



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.03.2021

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THE HONOURABLE MR.JUSTICE **V. PARTHIBAN**

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W.P(MD) No.3878 of 2021

and

W.M.P(MD)No.3118 of 2021

CWRE Wind Power Private Limited,
represented by its Director,
Laxsmanan Natarajan, Having Registered office at
319,, 3rd Floor, JK Chambers,
Plot No.76,
Sector 17, Vashi
Navi Mumbai - 400 703,
Maharashtra.

.. Petitioner

Vs

1.The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Tirunelveli Electricity Distribution Circle,
Tirunelveli - 11.

2.The Chief Engineer,
Non Conventional Energy Sources (NCES),
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
No.144, Anna Salai,
Chennai - 600 002.

.. Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the 1st respondent to issue No Objection Certificate in favour of the petitioner's 2100 KW WEG in Vannikonendal Village, Manu Taluk (earlier known as Sankarankoil Taluk), Tirunelveli District, bearing HTSC number 079234724221 so as to enable the buyer to get approval from the Chief Engineer (CE), NCES, TANGEDCO, Chennai for name transfer of WEG/HTSC/Change of user.

For Petitioner : Mr.Raguvaran Gopalan

For Respondents : Ms.Rajeswari,
for Mr.S.M.S.Jonny Basha

ORDER

The petitioner is a company duly incorporated under the Companies Act, 1956 and has been in the business of general and sale of electricity since 2013. The petitioner owns and operates 6.3



MW wind farm project in Vannikonendal Village, Manur Taluk, Tirunelveli District.

2.The Wind Energy Generators (WEG) were erected and commissioned as a captive generating plant by the petitioner under the provisions of the Electricity Act, 2003. The petitioner has entered into an Energy Wheeling Agreement [EWA] on 14.06.2018 with the 1st respondent TANGEDCO for wheeling of energy generator from the petitioner's Captive Generating Plant to the petitioner's group captive consumers as set out in the agreement dated 14.06.2018.

3.The petitioner had in the course of its activities had faced severe financial crunch and therefore it had taken a decision to sell its 2100 KW WEG in Vannikonendal Village, Manur Taluk, Tirunelveli District, bearing HTSC Number 079234724221 to one buyer LS Mills Limited. In order to complete the sale transaction, the intending buyer has obtained No Objection Certificate [NOC] from the respondents for name change of WEG/HTSC/Change of user in favour of the intending buyer.

4.The petitioner after taking decision to sell the Wind Energy Generator, had also entered into an Asset Sale Agreement with the buyer LS Mills Limited on 22.01.2021. The petitioner being the seller is under legal obligation to obtain necessary No Objection Certificate from the respondents and also from the private lender namely L&T Infrastructure Finance Company Limited. According to the petitioner the No Objection Certificate has been obtained from the private lender. When the petitioner has approached the 1st respondent for their no objection, the company was given to understand that the No Objection Certificate would not be given, as there was an outstanding claim of Rs.1,19,21,940/- due and payable by the petitioner's consumers as Cross Subsidy Surcharges (CSS) for the finance year 2019 -2020.

5.According to the petitioner the 1st respondent has orally refused to issue No Objection Certificate for the above said reason. In this connection the learned Counsel, Mr.Raguvaran Goplan, who had appeared for the petitioner, referred to the relevant paragraphs of the affidavit filed in support of the writ petition in order to emphasis the fact that for the stated reasons by the 1st respondent No Objection Certification could not be withheld. The relevant paragraphs of the affidavit are extracted hereunder:

"Clause 7.9.9 of RA 7 of 2019: In case where the captive users/ CGPs offer explanation / clarification and the licensee finds the explanation satisfactory, the licensee may accordingly act on withdrawal of claims made. Where, the licensee is not satisfied with the explanations offered by the CGP/ captive users and is convinced that action has to be pursued for disqualification of the CGP or to raise the demand towards payment of cross subsidy



surcharges, such cases shall be brought before the commission for adjudication by filing necessary petition.

