

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2020

CORAM:

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

W.P.Nos.27743 and 27744 of 2013

W.P.No.27743/13

M/s.Marudhamalai Andavar Cotton Spinning Mills,
Rep. By its Managing Partner,
V.Vellore, Vagatholuvu P.O.,
Udumalpet.

. Petitioner

Vs

1. Tamil Nadu Generation & Distribution Corporation Ltd.,
Rep. By its Chairman & Managing Director,
5th Floor, NPKKR Maligai,
144, Anna Salai,
Chennai - 2.
2. Chief Financial Controller/Revenue,
Tamil Nadu Generation & Distribution Corporation Ltd.,
144, Anna Salai,
Chennai - 2.
3. Superintending Engineer,
Udumalpet Electricity Distribution Circle,
Udumalpet.
4. Tamil Nadu Electricity Regulatory Commission,
Rep. By its Secretary,
No.19A, Rukmini Lakshmi pathy Salai,
Egmore, Chennai - 8.

.. Respondents

W.P.No.27744/13

M/s.Marudhamalai Andavar Spinning Mills,
Rep. By its Managing Partner
Perur Main Road,
Coimbatore - 641 039.

.. Petitioner

Vs.

1. Tamil Nadu Generation & Distribution Corporation Ltd.,
Rep. By its Chairman & Managing Director,
5th Floor, NPKKR Maligai,
144, Anna Salai,
Chennai - 2.
 2. Chief Financial Controller/Revenue,
Tamil Nadu Generation & Distribution Corporation Ltd.,
144, Anna Salai,
Chennai - 2.
 3. Superintending Engineer,
Tirunelveli Electricity Distribution Circle,
TANGEDCO,
Tirunelveli - 627011.
 4. Superintending Engineer,
Coimbatore Electricity Distribution (Metro) Circle,
TANGEDCO,
Coimbatore - 641 012.
 5. Tamil Nadu Electricity Regulatory Commission,
Rep. By its Secretary,
No.19A, Rukmini Lakshmipathy Salai,
Egmore, Chennai - 8.
- ... Respondents

Prayer in W.P.N.o.27743 of 2013: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records of the third respondent in impugned letter Lr.No.SE/UEDC/AO/Rev./HT/AS/A2/F.Tr.Charges/2013, dated 01.10.2013 and quash the same as being arbitrary, illegal and without authority of law and consequently to direct the respondents to offset the amount of Rs.11,52,192/- receivable by the petitioner on account of unutilized banking units towards transmission charges to the extent of Rs.4,20,098/- and to further to set off any such dues from the petitioner arising in the present or in the future, against the aforementioned amount of Rs.11,52,192/- receivable by the petitioner.

Prayer in W.P.N.o.27744 of 2013: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus to direct the respondents to offset the amount of Rs.20,09,354/- receivable by the petitioner on account of unutilized banking units for HT SC No.605 and HT SC No.1073 for the period from 01.04.2012 to 31.03.2013 towards transmission charges due from the petitioner to the extent of Rs.8,81,649/- and to further to set off any such dues from the petitioner arising in the present or in the future, against the

aforementioned amount of Rs.20,09,354/- receivable by the petitioner.

For petitioner in both Wps : Mr.Rahul Balaji
For Respondents in both WPs: Mr.N.Damodaran, Sr.S.C.

COMMON ORDER

Two writ petitions have been filed by two Companies who are Spinning Mills and they challenged the proceedings issued by the third respondent dated 01.10.2013 and seek for consequential direction to set off the amount of Rs.11,52,192/- and Rs.20,09,354/- respectively stated to be receivable by the petitioners on account of unutilized banking units towards transmission charges to the extent of Rs.4,20,098/- and Rs.8,81,649/- respectively and to further to set off any dues from the petitioners arising in the present or in the future against the amount of Rs.11,52,192/- and Rs.20,09,354/- respectively.

