a petition filed by an affected person under Regulation 16(1) of the Conduct of Business Regulations of the Commission.

4.3. The following are the extracts of the said provisions:

**Conduct of the Business Regulations:**

*“16(1) The Commission may initiate any proceedings suomotu or on a petition filed by any affected or interested person.”*

**Section 142 of the Electricity Act, 2003**

*“142 . **Punishment for non-compliance of directions by Appropriate Commission** – In case any complaint is filed before the Appropriate Commission by any person or if that **Commission is satisfied that any person has contravened any of the provisions of this Act** or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.”*

4.4. Having satisfied ourselves with regard to the jurisdiction, we now proceed to examine the merits of the case by considering the rival contentions. Before doing so, let us make it clear that we are inclined to strictly confine ourselves to the issue of non-compliance of the Regulations of the Commission under section 142 of the Electricity Act.

4.5. The Commission, in our view, cannot take up the issues raised by the respondent relating to the issue of validity of the regulation under reference as Commission is not the appropriate Forum to test the validity of its regulations. On the issue raised by the respondent relating to the provisions in the other Commission also, we observe that in the absence of any challenge to the regulations under

reference, Commission can neither test the validity of its own regulations or its reasonableness with reference to the regulations prevailing in other States.

4.6. Thus, we are now seized of only with the issues raised by the respondent with regard to practical constraints. It is true that there existed a power crisis at the relevant point of time and TANGEDCO had to accord more priority on overcoming power crisis which affected the entire public at large. It is also true that power crisis got coupled with the meter shortage and hence it became difficult for effecting service connection in time. But then, can it be a reason for exemption from Regulation 22 of the Distribution Standards of Performance? It is necessary to examine the said regulation in the light of the stand taken by the respondent. The said regulation is re-produced for reference:

*22. Procedure for Payment of Compensation*

*“The claim for compensation shall be dealt with in the following manner*

*I. Automatic- This mode of payment requires the Licensee to pay the compensation amount to the affected consumer automatically, following the non-compliance to a particular standard in the next billing cycle through credit entry in the consumption bill*

*II. Upon claim: An aggrieved consumer has the right to claim the compensation for noncompliance of the standards if the Licensee fails to pay the compensation in the next billing period by representing to the designated employee of the Licensee.”*

4.7. It may be seen from the above that there are two parts in the above regulation which provides for payment of compensation. The first part deals with the payment of automatic compensation and second part deals with payment upon claim. A bare reading of the said provisions makes it clear that the first part make it obligatory on the part of the licensee to pay compensation automatically and the second part vests a right on the consumer to seek compensation if the licensee fails to pay compensation.

4.8. On a careful reading of the above provisions, it is clear that though the regulation provides for compensation on automatic basis, under part I, still if the licensee does not pay the same, the individual consumer has the right to claim such compensation in the next billing period under part II. It is conspicuous to note that the first part requires payment of compensation following non-compliance to a particular standard on automatic basis. Needless to say for such purpose, the Licensee has to satisfy itself that such non-compliance is so indefensible that it was left with the option of payment of compensation automatically alone. However, the first part does not state clearly as to what should be done in a case where the licensee is not clear itself with regard to non-compliance and when there is a doubt as whether in a particular case non-compliance has occurred or not . In our view, it is only for the said reason that the second part has been inserted to vest a right on the consumer to claim compensation The second part, in our view, is meant for such of those cases where there is no prima facie satisfaction on the part of licensee to pay automatic compensation on its own or failure to pay the same.. Now the next question arises for consideration is how a consumer can claim compensation if the licensee fails to pay compensation inspite of claim from the consumer under part II of Regulation 22. Both parts of the regulation 22 do not deal with the said aspect. However, the answer can be found in section 57(2) of the Act which states that such compensation to the affected person shall be determined by the Commission. However, there may be numerous cases non-compliance and it would be virtually impossible for the Commission to decide each and every case individually . It is only for this reason that the Commission has already made a general determination on the compensation for failure to adhere to the standards of performances in the Regulations and hence, it is not necessary on the part of the Commission to decide

each and every case of non-compliance. Hence, the only requirement on part of a person affected by the non-payment of compensation is to make a claim under Part II of the Regulation 22 if not paid by the licensee automatically under Part I and receive the claim as per the Regulations. It is seen that no such individual claims have been made and the consumer organisation has been seeking payment of compensation on behalf of all consumers. As individual claims are necessary under part II of Regulation 22 in cases where the licensee fails to pay automatic compensation under Part I of Regulation 22, we are unable to pass orders on total amount of claim. However, it would not prevent any person claiming compensation to approach the licensee and any individual claim already made in the past or that may be made in the future shall be settled by the licensee as per DSOP Regulations. The consumers of the State are free to exercise their right under Part II of Regulation 22 of the DSOP Regulations and the determination having already been made for compensation in respect of standards to be maintained for various works in the DSOP Regulations, the licensee is bound to pay compensation as laid down in the regulations.

