

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30-4-2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

WRIT PETITION No.13522 of 2015

and

M.P.Nos.1 to 3 of 2015

M/s.Jansons Textiles Processors
68-1A, Namakkal Road
Tiruchengode 637 211
Rep. By its General Manager

.. Petitioner

vs

- 1.The Chairman
Tamil Nadu Generation and Distribution
Corporation Limited
144, Anna Salai, Chennai 600 002
- 2.Director Finance
Tamil Nadu Generation and Distribution
Corporation Limited
144, Anna Salai, Chennai 600 002
- 3.The Chief Financial Controller
Tamil Nadu Generation and Distribution
Corporation Limited
144, Anna Salai, Chennai 600 002
- 4.The Superintending Engineer
Namakkal Electricity Distribution Circle
Namakkal
- 5.The Tamilnadu Electricity Regulatory
Commission
represented by its Secretary
No.19A, Rukmini Lakshmipathi Salai
Egmore, Chennai 600 008

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the third respondent bearing Lr.No.CFC/FC/REV/AAO/HT/D.419/2014 dated 11.7.2014, and all proceedings consequent or pursuant thereto, including impugned letter of the fourth respondent dated 22.4.2015, bearing Lr.No.SE/NEDC/NKL/DFC/HT/AS/Asst/F HT 122/D No.122/2015 and quashing the same as being arbitrary, illegal and without authority of law and contrary to the provisions of the Electricity Act, 2003, and consequently, directing the second respondent to make payment

of total amount of Rs.1,14,39,744/- together with further interest thereon at 18% p.a. from the due date of payment.

For Petitioner : Mr.Satish Parasaran

For Respondents : Mr.S.K.Rameshuwar

ORDER

By consent, the writ petition itself is taken up for final disposal.

2.The petitioner claims that it has been granted a sanctioned demand of 400 KVA and in view of substantial demand for power for it's operations, has also put up wind mills in Tirunelveli Electricity Distribution Centre (EDC) with a capacity of 1.25 MW with HT SC No.492, which was installed and commissioned on 21.3.2003, and the electricity generated by the said wind mill, has been wheeled by the petitioner for it's captive consumption for HT SC No.122 at Namakkal EDC.

3.The petitioner would further state that according to the Tariff Orders issued by the Electricity Regulatory Commission, if the wind energy is not utilised fully during a month, the balance of it will be transferred to a banking account and during the lean seasons of wind energy, such banked energy is allowed for adjustment from the banking account, after paying notified banking charges to the respondents by the WEG owners.

4.The petitioner would state that in spite of the orders passed in M.P.No.42 of 2008 by the Electricity Regulatory Commission, the respondents resorted to various steps to scuttle the benefit of the orders by filing proceedings before this Court preventing wheeling of power through issuance of arbitrary and unapproved Circulars, and in this regard, various orders have also been passed by this Court.

5.The petitioner would further claim that the Circular issued by the third respondent, is wholly arbitrary and inasmuch as it is TANGEDCO, which is the cause for preventing adjustment of the units generated by the generating plants, and captive status has no impact upon the encashment of banked units and inasmuch as whatever units are not adjusted and treated as banked units, the same are required to be paid for at the rates fixed under the respective tariff orders.

6.The claim of the petitioner is that if the impugned letter issued by the fourth respondent, would be given effect to, it would not only deprive the petitioner of a huge amount of money that the TANGEDCO is lawfully obliged to pay to it, but also would result in the petitioner incurring a huge expenditure towards payments to be made on account of revision.

7.The learned Counsel appearing for the petitioner, would submit that the respondents 3 and 4, without taking note of the legal position and without adhering to the orders passed by the fifth respondent, and also the orders passed by this Court, have raised the impugned demand without affording an opportunity, whatsoever, to the petitioner and prays for appropriate orders.

8.Per contra, Mr.S.K.Rameshuwar, learned Standing Counsel, appearing for the respondents-TANGEDCO, would submit that the respondents have taken into consideration all the relevant aspects as well as the orders passed by the Tamil Nadu Electricity Regulatory Commission, and in strict compliance of the same, have raised the impugned demand and prays for dismissal of the writ petition.

9.This Court has carefully considered the rival submissions and also perused the impugned order.

10.In the light of the grounds raised by the petitioner in the writ petition, coupled with the fact that before raising the demand, the petitioner has not been put on notice, this Court is of the view that without going into the merits of the rival claim, the petitioner may be permitted to raise it's objections within the stipulated time and the fourth respondent may be directed to consider and dispose of the objections within a stipulated time and till then, further action, on the basis of the impugned notice, may be deferred.

11.In the result, the writ petition is disposed of and the petitioner is permitted to raise it's objections/representation to the impugned demand notice dated 22.4.2015, within a period of two weeks from the date of receipt of a copy of this order and the fourth respondent is directed to pass orders on the objections, within a period of four weeks thereafter, and till then, defer further proceedings in terms of the impugned notice dated 22.4.2015. No costs. Consequently, connected miscellaneous petitions are closed.

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sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

nsv

To:

1.The Chairman

Tamil Nadu Generation and Distribution
Corporation Limited
144, Anna Salai, Chennai 600 002

2.The Director-Finance

Tamil Nadu Generation and Distribution
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144, Anna Salai, Chennai 600 002

3.The Chief Financial Controller

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4.The Superintending Engineer

Namakkal Electricity Distribution Circle
Namakkal

5.The Secretary

Tamilnadu Electricity Regulatory
Commission
No.19A, Rukmini Lakshmipathi Salai
Egmore, Chennai 600 008

1 cc to Mr.Sathish Parasaran, Advocate, Sr. 24595

1 cc to Mr.S.K. Raameshwar, Advocate, Sr. 24896

W.P.No.13522 of 2015

PUR (CO)
kk 22/5

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