IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2019

CORAM

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

W.P.No.30214 of 2004

The Metal Powder Company Limited
Rep.by its Managing Director,
Mr.Gunasingh Chelladhurai
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 having Ref.CE/NCES/EE/WPP/A2/F.Metal Powder/D 40/2003 dated 05.05.2003 and quash the same in so far as the guideline No.iii of the 1st respondent is concerned and consequently direct the 1st respondent to direct the 4th respondent to make payment for the surplus energy of 44,66,677 units amounting to Rs.1,15,34,818 supplied during the period June 1998 to August 2000 along with interest at 12% thereon from the date of entitlement to the date of payment.

For Petitioner : M/s.Nalini Chidambaram
Sc for Mrs.C.Uma

For Respondents: Mr.P.R.Dhilipkumar

O R D E R

The petitioner has filed the writ petition for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent having Ref.CE/NCES/EE/WPP/A2/F.Metal Powder/D 40/2003 dated 05.05.2003 and quash the same in so far as the guideline No.iii of the 1st respondent is concerned and consequently direct the 1st respondent to direct the 4th respondent to make payment for the surplus energy of 44,66,677 units amounting to Rs.1,15,34,818 supplied during the period June 1998 to August 2000 along with interest at 12% thereon from the date of entitlement to the date of payment.

2. The case of the petitioner is that he is in the business of manufacture 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 manufacturing units in Melakkottai, Thirumangalam, Madurai District, State of Tamil Nadu.

3. The manufacturing units are power intensive. In the course of its business, the petitioner 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.

4. The petitioner learnt about memo dated 20.05.2000 issued by Chief Engineer NCES, TNEB, Chennai giving working instructions, setting out revised procedure for Wheeling and Banking facility for the surplus energy available, after adjusting in Industrial service connections for the implementation of Permanent BP(FB) No.63 Technical Branch dated 12.04.2000.

5. The writ petition is concerned with the period June 1998 to August 2000. As per the above said working instructions in force prior to 20.05.2000, wind energy generated can be wheeled after deducting 2% of the generated units to the developer own/subsidiary industrial establishment and adjusted in 3 consecutive billing months. Balance energy can be sold to TNEB at the prevailing rate during generation. Hence, by letter dated

14.09.2000, the petitioner wrote to Superintending Engineer, TNEB, the 4th respondent, that as per the procedure prior to 20.05.2000, the petitioner has to sell the balance surplus energy comprising of 39,11,003 units to TNEB. TNEB has also in turn sold the said surplus energy to 3rd parties. The petitioner claimed the value for the same by raising invoice dated 14.09.2000. The value of the units was fixed at Rs.1,05,59,708.

6. On 12.07.2004, the petitioner met the 1st respondent in person and explained the issues. Further, the petitioner vide their letter No:7952 dated 13.07.2004, wrote to the Chairman, TNEB explained that the amount due from TNEB is around Rs.2,97,86,357/-. The petitioner requested him to review the above subject matter and consider the issue in favor of the petitioner, by taking into consideration of the facts.

7. However, till date, the 1st respondent has not taken any final decision in the matter. The petitioner is entitled to receive the money for the value of the surplus electrical energy generated by the wind farm set up by the petitioner and sold to the TNEB during the period June 1998 to August 2000. But the 1st respondent is not making the payment. Aggrieved by the same, the present writ petition is filed.

8. The learned Senior counsel for the petitioner would submit that the petitioner is entitled to get payment for the surplus energy sold to the 1st respondent as per the terms of the agreement. The 1st respondent has sold the surplus energy supplied by the petitioner to 3rd parties and realized the amounts. In the circumstances, the 1st respondent is under a legal obligation to make payment to the petitioner for the surplus energy of 44,66,677 units amounting to Rs.1,15,34,818/- along with interest thereon.

9. The learned counsel for the respondents would submit that the petitioner had set up Wind Mills in Tamil Nadu State and entered into an agreement with the 1st respondent regarding the sale of surplus power to Tamil Nadu Electricity Board. The petitioner being an agreement holder, is bound by the Terms and Conditions of Supply of Electricity and as such estopped from disputing the demand. Further, the learned counsel submitted that the amounts payable to the petitioner was kept in abeyance in view of the Audit objection. Only on 05.05.2003, the Chief Engineer/NCES clarified the issue by his letter. Thereafter, steps were taken and paid the amount of Rs.45,13,428/- vide cheque No.766048 dated 23.07.2004 for the period of 01/1999 to 03/2000. For the period of 06/1998 to 12/1998 and 04/2001 to 08/2000 banking scheme had been implemented. The payment was not paid for surplus energy, due to the surplus units adjustment in the consumption energy.

10. A perusal of the records clearly shows that an agreement for private Wind Mill Generation dated 31.03.1995 was entered between the Metal Powder Company Limited and the TNEB/1st respondent herein, in connection with the proposal of the petitioner to set up a 2 Nos. wind mill of capacity 250 KW at Kanyakumari District. By letter dated 29.07.1996, the petitioner wrote to the Superintending Engineer TNEB, Madurai, the 4th respondent herein, requesting TNEB to bank 1,35,796 units from WEG over and above the consumption at the factory at Thirumanagalam for future use. It was also stated that the banking commission of 2% shall be deducted from the above units during future adjustment. Though the request was made on 29.07.1996, however the banking facilities was not provided to the petitioner because as per clause 7 it reveals that in case where the consumption of the Wind Mills is more than the generation during a particular month, it will not be carried forward and billing will be done at an appropriate tariff in force from time to time. The company agreed to pay the security deposit towards this, before effecting supply to the Wind Mill. The security deposit as well as other amounts that are required to be deposited from time to time shall be deposited by the Company forth-with on demand by the Board.

11. However, a perusal of Clause 20 shows that the company agrees that the 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.

12. If the company desires, it can opt for the Banking Scheme in terms of B.P.Ms.(FB).No.123(Tech.Branch) dated 29.03.1990 as amended from time to time and sell the surplus energy to the Board at the rate fixed by the Board for the purchase of power under “Power Feed Scheme” on a monthly basis.

13. It is also the undisputed fact that the audit objection was dropped by the audit branch and the petitioner has requested for approval of sale of surplus energy for wind farm No.1 to 186. It is seen from the enclosure sent with letter dated 15.12.2001 that the petitioner has obtained approval for Wind Farm No.309 only for sale of surplus energy. Further it is seen that the petitioner had obtained for banking the energy generated from WF.No.11, 12, 114,115, 162, 179, 184 and 186 only from 29.08.2000 and ends on 31.03.2001 (vide No.SE/MEDC/Mdu/DFC/HT/AS/A1/F.HT 20/D.1323/2001. However, the petitioner has not produced any relevant records against the

respondents Board, as to whether the banking facilities were provided to the petitioner prior to 29.08.2000. In the absence of any materials, the relief claimed by the petitioner cannot be granted.

14. In view of the above lines, this Court is not inclined to grant the relief sought for in the present writ petition. Accordingly, the writ petition stands dismissed. 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.

2. The Chief Financial Controller,
   Tamil Nadu Electricity Board,
   No.800, Anna Salai,
   Chennai-600 002.

3. The Chief Engineer Non Conventional Energy Sources,
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   No.800, Anna Salai,
   Chennai-600 002.

4. The Superintending Engineer,
   Madurai Electricity Distribution Circle,
   Tamil Nadu Electricity Board,
   K.Pudure, Madurai-625 002.

+1cc to Mrs.C.Uma, Advocate SR.60079
+1cc to Mr.P.R.Dhilipkumar, Advocate SR.60120

W.P.No.30214 of 2009

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