

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.03.2020

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.5874 of 2020

and

WMP.No.6887 of 2020

Tirunelveli Solar Project Pvt. Ltd.,
Rep. by Mr.P.Elavarasu, Asst. General
Manager – Project,
S/o. R. Purushothaman,
29, Hare Krishnam Regency,
Rampura Road, Sukhiya,
Sanganer, Jaipur,
Rajasthan – 302 011.

... Petitioner

-vs-

1. Tamil Nadu Generation and
Distribution Corporation Limited (TANGEDCO),
Rep. by its Chairman,
No.144, Anna Salai,
Chennai – 600 002.

2. The Chief Engineer,
NCES – TANGEDCO,
No. 144, Anna Salai,
Chennai – 600 002.

3. The Tamil Nadu Electricity Regulatory Commission,
Represented by its Chairperson,
No. 19 -A, Rukmini Lakshmipathy Salai,
Marshalls Road,
Egmore, Chennai – 600 003.

...Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, forbearing the respondents 1 and 2 in any way encashing the Bank Guarantee in BG.No.3188317BG0000544 dated 27.09.2017 executed by the petitioner in State Bank of India, Jaipur Branch pending hearing of the petition in S.R.No.23 of 2020 filed by the petitioner before the 3rd respondent.

For Petitioner : Mr. P.Wilson, Senior counsel
for Mr.Richardson Wilson

For Respondents : Mr.Vijay Meghanathan

ORDER

Heard Mr.P.Wilson, learned Senior Counsel assisted by Mr.Richardson Wilson, learned counsel for the petitioner and Mr.Vijay Meghanathan, learned counsel for the respondents.

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

3. The petitioner seeks for issuance of a writ of mandamus to forbear the respondents 1 and 2 from encashing the Bank Guarantee/Performance Guarantee furnished by the petitioner for

completion of the works allotted in the letter of intent dated 29.08.2017 for establishment of 100 MW solar power plant and for sale of solar power to TANGEDCO.

4. The petitioner has moved this Court on the limited ground that in terms of the letter of intent, if the petitioner, which is a special purpose vehicle formed for the project, seeks extension of time to complete the project, then they have to approach the Tamil Nadu Electricity Regulatory Commission (TNERC) and the petitioner had filed an application before TNERC on 05.02.2020. However, the application is yet to be numbered and has been assigned S.R.No.23 of 2020 and the matter has been placed before the Secretary because the petitioner is yet to pay the 1% of the value of the security furnished for the prayer to prevent precipitative action. The learned Senior Counsel submitted that the petitioner is ready and willing to pay the court fee and reasonable time may be granted because the TNERC has to hear the petition.

5. The learned Standing Counsel for the respondents submitted that the Bank Guarantee has been invoked by the Chief Engineer on 24.02.2020 on the ground that the petitioner defaulted in compliance of

the terms and conditions of the agreement. It is stated in the said communication that the petitioner has commenced their project only on 29.01.2020 and there is a delay of 123 days from the scheduled date of commissioning and as the company has commissioned the 100 MW solar project beyond the scheduled date of commissioning. As per the terms and conditions of Letter of Intent, the Performance Bank Guarantee shall be forfeited in proportionate to the delay period, which has been computed by the respondent at Rs.16,07,84,370/-.

6. It is not disputed by the respondent that though the Bank Guarantee has been invoked and the encashment is yet to take place. The law on the subject i.e., Power of the Court to injunct the encashment of Bank Guarantees, have been well settled and there is no pleading as fraud having been committed to prevent the respondent from encashing Bank Guarantee. Therefore, under normal circumstances, the prayer sought for in this writ petition should be rejected.

7. After considering the fact that the letter of intent provides for a remedy only before the TNERC, and not by way of arbitration, the present case can be treated as a distinct matter and the fact remains that

the petitioner has also moved the TNERC on 05.02.2020 and the matter is in the S.R. Stage.

8. In the light of the above, this Court is inclined to issue the following direction treating the facts of the case as peculiar.

9. In the result, the writ petition is disposed of by directing the petitioner to remit the 1% value as court fee as directed by the TNERC by order dated 27.02.2020 and if the same is done and the petition is in otherwise in order, the TNERC may consider the petition at the earliest. The writ petitioner is at liberty to mention before the Commission for earlier listing of the matter. It is pointed out by learned counsel on either side that TNERC will give a hearing within two weeks. Therefore, the respondent TANGEDCO shall not insist upon encashment of the Bank Guarantee till 23.03.2020.

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10. If the petitioner seeks for any further protection from precipitative action, it is open to the petitioner to move the TNERC.

T.S.Sivagnanam, J.

mp

With the above observation, the writ petition stands disposed of.

No costs. Connected miscellaneous petition is closed.

06.03.2020

Speaking Order : Yes/ No
Index: Yes/ No
mp

To

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