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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2021

CORAM

The Hon'ble Mr. Justice PARESH UPADHYAY
and
The Hon'ble Mr. Justice SATHI KUMAR SUKUMARA KURUP

W.A.No.2598 of 2021 and CMP No.16960 of 2021

- 1.Tamil Nadu Electricity Generation
and Distribution Company (TANGEDCO),
Rep. By its Chairman and Managing Director,
No.144, Anna Salai, Chennai - 600 002.
- 2.The Superintending Engineer,
Karur Electricity Distribution Circle,
Karur.
- 3.The Superintending Engineer,
Cuddalore Electricity Distribution Circle,
Cuddalore.
- 4.The Superintending Engineer,
Pudukottai Electricity Distribution Circle,
Pudukottai.
- 5.The Chief Financial Controller/Revenue,
TANGEDCO,
No.800, Anna Salai, Chennai - 600 002.
- 6.Deputy Financial Controller,
Karur Electricity Distribution Circle,
Karur.

... Appellants

Vs

M/s. E.I.D. Parry India Limited,
Rep. By its Vice-President - Legal,
Biswa Mohan Rath,
with its Registered Office located at
'Dare House' Parrys Corner,
Chennai - 600 001
and one of its Sugar Factor,
Located at Pugalur, Karur - 639 113.

... Respondent



Appeal preferred under Clause 15 of Letters Patent against the order dated 15.09.2020 made in W.P.No.9319 of 2020.

Prayer in W.P.No.9319 of 2020:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 2nd and 4th Respondents to duly honour the petitioners export invoices for the period from 2017 to 31st may 2020 along with interest amounting to Rs.12,43,45,237/- (Rupees Twelve Crore Forty Three Lakhs, Forty Five Thousand Two Hundred and Thirty Seven only).

For Appellants : Mr.J.Ravindran,
Additional Advocate General
assisted by
Mr.L.Jai Venkatesh

For Respondent : Mr.R.Parthasarathy

JUDGMENT

(Delivered by PARESH UPADHYAY, J.)

Challenge in this appeal is made to the order dated 15 September 2020 recorded on W.P.No.9319 of 2020. This appeal is by the first respondent. The prayer before learned Single Judge was :-

"Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the 2nd, 3rd and 4th respondents to duly honour the petitioner's export invoices for the period from 2017 to 31st May, 2020 along with interest amounting to Rs.12,43,45,237/- (Rupees twelve Crore Forty three lakhs forty five thousand two hundred and thirty seven only)."

2. After hearing the parties and inter alia taking into consideration the contest put forward including as contained in the counter, learned Single Judge passed the following order:-

"12. In view of the above, the TANGEDCO cannot be permitted to take a stand that they will not make any payment till the earlier writ petition



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filed by the petitioner is disposed of. Unfortunately, the petitioner has already supplied power to TANGEDCO and are not getting the payment for the last three years inspite of being entitled to receive the payment under the power purchase agreements. The reasons given by the respondents for not making the payment to the petitioner is unsustainable and unacceptable to this Court.

13. In view of the above discussion, there shall be a direction to the respondents to immediately take steps to make the payments to the petitioner towards the invoices raised by the petitioner from 2017 to 31st May 2020. This payment shall be made within a period of three months from the date of receipt of the copy of this order.

14. This writ petition is allowed with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed."

3. Heard Mr.J.Ravindran, learned Additional Advocate General for the appellants and Mr.R.Parthasarathy for the respondent - original writ petitioner.

4. On behalf of the appellant, it is submitted that the writ petitioner had alternative remedy which it should have availed and learned Single Judge should not have entertained the petition at all. Alternatively it is submitted that, few documents which are required to be placed on record before learned Single Judge, were not placed and therefore the appellants be permitted to file review petition. It is submitted that this appeal be entertained.

5. On the other hand, learned advocate for the respondent - original writ petitioner has contested this appeal and has submitted that the contest put forward by the present appellants was argued before learned Single Judge, the same is considered and answered and the relief is granted to the petitioner and no interference be made by this Court. It is submitted that this appeal be dismissed.

6. Having heard learned advocates for the respective parties and having considered the material on record this Court finds that, the contest put forward by the present appellants is



duly considered by learned Single Judge. The tenor of the contest is also taken note of by learned Single Judge, which reflects that even before the writ petition was filed, the claim of the writ petitioner was already accepted in principle but the only ground put forward at the stage of inter se correspondence was the liquidity crunch and subsequently some different stand is taken. Weighing the material, learned Single Judge has, in paras 8 to 11 of the judgement noted as under:-

"8. There is absolutely no dispute with regard to the fact that TANGEDCO has to pay the petitioner under the power purchase agreements for the supply of power made by the petitioner to TANGEDCO during the period from 2017 to 31st May 2020. The petitioner has raised the invoices and TANGEDCO did not respond to any of the invoice raised by the petitioner.

9. In the counter affidavit, a stand has been taken at paragraph 17 to the effect that TNERC has passed an order revising the tariff and this amount has not been paid by the petitioner and has been challenged before this Court in W.P.No.24498 of 2018 and the same is pending and therefore, till this amount is paid, the TANGEDCO will not make the payments for the invoices raised by the petitioner.

10. This stand taken by the TANGEDCO is totally unsustainable. The parties are bound by the power purchase agreements and this agreements itself stipulates the tariff rate that has been mutually agreed by the petitioner and TANGEDCO. The amount arrived at by the petitioner is in accordance with the tariff rate fixed under the agreements and there is no dispute with regard to the same. Curiously, the respondents never responded for any of the invoice raised by the petitioner and for the first time, a stand has been taken in the counter affidavit by placing reliance upon the order passed by the TNERC. The order passed by TNERC pertains to an inter se dispute between Sakthi Sugars Limited, Tamil Nadu News Print and Papers Limited and TANGEDCO. The final direction given by TNERC specifically deals with the concerned entities involved in the dispute and it is an order in personam. This order cannot be applied for any other entity which is not a party to the proceedings.



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11.The TANGEDCO by relying upon this order attempted to unilaterally revise the tariff and make a claim against the petitioner. This was challenged by the petitioner in W.P.24498 of 2018 and this Court stayed the demand made by the TANGEDCO by an interim order dated 27.09.2018. The order of the Division Bench relied upon by the petitioner and which has been extracted supra, categorically states that where interim orders are granted by this Court and the same has not been vacated, varied or modified, TANGEDCO cannot insist for payment and take those orders to their advantage. This order passed by the Division Bench was taken note by TANGEDCO and a circular was also issued on 23.01.2014, where the directions given by this Court was brought into force."

7.We considered the reasons recorded by learned Single Judge vis-a-vis the material as it stood on record. We do not find any infirmity in the impugned order.

8.1 So far the argument with regard to alternative remedy to the writ petitioner is concerned, at this bleated stage, that argument need not be examined.

8.2 So far the review of the order impugned is concerned, we find that the order passed by learned Single Judge is dated 15 September 2020. Since there was non-compliance of the direction therein, the writ petitioner has also initiated proceedings for compliance thereof and the said proceedings is not going further considering the pendency of this appeal. This argument therefore need not be entertained. In totality, we find that no interference is required in the impugned order.

9. For the reasons recorded above, this writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR



ssm/14

To

- 1.The Chairman & Managing Director,
TamilNadu Electricity Generation and Distribution,
Company (TANGEDCO)
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- 6.Deputy Financial Controller,
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Karur.

+1cc to Mr.L.Jai Venkatesh, Advocate Sr.69083

W.A.No.2598 of 2021

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