

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.3409 of 2015
and
M.P.Nos.1, 2 & 3 of 2015

(Through Video Conferencing)

M/s. ARS ENERGY PVT. LTD,
D-109, 2nd Floor, LBR Complex,
Anna Nagar East, Chennai - 102.
Rep. by its Deputy Director N.Prabu. Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Energy Department, Fort St.George,
Chennai - 600 009.
- 2.The Tamil Nadu Transmission Corporation,
(TANTRANSCO),
Rep. by its Managing Director,
No.144, Anna Salai,
Chennai - 600 002.
- 3.The Tamil Nadu Generation and Distribution
Corporation Ltd.,
(TANGEDCO),
Rep. by its Chairman and Managing Director,
No.144, Anna Salai, Chennai - 600 002.
- 4.The Superintending Engineer,
Chennai Electricity Distribution Circle/North,
TANGEDCO,
No.144, Anna Salai, Chennai - 600 002. Respondent

(Cause title amended vide order dated
18/02/2021 made in WMP.4258/2011 in
WP.3409/2015)

Writ Petition filed under Article 226 of the Constitution
of India, to issue a Writ of Mandamus, directing the 4th
respondent herein to pay the sum of Rs.10,35,74,823/- (Rupees

Ten Crores Thirty Five Lakhs Seventy Four Thousand Eight Hundred and Twenty Three Only) being the belated payment surcharge payable to the petitioner for the delayed payment of the price of energy supplied by the petitioner to the respondents pursuant to Short Term Open Access Agreement dated 30.09.2014 in terms of Clause 23 of the Tender Specification of the 2nd respondent in respect of Tender No.6 of 2014.

(Prayer amended vide order dt.18.02.2021 made in WMP 4259/2021 in WP.3409/2015)

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel
assisted by Mr. Kartik Lakshmanan
for Mr.K.Seshadri

For R1 : M/s.RM.Muthukumar

For R2 to R4 : Mr.P.R.Dhilipkumar

ORDER

This Writ Petition has been originally filed for a Writ of Mandamus to direct the fourth respondent to pay a sum of Rs.30,62,33,357/- (Rupees Thirty Crores Sixty Two Lakhs Thirty Three Thousand Three Hundred and Fifty Seven only) being the amount due and payable by the fourth respondent as of December 2014 for the energy supplied by the petitioner to the fourth 4th respondent or to cancel the STOA agreement dated 30.09.2014 for non payment of the price for the energy supplied by the petitioner under the agreement and to permit the petitioner to have Intra State Open Access to supply power to the H.T.Consumers within the State of Tamil Nadu as directed in the G.O.Ms.No.10 Energy (C3), dated 27.02.2009 and G.O.Ms.No.77 Energy (A1), dated 10.10.2014.

2. It is submitted that during the pendency of the present Writ Petition, respondents have paid the due amount of Rs.168,65,36,498/- on various dates. However, no interest has been paid for the delay in payment of due amount. The petitioner is therefore now confining the relief only to the interest of Rs.10,35,74,823/- (Rupees Ten Crores Thirty Five Lakhs Seventy Four Thousand Eight Hundred and Twenty Three Only) by calculating the interest on the daily at 15% per annum from the date of receipt of the bills. W.M.P.No.4258 of 2021 has been filed to amend the prayer of the present Writ Petition. By an order dated 18.02.2021, the said W.M.P. was ordered to amend the prayer in the said Writ Petition as follows:-

To direct the fourth respondent herein to pay a sum of Rs.10,35,74,823 (Rupees Ten Crores Thirty Five Lakhs Seventy Four Thousand Eight Hundred and Twenty Three Only) being the belated payment surcharge payable to the petitioner for the delayed payment of the price of energy supplied by the petitioner to the respondents pursuant to Short

Term Open Access Agreement dated 30.09.2014 in terms of Clause 23 of the Tender Specification of the second respondent in respect of Tender No.6 of 2014.

3. It is the case of the petitioner that it engaged in generation and supply of Electrical Engery. A Short Term Open Access Agreement dated 30.09.2014 was signed between the petitioner and the fourth respondent pursuant to a tender floated by the Government of Tamil Nadu in Tender No.6 of 2014. Under the said aggreement, the petitioner was required to supply energy to the respondents for a period between 01.10.2014 and 30.09.2015. The agreement stipulates that in case of violation of any terms and conditions and / or non payment of the charges payable, the transaction can be terminated and action can be taken as per Electricity Act, 2003.

4. The learned senior counsel for the petitioner has filed additional typed set of papers containing case laws and copy of the Tender No.6 of 2014. The learned senior counsel for the petitioner specifically drew my attention to Clause 23(f) of the Tender Documents.

5. The learned senior counsel also refers to a decision of the Division Bench of this Court in W.A.Nos.4189, 4194, 4197, 4201, 4204 & 4205 of 2019, wherein, while dealing with an identical situation, the Court has dismissed the writ appeals filed by the Electricity Department with the following observations:-

9.We are afraid we cannot accept this contention. In the regime entered into by the writ petitioner, they were selling the electricity at a rate less than Rs.2.90 and they were also getting certificates, which could be traded. They are not even getting the payment for the electricity purchased, which was at a much lower rate than the other writ petitioners and thereby putting them in a situation which is worser than the other writ petitioners. The appellants, after agreeing to pay the amount before the Court on 26.04.2019 cannot be permitted to take advantage of their own wrong.

