

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2021

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P. Nos. 9798 and 9804 of 2021

and

W.M.P. Nos. 10424 and 10433 of 2021

Dynamic Spare and Services P. Ltd.

WEG Nos.2346 and 2182

Muppandal, 8/125E/C3, Tamil Nagar

Aralvoimozhi - 629 301

Represented by its Director K.Adhavan

....Petitioner
in both WPs

Vs.

1. Tamilnadu Generation and Distribution
Corporation Ltd. (TANGEDCO)

10th Floor, 144, Anna Salai

Chennai - 600 002

Represented by its Chairman
Cum Managing Director.

2. The Chief Engineer /NCES

TANGEDCO

Second Floor

144, Anna Salai, Chennai - 600 002.

3. The Superintending Engineer

TANGEDCO

Tirunelveli Electricity Distribution Circle

Tirunelveli.

4. Tamilnadu Electricity Regulatory Commission

19-A, Rukmini Lakshmipathy Salai

Egmore, Chennai - 600 008

Represented by its Secretary.

.... Respondents
in both WPs

WP.No.9798 of 2021: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the First, Second and Third Respondents to allow Utility Change by terminating the existing Energy Purchase Agreement dated 19.09.2017 and execute Energy Wheeling Agreement

for Group Captive Consumption / Third Party sale in Petitioner's WEG No. 2346 as per the Common Order of the Hon'ble High Court of Judicature at Madras dated 30.08.2019 which was upheld by the Hon'ble Division Bench dated 18.02.2020 and also by the Hon'ble Supreme Court of India dated 24.09.2020 and consequently, make payment of Rs.6,76,721/- towards the wind energy sold from the Petitioner's WEG No.2346 for the period from 09/2019 to till date as per their respectively invoices along with interest at 1% per month for any delay in payments.

WP.No.9804 of 2021: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the First, Second and Third Respondents to allow Utility Change by terminating the existing Energy Purchase Agreement dated 19.09.2017 and execute Energy Wheeling Agreement for Group Captive Consumption / Third Party sale in Petitioner's WEG No. 2182 as per the Common Order of the Hon'ble High Court of Judicature at Madras dated 30.08.2019 which was upheld by the Hon'ble Division Bench dated 18.02.2020 and also by the Hon'ble Supreme Court of India dated 24.09.2020 and consequently, make payment of Rs.17,20,179/- towards the wind energy sold from the Petitioner's WEG No.2182 for the period from 09/2019 to till date as per their respectively invoices along with interest at 1% per month for any delay in payments.

For Petitioner : Mr. R.S.Pandiyaraj
For Respondents : Mr. M.Vijayameganathan
Standing Counsel

COMMON ORDER

These Writ Petitions have been filed for a direction to the respondents 1 to 3 to allow Utility Change by terminating the existing Energy Purchase Agreements dated 19.09.2017 and execute Energy Wheeling Agreement for Group Captive Consumption / Third Party sale in respect of the Petitioner's WEG Nos. 2346 and 2182 respectively and consequently, directing them to make payment of Rs.6,76,721/- and Rs.17,20,179/- respectively towards the wind energy sold from the Petitioner's WEGs for the period from 09/2019 to till date, along with interest at 1% per month for the delayed payment.

2. According to the petitioner, they have installed windmills of each 250 KW capacity bearing WF HT SC Nos.2346 and 2182 situated at Tirunelveli and the energy generated by the said windmills was sold to the Respondent TANGEDCO by executing Energy Purchase Agreements dated 19.09.2017, as per the tariff price fixed by the fourth respondent. During every month, the

petitioner was raising invoices for the amount of energy sold to the respondent TANGEDCO, however, from September 2019 onwards, the respondent TANGEDCO has not paid wind energy payment regularly and they are owing to pay Rs.6,76,721/- and Rs.17,20,179/- to the petitioner. Therefore, invoking clause 8 (b) of the Energy Purchase Agreement (EPA), the petitioner sent notices dated 01.12.2020 to the second respondent seeking to convert the existing EPA to Energy Wheeling Agreement (EWA) for the supply of wind energy generated in WEGs to other consumers either under group captive scheme or 3rd party sale under the provisions of the Electricity Act, 2003 and the same were followed by reminders dated 01.03.2021. However, no action was taken on the same, since the first respondent by proceedings No.266 dated 20.05.2017, has ordered not to act upon the request relating to convert WEG from sale to Board category to group captive or 3rd party sale. Therefore, the petitioner has no other option except to approach this Court with the present writ petitions for the aforesaid relief.