2. Mr.Rahul Balaji, learned counsel appearing for the petitioners submitted that the petitioner in W.P..No.27743 of 2013 had challenged the impugned proceedings dated 01.10.2013, however, on account of subsequent developments, the Court can dispose of these writ petitions by issuing certain directions by taking note of the orders passed by the Tamil Nadu Electricity Regulatory Commission (for brevity "TNERC") in R.A.No.6 of 2013, dated 31.03.2016.

3. Mr.N.Damodaran, learned Senior Standing Counsel appearing for the respondents/Electricity Board does not have any written instruction to the said effect and would seek time to file counter affidavit and contest these writ petitions, if need arises.

4. The first issue to be considered is whether the correctness of the impugned communication needs to be considered in these writ petitions on account of the subsequent developments taken place during the pendency of these writ petitions. It is the case of the petitioners that the TNERC has not passed any clarification order as directed by this Court in W.P.(MD).No.12650 of 2012, dated 17.10.2012. Even the order passed by the APTEL in Appeal Nos.197, 198, 200, 201, 208 of 2012 and 6 of 2013, dated 24.05.2013, has not been acted upon and complied with by the TNERC. Therefore, the petitioners contended that the matter of assessment charges and banking charges needs to be considered by the TNERC and final order has to be passed in view of the direction given by this Court as well as APTEL. Hence, the petitioners contend that since the levy of transmission charges has not attained finality, it is

arbitrary and illegal on the part of the respondents 1 and 2 to deny the adjustment of the amount receivable by the petitioners towards unutilized banking units and towards the payment of transmission charges on the untenable ground that the former is payable at the banking end, while the later is payable at the consumer end.

5. It is seen that the TNERC has passed orders in R.A.No.6 of 2013, dated 31.03.2016, by taking note of the directions issued by the APTEL in Appeal Nos.197, 198, 200, 201, 208 of 2012 and 6 of 2013, dated 24.05.2013. Therefore, in the light of the subsequent developments, this Court is of the view that the stand taken by the petitioners at this juncture appears to be reasonable and the third respondent/Superintending Engineer of the respective Distribution Circle should be directed to consider the effect of the order passed by the TNERC dated 31.03.2016 in R.A.No.6 of 2013 and the correctness of the impugned order is not required to be adjudicated at this juncture and the issue is left open to be decided by the third respondent/Superintending Engineer of the respective Distribution Circle, after taking note of the order passed by the TNERC dated 31.03.2016. Therefore, this Court is of the view that writ petitions could not be adjudicated and disposed of with certain directions.

6. In the light of the above, the writ petitions are disposed of by directing the petitioners to submit a representation to the third respondent/Superintending Engineer of the respective Distribution Circle with copies to the respondents 1 and 2 by placing reliance on the orders passed by the TNERC dated 31.03.2016 in R.A.No.6 of 2013 and raising all the contentions open to them both on facts as well as law, within a period of eight weeks from the date of receipt of a copy of this order. On receipt of the same, the third respondent//Superintending Engineer of the respective Distribution Circle shall consider the representation taking note of the orders passed by the TNERC dated 31.03.2016 in R.A.No.6 of 2013 and pass orders on merits and in accordance with law within a period of 12 weeks thereafter. While doing so, the third respondent/Superintending Engineer of the respective Distribution Circle shall consider the prayer for adjustment made by the petitioners with regard to payment for unutilized banking units. No Costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

To

1. The Chairman & Managing Director,
Tamil Nadu Generation & Distribution Corporation Ltd.,
5th Floor, NPKKR Maligai,
144, Anna Salai,
Chennai - 2.
 2. Chief Financial Controller/Revenue,
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 4. The Secretary,
Tamil Nadu Electricity Regulatory Commission,
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Coimbatore Electricity Distribution (Metro) Circle,
TANGEDCO,
Coimbatore - 641 012.
- +1 CC to Mr.R.Parthasarathy, Advocate sr 5788.

W.P.Nos.27743 and
27744 of 2013

RP (CO)
SP (21/02/2020)

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