6. The learned counsel for the petitioner therefore submitted that the respondents are duty bound to pay interest at 15% being the contractual rate.

7. Per contra, the learned counsel for the respondents submitted that the writ petition is not maintainable. It is

submitted that in case of violation of any terms and conditions and / or non payment of any of the charges payable for the energy supplied, this transaction was permitted to be terminated and action could be taken as per Electricity Act 2003.

8. The learned counsel for the respondents submitted that as per the agreement, conditions in Tender No.6 of 2014 pursuant to which Short Term Open Access Agreement dated 30.09.2014 was entered into between the petitioner and the fourth respondent stipulate that the petitioner has to approach the State Commissioner under the Electricity Act, 2003 in case of any dispute.

9. The learned counsel for the respondents further submits that in case violation of the non payment of charges payable only, the permitted transaction will be terminated and action can be taken as per the Electricity Act, 2003. It is submitted that under the Electricity Act, 2003, this is a separate method of resolving the dispute and therefore, this Writ Petition is not maintainable.

10. He further submitted that the claim in this writ petition was exaggerated for a sum of Rs.10,35,28,556/-. The amount that was payable to the petitioner for the energy supplied was Rs.168,65,36,498/- and was paid and therefore the remedy in this writ petition has worked during the pendency of this writ petition.

11. By way of a rejoinder, the learned senior counsel for the petitioner invited attention to the decision of the Division Bench of this Court in W.A.Nos.1652 and 1653 of 2013, dated 06.11.2013.

12. He submitted that the learned Single Judge of this Court in an order dated 15.09.2020 in W.P.No.9319 of 2020 noted the above order and held that the petitioner therein was entitled to receive amounts.

13. Opposing the prayer of the petitioner, the learned counsel for the respondents submits that the remedy in this writ petition has worked out during the pendency of the writ petition as principal due under the Contract / Agreement signed by the petitioner has been paid. He further submits that the petitioner has an alternate remedy and therefore, this Writ Petition is liable to be dismissed.

14. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for first respondent and the learned counsel for the second to fourth respondents.

15. Short Term Open Access Agreement dated 30.09.2014 is silent regarding payment of interest. At the same time, in the Tender Document, it is stated that if the payment is outstanding beyond the due date by TANGEDCO, then surcharge as applicable will be paid on daily basis at 15% per annum.

16. Clause 23(f) of the Tender Documents in Tender No.6 of 2014 is reproduced below:-

"23.Billing and Payment Term:-

f. The due date for payment of monthly energy bills will be 30 days from the date of receipt (excluding the date of receipt) of bill in complete shape from the bidder. If the payment is made within 7 (seven) working days from the date of receipt of invoice TANGEDCO will avail 2% rebate on each monthly billed amount raised by the supplier or will avail 1% rebate on billed amount, if the payment is made within the due date. If, 7th working day or 30th working day (Due date) happens to be a holiday for TANGEDCO/Banks, then payment will be made on the next working day for which TANGEDCO will avail the appropriate rebate. If payment is outstanding beyond the due date by TANGEDCO, then surcharge as applicable on daily basis at 15% per annum will be payable."

17. The above Short Term Open Access Agreement dated 30.09.2014 signed between the petitioner and the fourth respondent clearly states that in case of transmission losses and transmission charges payable to TANTRANSCO will be as per the terms of PPA in Tender No.6/2014.

18. Thus, there is no dispute that the petitioner is entitled for interest if payment or surcharge for outstanding due beyond due date by TANGEDCO. The respondents are therefore bound to pay interest at 15% p.a to the petitioner. Therefore, I am inclined to allow this Writ Petition by directing the fourth respondent to calculate the interest from the due date as per Clause 23(f) of the Tender No.6-2014 at 15% per annum within a period of twelve weeks.

19. Liberty is also given to the petitioner to give its calculation to the fourth respondent to substantiate the amount of interest to be paid to it. Such calculation may be given to the fourth respondent within a period of four weeks from the date of receipt of a copy of this order.

20. The fourth respondent shall thereafter calculate the amount of surcharge as per Short Term Open Access Agreement dated 30.09.2014 read with Tender No.6/2014 and pay the interest to the delayed period within a period of twelve weeks from the date of receipt of a copy of this order.

21. This Writ Petition is allowed with the above observations. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
The Government of Tamil Nadu,
Energy Department, Fort St.George,
Chennai - 600 009.
- 2.The Managing Director,
The Tamil Nadu Transmission Corporation,
(TANTRANSCO),
No.144, Anna Salai, Chennai - 600 002.
- 3.The Chairman and Managing Director,
The Tamil Nadu Generation and Distribution Corporation Ltd.,
(TANGEDCO),No.144, Anna Salai, Chennai - 600 002.
- 4.The Superintending Engineer,
Chennai Electricity Distribution Circle/North,
TANGEDCO, No.144, Anna Salai, Chennai - 600 002.

+1 cc to Mr.K.Seshadri, Advocate Sr No.11361

+1 cc to Government Pleader Sr No.11905

W.P.No.3409 of 2015 and
M.P.Nos.1, 2 & 3 of 2015
24.02.2021

GPL(CO)
RG.23.04.2021(6P/7C)