

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.08.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.18129 of 2011

M.P.Nos. 1 to 3 of 2011

M/s. OPG Power Generation Private Limited
117, P.S.Sivasami Salai, St.Ebba's Avenue
Mylapore, Chennai 600 004.

...Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary
Energy Department
Fort St.George
Chennai 600 009.
2. Tamil Nadu Generation and Distribution
Corporation Limited
144, Anna Salai,
Chennai 600 002.
3. Tamil Nadu Electricity Regulatory Commission,
19A, Rukmani Lakshmipathy Salai,
Egmore, Chennai - 08
4. M/s. Ind-Bharath Power Gencom Limited
New No.20, Old No. 129, Chambers Road,
Nandanam, Chennai 600 035.
5. The Madras Aluminium Co.Limited
Mettur R.S., Mettur Dam,
Salem District - 636 402.

...Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the 3rd respondent comprised in its impugned orders in P.P.A.P.No. 5/11 dated 11.07.2011 and quash the same and direct the 3rd respondent to take up the said P.P.A.P.No. 5/2011 filed by the 2nd respondent and dispose of the same on merits in a time bound manner, after hearing the parties and fix the maximum ceiling of tariff for purchase of electricity in pursuance of an agreement between the generating companies located in Tamil Nadu totaling a quantity of 600 MW for the period June 2011 to May 2012 by following the provisions

of S.61 and S.62 of the Electricity Act, 2003 and in consonance with the Tariff Regulations framed pursuant thereto by the Hon'ble TNERC.

For Petitioner : Mr.P.S.Raman, SC
for Rahul Balaji.
For Respondents : Mr.J.Ramesh, AGP
for R1
Mr.S.K.Rameshwar
for R2 & R3.
R4 & R5 - No Appearance

O R D E R

The prayer sought for in this Writ Petition is for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent comprised in its impugned orders in P.P.A.P.No. 5/11 dated 11.07.2011 and quash the same and direct the 3rd respondent to take up the said P.P.A.P.No. 5/2011 filed by the 2nd respondent and dispose of the same on merits in a time bound manner, after hearing the parties and fix the maximum ceiling of tariff for purchase of electricity in pursuance of an agreement between the generating companies located in Tamil Nadu totaling a quantity of 600 MW for the period June 2011 to May 2012 by following the provisions of S.61 and S.62 of the Electricity Act, 2003 and in consonance with the Tariff Regulations framed pursuant thereto by the Hon'ble TNERC.

2. The learned counsel appearing for the petitioner would submit that the writ petition pertains to challenging the order dated 11.07.2011 of the Tamil Nadu Electricity Regulatory Commission and the third respondent herein, has failed to exercise its jurisdiction that has been expressly conferred upon it under Section 62 of the Electricity Act 2003, pursuant to the petition filed by the first respondent in PPAP No.5 of 2011 wherein the second respondent had sought for fixation of a tariff for purchase of electricity in pursuance of an agreement between the generating companies located in Tamil Nadu of a quantum of about 600 MW for a period not exceeding one year from June 2011-May-2012 and prayed that this Court may set aside the order passed by the Electricity commissioner for violation of principles natural justice and the matter remanded back to the Commission for fresh consideration.

3. The learned counsel appearing for the respondent Board would submit that though the petitioner is having effective alternate appellate remedy before the appropriate forum, he has approached this Court by filing this writ petition and the same is unsustainable.

4. This Court has perused the order dated 11.07.2011, Tamil Nadu Electricity Regulatory Commission and on perusal of the records it reveals that when the case was taken up for hearing, on the same day itself order came to be passed and that the proceedings is contrary to the Tamil Nadu Electricity Regulatory Commission 2004 which indicates, notice should be issued to the Consumer. However, the said procedure was not followed.

5. Hence without expressing any opinion in this case, this Court is inclined to set aside the order dated 11.07.2011 and the matter is remanded back to the the Tamil Nadu Electricity Regulatory Commission for fresh consideration, after following the due process of law, the proceedings shall be completed within a period of three months from the date of receipt of a copy of this order.

6. Accordingly, with the above terms, the present writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary, State of Tamil Nadu,
Energy Department, Fort St.George
Chennai 600 009.

2. Tamil Nadu Generation and Distribution
Corporation Limtied सत्यमेव जयते
144, Anna Salai,
Chennai 600 002.

3. Tamil Nadu Electricity Regulatory Commission,
19A, Rukmani Lakshmipathy Salai,
Egmore, Chennai - 08

+1 cc to M/s.R.Parthasarathy,Advocate Sr.No. 76258

AKM/16.12.19/3P-5C /

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