IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.18274 of 2014
and
M.P.No.1 of 2014

M/s.Jansons Textiles Processors,
68-A, Namakkal Road,
Tiruchengode 637 211,
Rep by its General Manager.

...Petitioner

Vs

1. Tamil Nadu Electricity Regulatory Commission, Rep. By its Secretary, 19-A, Rukmini Lakshmipathy Salai, (Marshall's Road) Egmore, Chennai – 600 008.

2. The Chairman, Tamil Nadu Generation and Distribution Corporation Limited, 144, Anna Salai, Chennai 600 002.

3. Director Finance, Tamil Nadu Generation and Distribution Corporation Limited, 144, Anna Salai, Chennai 600 002.

4. The Chief Financial Controller, Tamil Nadu Generation and Distribution Corporation Limited, 144, Anna Salai, Chennai 600 002.

5. The Superintending Engineer, Tirunelveli, Electricity Distribution Circle, Tirunelvi.

... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent and their men, agents not to collect current consumption charges, demand charges and any arrears from the petitioner until the respondent makes payment of the outstanding dues of Rs.1,14,39,744/- payable to the petitioner along with interest thereon at 1% per month payable from the time such payments became due and which as of 30.06.2014 amount to Rs.28,87,382/-, aggregating to Rs.1,43,27,126/- or to give adjustment in the current consumption charges payable by the petitioner till the entire amount is adjusted.

For Petitioner : Mr.Rahul Balaji

For R2 to R4 : Mr..L.Jaivenkatesh
Standing Counsel for TANGEDCO

For R1 : No Appearance

O R D E R

The issues involved in this writ petition pursuant to the adjustment of the outstanding dues payable by Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) to the respective petitioner towards the current consumption charges. The batch of writ petitions were already decided by this Court and an order was passed on 03.09.2021, which reads as under:

> "This Court heard the learned counsel appearing on behalf of the petitioners and the learned Standing Counsel appearing on behalf of the TANGEDCO.
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> 2.On carefully considering the submissions and the materials placed before this Court, it is seen that whatever amounts are due and payable to the petitioners by TANGEDCO is an admitted liability. The rate is fixed pursuant to the orders passed by the Commission by way of tariff orders and even the agreement that is entered into between the parties is pursuant to the orders passed by the Commission.
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> 3.In view of the above, since there is no dispute with regard to the liability owed by TANGEDCO to the petitioners,all these writ petitions are certainly maintainable. It is alsoseen that by virtue of the interim orders passed by this Court in all these writ petitions, the amounts due and payable to the petitioners has been substantially adjusted from the current consumption charges.
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> 4.The issue that is involved in all these writ petitions can be easily resolved if the TANGEDCO comes

up with a Policy paper wherein, they should specifically bring out guidelines as to how they are going to handle cases of this nature where the liability of TANGEDCO is admitted and the non-payment of the same carries a substantial interest after the due date fixed in the agreement. If TANGEDCO is not in a position to immediately make payments under the agreement, the Policy paper itself would state that till the payments are made, the TANGEDCO will automatically adjust the liability from the current consumption charges. If such standardized practice is brought out in the Policy paper, the petitioners need not have to come to this Court and seek for an order and such adjustments will automatically take place till the final liability is paid to them.

5.One more area where the real controversy arises is the manner in which the payments are made by TANGEDCO. The liability must be settled in a proper manner without picking and choosing persons. If liability is settled in such an arbitrary fashion, it will unnecessarily give rise to corruption. Therefore, the liability must be settled in seriatim and no one must be given priority. If the same is done, no fingers will be pointed against the TANGEDCO and in fact such good practice will pave way for avoiding unnecessary litigations and unwanted allegations being made against the TANGEDCO.

6.All the above shall be kept in mind and this Court expects the Chairman of TANGEDCO to come up with a clear Policy paper as to how TANGEDCO is going to deal with its liabilities under the agreements, going forward. Once the same is filed before this Court, the same will be recorded by this Court and made as an order of the Court. This standard practice will be followed in future without giving rise to unnecessary litigations.

7.In all those cases where the liability subsists, the adjustment shall be made from the current consumption bills till the liability is exhausted and the present arrangement shall be continued. 8.Post this batch of cases under the caption 'For Filing Report' on 04.10.2021 at 2.15 p.m."

3. The learned counsel for the petitioner made a submission that the issues raised in the present writ petition are also similar to that of the writ petitions decided by this Court as stated above.

4. The learned counsel for the respondents also made a submission that the issues are similar, and therefore, the said judgment is to be followed in yet another case filed in W.P.No.13607 of 2021. This Court passed an order and the said order is also extracted here under:

"2.The case of the petitioner is that the petitioner is an industry involved in the manufacture of yarn having High Tension Electricity Supply in H.T.Sc.No.0388 coming under the fourth respondent. The petitioner owning windmills at feasible locations and wheeling the wind power to their consumption at their industry coming under the fourth respondent under captive consumption arrangements in accordance with the Energy Wheeling Agreement (EWA) executed between the officers of the second respondent. According to the Tariff orders issued by the first respondent Commission, the petitioner has entered into the aforesaid Agreement where it was agreed that if wind energy is not utilized fully during a month, the balance of it will be treated as sell to board for which the respondent Board will pay the petitioner at 75% of the normal purchase rate fixed by the Commission.

