

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P. No. 10067 of 2021
and
W.M.P. No. 10702 of 2021

M/s. Texonic Instruments

represented by its Authorised Signatory

Naveen Bhandari

No.9, Ashipattan Street

Anna Salai, Chennai - 600 002.

...Petitioner

Vs.

1. The Chairman
TANGEDCO
144, Anna Salai
Chennai - 600 002.

2. Chief Financial Controller (General)
TANGEDCO
Seventh Floor
144, Anna Salai
Chennai - 600 002.

3. The Chief Engineer, NCES
TANGEDCO
Second Floor
144, Anna Salai
Chennai - 600 002.

4. The Superintending Engineer
TANGEDCO, Dindigul EDC
Dindigul.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the Respondents for the termination of the PPA dated 09.02.2011 and 23.03.2011 and to execute energy wheeling agreement for Third Party Sale.

For Petitioner : Mr. T.Chezhiyan

For Respondents: Mr. N.Damodharan, SC

O R D E R

Seeking a direction to the Respondents for termination of the Energy Purchase Agreements (EPA) dated 09.02.2011 and 23.03.2011 and to execute the Energy Wheeling Agreement (EWA) for Third Party sale, the present writ petition came to be filed by the petitioner.

2.It is the case of the petitioner that they are having two numbers of Windmill with the capacity of 800 KWA each, bearing WF HT SC Nos.D-42 (Group -II) and D-228 and they entered into Energy Purchase Agreements dated 09.02.2011 and 23.03.2011 with the fourth respondent for supply of energy. As per Clause 6(2) of the said Agreement, the payment to WEG in respect of energy supplied shall be within 30 days from the receipt of the Bill, failing which, the said payment is liable to be paid with interest at 1% per month. Contrary to the same, the respondent TANGEDCO failed to make payment for nearly two years, despite raising invoices by the petitioner every month. The total outstanding due for both the wind electric generators is Rs,1,37,59,924/-. Therefore, invoking clause 8(b) of the Energy Purchase Agreement (EPA), the petitioner sent a notice dated 18.02.2021 to the fourth respondent seeking migration of EPA to EWA. Finding no response on the same, they have come up with this writ petition 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 this writ petition 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), this writ petition stands disposed of, 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 application for migration, 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 Petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

Maya

To

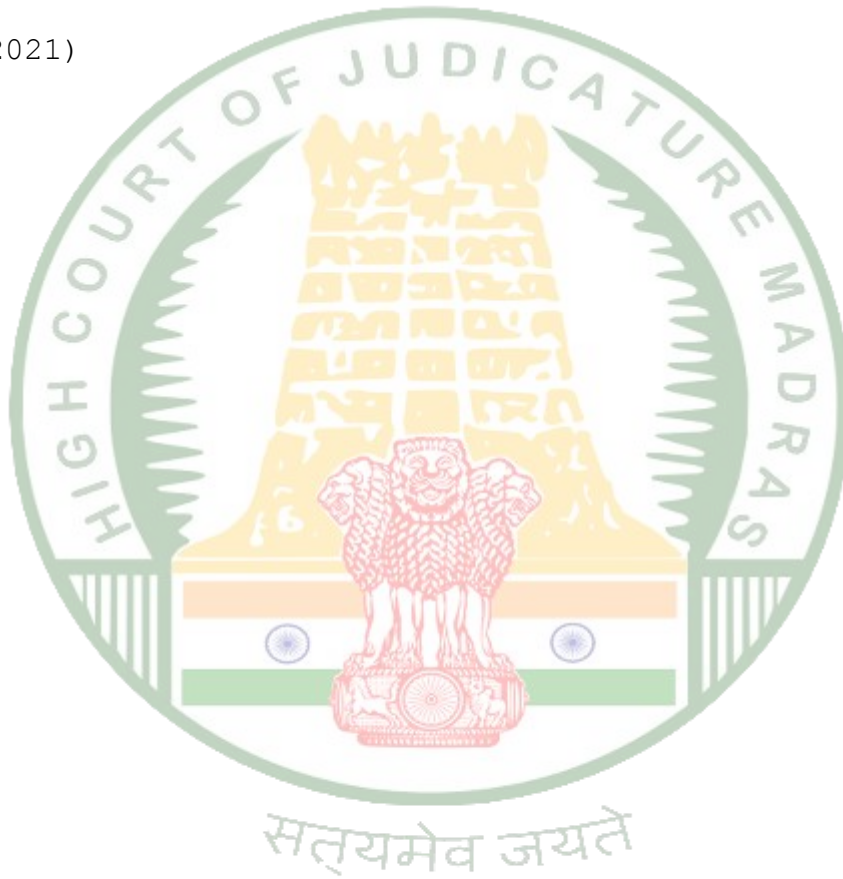
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