

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2015

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THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

W.P. Nos. 11178 & 11179 of 2015

&

M.P. Nos. 1 of 2015

M/s. Arkay Energy (Rameswaram) Limited,
Corporate Office at
New No.20, Old No. 129,
Chamiers Road,
Nandanam, Chennai - 600 035.
rep. By its President (Commercial & Legal),
R. Jarard Kishore

.... Petitioner in
W.P. No. 11178 of 2015

M/s. Ind-Barath Power Gencom Ltd.,
Corporate Office at
New No.20, Old No. 129,
Chamiers Road,
Nandanam, Chennai - 600 035
rep. By its President (Commercial & Legal)
R. Jarard Kishore.

.... Petitioner in
W.P. No. 11179 of 2015

Vs.

1. The Tamil Nadu Generation and
Distribution Corporation Ltd.,
(TANGEDCO),
rep. By its Chairman and
Managing Director,
No.144, Anna Salai,
Chennai - 600 002.

2. The Chief Engineer/PPP
NPKRR Maaligai,
No.144, Anna Salai,
Chennai - 600 002.

... Respondents in both
writ petitions

Prayer: Petitions under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus directing the respondents 1 and 2 herein to consider the representations of the petitioner dated 13.02.2015 and 02.03.2015 and release the payments which are due and payable to the respective petitioners for the energy which was supplied by the petitioners to the respondents within the State of Tamil Nadu pursuant to the Government Order in G.O.Ms. No. 10 Energy (C3) Department dated 27.02.2009.

For Petitioner : Mr.AR.L. Sundaresan
in both writ Senior Counsel for
petitions M/s.A.L.Ganthimathi

For Respondents : Mr.P. Gunaraj

COMMON ORDER

By consent, the main writ petitions themselves are taken up for final disposal.

2. The petitioner in W.P. No. 11178 of 2015 is a Company incorporated under the Companies Act, 1956, inter alia, carrying on business in the generation and distribution of electrical energy from its Gas based Plant at Valathur in Ramnad District. The petitioner in W.P. No. 11179 of 2015 is a sister concern of the petitioner in W.P. No. 11178 of 2015. The Government of Tamil Nadu, on account of acute shortage of power supply within the State and considering it as a emergency, invoked the power under Section 11 of the Electricity Act, 2003 and issued a notification in G.O.Ms. No. 10 Energy (C3) dated 27.02.2009 in public interest, which reads thus:

"(i) All power generation units operating in Tamil Nadu shall operate and maintain generating stations to maximum capacity and Plant Load Factor (PLF); and

(ii) All generating stations shall supply all exportable electricity so generated to the State Grid for supply either to Tamil Nadu Electricity Board or to other HT Consumers within the State as per the Regulations Notified in this regard by the Tamil Nadu Electricity Regulatory Commission."

The petitioners, in terms of the said G.O., were bound to keep the generation of electricity in their plant at Tuticorin at its maximum capacity and were also bound to supply the energy generated to Tamil Nadu Electricity Board or the HT Consumers which is

possible only through the lines of the Tamil Nadu Electricity Board. The open access for supply of energy outside the State was not permitted on account of the issuance of the above said notification under emergency powers. On account of the same, the petitioners herein were supplying the entire energy which was generated to the Tamil Nadu Electricity Board and subsequently, to Tamil Nadu Generation and Distribution Corporation Limited. The petitioners would further state that after the issuance of the said Government Order dated 27.02.2009, the petitioner in W.P. No. 11179 of 2015 addressed a letter dated 24.08.2010 to the 1st respondent requesting them to buy the surplus energy capacity generated by them immediately as per the Government Order or if the said directions were not in force, permit the petitioners to go for inter state open access as they do not have buyers in Tamil Nadu for the surplus capacity generated. However, according to the petitioners, the 1st respondent, without considering the genuine request of the petitioners, appears to have advised the Power Trading Corporation under its letter dated 27.08.2010 to restrict the supply of energy to 80% of the contracted quantity. Under such circumstances, the petitioner in W.P. No. 11179 of 2015, namely, M/s. Ind Bharath Power gencom. Ltd. wrote a letter dated 28.08.2010 to the 2nd respondent herein with a copy to the 1st respondent requesting them to purchase the entire energy generated as per the directions contained in the Government Order through PTC without restrictions and make payments as per the rates already approved by the Board till such time the Government Order was revoked. Since the same was not considered, W.P. No. 19955 of 2010 was filed by the petitioner in W.P. No. 11179 of 2015 before this Court and the said writ petition was disposed of by order dated 05.10.2010 recording the submissions made by the learned Standing Counsel for the respondent Board that they will consider the claim of the petitioner's sister concern along with similarly placed power generating companies. Though the said order was forwarded to the 1st respondent by letter dated 09.10.2010, no action was taken. While so, the 2nd respondent, by letter dated 24.11.2011, asked the petitioners to attend a meeting in his office on 24.11.2011 for arriving at a consensus on the subject matter. The petitioners attended the meeting and in the said meeting, the 2nd respondent informed that the issue will be revisited for settlement of the same mutually on receipt of orders of the Committee, which was specially formed for the purpose of resolving the dispute in question. Even thereafter, no action has been taken. Therefore, the petitioners addressed letters dated 27.10.2014 to the 1st respondent requesting for payment of invoices value arrears along with surcharge payable for the belated payment immediately, which was followed by reminders dated 16.12.2014, 02.02.2015 and

13.02.2015. As no action was taken, the last representation was submitted by the respective petitioners on 02.03.2015 to the 1st respondent. Since there is no response, the petitioners have come forward to file these writ petitions.

3. Mr.AR.L. Sundaresan, learned Senior Counsel appearing for the petitioners would submit that since no response is forthcoming to the representations as well as reminders submitted by the petitioners in these writ petitions, they are constrained to approach this Court.

4. Per contra, Mr.P. Gunaraj, learned counsel, who accepts notice on behalf of the respondents, would submit that there is no privity of contract between the respective petitioners and the respondents as their supply is through Power Trading Corporation and that the said fact may be taken into consideration.

5. This Court, having considered the rival submissions, without going into the merits of the representations submitted by the petitioners, directs the 1st respondent, to consider the representations of the respective petitioners dated 13.02.2015 and 02.03.2015 and pass orders on the same, in accordance with law, as expeditiously as possible, in any event, not later than four weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioners. The writ petitions are disposed of accordingly. No costs. Connected M.Ps are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

nv

To

1. The Tamil Nadu Generation and Distribution Corporation Ltd., (TANGEDCO), rep. By its Chairman and Managing Director, No.144, Anna Salai, Chennai - 600 002.

2. The Chief Engineer/PPP
NPKRR Maaligai,
No.144, Anna Salai,
Chennai - 600 002.

+1cc to Mr.P.Gunaraj, Advocate, S.R.No.21056

+2cc's to M/s.A.L.Gandhimathi, Advocate, S.R.No.21023 & 21022

W.P. Nos. 11178 & 11179 of 2015

TEJ(CO)
CA(30/04/2015)



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