

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 16.03.2021

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THE HON'BLE MR. JUSTICE B.PUGALENDHI

Writ Petition No.19283 of 2020

&

W.M.P.Nos.23876 & 23878 of 2020

Techno Electric and Engineering Company Ltd.,
(formerly known as Simran Wind Project Ltd.,)
Rep by its authorized signatory -
Mr.Vikram Jhunjhunwala

...Petitioner

Vs.

1. Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO),
Rep by its Chairman & Managing Director,
10th Floor, 144, Anna Salai,
Chennai - 600 002.
2. The Joint Managing Director (Finance),
TANGEDCO, 144, Anna Salai,
Chennai - 600 002.
3. The Director Finance,
TANGEDCO, 144, Anna Salai,
Chennai - 600 002.
4. The Chief Engineer, NCES,
TANGEDCO, 144, Anna Salai,
Chennai - 600 002.
5. Superintending Engineer,
TANGEDCO,
Palladam Electricity Distribution Circle,
Maharaja Nagar, Tirunelveli.
6. Superintending Engineer,
TANGEDCO,
Palladam Electricity Distribution Circle,
Palladam.

7. Superintending Engineer,
Udumalpet Electricity Distribution Circle,
TANGEDCO, Udumalpet - 642 126.
8. Rural Electrification Corporation Limited,
Rep by its CEO,
Core - 4, Scope Complex,
7, Lodhi Road, CGO Complex,
Pragati Vihar, New Delhi, Delhi - 110 003.
9. Rural Electrification Corporation Limited,
Rep by its Chief Program Manager,
No.180, Shop Nos.12 & 13, TNHB Complex,
Luz Church Road, Mylapore,
Chennai - 600 004.

...Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of mandamus directing the respondents 1 to 7 to act in furtherance of the petitioner's request letters dated 11.11.2020 and 24.11.2020 and release the sums due to it together with the accumulated interest thereon for the energy supplied under the respective Energy purchase Agreements with the respondents 8 & 9 being directed to ensure that the funds released by the REC Limited (formerly Rural Electrification Corporation Limited) are utilized for settling generator dues by establishing an appropriate monitoring and reporting scheme.

For Petitioner : Mr.R.Parthasarathy

For Respondents : Mr.M.Dhamodaran, SC
(for R.1 to R.7)

Mr.Arun Karthik(for R8 & R9)

ORDER

The petitioner is a company registered under the Companies Act, 2003, which is generating wind energy through wind turbine generators and supplying the same to the TANGEDCO. The petitioner has installed 67 wind turbine generators with a capacity of 111.90 MW under the Renewable Energy Certificate (REC) Scheme in the year 2011 and 2012. The petitioner has entered into an agreement under the REC Scheme to sell the electricity to TANGEDCO.

2.The grievance of the petitioner is that for the past few years, the payments have not been settled by the TANGEDCO and

even when payments are made belatedly they are being made without any interest for such delay.

3.Mr.R.Parthasarathy, learned counsel for the petitioner submits that in the Tariff Order No.1 of 2009 issued by the Tamil Nadu Electricity Regulatory Commission, a specific instruction is provided for interest payment on the belated payments which reads as follows;

"8.11.1.When a wind generator sells power to the distribution licensee, the generator shall raise a bill every month for the net energy sold after deducting the charges for startup power and receive power. The distribution licensee shall make payment to the generator within 30 days of receipt of the bill. Any delayed payment beyond 30 days is liable for interest at the rate of 1% per month."

4.He would further submit that they have installed the wind turbines by affording loan from the Nationalized Banks and their Bankers are charging interest for the amount. The respondent/ TANGEDCO is disbursing the amount depending upon the companies and denying the interest for the belated payments. The petitioners have installed these wind turbine generators under the Renewable Energy Certificate Scheme which was introduced by the Government of India in the year 2010 with an objective to encourage and ensure green energy. Since, the respondents have delayed the payments for more than 2 years, the petitioner has approached this Court for a mandamus directing the respondents 1 to 7 to consider the request letters of this petitioner dated 11.11.2020 and 24.11.2020 and to release the sums due to the petitioner together with the accumulated interest for the energy supplied by the petitioner company under the Energy Purchase Agreements.