2.1. The petitioner industry have already collected the details of surplus wind energy sold to the respondent after captive consumption for 2019-20 as per fourth respondent's statement, a total banked units of 3,26,964/- un tilised energy as on 31st March every year may be encashed at 75% of the total banked energy i.e., units (245223 units x Rs.2.75/-) Rs.6,74,363/-, accordingly, raised invoices for the encashment of the same at the applicable Tariff value at the appropriate time with the respondents. But both in pursuance of the Tariff order dated 15.05.2006 and also as per the terms of the said Energy Wheeling Agreement executed between the petitioner and the Officials of the respondent, no payment has been made by the respondents till date.

2.2. Further, the petitioner has already availed term loan from financial organisations, for establishing their wind mills and are paying 15% interest per annum for the same. Since there is a delay in getting the payment from the respondent Corporation the petitioner industry is unable to repay its term loans and therefore, they are facing penal interest charges due to delay in repayment of the installment of their term loan. Hence, the petitioner has come forward before this Court with the present writ petition for the relief stated supra.

3. The learned counsel for the petitioner would submit that in a similar case in W.M.P.No.7381 of 2021 in W.P.No.6828 of 2021 dated 17.03.2021, this Court has passed an interim order by directing the respondents therein to adjust the outstanding due amount for the current consumption charges payable by the petitioner therein and not to disconnect the electricity supply to the petitioner therein, till the entire outstanding due amount is adjusted. He therefore prayed that the similar relief may be granted to the petitioner herein. He also prays this Court to issue appropriate direction to the fifth respondent to consider the petitioner's representation dated 05.01.2021 and to pass appropriate orders.

4. The learned counsel appearing for therespondents would submit that the respondents have complied with the direction passed by this Court vide order dated 17.03.2021. He has also brought to the notice of this Court that in the light of the interim order passed by this Court in W.M.P.No.7381 of 2021 in W.P.No.6828of 2021 dated 17.03.2021, the respondents would consider the petitioner's representation and adjust the outstanding due amount for the current consumption charges payable to the petitioner subject to the calculation of the outstanding amount.

5. Heard the learned counsel on both sides.

6. In the light of the interim order passed by this Court in W.M.P.No.7381 of 2021 in W.P.No.6828 of 2021 dated 17.03.2021 and also considering the submissions made by the learned counsel on both sides, this Court issues the following directions:

(i) The fifth respondent is directed to consider the petitioner's representation dated 05.01.2021 and adjust the outstanding due amount payable by the TANGEDCO to the petitioner against the current consumption charges payable by the petitioner to the TANGEDCO subject to the calculation of the outstanding due amount as claimed by the petitioner.

(ii) The aforesaid exercise shall be completed by the fifth respondent as expeditiously as possible, within a period of four weeks from the date of receipt of a copy of this order.

(iii) It is also made clear that the respondents shall not take any coercive steps to disconnect the electricity connection to the petitioner until outstanding due amount is adjusted by the respondent Board towards the current consumption charges payable by the petitioner."

9. It is also seen from the records that in many cases, by virtue of the interim orders passed by this Court, the TANGEDCO had taken into account the un-utilised banking units and the amount payable towards the same was also adjusted from the current consumption charges. One such sample letter is found at Page No.52 of the consolidated typed set of papers filed by the petitioner, issued by the Superintending Engineer, Tatabad, Coimbatore to the concerned petitioner.

10. It is clear from the above that in many of the cases, TANGEDCO has acted upon the interim orders passed by this Court and had adjusted the amounts due and payable to the petitioners from the current consumption charges.

11. In view of the above, all these Writ Petitions are Disposed of with the following directions:-

(a) In all those cases where the TANGEDCO has acted upon the interim orders passed by this Court and the entire outstanding amounts due and payable has been adjusted, those writ petitions will be rendered infructuous since the grievance of those petitioners stands redressed;

(b)In those cases where the TANGEDCO is in the process of
adjusting the outstanding amount due, such adjustment shall be continued till the entire outstanding amount is adjusted towards the current consumption charges / open access charges payable by the respective petitioners and

(c) The TANGEDCO shall not take any coercive steps to disconnect the electricity connection to the petitioners until the outstanding amounts due and payable is completely adjusted towards the current consumption charges/ open access charges payable by the petitioners."

5. Accordingly, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
   Tamil Nadu Electricity Regulatory
   19-A, Rukmini Lakshmipathy Salai,
   (Marshall's Road)
   Egmore, Chennai - 600 008.

2. The Chairman,
   Tamil Nadu Generation and Distribution
   Corporation Limited, 144, Anna Salai,
   Chennai 600 002.

3. The Director Finance,
   Tamil Nadu Generation and Distribution
   Corporation Limited, 144, Anna Salai,
   Chennai 600 002.

4. The Chief Financial Controller,
   Tamil Nadu Generation and Distribution
   Corporation Limited, 144, Anna Salai,
   Chennai 600 002.

5. The Superintending Engineer,
   Tirunelveli,
   Electricity Distribution Circle,
   Tirunelvi.

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NR(CO)
SU(06/12/2021)