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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13-12-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP NO.8725 OF 2015

AND

MP NOS.1 TO 3 OF 2015

Mod Forge Private Limited,
Represented by its General Manager,
103, Sidco Aiema Towers,
1, 1st Main Road,
Ambattur Industrial Estate,
Chennai - 600 058.

.. Petitioner

.vs.

1. The Chairman,
Tamil Nadu Generation and Distribution Corporation Ltd.,
144, Anna Salai,
Chennai - 600 002.
2. Director Finance,
Tamil Nadu Generation and Distribution Corporation Ltd.,
144, Anna Salai,
Chennai - 600 002.
3. The Chief Financial Controller,
Tamil Nadu Generation and Distribution Corporation Ltd.,
144, Anna Salai,
Chennai - 600 002.
4. The Superintending Engineer,
Tirunelveli Electricity Distribution Circle,
Tirunelveli - 627 011.
5. The Superintending Engineer,
TANGEDCO/Distribution,
North Chennai Electricity Distribution Circle,
144, Anna Salai,
Chennai - 600 002.



6. The Tamil Nadu Electricity Regulatory Commission,
Represented by its Secretary,
No.19A, Rukmini Lakshmipathi Salai,
Egmore,
Chennai - 600 008.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the third respondent bearing Lr.No.CFC/FC/REV/ AAO/HT/D.419/2014 dated 11.07.2014 and all proceedings consequent or pursuant thereto, including the impugned letter of the fourth respondent dated 11.03.2015 bearing Lr. No.SE/TEDC/TIN/AO/REV/AS/WM/D. No.616/15 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 second respondent to make payment of total amount of Rs.25,61,426/- together with further interest thereon at 18% per annum from the due date of payment.

For Petitioner : Mr.Rahul Balaji

For Respondents-1 to 5: Mr.L.Jaivenkatesh,
Standing Counsel for TANGEDCO.

For Respondent-6 : No Appearance

O R D E R

The order impugned dated 11.07.2014 issued regarding Wind Mill Captive Norms of 51% consumption, the Board claimed Cross Subsidy Surcharge and decline to pay Bank unutilised Units.

2. It is brought to the notice of this Court that the deficiency occurred due to shortage of power supply and at the instance of the Electricity Board. Thus, the petitioner-Company cannot be faulted nor the liability can be fixed on the petitioner-Company.

3. Under those circumstances, the petitioner pleaded exoneration from payment of surcharge and payment for unutilised funds. The issues, in this regard, were elaborately adjudicated by the Tamil Nadu Electricity Regulatory Commission in DRP No.1 of 2016 and an order was passed on 03.08.2021. The relevant portions of the order are extracted as under:-



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"6.9 At this juncture, it would be relevant to refer the Clause 10 of the Energy Wheeling Agreement executed between the parties:-

"10. Agreement Period:

a. This agreement shall come into force from the date of execution and shall remain in full force for a period of twenty (20) years.

b. In case of any breach or violation of any of the clauses in this agreement, by any party, the other party shall be at liberty to terminate this agreement after giving three months notice.

c. It is agreed that the change of utilisation of wind energy, from captive consumption to sale may be done after giving three months notice by the Wind Energy Generator to the Board and after executing energy purchase agreement on the terms applicable as per Order Nos.2 and 3 dated 15.05.2006."

Though the petitioner in HT SC.1797 M/s.R.K.K.R. Steels is the 100% user of the power generated from WF.HT.SC.D.112, the disconnection and Account closure of the user end HT.SC.1797 was not immediately informed to first respondent by the second respondent. This might be one of the reasons that, the first respondent has not issued any notice to terminate the Energy Wheeling Agreement. In the absence of any such notice from the respondents towards 'termination of EWA', the Energy Wheeling Agreement cannot be considered as void.

6.10. The petitioner has executed the EWA based on the Commission's T.O.No.3 of 2006 dated 15.05.2006, hence the provisions of banking referred in that order is applicable to the petitioner's case as below:-



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"10.4 Banking

xxx

xxx

xxx

The Commission fixes the banking charges as 5% for WEG. The Licensee shall pay at a rate of 75% of normal purchase rate for the unutilised portion of energy banked by the NCES based wind electric generators....."

The same has been well inserted into the Energy Wheeling Agreement of the petitioner as below -

"5. Banking:

a. The Wind Energy Generator shall bank the energy generated in the Wind Mill and the Banking period shall be one year from April to March.

b. The unutilised portion of banked energy if any shall be purchased by the Licensee at the rate of 75% of the normal purchase rate.

c. The Banking shall be done slot wise to enable unit-to-unit adjustment."

It is evident from the Wind Energy Statement issued by the first respondent during the period from 04/2014 to 07/2015 that the entire energy generated by the petitioner was accepted by the first respondent into its grid. In this circumstance, the unutilised portion of power generated becomes eligible for payment under para 10.4 of the T.O.No.3 of 2006 and clause 5 (b) of the Energy Wheeling Agreement."

4. In view of the order of the Tamil Nadu Electricity Regulatory Commission, cited supra, the orders impugned passed by the third respondent bearing Lr.No.CFC/FC/REV/AAO/HT/D.419/2014 dated 11.07.2014 and the fourth respondent bearing Lr. No.SE/TEDC/TIN/AO/ REV/AS/WM/D. No.616/15 dated 11.03.2015 are quashed and further, the respondents are directed to settle the dues, within a period of four months from the date of receipt of a copy of this order.



5. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Chairman,
Tamil Nadu Generation and Distribution Corporation Ltd.,
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2. Director Finance,
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6. The Secretary,
Tamil Nadu Electricity Regulatory Commission,
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PL(CO)
PM/30/12/2021