

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2016

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

W.P. No. 24246 of 2016
&
W.M.P. No. 20712 of 2016

M/s. ARKAY Energy (Rameswaram) Limited,
Having its Corporate Office,
At No.20, Old No. 129, Chambers Road,
Nandanam, Chennai 600 035.
rep. by its Manager (Legal). ...Petitioner

Vs.

1. The Tamil Nadu Generation and Distribution Corporation (TANGEDCO) Limited, rep. by its Chairman & Managing Director, NPKRR Maaligai, No.144, Anna Salai, Chennai 600 002.
2. The Tamil Nadu Transmission Corporation (TANTRANSCO) Limited, rep. by its Managing Director, NPKRR Maaligai, No.144, Anna Salai, Chennai 600 002.
3. The Chief Engineer/Grid Operation, State Load Despatch Centre, The Tamil Nadu Transmission Corporation (TANTRANSCO) Limited, NPKRR Maaligai, No.144, Anna Salai, Chennai 600 002.

4. The Superintending Engineer,
Ramnad Electricity Distribution Circle,
The Tamil Nadu Generation and
Distribution Corporation (TANGEDCO)
Limited,
Ramnad, Ramnad District.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus directing the 3rd and 4th respondents herein to forthwith complete the execution of the Energy Wheeling Agreement with the petitioner pursuant to the Energy Wheeling approval granted by the 3rd respondent vide proceedings under Ref No. CE/GO/SE/OA & CO/STU/EE/ABT/AEE1/F. Arkay R-0/D.149/16 dated 14.06.2016.

For Petitioner :: Mr.AR.L.Sundaresan,
Senior Counsel for
Mrs.AL. Ganthimathi

For Respondents:: Mr.S.K. Raameshuwar

O R D E R

The petitioner Company is carrying on business in generation and distribution of Electrical Energy. From the year 2009, citing power shortage, the Government of Tamil Nadu, exercising power under Section 11 of the Electricity Act, 2003, issued Government Orders in G.O.Ms.No.10 Energy (C2) Department dated 27.02.2009 and G.O.Ms. No. 77 Energy (A1) Department dated 10.10.2014 directing that all Generation Companies within the State should generate electricity and supply the same to the State grid for consumption by consumers within the State and export of electricity outside the State was prohibited. Subsequently, vide G.O.(Ms.) No. 41 Energy (A1) Department dated 31.05.2016, the said directions have been revoked. However, according to the petitioner, the agreements which were entered into by the petitioner for supply of electricity to the TANGEDCO came to an end on 31.05.2016. Since then, the generation capacity of the petitioner was lying idle and even during the time when contract with TANGEDCO was in force, they were not drawing power at the agreed quantum on a continuous basis and back down instructions were issued from time to time. Under such circumstances, the petitioner, with a view to ensure that the plant was not lying idle and the capacity was not wasted and to ensure that the employees were not adversely affected and to ensure that the assets of the petitioner Company were not going waste, had to look out for captive consumers to consume electricity generated from the petitioner's plant. Accordingly,

for the period from 2016-2019, the petitioner had identified 32 captive consumers and entered into Power Supply Agreements for supply of Electrical Energy as Captive Consumer.

2. Thereafter, the petitioner applied for sanction from the 3rd respondent herein for the Energy Wheeling Approval and by letter dated 18.06.2016, the petitioner requested the 3rd respondent herein to grant approval for the Wheeling of Energy from the petitioner's Gas based Power Plant at Valathur, Ramnad District. The petitioner enclosed the list of captive users and other required documents and requested the 3rd respondent to grant Wheeling Approval for the period from 08.06.2016 to 31.05.2019. Considering the request of the petitioner and after being satisfied with the availability of capacity for wheeling of electricity by the petitioner into the State Grid at Ramnad, the 3rd respondent granted the Energy Wheeling Approval by proceedings dated 14.06.2016. Thereafter, the 3rd respondent had requested the 4th respondent to execute the Wheeling Agreement and furnish a copy of the same to the office of the 3rd respondent. On receipt of the aforesaid Wheeling Approval from the 3rd respondent, the petitioner, by letter dated 15.06.2016 requested the 4th respondent to execute the Energy Wheeling Agreement in terms of the order of the 3rd respondent herein. However, the 4th respondent did not consider the same and execute the Energy Wheeling Agreement. Hence, the petitioner sent reminder letters on 04.07.2016 and thereafter on 08.07.2016 bringing to the notice of the 4th respondent that the petitioner was drawing gas from GAIL and for non-offtake of natural gas, the petitioner would be charged with penalty and for non-supply of electricity to the Captive Users, the petitioner would be exposed to penalty. However, the Energy Wheeling Agreement, which was supposed to be executed by the 4th respondent, pursuant to the approval granted by the 3rd respondent, was not executed and hence, the petitioner approached this Court, by way of the present writ petition.

3. By virtue of interim order dated 14.07.2016, this Court, taking note of the steps taken by the petitioner and also the approval granted by the 3rd respondent, directed the learned counsel for respondents to get instructions.

4. Accordingly, when the matter is called today, learned counsel for the respondents would produce the proceedings of the 4th respondent dated 16.07.2016, which states that the Energy Wheeling Agreement has been executed on 16.07.2016. Learned counsel for the petitioner has also agreed that the agreement was entered into by the 4th respondent, with the petitioner Company.

5. In view of the above communication dated 16.07.2016 of the 4th respondent and the submissions made by the learned counsel on either side, the writ petition is closed. No costs. Connected W.M.P. is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

nv

To

1. The Chairman & Managing Director,
The Tamil Nadu Generation and
Distribution Corporation (TANGEDCO)
Limited,
NPKRR Maaligai, No.144, Anna Salai,
Chennai 600 002.
2. The Managing Director,
The Tamil Nadu Transmission Corporation
(TANTRANSCO) Limited,
NPKRR Maaligai, No.144, Anna Salai,
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3. The Chief Engineer/Grid Operation,
State Load Despatch Centre,
The Tamil Nadu Transmission
Corporation (TANTRANSCO)
Limited,
NPKRR Maaligai, No.144, Anna Salai,
Chennai 600 002.
4. The Superintending Engineer,
Ramnad Electricity Distribution Circle,
The Tamil Nadu Generation and
Distribution Corporation (TANGEDCO)
Limited, Ramnad, Ramnad District.

1 cc to Ms.A.L.Ganthimathi, Advocate, sr.41778
1 cc to Mr.S.K.Rameshwar, Advocate, sr.41236

W.P. No. 24246 of 2016

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kra 09.08.2016