

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

WP No.18118 of 2020
and WMP Nos.22504, 22505 & 22506 of 2020

Kamuthi Renewable Energy Ltd,
Adani House, 4th Floor,
SIDCO Corporate Office Building,
Thiru Vi Ka Industrial Estate,
Guindy, Chennai 600 032 ..Petitioner

Vs

- 1 The Tamilnadu Electricity regulatory Commission
rep by its Secretary,
4th Floor, SIDCO Corporate office Building,
Thiru Vi Ka Industrial Estate, Guindy,
Chennai-600 032
- 2 The Tamil Nadu Generation and Distribution Corporation Ltd,
144, Anna Salai, Chennai-02,
rep by its Chairman and Managing Director
..... Respondents

Prayer :- Writ Petition under Article 226 of the Constitution of
India praying for the issuance of a Writ of Certiorarified Mandamus

to call for the records of the Respondent in order dated 12.10.2020
Petition Sr No. 32 of 2020 and quash the same as arbitrary and
illegal and contrary to the Tamil Nadu Electricity Regulatory
Commission- Fees and Fines Regulations 2004 and the provisions of
the Electricity Act 2003 and consequently direct the respondent to
take up the petition filed by the petitioner by accepting the court
fees already paid as appropriate and adjudicate the petition
expeditiously.

For Petitioner : Mr.R.Parthasarathy
For Respondents : Mr. Abdul Saleem
Standing counsel for R1
Mr.L.Jai Venkatesh
Standing Counsel for R2

ORDER

This writ petition has been filed challenging the docket order
of the 1st respondent dated 12.10.2020 and for a consequential
direction to take up the petition filed by the petitioner and to
adjudicate the same on its own merits and in accordance with law.

2. When the matter was taken up for admission on 12.12.2020, this Court passed the following order :-

Mr.Abdul Saleem, learned standing counsel takes notice for first respondent. Mr.N.Damodharan, learned standing counsel takes notice for second respondent.

2. *The petitioner has filed a petition before the first respondent with the following prayer:-*

1. *To declare that consequent upon the Commissioning and the issuance of Commissioning Certificate by the Superintending Engineer, Ramanathapuram, dated 15.04.2016 to the Petitioner certifying that the 72 MW Solar Power Plant of the petitioner was Commissioned on 31.03.2016, the entire 72 MW Solar Power Plant stood commissioned and entitled to the Tariff fixed under the Hon'ble Commission's "Comprehensive Tariff Order on Solar Power" dated September 12, 2014 under Order No. 4 of 2014 and*

consequently, set aside the action of the 2nd Respondent in its internal communication in Memo No.CE/NCES/SE/Sol/EE/SCB/A1/F./D. 1248/16 dated 20.09.2019 as acted upon by the 4th Respondent in its communication dated 30.09.2019 in Lr.No.SE/NCES/TIN/Tech/F.KREL/D.517/2016 to segregate the 72 MW Solar Power Plant erected by the Petitioner as 25 MW and 47 MW separately with separate energy meters and be paid at different Tariff rates as illegal and without jurisdiction and pass such further orders as this Hon'ble Commission may deem fit.

2. Pass such other and further orders, as this Hon'ble Commission deems fit and proper in the facts and circumstances of the case. ”

3. The grievance of the petitioner is that Registry of the first respondent has directed the petitioner to pay 1% (one percentage) of Court Fee on Rs.373.533 Crores for the purpose of entertaining

the application. According to the petitioner, the dispute in question is covered under item No.7(A) of the table in Regulation 6 of the Tamil Nadu Regulatory Commission Fees and Fines Regulations, 2004 and what is payable is only a sum of Rs.10,000/- as fees. It is further stated that the Registry of the first respondent has invoked Section 86(1)(f) of the Electricity Act and has directed the petitioner to pay 1% of the amount when no money claim has been made. The petitioner is also relying upon the orders passed by the APTEL in Appeal No.31 of 2017, dated 24.09.2019, wherein the Appellate Tribunal has clearly differentiated between a regulatory dispute and a money dispute. The first respondent, which is also bound by this decision, unfortunately, is insisting for 1% fees as if the petitioner has raised a money dispute.

