

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2015

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.21232 of 2015

and M.P.Nos.1 to 3 of 2015

M/s.Precision Equipments (Chennai) Private Limited
Rep by its Managing Director,
B-70/1, SIPCOT Industrial Park,
Tandalam,
Sriperumbudur-602 105. ...Petitioner

-Vs-

- 1.The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited, 144, Anna Salai,
Chennai-600 002.
- 2.Director of 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,
Tirupur Electricity Distribution Circle,
Tirupur-641 602.
- 5.The Superintending Engineer,
Chengalpattu Electricity Distribution Circle,
Chengalpattu.
- 6.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 the impugned letters bearing Lr.No.SE/TED/TPR/DFC/AO/Rev/HT.Wind/D/13 dated 5.11.2013 issued by the fourth respondent to the 5th respondent and Lr.No.SE/TEDC/Tirupur/DFC/AO/Rev/HT Wind/D401/15 issued by the 4th respondent dated 18.03.2015 and quash the same as being arbitrary, illegal and without authority of law and contrary to the provisions of the Electricity Act, 2003 and consequently direct the 2nd respondent to make payment of total amount of Rs.12,44,056/- together with further interest thereon at 18% p.a. from the due date of payment.

For Petitioner : Mr.Sathish Parasaran
For Respondents : Mr.P.Gunaraj,
Government Advocate for R1 to R5
Mr.Abdul Saleem for R6

O R D E R

By consent, this Writ Petition is taken up for final disposal.

2. The petitioner would state that there was Power Purchase Agreements dated 15.03.2006 and 01.03.2010 entered into between the petitioner and the Tamil Nadu Generation and Distribution Corporation Limited [TANGEDCO]. It is further stated by the petitioner that in view of power shortage in the State, then Tamil Nadu Electricity Board [TNEB] approached the Tamil Nadu Electricity Regulatory Commission [TNERC] for imposition of R&C measures and the TNERC, after following the statutory procedure, passed an order dated 28.11.2008, seeking certain directions in respect of wind energy captivity. The grievance expressed by the petitioner is that despite directions from the TNERC, the respondents putting all kinds of obstructions and preventing the wheeling of power by issuance of arbitrary and unapproved circulars, which have also been put to challenge in two writ petitions. The TNERC has also initiated Sua Motu proceedings and vide proceedings dated 28.10.2009, severely reprimanded the arbitrary actions of the respondents and issued certain corrective measures. Challenge was also made to the said Sua Motu proceedings by filing appeal by M/s.Karunambikai Mills Private Limited praying that they should be allowed to utilize the banked energy instead of encashing it and even after such banking adjustments, there remains large quantities of energy at the banking account as unutilised at the end of the banking period on 31st March. It is the specific case of the petitioner that in terms of applicable Tariff Orders and regulations, he is entitled to receive payments for the unutilized banked units at the end of the each year and despite

that, the respondents by relying upon Rule 3 of the Indian Electricity Rules, 2005 and under the pretext of 51% of the energy generated was not captively consumed, has withheld the payment till date, which is also contrary to Rule 3(2) of the said rules. Subsequently, a clarification was issued by the second respondent dated 03.09.2012 stating that where 51% consumption is not met, the cross-subsidy if applicable alone are to be collected. The respondents, without taking note of the rules and regulations/legal position has issued the impugned circulars without putting the petitioner on notice and the impugned directions have been issued unilaterally by TANGEDCO without filing any petition before TNERC.

3. The learned counsel appearing for the petitioner would submit that in similar facts and circumstances, this Court has set aside the impugned orders on the ground of violations of the principles of natural justice and therefore, similar orders may be passed.

4. Per contra, Mr.P.Gunaraj, learned Standing Counsel appearing for the respondents would submit that the respondents have taken into consideration all the relevant aspects as well as the orders passed by TNERC have raised the impugned demand and prays for dismissal of this writ petition.

5. This Court, taking into consideration the earlier order dated 30.04.2015 made in W.P.No.13522 of 2015, permits the petitioner to raise objections to the impugned demand notice dated 18.03.2015, within a period of two weeks from the date of receipt of a copy of this order and the fourth respondent shall pass orders on the said objections in accordance with law, within a period of four weeks thereafter and till then, further proceedings in terms of the impugned demand notice, shall be deferred.

6. This Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते
-s/d-

Assistant Registrar

TrueCopy

Sub-Assistant Registrar

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To

1.The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited, 144, Anna Salai,
Chennai-600 002.

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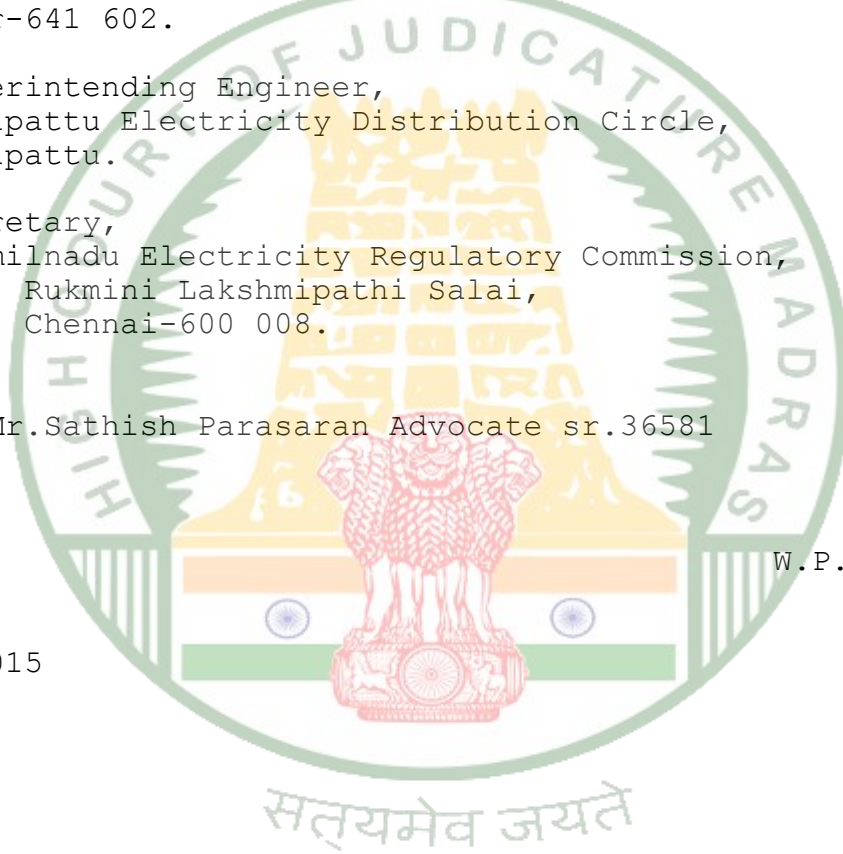
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6. The Secretary,
The Tamilnadu Electricity Regulatory Commission,
No.19A, Rukmini Lakshmi Pathi Salai,
Egmore, Chennai-600 008.

+1 cc to Mr. Sathish Parasaran Advocate sr.36581

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