IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2016

C O R A M

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.37376 of 2015
&
MP Nos.1 to 3 of 2015

Padmaadevi Sugars Limited
(Formerly known as S.V.Sugar Mills Limited)
Rep. by its Manager (Accounts)
Kancheepuram. ... PETITIONER

Vs

1. Tamil Nadu Generation & Distribution Company Limited
Represented by its Chairman & Managing Director
144 Anna Salai, Chennai-600 002.

2. The Superintending Engineer
Kanchi Electricity Distribution Circle
Anna Maaligai, Vellore Road,
Olimuhamedpet
Kanchipuram.

3. The Chairman
Tamil Nadu Electricity Board
144 Anna Salai, Chennai-600 002. ... RESPONDENTS

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd Respondent comprised in his impugned letter dated 19.10.2015 bearing Ref. Lr.No. 0236/RCS/A1/ F.PPA Bill/2015 and quash the same, in so far as it seeks to levy a penalty for short-supply of an amount of Rs.92,21,758/- and consequently direct the respondents to forthwith and in a time bound manner release the dues under the respective Power Purchase Agreements and Open Access Agreement for sale to TANGEDCO dated 30.09.2014 entered into between the petitioner and the respondent without in any manner deducting any penalties for short supply, so long as the Respondents do not make full payments within the due date against the Invoices raised for supply of electricity from time to time and pay interest on the delayed payments at the contractual rate for the period of delay.

For Petitioner : Mr.Satish Parasaran

For respondents : Mr.S.K.Raameshuwar
Standing Counsel

O R D E R

Heard Mr.Satish Parasaran, learned counsel for the petitioner and Mr.S.K.Raameshuwar, learned Standing Counsel for respondents and with the consent of the learned counsel appearing on either side, the writ petition is taken up for final disposal.

2.The petitioner is the Sugar Mill and they have invested in a Power Generation Plant and set up 27.3 MW coal based Power Plant. The petitioner submits that after meeting their internal requirements, they have a surplus of 16 MW and in respect of the said quantum they have entered into a short term Open Access Agreement with the respondent TANGEDCO periodically, which has expired on 30.09.2015.

3.The State was facing shortage of power and with a view to procure surplus power from the generators, such as the petitioner, in terms of approved contracts from time to time by way of Power Purchase Agreements and subsequently termed as ' Open Access Agreement for Sale'. As a consequence of which, the petitioner has entered into a Power Purchase Agreement on 23.10.2013, for a period from 28.10.2013 to 25.5.2014, which was extended periodically upto September, 2015, and another agreement dated 30.09.2014 was entered for the period from October, 2014 to September, 2015. In respect of power which has been generated by the petitioner and given to the TANGEDCO, they have been raising periodical invoices, but the respondents failed to pay the amounts to the petitioner in respect of the invoices raised. The invoices for the power supplied by the petitioner are from 28.04.2013, till September, 2015 and the total amount comes to Rs.296.42 crores, being the amount calculated together with interest.

4.Though the petitioner continued to supply, the payments were not released and the petitioner has given several representations to TANGEDCO to release payment. Some of those representations have been filed in the typed set of papers viz. representations dated 22.07.2015, 12.08.2015 (represented by Association), 13.08.2015, 25.08.2015. Since all those representations did not evoke any response, the petitioner could not muster the purchase of power and therefore, intimated the

TANGEDCO by letter dated 04.09.2015, that due to the delayed payment by TANGEDCO against the power procured from their coal based power plant, the coal suppliers have stopped the supplying of coal to their Power Plant and their coal stock has been depleted. It is also stated that due to non-availability of coal, the Plant stopped their operations from 04.09.2015 and same will be resumed only after clearing the dues to the coal suppliers, which can be done only after receiving the pending payment from TANGEDCO. Therefore, the petitioner intimated the TANGEDCO that they are forced to stop their Power Plant operations due to non release of payment by TANGEDCO and requested to restrain from levying any penalty for shortfall of units due to this stoppage.

5.This was followed by another representation given to the Chairman and Managing Director of TANGEDCO on 11.09.2015, which has also been acknowledged by the Secretariat branch of the respondent TANGEDCO. In the said representation, the petitioner stated that they have received payment for the supply till April, 2015 and they have raised the invoices for a total amount of Rs.16,05,12,312/- for the period from May 2015 to August 2015, which has not been settled and they have not been availing any working capital facilities from their Bankers for the past four years, due to heavy loss incurred by the Company and they are managing the operations of the Company from the revenue generated by the sale proceeds of sugar and power. Therefore, it was stated that because TANGEDCO has not released payments, the coal suppliers have stopped supplying the coal and they are not in a position to operate the Power Plant from 04.09.2015.

6.Inspite of the aforementioned representations, the respondent Board appears to have been acting as a silent spectator and did not respond to any of their communications, but, just to thwart the power given by the petitioner, issued the impugned proceedings alleging that because of shortfall, the petitioner has to pay the penalty of Rs.92,21,758/-.

7.Firstly, it has to be pointed out that the impugned proceedings is in violation of the principles of natural justice. That apart, the respondent TANGEDCO are bound to analysis as to why there was a short fall in the Union.

8.The petitioner from July, 2015 onwards, has been continuously representing that because of the default in payment by TANGEDCO, they are unable to procure the coal. This issue has never been addressed and no effective steps were taken by the TANGEDCO to clear the arrears in time. Further, the agreement provides for interest, if there is delay in payment.

Therefore, when the respondent TANGEDCO have not settled the Bills, owing to which the Power Plant had to be shut down, there is no justification for them to levy penalty alleging shortfall.

9.Counter affidavit filed by the second respondent accepts that there was a delay in payment, which they attribute to the financial constraints which the TANGEDCO is going through, as they had incurred losses for many years. But, so far as the justification to levy the penalty on the ground of alleged shortfall, the same has not been adverted to in the counter affidavit nor any worthwhile material has been referred to justify such demand for shortfall. Paragraph No.13 of the counter affidavit relates to entirely a different aspect i.e. regarding purchase price, which has no relevance to the impugned proceedings. Further, it has to be pointed out that paragraph Nos. 9, 10, & 11 also refer to the financial incapacity of TANGEDCO. Thus, it is clear that on account of the default committed by TANGEDCO, the petitioner had to shut down the Power Plant. It is not as if the petitioner has not intimated the respondents well before shutting down the Power Plant. The bunch of representations which were given by the petitioner and placed in the typed set of papers have not been denied by the respondents.

10.In such circumstances, the impugned action of the second respondent is unreasonable and arbitrary and abuse of the dominant position by the respondent Board and a clear case of exploitation of inequalness in bargaining power.

11.For all the above reasons, the impugned order is held to be unsustainable. Accordingly, the Writ Petition is allowed, the impugned order is quashed and the respondents are directed to settle the pending payments, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rpa

To

1. The Chairman & Managing Director
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2. The Superintending Engineer
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Anna Maaligai, Vellore Road,
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3. The Chairman
Tamil Nadu Electricity Board
144 Anna Salai, Chennai-600 002.

+1cc to Mr.Satish Parasaran, Advocate, S.R.No.15640
+1cc to Mr.S.K.Raameshuwar, Advocate, S.R.No.15434

W.P.No.37376 of 2015

SAI(CO)
CA(23/03/2016)