

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.11.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. No.34798 of 2015

M/s IndBarath Thermal Power Limited
Rep. by its Manager (Legal).

[PETITIONER]

Vs

- 1 The Government of Tamil Nadu
Rep. by Secretary to Government
Energy Department
Fort St.George, Chennai 600 009.
- 2 The Tamil Nadu Generation and
Distribution Corporation (TANGEDCO) Ltd.
Rep. by its Chairman & Managing Director
No.144 Anna Salai, Chennai 600 002.
- 3 The Tamil Nadu Electricity Regulatory Commission
Rep. by its Registrar
19A Rukmani Lakshmipathy Salai
(Marshals Road),
Egmore, Chennai 600 008.
- 4 The Chairman T.N.E.B.
No.144 Anna Salai Chennai - 2.

[RESPONDENTS]

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue Writ of mandamus to direct the 3rd Respondent herein to revoke the licence of the 2nd Respondent herein as Distribution Licensee under Sec.19 of the Electricity Act 2003.

For Petitioner : Mr.A.R.L.Sundaresan, Sr.Counsel
for Mrs.AL.Gandhimathi

For Respondents : Mr.R.Rajeswaran - R1
Spl.Govt. Pleader

Mr.P.H.Aravindh Pandian,
Addl.Advocate General - R2 to R4
asstd by Mr.S.K.Rameshwar

O R D E R

By consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2.Heard Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioner, Mr.R.Rajeswaran, learned Special Government Pleader appearing for first respondent and Mr.P.H.Aravindh Pandian, learned Additional Advocate General, assisted by Mr.S.K.Rameshwar, learned Standing Counsel, appearing for the respondent Board.

3.The petitioner is a Company incorporated under the Companies Act, engaged in the business of generation and supply of electrical energy. The petitioner has a Coal based Power Generating Plant at Tuticorin District and has been supplying electricity generated from the said Plant to the second respondent (TANGEDCO). The said supply is pursuant to the letter of acceptance dated 26.9.2014 for the period from 01.10.2014 to 30.09.2015. The prayer sought for in this Writ Petition is to direct the third respondent to revoke the licence granted to the second respondent (TANGEDCO) under Sec.19 of the Electricity Act 2003.

4.This prayer has been sought for, on the ground that the amount due and payable to the petitioner by the second respondent is Rs.254,53,61,766/- towards principal and a sum of Rs.31,90,00,336/- towards belated payment surcharge. The petitioner would state that Section 19 of the Act, provides for revocation of the licence by the appropriate Commission and the third respondent after making necessary enquiry is entitled to cancel the licence of the second respondent. It is further submitted that where the licensee fails, within the period fixed by the Commission, or any longer period that may be fixed by the Commission, to show to the satisfaction of the Commission that they are in a position to fully and efficiently discharge the duties and obligations imposed on him and to make the deposit or furnish the security or pay the fees or other charges required under the licence. With these facts, the petitioner seeks for revocation of the licence issued under section 19 of the Act, in favour of the second respondent.

4.At the very inception of the argument of the learned Senior counsel appearing for the petitioner, this Court made it clear that such a relief sought for cannot be granted for more than one reasons. Firstly, for the amount due, the petitioner has to approach the appropriate forum for realising the dues and

secondly there was no application/representation before the third respondent Commission seeking for revocation of the licence of the second respondent and therefore, the Writ of Mandamus as sought for cannot be issued.

5.The learned Additional Advocate General appearing on behalf of the respondent Board submitted that he has got serious objection to the maintainability of the Writ Petition since the relief sought is a consequence of a money claim from the second respondent. On instructions from Mr.Sundaravadanan, CFG (General), TANGEDCO, who is present in Court, it is agreed that the amounts due to the petitioner for March 2015 and April 2015 will be settled on or before 6.11.2015, which according to the respondent Board is Rs.70.45 Crores.

6.The submission made on behalf of the second respondent through a Senior official from the respondent Board is placed on record and it should be promptly and duly complied with by the second respondent. In so far as the relief of cancellation of the licence of the second respondent is concerned, as pointed out earlier, the petitioner has to approach the Commission, if they have got any grievance or if they have got grounds to move Commission, as stated by the petitioner.

7.Accordingly, it is left open for the petitioner to move the Commission for necessary relief, if so advised. The undertaking given by the second respondent through their Senior Official who is present in Court that the amount of Rs.70.45 crores would be settled to the petitioner on or before 06.11.2015, placed on record.

The Writ Petition is disposed of on the above terms. No costs.

sd/

सत्यमेव जयते
ASSISTANT REGISTRAR(CO)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

rpa

To

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WEB COPY

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+1 CC to MR.S.K.Rameshwar Advocate. SR.NO.59708
+1 CC to Mrs.AL.Gandhimathi Advocate. SR.NO. 60157

W.P. No.34798 of 2015

CO-PPA
JD 23/11/2015



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