



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.21297 of 2013
and M.P.No. 1 of 2013

M/s. Sabari Alloys & Metals India Pvt. Ltd.,
H.T.S.C. No.1772,
No. A -3, SIPCOT Industrial Estate,
Gummidipoondi - 601 201,
Tiruvallur District Rep by its Manager,
R.Elango

.. Petitioner

-vs-

1. The Chairman,
TANGEDCO, Anna Salai,
Chennai - 2.

2. The Chief Engineer,
Distribution,
TANGEDCO,
Chennai North, Chennai - 2.

3. The Superintending Engineer,
CEDC/North, Chennai -2.

4. The Accounts Officer (Revenue),
TANGEDCO, CEDC/North,
Anna Salai, Chennai - 2.

.. Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent in Letter No.SE/CEDC/N/AEE/GI/F.HTSC.1772/D 782/13 dated 19.06.2013 and the consequential bill No.1772 dated 30.06.2013 issued by the 4th respondent and quash the same as illegal, arbitrary and without authority of law and further direct the 3rd respondent to permit the petitioner Industry to use wind power.

For Petitioner : Mr.K. Seshadri
For Respondents : Mr.R.P.Dhilip Kumar



ORDER

Heard Mr.K.Seshdri, learned counsel for the petitioner and Mr.R.P.Dhilip Kumar, learned counsel for respondents.

WEB COPY

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

3. This writ petition has been filed challenging the order passed by the 3rd respondent dated 19.06.2013 and the consequential bill dated 30.06.2013.

4. Though several grounds raised by Mr.K.Seshadri, learned counsel for the petitioner, the principal ground, which was urged before this Court is that excess penalty to the tune of Rs.63,39,969/- should not have been levied without adjustment of the wind power. The learned counsel for the petitioner has drawn the attention of this Court to the statement showing energy generated through wind mill for the month of June, 2013 and it is submitted that this record issued from the office of the Superintending Engineer, Tirunelveli Circle clearly shows that the petitioner has generated wind energy and appropriate deduction has to be made.

5. The learned counsel also relied upon the directions issued by the Tamil Nadu Electricity Regulatory Commission (for brevity, 'TNERC') in its order dated 17.09.2010, which speaks about how the adjustment to be made. In this regard, learned counsel has referred to paragraph 4.4 and 4.5 of the order, which reads as follows:

"4.4. The consumer is at present permitted to utilise power from captive sources. The present order would enable a consumer to purchase power from third party sources as well. Procurement of power by a consumer through Open Access is protected by the Electricity Act, 2003. The role of the license is limited to that of a carrier. Procurement through Open Access will be treated as an additionality. The ceiling, upto which a consumer can utilise power including the TNEB quota demand, captive power and third party purchase would be the sanctioned demand. In such a situation, there would be no need for advance declaration by the consumer of procurement of captive power as stipulated in SMP No.1 of 2009 of procurement of third party power as stipulated in the Interim Order dated 17.08.2010. As the TNEB had allowed procurement of power upto the sanctioned demand in their



WEB COPY

communication dated 17.7.2009 "procure for allowing third party sale/purchase under intra state open access", there should be no difficulty in allowing the consumer to procure power upto the sanctioned demand.

4.5 the equivalent demand brought in by the consumer from captive and third party sources should be subtracted from the maximum demand recorded by the meter of the consumer. Balance would be the demand actually supplied by the TNEB. If this figure exceeds the quota demand of the TNEB, the consumer would be liable to pay excess demand charges at the rates stipulated in the order of the Commission in M.P.No.42 of 2008. Similarly, the energy purchased from captive and third party sources would be subtracted from the total energy consumed by the consumer. The balance would be deemed to be the energy actually supplied by the TNEB. If this quantum exceeds the energy quota of the TNEB, the consumer would be liable to pay excess energy charges at the rates stipulated in the order of the Commission in M.P.No. 42 of 2008."

6. In the considered opinion of this Court, the deduction of the wind energy generated from the current consumption bill are two different exercise and it appears that as per the directions of TNERC, certain adjustment has to be made. Therefore, this Court is inclined to issue appropriate direction to the 3rd respondent to consider the representation of the petitioner and pass orders taking into consideration all relevant factors as well as the report of the Superintending Engineer, Tirunelveli and the details regarding the wind energy generated by the petitioner during the relevant time.

7. In the light of the above, the writ petition is disposed of by remanding the matter to the 3rd respondent with a direction to the petitioner to submit a representation enclosing all records and seeking request for adjustment of the wind energy stated to be generated by the respondent. On such representation, the 3rd respondent shall consider the same and pass orders on merits and in accordance with law.

8. When this writ petition was entertained, an interim order was passed subject to payment of Rs.2,00,000/- and the petitioner has paid the amount. In the light of the above, no coercive action shall be initiated by the 3rd respondent against the petitioner by demanding any further amount till orders have been passed by the 3rd respondent in terms of the above direction.



9. The above direction shall be complied with by the 3rd respondent within a period of eight weeks from the date on which the representation is given. No costs. Connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

mp

To

1. The Chairman,
TANGEDCO, Anna Salai,
Chennai - 2.
2. The Chief Engineer,
Distribution,
TANGEDCO,
Chennai North, Chennai - 2.
3. The Superintending Engineer,
CEDC/North, Chennai -2.
4. The Accounts Officer (Revenue),
TANGEDCO, CEDC/North,
Anna Salai, Chennai - 2.

+1 CC to Mr.K.Seshadri, advocate sr 104001

+1 CC to Mr.P.R. Dhilip Kumar, Advocate sr 103940.

W.P.No.21297 of 2013
and M.P.No. 1 of 2013

NRL (CO)
SP (20/02/2020)