4. *This is the only short issue that arises for consideration in the present case.*

5. *The learned counsel appearing on behalf of the respondents are requested to be ready for the final hearing and if any counter is filed, the same shall be done after serving a copy to the learned counsel for the petitioner.*

6. *Post this case under the caption 'for orders' on 18.12.2020.*

3. When the matter was taken up for hearing today, the learned Standing counsel appearing on behalf of the 1st respondent on instructions submitted that the matter can be remitted before the 1st respondent commission and the same will be decided on its own merits and in accordance with law.

4. In view of the above, the petition filed by the petitioner before the 1st respondent shall be numbered as a Miscellaneous

petition by the Registry of the 1st respondent Commission and it shall be placed before the 1st respondent for hearing within a period of one week from the receipt of a copy of this order. The 1st respondent shall afford an opportunity to the petitioner and TANGEDCO and shall deal with the case on its own merits and in accordance with law and shall pass final orders within a period of twelve weeks thereafter.

5. This writ petition is disposed of with the above directions. No costs. Consequently, all connected miscellaneous petitions are closed.

13.09.2021

rka/sha

To

1. Government of Tamil Nadu,
Rep. By its Secretary,
Energy Department,
Fort St. George,
Chennai - 600009
2. The Chairman,
Tamil Nadu Electricity Board,
No.800, Anna Salai,
Chennai - 600002
3. The Executive Engineer,
No.46, Tamil Nadu Electricity Board
Velachery Main Road,
Chennai - 600042
4. The Assistant Engineer, O& M,
Tamil Nadu Electricity Board
Velachery Main Road,
Chennai- 600042

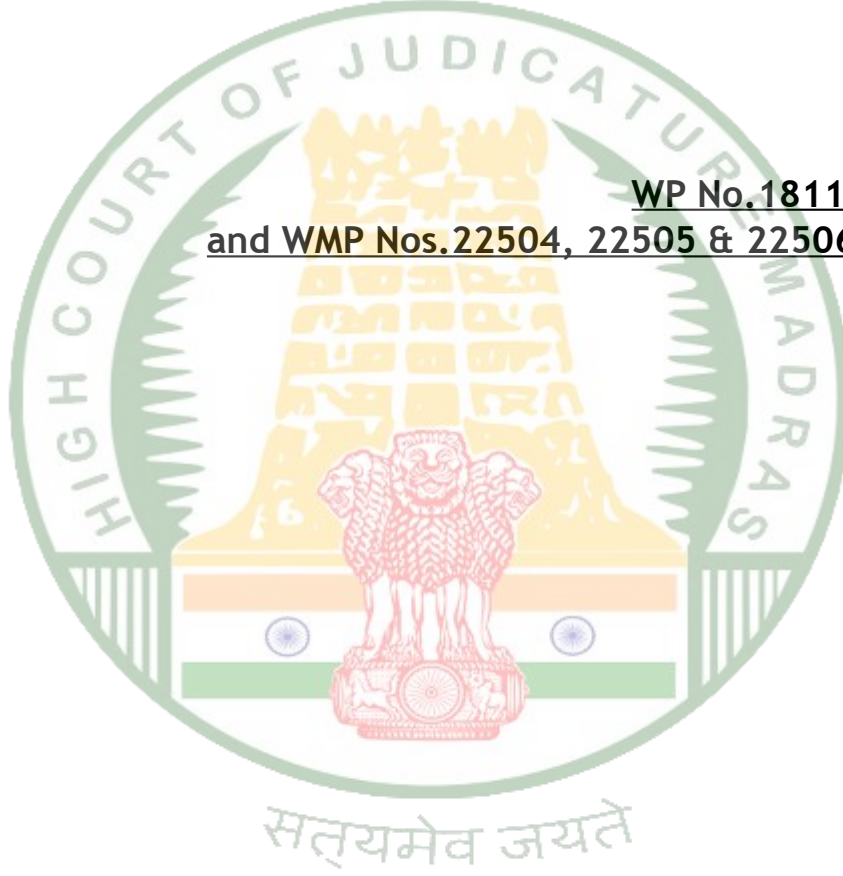
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N.ANAND VENKATESH, J.

W.P.No.18118 of 2021

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