

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, THE CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

WRIT APPEAL NO.597 OF 2020 AND C.M.P.NO.8313 OF 2020

1. Tamil Nadu Transmission Company
(TANTRANSCO), Chennai 600 002.

2. State Load Dispatch Centre
C/o TANTRANSCO, 144, Anna Salai
Chennai 600 002

Appellants

-Vs-

1. OPG Power Generation Private Limited
OPG Nagar, Periyaobalapuram Village
Nagarajakandigai, Madharapakkam Road
Gummidipoondy, Thiruvallur
Tamil Nadu 601 201.

2. Tamil Nadu Generation and Distribution
Corporation Limited, rep.by its Chairman
NPKRR Maaligai, 144, Anna Salai
Chennai 600 002.

3. The Chief Financial Controller / Revenue
TANGEDCO (Accounts Branch)
144, Anna Salai, Chennai - 600 002.

4. The Superintending Engineer
CEDC/North, Chennai 600 002.

... Respondents

Prayer:

Writ Appeal under Clause 15 of the Letters Patent against
the order dated 12.06.2020 passed in W.M.P.No.9105 of 2020 in
W.P.No.7738 of 2020.

W.M.P.No.9105 of 2020:-

Writ Miscellaneous Petition filed under section 226 of the
constitution of India, praying to stay of all further
proceedings pursuant to the impugned demand letter dated
07/05/2020 bearing Ref.Lr.No.SE/CEDC/N/AAO/HT/FOPG Unit
1/F.CPP/D1725/20 being the demand for open Access charges for

the period of 1st April to 30th April 2020 in respect of the petitioners Medium Term Open Access Agreement (MTOA) dated 27/09/2019 for 53.366 MW and all proceedings Pursuant there to pending disposal of the writ petition file for issuance of a.

W.P.No.7738 of 2020:-

Writ of Certiorari mandamus calling for the records of the 4th respondent in the impugned demand letters bearing reference Lr.NO.SE/CEDC/N/AAO/HT/F OPG UNIT 1/F CPP 1683/20 levying a sum of Rs.98,47,160/- (Rupees Ninety Eight Lakhs Forty Seven Thousand and One Hundred and Sixty Only) as the dues payable for open Access charges for the month of March 2020, to be modified and direct the 4th respondent to revise and refund the proportionate portion of the charges in terms of the petitioners letter dated 09.05.2020 and impugned demand letter dated 07.05.2020, bearing reference Lr.No.SE/CEDC/N/AAO/HT/F.OPG UNIT 1/F.CPP/D.1725/20, for a sum of Rs.54,09,067/- (Rupees Fifty Four Lakhs Nine Thousand and Sixty Seven Only) levied for the month of April 2020, and to set aside the demands to the extent of the period of lockdown as notified by the central and State Governments for the period when there was no utilization of the transmission and distribution infrastructure of the Respondents for the medium term open access due to force majeure conditions and quash the same and to consequently direct the respondents to refund the excess sums collected as requested by the petitioner vide letter dated 09.05.2020 for such period towards open access charges.

For Appellants : Mr.V.Anil Kumar

For Respondents : Mr.Rahul Balaji - for R1

J U D G M E N T

(Delivered by The Hon'ble Chief Justice)

Learned counsel for the appellants has raised several grounds questioning the correctness or otherwise of the impugned order dated 12.06.2020, but the main ground raised is that the learned Single Judge ought not to have entertained the Writ Petition in view of Clause 12 of the agreement, which is extracted hereunder.

"12: Settlement of Disputes : If any dispute or difference on account of difference of any kind whatsoever arises between the parties to this agreement, it shall at the first instance, be settled amicably, by the parties, failing which either party may approach the Commission for the adjudication of such disputes under Section 86(1) (f) of the Electricity Act, 2003."

2. Learned counsel for the respondents submits that the learned Single Judge, after the arguments were heard, proceeded keeping in view of the controversy involved on merits and therefore the writ petition was rightly entertained by the learned Single Judge, as interference was called for on the issues raised in the writ petition.

3. Having heard learned counsel for the parties, since this appeal is only against an interim order passed during the pendency of the writ petition, we find it appropriate that the learned Single Judge may also address himself to the issue relating to the remedy available under Clause 12 of the agreement read with any law applicable in relation thereto, which the learned counsel for the parties will be at liberty to point out, including judgments on issue. The learned Single Judge may accordingly proceed to hear the matter and counsel for the parties agree to appear before the learned Single Judge on 13.08.2020.

4. The appeal stands disposed of with the said observations. No costs. Consequently connected miscellaneous petition is closed,.

5. Registry shall list the writ petition before the learned Single Judge having the roster on 13.08.2020.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

KST

To

1. OPG Power Generation Private Limited
OPG Nagar, Periyaobalapuram Village
Nagarajakandigai, Madharapakkam Road
Gummidipoondy, Thiruvallur
Tamil Nadu 601 201.
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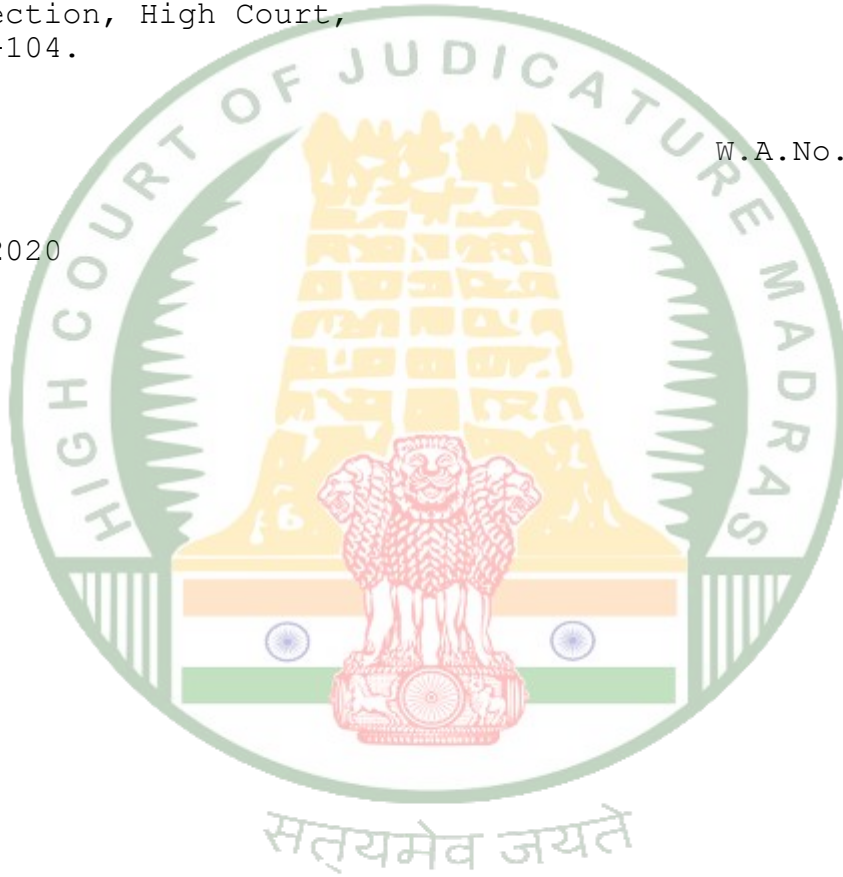
5. The Sub Assistant Registrar,
Writ Section, High Court,
Madras-104.

6. The Section Officer,
Writ Section, High Court,
Madras-104.

W.A.No.597 of 2020

VS (CO)

CS/07/09/2020



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