4.9. Despite the above, we find that there is no bar in taking up non-compliance of First part of Regulation 22, namely, failure to pay compensation on automatic basis as the same is covered under section 142 of the Electricity Act, 2003. It is clear that the licensee, inspite of the failure to adhere to the distribution standards of performance failed to pay the compensation on automatic basis to the consumers and merely because the individual consumers have not approached the licensee under Part II for exercising the right of compensation and no case has been brought before the Commission individually, it does not preclude the Commission from

proceeding against the licensee for violation of Part I of Regulation 22. Therefore, it is to be seen whether there is willful violation of the orders of the Commission. It is seen that Commission ordered compensation to be paid for violation of the standards of performance in regard to effecting of service connection vide its letter TNERC/D(E)/2007/DD(E)/AD/SA/F.DSOP.PAY/D 591/2007 dated 2.8.2009. Since the same has not been complied, the petitioner is before us seeking compensation on behalf of all the consumers. However, considering the limitations in part II of Regulation 22 which requires only the affected person to exercise his right, Commission cannot intervene unless it is approached. However, this does not absolve the licensee of violation of part I of Regulation 22 and hence, the Commission proceeds to examine the response of the licensee to the complaint. It is seen that the licensee, apart from questioning the validity of the very regulation, has come out with practical constraints. As stated supra, Commission cannot take up the issue of validity of its own regulations, and hence proceeds to examine only the practical difficulties set out by the respondent. However, for the purpose of enforcement of Regulation 22, we have made certain observations in the succeeding paragraphs in regard to the validity of Regulation 22 vis-a-viz the Electricity Act and the reliance placed on Regulation of other Commissions for the limited purpose of examining the merits of defence taken by TANGEDCO on the question of validity of Regulation 22 without rendering our final observations.

4.10. On the question of financial crisis, we cannot agree to the justifications for the reason that financial constraints cannot be cited as a reason for non-payment of compensation for non-adherence to distribution standards. On the question of pre-occupation of the licensee with the management of power crisis and shortage of meter, we would have exonerated the licensee in the normal circumstances in view

of Restriction and Control Measures prevailing then requiring the licensee to pay utmost priority to the power crisis. But we find the factual situation otherwise requiring us to intervene and bearing the same in mind, we would like to observe as follows.

4.11. On an examination of the material records produced before us, we find that the performance of the distribution licensee, in terms of its duty to effect service connection in time, to say the least, is far from satisfactory going by the inordinate delay. More appalling is the stand taken by the distribution licensee in justifying its stand. The Commission is unable to appreciate such an indifferent approach when consumer is the base on which the distribution business sustains. It is pertinent to state here that the regulation under reference, namely, Regulation 22 of the DSOP Regulations satisfies the object of section 61(d) of the Electricity Act, 2003 which is one among the various guiding principles set out under section 61. Viewed in the said context, we are unable to subscribe to the stand taken by TANGEDCO that the provision for automatic compensation is against the spirit of the Electricity Act, 2003. We find that such a stand on the part of TANGEDCO is propelled by its own self-serving considerations and not on the basis of holistic reading of the Electricity Act, 2003.

4.12. We would like to add that any regulation has to be state specific and therefore mechanical reliance cannot be placed upon the regulations prevailing in other states. What is required to be seen is whether the instant regulation satisfies the test of validity in terms of relevant statute, namely, the Electricity Act, 2003 and there being no excess in rule making under Regulation 22 vis-à-vis section 61(d), we find that

the contentions of TANGEDCO in this regard are totally devoid of merits. Even otherwise, we are to observe here that the validity of Regulation 22 of the DSOP Regulations cannot be tested before the same Commission which framed it in the first instance and Commission is neither the appropriate Forum nor a competent Forum to examine its validity. Therefore, we find the defence set up in this regard as one liable for summary rejection. If at all there is any difficulty in the implementation of the regulation for automatic compensation, nothing prevented the distribution licensee to object to the same at the time of framing of regulations and having maintained a stoic silence all these years, pleading for exemption from the rigours of the same , at this juncture, cannot be agreed to.

4.13. On the question of pre-occupation of the licensee with the management of power crisis and shortage of meter, we have to observe that the failure to effect service connections, does not seem to be period specific or something which had arisen solely due to the power situation prevailing at a given point of time or during power crisis, as seen from the records adduced before us. We find that the non-compliance of Regulation 22 to be one of continuing in nature and not restricted to any period or solely arising out any given situation or circumstances. Therefore, even on this score, we disagree with the contentions of the respondent.

4.14. The Commission has accorded approval for the purchase of meter by the consumer on his own and it requires to be explained why such mechanism was not implemented in sincerity. The Chief Engineer of TANGEDCO who appeared before the Commission informed the Commission that instructions have been issued to permit the consumers to purchase their own meter in case of inability on the part of

the licensee to effect service connection for want of meter. However, the fact remains that the circular permitting the consumers to purchase the meter on their own was issued only recently after the order of the Commission inspite of the fact that such approval for such arrangement was accorded by the Commission after receipt of report on investigation under section 128 of the Electricity Act, 2003 as early as in 2012 in SuoMotu Order No. 1 of 2012 dated 15-03-2012 in regard to delay in effecting service connection.

4.15. In the light of the above, we are firmly convinced that this is a fit case for imposition of penalty under section 142 of the Electricity Act, 2003 for contravention of part 1 of Regulation 22 of the DSOP regulations Accordingly, the Commission imposes a fine of Rs.1 lakh on the distribution licensee, TANGEDCO which shall be paid in the name of Secretary of the Commission for the aforesaid violation within a period of one month from the date of this order. As regards violation of part II of Regulation 22, the individual consumers are at liberty to approach the licensee for compensation which shall be paid by the licensee as determined by the Commission in the DSOP Regulations. Commission further directs that the said penalty of Rs.1 lakh shall be recovered from the salary of the officials who are responsible for such violation of Standards of Performance during the relevant period.

(Sd.....)  
**(K.Venkatasamy)**  
**Member (Legal)**

(Sd.....)  
**(Dr.T.PrabhakaraRao)**  
**Member**

(Sd.....)  
**(M.Chandrasekar)**  
**Chairman**

/True Copy /

Secretary  
Tamil Nadu Electricity  
Regulatory Commission