

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 31-08-2020

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.11694 of 2020

SAS Hotels and Enterprises Limited

...Petitioner

Vs

- 1.The Chairman,
Tamil Nadu Generation and Distribution Corporation Limited,
144, Anna Salai,
Chennai - 600 002.
 - 2.Chief Engineer / NCES,
Tamil Nadu Generation and Distribution Corporation Limited,
2nd Floor, Eastern Wing,
144, Anna Salai,
Chennai - 600 002.
 - 3.Tamil Nadu Electricity Regulatory Commission,
Rep. by its Secretary,
No.19A, Rukmini Lakshmipathy Salai, Egmore,
Chennai -600 008.
 - 4.The Superintending Engineer,
TANGEDCO,
Chennai Electricity Distribution Circle,
No.97, 1st Floor, Kodambakkam High Road,
Nungambakkam,
Chennai - 600 034.
 - 5.The Superintending Engineer,
TANGEDCO,
Coimbatore Electricity Distribution Circle,
Tatabad,
Tamil Nadu - 641 012.
- ...Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned order of the fourth Respondent in Lr.No.SE/CEDC/C/ DFC/AAO/HT/AS/D.1398/2018, dt. 06.08.2018, and quash the same as being arbitrary, illegal and without authority of law and contrary to the provisions of

the Electricity Act 2003 and consequently direct the Respondents to forthwith make payment of the unutilized banked units for the year 2016-17 in terms of the Honble TNERC Order dated 28.01.2020 in R.A. No.7 of 2019 together with interest thereon till the date of payment in accordance with the Tariff order in a time bound manner by making payment for the entire unutilized banked units.

For Petitioner : Mr.Rahul Balaji

For Respondents: Mr.P.H.Arvind Pandian,
Addl. Advocate General.

ORDER

This Writ Petition has been filed, challenging the impugned letter, issued by the fourth respondent, dated 06.08.2018, and for a consequential direction to the respondents to strictly act in accordance with the orders passed by the Tamil Nadu Electricity Regulatory Commission (TNERC) in R.A.No.7 of 2019, dated 28.01.2020.

2. The case of the petitioner is that the dispute with regard to the manner in which the consumption must be calculated has been resolved by TNERC through its order made in R.A.No.7 of 2019, dated 28.01.2020.

3. In view of the orders passed by TNERC, the petitioner seeks to set aside the impugned letter issued by the fourth respondent, dated 06.08.2018.

4. Mr.Rahul Balaji, learned counsel for the petitioner, submitted that TNERC has specifically laid down the procedure for verification of status of Captive Generating Plants and Captive Users. The learned counsel specifically relied upon Clause 7.7.1 of the order of TNERC made in R.A.No.7 of 2019, dated 28.01.2020, which reads as under :

'7.7.1 Verification of criteria of consumption shall be based on the aggregate energy generated from generating unit(s) in a generating station identified for captive use before the commencement of captive wheeling to be determined on annual basis i.e gross energy generated less auxiliary consumption. In the case of wind energy, if the CGP having multiple generating units have separate Energy Wheeling Agreements, aggregate energy of all generating units of the CGP shall be considered irrespective of separate wheeling agreements, provided the captive users of each EWA are the same

holding same proportion of ownership. The quantum of auxiliary consumption shall be the metered auxiliary consumption or the normative auxiliary consumption whichever is less. The captive consumption (the captive user) may be within the premises where the CGP is located or at a different location. In the absence of measured data on auxiliary consumption, until metering as prescribed in para 7.9.1 of this procedure is completed, the normative auxiliary consumption specified in the Regulations of the Commission may be considered for the purpose of CGP verification status.''

5. The learned counsel, by relying upon the above direction issued by TNERC, submitted that the criteria for captive consumption, which is 51% on an annual basis, has been fully met by the petitioner and, in view of the same, the impugned order passed by the fourth respondent requires interference of this Court. The learned counsel further submitted that fourth and fifth respondents must be directed to comply with the orders passed by TNERC and calculate the dues payable to the petitioner.

6. Per contra, Mr. P.H. Arvind Pandian, learned Additional Advocate General, appearing on behalf of respondents 1, 2, 4 and 5, submitted that TNERC has already passed an order by laying down the guidelines and fixing the methodology of verification of the consumption annually by the captive users. The learned Additional Advocate General further submitted that in view of the said order, the respondents 4 and 5 can be directed to once again determine the unutilised banked units in line with the order passed by TNERC and, thereafter, pass a fresh order.

7. On a careful consideration of the submissions made on either side, it is clear that the impugned order, dated 06.08.2018, is no longer sustainable in view of the orders passed by TNERC in R.A.No.7 of 2019, dated 28.01.2020. Accordingly, the impugned order passed by the fourth respondent, dated 06.08.2018, is hereby quashed. The matter is remanded back to the file of fourth and fifth respondents to determine any payment to be made to the petitioner for the unutilised banked units strictly in accordance with the order passed by TNERC in R.A.No.7 of 2019, dated 28.01.2020. The final orders are to be passed within a period of eight weeks from the date of receipt of a copy of this order.

8. Writ Petition is allowed with the above directions.
No costs. Consequently, the connected W.M.P.Nos.14362,
14364,14365 and 14366 of 2020 are closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

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LN(CO)
SP(07/10/2020)