5.Mr.Damodaran, learned Standing counsel appearing for the TANGEDCO who took notice for the respondents made his submissions based on the affidavit filed on behalf of the respondents 1 to 7. He would submit that both PFC and REC have released a portion of the first tranche of Rs.222.20 Crores and Rs.285.86/- Crores by PFC and REC respectively, totaling to Rs.508.06/- Crores towards the dues payable insofar as the wind energy generators are concerned and the same has been paid towards the cleared invoices sent by TANGEDCO. It is pertinent to note that the total dues payable to the wind energy generators comes to around Rs.1,700/- Crores. He would further submit that from the above it could be seen that only around 30% of the entire amount due and payable has been made till date insofar as the wind energy generators are concerned.

6.The learned Standing counsel would further submit that in respect of petitioner company is concerned, the invoice details, amount payable for each invoice, the bank account details etc., were being obtained from the respective Electricity Distribution Circles and the same will be forwarded to the funding institutions i.e., PFC and REC for payment of the amount due and payable to the petitioner company herein under the first tranche. He would further submit that procurement of the said invoices and other details as mentioned above from the various Electricity Distribution Circles is under process and the same will be completed and forwarded to the financing institutions within a period of 15 days.

7. Mr.Arun Karthik, learned counsel for the respondents 8 and 9 submits that they would disburse the amount based on the approved invoices received by the respondents 8 and 9 from the TANGEDCO. The TANGEDCO in their affidavit filed on behalf of the respondents 1 to 7 dated 20.01.2021 has stated as follows:-

"I state that in respect of the petitioner company herein is concerned, the invoice details, amount payable for each invoice, the bank account details etc., are being obtained from the respective Electricity Distribution Circles and the same will be forwarded to the funding institutions i.e. PFC and REC for payment of the amount due and payable to the petitioner company herein under the first tranche. I further state that procurement of the said invoices and other details as mentioned above from the various Electricity Distribution Circle is under process and the same will be completed and forwarded to financing institutions within a period of 15 days."

8.This Court paid its anxious consideration to the rival submissions made and perused the materials available on record.

9.It appears that the respondents have disbursed this amount to some of the companies and has not paid the amount to other companies. The respondent/TANGEDCO has to encourage this type of investments. The State of Tamil Nadu has stood as No.1 in generating wind energy and the Government of India is encouraging the alternative production of energy under the REC scheme. The petitioners and others have borrowed huge amounts from the Nationalized Banks for producing the wind energy and supplying the same for the past few years. If the payments are delayed in such a manner, then there cannot be any further investments on this alternative energy sources. The TANGEDCO which is expected to encourage this type of investments are delaying the payments, whereby, the PEC and the REC Corporation

have sanctioned Rs.12,400/- Crores and Rs.17,830 Crores in the month of October, 2020 itself.

10. Even as on 20.01.2021, the TANGEDCO requested a time of 15 days for furnishing the invoices to the funding institutions, PFC and REC after obtaining the details from the respective electricity distribution circles. It appears, even after the lapse of that period mentioned in the counter affidavit, the invoices were not furnished to the respondents 8 and 9 and therefore, the amounts have not been disbursed.

11. In view of the above observations, these writ petitions are allowed with a directed to the respondents 1 to 7 to furnish the invoices to the respondents 8 and 9 forthwith and on receipt of the invoices, the respondents 8 and 9 shall disburse the amount to the petitioners with interest in accordance with the terms of the scheme without any further delay. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mrm

To

1. The Chairman & Managing Director,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
10th Floor, 144, Anna Salai,
Chennai - 600 002.
2. The Joint Managing Director (Finance),
TANGEDCO, 144, Anna Salai,
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Palladam Electricity Distribution Circle,
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7. The Superintending Engineer,
Udumalpet Electricity Distribution Circle,
TANGEDCO, Udumalpet - 642 126.
8. The CEO,
Rural Electrification Corporation Limited,
Core - 4, Scope Complex,
7, Lodhi Road, CGO Complex,
Pragati Vihar, New Delhi, Delhi - 110 003.
9. The Chief Program Manager,
Rural Electrification Corporation Limited,
No.180, Shop Nos.12 & 13, TNHB Complex,
Luz Church Road, Mylapore,
Chennai - 600 004.

+1cc to Mr.R.Parthasarathy, Advocate, SR.No.16677.
+1cc to Mr.Arun Karthik, Advocate, SR.No.16734.

GPL (CO)
CSR 08.04.2021

W.P.No.19283 of 2020

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