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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No. 24553 of 2021

and

W.M.P. Nos. 25850 & 25851 of 2021

TCP Limited

Represented by its Executive Director

No.4, Karpagambal Nagar

Mylapore, Chennai - 600 004

...Petitioner

Versus

1. Tamil Nadu Generation and Distribution

Corporation Limited (TANGEDCO)

Rep by its Chairman

NPKRR Maaligai

144, Anna Salai

Chennai - 600 002

2. The Chief Finance Controller/Revenue

TANGEDCO (Accounts Branch)

144, Anna Salai

Chennai - 600 002

3. The Superintending Engineer

CEDC/North, TANGEDCO

144, Anna Salai

Chennai - 600 002

4. Tamil Nadu Transmission Corporation Ltd

TANTRANSCO

Rep by its Managing Director

144, Anna Salai

Chennai - 600 002

5. State Load Despatch Centre c/o TANTRANSCO

144, Anna Salai

Chennai - 600 002

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the 3rd respondent to refund the excess Open



Access charges amounting to Rs. 76,67,040/- (Rupees seventy six lakhs sixty seven thousand forty only) along with interest amounting to Rs.17,05,917(Rupees seventeen lakh five thousand nine hundred and seventeen only) paid by the petitioner under protest in respect of Petitioner's 63.5MW thermal plant, during the lock down period of March 2020 to May 2020 along with interest till date of realisation in accordance with the final order dated 29.06.2021 passed by the Hon'ble TNERC.

For Petitioner : Mr. Rahul Balaji

For Respondents : Mr. S. Madhusudanan
Standing Counsel for TNEB

O R D E R

This writ petition has been filed for issuance of Writ of Mandamus directing the 3rd respondent to refund the excess Open Access charges amounting to Rs. 76,67,040/- (Rupees seventy six lakhs sixty seven thousand forty only) along with interest amounting to Rs.17,05,917(Rupees seventeen lakh five thousand nine hundred and seventeen only) paid by the petitioner under protest in respect of Petitioner's 63.5MW thermal plant, during the lock down period of March 2020 to May 2020 along with interest till date of realisation in accordance with the final order dated 29.06.2021 passed by the Hon'ble TNERC.

The facts of the case are as follows:

2. The petitioner is a company, engaged in the generation of electricity using coal as a raw material and has set up its captive power plant in Gummidipoondi with the capacity of 63.5 MV. The petitioner company had entered into two medium term open access agreements with the 5th respondent dated 30.08.2019 and 26.07.2019 to transmit and wheel the energy generated by the petitioner. Thereafter, the petitioner company filed writ petition in W.P.No.9321 of 2020 challenging the multiple demand notices levying OA charges issued by the first respondent before this Court. This Court, vide its common order dated 17.09.2020, directed the Tamil Nadu Electricity Regulatory Commission (TNERC) to dispose of the application within a period of four weeks. Subsequently, the petitioner filed a transfer application in TA.No.6 of 2020 and the TNERC was allowed the petitioner's application vide order dated 29.06.2021, describing the event as a force majeure condition and to set aside the demand letters levying OA charges to the extent of the lockdown period from 24.03.2020 to 15.05.2020, as there was no utilisation of the transmission and distribution infrastructure. It is also directed the respondents to revise and refund the proportionate excess OA charges collected. However, till date, the order was



not implemented and the said amount was not refunded to the petitioner. Hence, the present Writ petition has been filed.

3. The learned counsel for the petitioner submitted that the Regulatory Commission has directed the 3rd respondent to recalculate and refund the excess amount paid by the petitioner company. But, till date, the 3rd respondent has not paid the excess OA charges. The learned counsel further submitted that on the very same issue, this Court, in W.P.Nos.19753, 21050 & 23486 of 2021 dated 28.10.2021, was directed the TANGEDCO to comply with the orders passed by the TNERC and refund the amount to the petitioner. Therefore, the learned counsel prays this Court to issue a direction to the 3rd respondent to implement the order dated 29.06.2021 by the TNERC.

4. Heard Mr. S.Madhusudanan, learned Standing Counsel for respondents and perused the materials placed on record.

5. Considering the facts and circumstances of the case and also having regard to the submissions made by the Learned Counsel appearing on either side, this Court directs the third respondent to implement the order passed by the TNERC dated 29.06.2021 within a period of six weeks from the date of receipt of a copy of this order if there is no legal impediments.

6. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Rli

To

1. The Chairman
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO)
NPKRR Maaligai
144, Anna Salai
Chennai - 600 002
2. The Chief Finance Controller/Revenue
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4. The Managing Director
Tamil Nadu Transmission Corporation Ltd
TANTRANSCO
144, Anna Salai
Chennai - 600 002
5. State Load Despatch Centre c/o TANTRANSCO
144, Anna Salai
Chennai - 600 002

+1cc to Mr.R.Parthasarathy, Advocate, S.R.No.59279
+1cc to Mr. S. Madhusudanan, Advocate, S.R.No.59233

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NSK 08/12/2021