

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.06.2019

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.Nos.14507 & 14511 of 2019
& W.M.P.Nos.14514 & 14516 of 2019

M/s.ReGen Powertech Private Limited,
CIN: U40109TN2006PTC085606

Having its Registered Office at
Sivanandam, 1st floor, New No.1,
Pulla Avenue, Shenoy Nagar,
Chennai Tamil Nadu - 600 030,
Represented by its authorized signatory,
Mr.Narayanan.S

... Petitioner
in both cases

/versus/

The Director/Generation,
TANGEDCO (Tamil Nadu Generation and Distribution Corporation
Limited)
No.144, Anna Salai,
Chennai - 600 002.

... Respondent
in both cases

Prayer in W.P.No.14507 of 2019:- Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Certiorari, to call for the records pertaining to Lr.No.:Dir/Gen/CE/NCES/SE/Solar/EE/WPP/AEE2/F.M/s.Regen Powertech Pvt Ltd, D.593/19, dated 30.04.2019 issued to the petitioner by the Director/Generation of the Respondent issued without any jurisdiction.

Prayer in W.P.No.14550 of 2019:- Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of declaration, declaring the commissioning date of the 200 MW Project under the Energy Purchase Agreement dated 19.10.2017 between the Petitioner and the respondent is extended for the period of delay caused by the Respondent in providing the evacuation facility to the petitioner until completion of the same.

For Petitioner : Mr.N.L.Rajah, Senior Counsel
in both cases for Mr.Fox Mandal and Associates

For Respondent : Mr.P.H.Aravindh Pandian,
in both cases Additional Advocate General
Asst. by Mr.S.K.Rameshwar, Sr. Counsel

O R D E R

Heard the learned counsel for the petitioner and the learned Additional Advocate General for the respondent.

2. The learned Senior Counsel for the petitioners and the learned Additional Advocate General appearing for the respondent would intimate the Court that the dispute between the M/s.Regen Powertech Private Limited and Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO), who are the petitioner and the respondent respectively, has to be agitated before the Tamil Nadu Electricity Regulatory Commission (TNERC). Since it is with regard to breach of contract and consequential attempt to invoke bank guarantee. Since the commission is not functioning, writ petition was filed. As far as, merits of the case, the learned Additional Advocate General submitted the order of the TANGEDCO dated 30.04.2019 is totally in consonance with the terms of agreement entered between the petitioner/Regen Powertech Pvt. Ltd., and TANGEDCO, which gives power to invoke bank guarantee in case of breach of agreement, within the stipulated time.

3. However, the Learned Senior Counsel appearing for the petitioner would submit that the alleged breach was not due to inaction on the part of the petitioner but due to the TANGEDCO failure to honor their commitment and failure to arrange for evacuation of 400KV besides other reasons. However, to show their bonafide, out of 200 MW Wind Power contract projects, they have already made functional for evacuating around 49.5MW.

4. After hearing the learned counsels at length about the rival submissions regarding the impugned order, dated 30.04.2019, passed by the TANGEDCO invoking bank guarantee by exercising the clause 16(b) of the Power Purchase Agreement (PPA). The learned counsel for the petitioner as well as the Additional Advocate General for the respondent informed that the Government is going to re-constitute the Tamil Nadu Electricity Regulatory Commission (TNERC) by filling up the vacancies soon.

5. In such circumstances, this Court is of the opinion that when the statutory body to look upon the technical aspects is likely to be constituted soon it is better the said body hear the dispute and arrive at a conclusion.

6. From the records, this Court finds that the bank guarantee furnished by the petitioner herein is valid upon to 30.10.2019. By virtue of the interim order passed by this Court on 16.05.2019, the respondent is restrained from encashing the performance bank guarantee till 19.06.2019.

7. In the light of the subsequent developments, these Writ Petitions are disposed of, with the following directions.

(i). The respondent herein shall not exercise the right of encashing the performance bank guarantee given by the petitioner herein, for a period of three weeks from the date of constitution of TNERC. By that time the petitioner shall approach the TNERC and seek redressal for its grievance.

(ii). The respondent herein is restrained from taking any coercive action for three weeks from the date of Tamil Nadu Electricity Regulatory Commission constituted. The restrained order will be only for the period of three weeks, from the date of TNERC constitution. Thereafter, it is opened for the respondent to proceed, in accordance with law.

8. With the above observations, the Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bsm

TO

The Director/Generation,
TANGEDCO (Tamil Nadu Generation and Distribution Corporation Limited)
No.144, Anna Salai,
Chennai - 600 002.

+2 ccs to Mr.S.K.RameshKumar, Advocate, S.R.No.53279

W.P.Nos.14507 & 14511 of 2019
& W.M.P.Nos.14514 & 14516 of 2019

NR(CO)
SSM(19/07/2019)