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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.06.2021

Coram

The Honourable Mr. Justice D. KRISHNAKUMAR

W.P.No.13148 of 2021
and W.M.P.No.13962 of 2021

Gem Renewables P Ltd.,
WEG No.897,
No.27-21, B/2, Joseph Nagar,
Main Road, (Near LMS Girls HSS),
Marthandam - 629 165, Kanyakumari,
Rep. by its Director Asha Priya Dharshini

...Petitioner

Versus

1. Tamil Nadu 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,
2nd Floor,
144, Anna Salai, Chennai - 600 002.
3. The Superintending Engineer,
TANGEDCO,
Tirunelveli Electricity Distribution Circle,
Tirunelveli.
4. Tamil Nadu Electricity Regulatory Commission,
19-A, Rukumini Lakshmipathy Salai,
Egmore, Chennai - 600 008.
Rep. by its Secretary

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 1st, 2nd and 3rd respondents to allow Utility Change by terminating the existing Energy Purchase Agreement dated 07.12.2017 and execute Energy Wheeling Agreement for Group Captive Consumption/3rd party sale in petitioner's WEG No.897 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.5,90,632/- towards the wind energy sold from the petitioner's WEG No.897 for the period from 07/2020 to till date as per their respective invoices along with interest at 1% per month for any delay in payments.

For Petitioner : Mr.M.Saravanakumar

For Respondents : Mr.N.Damodaran

O R D E R

(The case has been heard through video conference)

The relief sought for in the present writ petition is to direct the respondents 1 to 3 to allow Utility Change by terminating the existing Energy Purchase Agreement dated 07.12.2017 and execute Energy Wheeling Agreement for Group Captive Consumption/3rd party sale in petitioner's WEG No.897 as per the common order of this Court dated 30.08.2019 which was upheld by the Division Bench of this Court vide judgment dated 18.02.2020 and also by the Honourable Supreme Court vide order dated 24.09.2020 and consequently, make payment of Rs.5,90,632/- towards the wind energy sold from the petitioner's WEG No.897 for the period from 07/2020 to till date as per their respective invoices along with interest at 1% per month for any delay in payments.

2. The learned counsel for the petitioner has brought to the notice of this Court that in a case of similar nature, this Court has passed an order in favour of the petitioner therein. In support of his contention, he has relied on the order passed by this Court in W.P.No.4989 of 2018 dated 20.04.2021, wherein, this Court has held as follows:

"4. In view of the above, the present writ petition deserves to be allowed with the following directions:

(i) the respondent/TANGEDCO are directed to permit the petitioners to switch over to captive consumption, so as to use the same for their own industry.

(ii) the respondent/TANGEDCO are directed to settle the respective dues to the petitioner 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.

(iii) Consequently, in view of permitting the



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petitioners to migrate from EPA to EWA, the proceedings dated 20.05.2017 issued by the first respondent deciding not to concede any request for migration is set aside.

In fine, with the above directions, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed."

He therefore prayed that the similar relief may be granted to the petitioner herein.

3. Considering the submissions made by the learned counsel for the petitioner and also following the earlier order passed by this Court in W.P.No.4989 of 2018 dated 20.04.2021, this Court is inclined to allow this writ petition with the following directions:

(i) the respondents 1 to 3/TANGEDCO are directed to permit the petitioner company to switch over to captive consumption, so as to use the same for *** group captive consumption/third party sale.**

(ii) the respondents 1 to 3/TANGEDCO are directed to settle the respective dues to the petitioner company 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.

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

4. In the result, this Writ Petition is allowed with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

*** Corrected as per the order made
in WP.13148 of 2021 dated.28.07.2021**

Sd/-
Sub Assistant Registrar
Dated.04.08.2021

Sub Assistant Registrar

mrr



To

- 1.The Chairman cum Managing Director,
Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO)
10th Floor, 144, Anna Salai,
Chennai - 600 002.
- 2.The Chief Engineer/NCES,
TANGEDCO,
2nd Floor,
144, Anna Salai, Chennai - 600 002.
- 3.The Superintending Engineer,
TANGEDCO,
Tirunelveli Electricity Distribution
Circle,
Tirunelveli.
- 4.The Secretary, Tamil Nadu Electricity
Regulatory Commission,
19-A, Rukumini Lakshmipathy Salai,
Egmore, Chennai - 600 008.

**To be substituted
the order already
despatched on
27.07.2021**

W.P.No.13148 of 2021

PCH (CO)
PR (26/07/2021)
K.RK. (04.08.2021)