

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P. No.20492 of 2013
and M.P. No.2 of 2013

Tamil Nadu News Print & Papers Ltd.
Represented by its Senior Manager
(Marketing) Mr.V.K.Parameshwaran
67 Mount Road, Chennai - 600 032.Petitioner

Vs

1.Tamil Nadu Generation and
Distribution Corporation Ltd.
Represented by its Chairman &
Managing Director,
No.144, Anna Salai,
Chennai 600 002.

2.The Chief Engineer,
Non-Conventional Energy Services (NCES),
TANGEDCO, 144, Anna Salai,
Chennai 600 002.

3.The Superintending Engineer,
Tirunelveli Electricity Distribution Circle,
Tirunelveli 627 001.Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records 2nd respondent's communication in Lr. No.CE/NCES/EE/WBP/AEE2/F.AG Audit - CMD benefit/D.435/13 dated 22.02.2013 which was sent to the Superintending Engineers of the respective circles to take steps towards recovery and consequential letter bearing No.Lr.No.SE/TEDC/TIN/AO/REV/WM/AS/D.No. 5664/13 dated 14.06.2013 of the third respondent herein and to quash the same as being arbitrary, illegal and contrary to the tariff orders issued by the Tamil Nadu Electricity Regulatory Commission.

For Petitioner : Mr.R.Parthasarathy

For Respondents: Mr.S.K.Raameshuwar,
Standing Counsel

ORDER

Tamil Nadu News Print & Papers Ltd. represented by its Senior Manager has come to this Court challenging the Lr. No.CE/NCES/EE/WBP/ AEE2/F.AG Audit - CMD benefit/D.435/13 dated 22.02.2013 issued by the Chief Engineer, Non-Conventional Energy Services, the second respondent herein and consequential letter bearing No.Lr.No.SE/TEDC/TIN/AO/REV/WM/AS/D.No.5664/13 dated 14.06.2013 issued by the Superintending Engineer, Tirunelveli Electricity Distribution Circle, the third respondent herein on the ground that since the orders have been passed without giving them any opportunity of hearing, they are arbitrary, illegal and contrary to the tariff orders issued by the Tamil Nadu Electricity Regulatory Commission.

2.Learned counsel appearing for the petitioner would submit that as the impugned orders have been passed without application of mind and without reference to the specific terms of the tariff order, the question of sharing of benefits of Clean Development Mechanism (hereinafter referred to as the 'CDM') would arise only in respect of projects that are commissioned on or after the date when the respective tariff orders came into force. Learned counsel appearing for the petitioner, referring to paragraph Nos.4 and 8.5 of the Tamil Nadu Electricity Regulatory Commission Order No.1 of 2009 dated 20.03.2009 which are dealing with the applicability of the order and CDM benefits, would submit that the sharing of CDM benefits will remain equal till such time the benefits accrue and that all the wind energy generators commissioned on or after 19.09.2008 shall become eligible for the benefits of the present order, subject to the condition that the monetary benefits shall accrue from the date of the order. When the respondents have not given any opportunity to the petitioner to explain as to why the petitioner is liable to pay a huge amount of Rs.46,10,385/-, the impugned orders passed by the respondents could be set aside.

3.Learned Standing Counsel appearing for the respondents would submit that the matter may be remanded back to the Regulatory Commission to decide the applicability of the issue raised by the petitioner.

4.But this Court is unable to accept the arguments advanced by the learned Standing Counsel appearing for the respondents. As the petitioner was never put on notice prior to the passing of the impugned letters, the same are liable to be set aside since it violates the principles of natural justice.

5.This Court finds some merits on the submission made by the learned counsel appearing for the petitioner for the simple reason that para 4 of the said order dated 20.03.2009 passed by the Tamil Nadu Electricity Regulatory Commission clearly shows that all wind energy generators commissioned on or after 19.09.2008 shall become eligible for the benefits of the present order subject to the condition that the monetary benefits shall accrue from the date of the order, but there was no mention about the same in the counter affidavit filed by the respondents. Therefore, in any event, the impugned orders are liable to be set aside as the same have been issued without notice whatsoever to the petitioner and accordingly, the same are set aside. Accordingly, the writ petition stands allowed. Consequently, miscellaneous petition is closed.

6.Liberty is given to the respondents to approach the Tamil Nadu Electricity Regulatory Commission, if so advised. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Chairman &
Managing Director,
Tamil Nadu Generation and
Distribution Corporation Ltd.,
No.144, Anna Salai,
Chennai 600 002.

2.The Chief Engineer,
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TANGEDCO, 144, Anna Salai,
Chennai 600 002.

3.The Superintending Engineer,
Tirunelveli Electricity Distribution Circle,
Tirunelveli 627 001.

+1cc to Mr.S.K.Rameshuwar, Advocate Sr.93880

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