3.The learned counsel for the petitioner submitted that the issue involved herein has already been considered and decided by this Court vide order dated 30.08.2019 in W.P. No. 5196 of 2019 etc. batch, the operative portion of which is usefully extracted hereunder:

"29. Thus, for the reasons stated above, the Writ Petitions deserve to be allowed with the following directions:-

(a) the respondents /TANGEDCO are directed to permit the Petitioners to switch over to captive consumption so as to use the same for their own industry;

(b) the respondents/ TANGEDCO are directed to settle the respective dues to the Petitioners as per their respective invoices raised by them, along with interest as per Clause 6(b), within a period of two months from the date of receipt of a copy of this order.

(c) Consequently, in view of permitting the petitioners to migrate from EPA to EWA, the proceedings dated 20.05.2017 of the first respondent deciding not to concede any request for migration is set aside.

30. In fine, with the above directions, the writ petitions stand allowed. No costs. Consequently, connected Miscellaneous Petitions are closed."

The learned counsel further submitted that as against the aforesaid order, the respondent TANGEDCO filed an appeal in WA.No.4189 of 2019 etc. batch, which were dismissed by a Division Bench of this Court on 18.02.2020; and the further

appeal in SLP Nos.8513 - 8518 of 2020 before the Supreme Court also ended in dismissal, by order dated 24.09.2020. Hence, the learned counsel prayed for similar order in these writ petitions as well.

4.The submissions so made by the learned counsel for the petitioner have been fairly conceded by the learned Standing Counsel taking notice for the respondents.

5.Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side and also following the earlier order of this Court (cited supra), these writ petitions are also liable to be allowed. Accordingly, these writ petitions stand allowed in the same lines as done in W.P. No. 5196 of 2019, etc. batch. dated 30.08.2019. With regard to the consideration of the applications for migration to captive consumption, the respondents shall pass appropriate orders, within a period of four (4) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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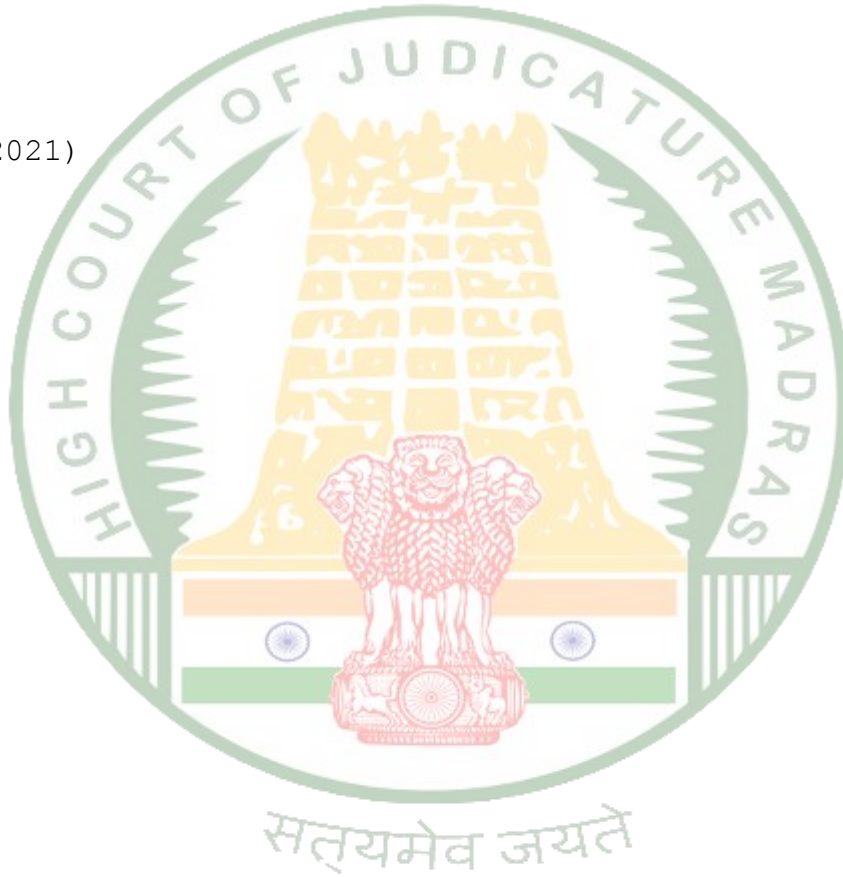
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4. The Secretary
Tamilnadu Electricity Regulatory Commission
19-A, Rukumini Lakshmipathy Salai
Egmore, Chennai - 600 008.

+2 Ccs to Mr.R.S. Pandiyaraj, Advocate sr 23918.

W.P. Nos. 9798 and 9804 of 2021

AKII(CO)
SP(08/07/2021)



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