

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2019

CORAM

THE HON'BLE Mr. JUSTICE M.DHANDAPANI, J.

W.P.No.30213 of 2004
W.P.M.P.No.175 of 2010

Aluminum Powder Company Limited
Rep.by its Director,
Gunasingh Chelladurai
Melakkottai
Thirumangalam-625 706.
Madurai District.

...Petitioner

Vs

1. Tamil Nadu Electricity Board
Rep.by its Chairman,
No.800, Anna Salai,
Chennai-600 002.
 2. The Chief Financial Controller,
Tamil Nadu Electricity Board,
No.800, Anna Salai,
Chennai-600 002.
 3. The Chief Engineer Non conventional Energy Sources,
Tamil Nadu Electricity Board,
No.800, Anna Salai,
Chennai-600 002.
 4. The Superintending Engineer,
Madurai Electricity Distribution Circle,
Tamil Nadu Electricity Board,
K.Pudure, Madurai-625 002.
- ... Respondents

PRAYER: 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 3rd respondent relating to the proceedings of the 3rd respondent dated 19.03.2003 having CE/NCES/EE/HPP/A2/F.Metal Powder/D.1661/2003 and quash the same as far as the said proceedings has directed the amount due to the petitioner after obtaining necessary instructions from accounts branch, head quarter office, since an amount has to be

collected from their group concern, M/s.Metal Powder Company Limited, based on the audit remarks and direct the respondents to release the sum of Rs.14,18,129/- towards the sale of balance unadjusted units generated from the wind farm set up by the petitioner to the 1st respondent together with interest thereon at 12% from the date of entitlement to the date of payment.

For Petitioner : Mrs.Nalinichidambaram
senior counsel for Mrs.C.Uma

For Respondents: Mr.P.R.Dhilip Kumar
Standing counsel

O R D E R

The petitioner has filed a writ petition for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent relating to the proceedings of the 3rd respondent dated 19.03.2003 having CE/NCES/EE/HPP/A2/F.Metal Powder/D.1661/2003 and quash the same as far as the said proceedings has directed the amount due to the petitioner after obtaining necessary instructions from accounts branch, head quarter office, since an amount has to be collected from their group concern, M/s.Metal Powder Company Limited, based on the audit remarks and direct the respondents to release the sum of Rs.14,18,129/- towards the sale of balance unadjusted units generated from the wind farm set up by the petitioner to the 1st respondent together with interest thereon at 12% from the date of entitlement to the date of payment.

2. The case of the petitioner is that he is in the business of manufacturing of non ferrous metal powders used mainly in industrial applications like manufacture of paints, color printing, cellular concrete, brake lining, crackers and fire works and as solid fuel by ISRO and Defence. The petitioner has set up the manufacturing unit in Melakkottai, Thirumangalam, Madurai District, State of Tamil Nadu.

3. The manufacturing units are power intensive. In the course of its business, the petitioner had set up wind mills in the Districts of Kanyakumari and Tirunelveli in the State of Tamil Nadu to save electricity costs. The power generated by the wind mills are used for captive consumption and the surplus energy, if any, will have to be sold only to TNEB, the 1st respondent herein, which has sole monopoly for distribution and transmission of power in the State of Tamil Nadu. No third party sale is permitted in Tamil Nadu. On 16.06.2000, the petitioner vide his letter No:414 requested the 3rd respondent for approval of sale of surplus energy. On 17.07.2000, the 3rd respondent vide his letter No.CE/NCES/EE/C/A3/F. Aluminium

Powder/D.1668/2000 confirmed to the petitioner that the sale of surplus energy to TNEB has already been complied with and issued the NOC approval letter. Again by letter dated 14.09.2000, the 3rd respondent wrote to the petitioner confirming the contents of the letter dated 17.07.2000 regarding sale of surplus energy available, after adjusting in the petitioner H.T.Sc.No.48 of Madurai EDC, generated from petitioner wind mill having SC.No.319 of Tirunelveli EDC. On 13.10.2000, the petitioner, based on 3rd respondent letter No.CE/NCES/EE/C/A3/F.Aluminium Powder/D.1668/2000 dated 17.07.2000 and CE/NCES/EE/C/A3/F.Aluminium Powder/D.1965/2000 dated 14.09.2000, wrote to the 4th respondent that as per the revised procedure for wind mill powder generation, the petitioner has to encash the balance unadjusted units of 525233 units. The petitioner has raised invoice for the value of Rs.14,18,129.10/- towards sales of balance unadjusted units generated and supplied.

4. On 27.03.2001, the 4th respondent raised objection with reference to the dismantling and merger of the wind mills without proper approval of the 3rd respondent. The 3rd respondent wrote to the 4th respondent by letter dated 19.03.2003 stating that there was no need for separate approval for the merger, since it is made in the field within the power. However by the same letter, the 3rd respondent stated that regarding the demand for Rs.49 lakhs. Challenging the said order, the present writ petition is filed.

5. The learned counsel for the petitioner would submit that the third respondent/Chief Engineer passed the impugned order dated 19.03.2003. It clearly shows that third respondent issued a direction to the fourth respondent/the Superintending Engineer to consider the request of the company after receipt of the copies of the said agreements executed by the company from SE/KKEDC and the amount eligible to the company may be arranged to be released in favour of the petitioner, but till date, the amount has not released in favour of the petitioner. The learned counsel would further submit that as per the Clause 20 of the agreement, company agreed that transaction between the company and the Board would be settled on a monthly basis and the company would be billed only for the net excess energy drawn by the Company from the Grid at appropriate tariff in force from time to time. If the energy by the company is less than the power generated by the Wind Mill, then the excess energy generated would be adjusted in the next month's account subject to the condition that the company would be allowed to accumulate energy only for a maximum period of 3 months.

6. The learned counsel for the respondents would refute the allegations raised by the learned counsel for the petitioner.

7. A perusal of the impugned order clearly shows that by letter dated 19.03.2003, the third respondent, has requested the Superintending Engineer/4th respondent to consider the request of the company, after receipt of the copies of the agreements executed by the company SE/KKEDC, and the amount eligible to the company may be arranged to be released after obtaining necessary instruction from Accounts Branch, Head Quarters Office, since amount has to be collected from their group concern, M/s.Metal Powder Company Limited, based on audit remarks. However, till date, no effective steps have been taken by the fourth respondent.

8. Hence, this Court is inclined to issue a direction to the 4th respondent to comply with the order dated 19.03.2003, and pass appropriate order within a period of six weeks. If the petitioner's company is eligible to the said amount, the same may be paid. In case, any excess amount is in favour of the petitioner, the same may be adjusted in the future bills.

9. Accordingly, the writ petition is disposed of with the above direction. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

ssb

To

1. Tamil Nadu Electricity Board
Rep.by its Chairman,
No.800, Anna Salai,
Chennai-600 002.
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4. The Superintending Engineer,
Madurai Electricity Distribution Circle,
Tamil Nadu Electricity Board,
K.Pudure, Madurai-625 002.

+1cc to Mrs.C.Uma, Advocate SR.60078

+1cc to Mr.P.R.Dhilip Kumar, Advocate SR.60119

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EU(CO)
CB(11/10/2019)



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