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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2020

CORAM

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

W.P.Nos.13231 and 13232 of 2018
and

W.M.P. Nos. 15586 and 15587 of 2018

W.P. No. 13231 of 2018

Siva Subramania Textiles, HTSC 184,
2/1, Avinashi Road,
Chinniampalayam,
Coimbatore - 641 062.

Rep. by its Authorized signatory P.Thirumoorthy

... Petitioner

Vs

- 1.Tamil Nadu Electricity Regulatory
Commission rep. by its Secretary,
19-A, Rukmini Lakshmipathy Salai,
Egmore, Chennai - 600 008.
- 2.The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited,
144, Anna Salai,
Chennai - 600 002.
- 3.Director Finance,
Tamil Nadu Generation and Distribution
Corporation Limited,
144, Anna Salai,
Chennai 600 002.
- 4.The Superintending Engineer,
TANGEDCO,
Coimbatore Metro Electricity Distribution Circle,
Coimbatore.
- 5.The Superintending Engineer,
TANGEDCO,
Udumalpet Electricity Distribution Circle,
Udumalpet.



6.The Superintending Engineer,
TANGEDCO,
Tirupur Electricity Distribution Circle,
Tirupur.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus forbearing the respondent and their men, agents from collecting current consumption charges, demand charges and any arrears from the petitioner until the respondent makes payment of the outstanding dues of Rs.3,11,971/- (for the year of 2016-2017) payable to the petitioner or give adjustment in the current consumption charges payable by the petitioner till the entire amount is adjusted.

W.P. No. 13232 of 2018

Vellingiri Andavar Textiles (P) Limited, HTSC 345,
2/1, Avinashi Road,
Chinnampalayam,
Coimbatore - 641 062.

Rep. by its Authorized signatory P.Thirumoorthy

... Petitioner

Vs

1.Tamil Nadu Electricity Regulatory
Commission rep. by its Secretary,
19-A, Rukmini Lakshmipathy Salai,
Egmore, Chennai - 600 008.

2.The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited,
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144, Anna Salai,
Chennai 600 002.

4.The Superintending Engineer,
TANGEDCO,
Coimbatore Metro Electricity Distribution Circle,
Coimbatore.



5.The Superintending Engineer,
TANGEDCO,
Udumalpet Electricity Distribution Circle,
Udumalpet.

6.The Superintending Engineer,
TANGEDCO,
Tirupur Electricity Distribution Circle,
Tirupur.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus forbearing the respondent and their men, agents from collecting current consumption charges, demand charges and any arrears from the petitioner until the respondent makes payment of the outstanding dues of Rs.28,17,914/- (for the year of 2016-2017) payable to the petitioner or give adjustment in the current consumption charges payable by the petitioner till the entire amount is adjusted.

For Petitioner (in both W.P's)	: Mr. R.S.Pandiyaraj
For Respondents (in both W.P's)	: Mr. N.Damodharan Standing Counsel

O R D E R

These Writ Petitions have been filed for the issuance of Writ of Mandamus forbearing the respondents from collecting the current consumption charges, demand charges and any arrears from the petitioner till the respondent makes payment of the outstanding dues to the petitioner.

2. When these Writ Petitions were admitted, the following interim order was passed by this Court on 05.06.2018.

" Order: These petitions coming on this day for hearing upon perusing the petitions and the respective affidavits filed in support thereof and upon hearing the arguments of M/s.R.S.Pandiyaraj, Advocate for the petitioner in both the petitions and of Mr. C.Manishankar, Additional Advocate General Assisted by the M/s. S.K.Raameshuwar, Standing Counsel for the respondents 2 to 6 in both the petitions the Court made the following order:

Mr. C.Manishankar, learned Additional Advocate General assisted by the learned standing counsel for the respondents 2 to 6, on instructions, submitted that the service connection enjoyed by the petitioners will not be disconnected till 18.06.2018."



3. Pursuant to the above order, the Chief Financial Controller / Revenue TANGEDCO issued the following memo dated 14.06.2018 and the same is extracted hereunder:

"M/s.Karur Vysya Bank, WTG - HT SC No.GA2-T.42, Theni EDC, has requested to instruct the concerned officials to admit the claim and to make the payment for the unutilized banked energy for the FY 2015-16 and 2016-17 in respect of WTG-HT SC No.GA2-T.42, Theni EDC.

2.0. In this connection it is stated that the instructions were issued to the EDCs vide reference (2) in connection with the payment for surplus energy. The operative portion of the said circular is re-produced below:

"xxxxxxx

7. As per Regulation 23 of the Grid Connectivity and Intra-State Open Access Regulation - 2014, an Open Access customer is liable to pay Cross Subsidy Surcharge. As per Regulation 3(q), an Open Access customer means a consumer, trader, Distribution Licensee or a generator who has been drawn granted Open Access under the regulation. Open Access consumers who draw energy under captive category are also the owners of the Generating plant to the extent of their equity share holding. Therefore unless CGP verification process is completed, exact quantum of the amount payable to the generators for the unutilized banked energy / injected energy cannot be ascertained. Therefore, all the invoices seeking payment for unutilized energy / injected energy shall be kept in abeyance in respect of all Generators with wheeling under captive category such as thermal, wind, solar, biomass, bagasee, etc., if any, till Captive Generator status is ascertained [i.e., those covered under Energy Wheeling Agreement] and all such details shall immediately be arranged to be submitted to this office as per the format enclosed for arranging further action."

2.1 Based on the above instructions, the Generating End EDCs have kept pending the invoices claimed by the Wind Generator. Likewise, the case of M/s.Karur Vysys Bank's invoices for the FY 2015-16 and 2016-17 were also kept pending in Theni EDC.



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2.2 Subsequently, some of the captive generators / consumers have filed petitions before the Hon'ble High Court of Madras and obtained interim orders to adjust the outstanding amount pending with TANGEDCO against the CC Charges.

2.3 In continuation, M/s.Vellingiri Andavar Textiles (P) Limited (W.P.No.13231/2018) and M/s.Siva Subramania Textiles (W.P.No.13232/2018) of Coimbatore Metro EDC have filed petitions before the Hon'ble High Court of Madras with a prayer to issue directions to the respondents not to demand current consumption charges, demand charges and any arrears from the petitioner until the respondent makes payment of the outstanding dues pending towards unutilised wind energy and the Hon'ble Court has passed the following interim order on 05.06.2018.

"xxxxxx

These petitions coming on this day for hearing upon perusing the petitions and the respective affidavits filed in support thereof and upon hearing the arguments of M/s.R.S.Pandiaraj, Advocate for the petitioner in both the petitions and Mr.C.Manishanker, Additional Advocate General assisted by the M/s.S.K.Raameshuwar, Standing Counsel for the respondents 2 to 6 in both the petitions, the Court made the following order:

Mr.C.Manishankar, learned Additional Advocate General assisted by the M/s.S.K.Raameshuwar, Standing Counsel for the respondents 2 to 6 in both the petitions, on instructions, submitted that the service connection enjoyed by the petitioners will not be disconnected till 18.06.2018".

2.4 Further it is stated that vide reference (3) cited above, instruction have been issued to the SE/Tirunelveli EDC in connection with payment for surplus wind energy. The operative portion is as follows:

"xxxxxx

4.0 Hence, the Superintendent Engineer / Tirunelveli EDC is requested to process the claim made by the wind energy generators (100% ownership cases) towards surplus wind energy for the financial years 2014-15 to 2017-18 though they have not fulfilled the captive status since this circular is issued by



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superseding the earlier circular dated 11.07.2014. The CSS has to be collected for the energy adjusted in respective financial years from those wind energy generators / captive users. Since the CGP status verification case is pending before the Hon'ble High Court of Madras and as per interim order of the Court TANGEDCO cannot issue demand notice for the CSS. Therefore, the Superintending Engineer / Tirunelveli EDC is requested to obtain necessary undertakings for the following categories:

i. Category - I:

If the captive user is satisfied the twin rules, undertaking in enclosed format - I shall be obtained before releasing the payment for surplus wind energy.

ii. Category - II:

If the captive generator / user fails to satisfy the twin requirements of Rule - 3 of Electricity Rules - 2005 and comes to pay the CSS voluntarily then the same shall be collected before releasing the payment by obtaining the undertaking in enclosed format - I.

iii. Category - III:

If the captive generator / user fails to satisfy the twin requirements of Rule - 3 of Electricity Rule - 2005 and not comes forward voluntarily to pay the CSS then the same cannot be demanded since the CGP status verification case is pending before the Hon'ble High Court of Madras. In those cases, the payment may be released after obtaining undertaking in enclosed format - II."

3.0 In view of the above, all the SE/EDCs are instructed to follow the above instructions vide Memo.No. CFC/REV/FC/REV/DFC/AAO/HT/D.324/18 dated 16.05.2018 in respect of 100% ownership cases and to take necessary action to release the payments at the earliest."

4. Learned counsel appearing on behalf of the petitioner submitted that pursuant to the above memo, the entire amount due and payable to the petitioner has been adjusted towards the current consumption charges payable to the petitioner.



5. Recording the submissions of the learned counsel appearing on behalf of the petitioner, these Writ Petitions are closed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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