Clause 7.9.10 of RA 7 of 2019: All cases of disputes on the status verification of CGPs conducted by the licensee shall be referred to the Commission by the licensee by filing a petition (Miscellaneous Petition in view of the directions of the Hon'ble High Court of Madras in W.A.Nos.930 and 931, dated 09.10.2018) before the Commission for adjudication and till such time final orders are passed by the Commission no distraint proceedings or coercive action shall be taken. Upon filing of such petition, the Commission shall decide the issue after giving opportunities to both parties, as soon as possible, but not later than six months from the date of filing of such petitions".

6.The learned Counsel would submit that the petitioner company has two other Wind Energy Generators (WEG), apart from the one which is now intended to be sold. He therefore submitted that in order to secure the interest of the TANGEDCO, towards realisation of the outstanding amount as claimed by them from the petitioner company assuming the amount is payable at all by the petitioner, the petitioner company is willing to give an undertaking in that regard. According to the Counsel, any finding against the petitioner company by the TNERC now pending in M.P.34 of 2020 and consequently any sum is found to be due and payable by the petitioner to the TANGEDCO, as an outcome of the said proceedings, an undertaking would be given that the claims in relation to the WEG, which is the subject matter of consideration in this writ petition would be deemed to be related to the other two WEGs owned by the company.

7.At this, this Court enquired with the learned Counsel appearing appearing for TANGEDCO and on instructions, she submitted that if any clear undertaking is given on that aspect, the same would be considered and the required No Objection Certificate will be given to the petitioner. There upon the petitioner has come up with the present undertaking affidavit dated 16.03.2021. The affidavit is taken on file and the undertaking portion of the said affidavit is extracted hereunder, as being part of this order:

" UDERTAKING:

8.The petitioner is furnishing the following undertaking which may be considered to be recorded by this Hon'ble Court and the Hon'ble Court may be pleased to issue appropriate directions to the 1st respondent to furnish the NOC forthwith (as the 1st respondent has already furnished " Status Report dated 26.02.2021" instead of NOC after filing the instant writ petition on 22.02.2021, a copy of which is enclosed) and the 2nd



respondent to issue the approval for name change of WEG with HTSC No 079234724221 to the intending buyer, LS.Mills Limited on such basis as mentioned herein below:-

a.The petitioner has the following Three Wind Energy Generators of 2.1. MW each, i.e., a total of 6.3 MW

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- i.HTSC No.079234724220,
- ii.HTSC No.079234724221 and
- iii. HTSC No.079234724222

The petitioner is transferring only one out of Three Wind Energy Generators, viz., HTSC No.079234724221 to the intending buyer LS Mills Limited and the other Two Wind Energy Generators would continue to be owned by the petitioner, thus adequately protecting the interest of the TANGEDCO.

b.Any sum with regard to the claims raised and found to be due with respect to HTSC No.079234724221 that is being transferred would be deemed to be relatable to HTSC No.079234724220 and HTSC No.079234724222 and the petitioner agrees to the same.

c.In the even the Hon'ble TNERC renders a finding in the pending petition in M.P.No.34 of 202 that any sum if due and payable by the petitioner, the petitioner irrevocably undertakes to make payment of such sum upon final determination of such liability by a competent authority or any Court in this regard."

8.The learned Counsel would with reference to the above undertaking submit that a direction may be issued to TANGEDCO namely, the respondents herein to forthwith give No Objection Certificate as the company has to tide over the financial crisis before March 31, 2021.

9.In consideration of the above affidavit of undertaking and also the fact that the learned Counsel appearing for the TANGEDCO on instructions submitted that if any direction is issued in pursuance of the undertaking affidavit, the same shall be complied with, this Court has no hesitation in accepting the plea made on behalf of the petitioner herein.

10.After going through the affidavit and also in consideration of the above factual narrative, this Court is convinced that the interest of the TANGEDCO would be fully secured and there cannot be any legitimate apprehension in regard to their claim arising under the agreement entered into between the TANGEDCO and the 1st respondent company. In the said circumstances, this writ petition is disposed of with directions as under:



(i) The respondents are directed to issue No Objection Certificate to the petitioner for the purpose, for which it is sought forthwith, without any further delay, as this Court is convinced of *bona fides* of the request and the same has been pending for some time, as of now.

(ii) In any event, the No Objection Certificate shall be issued not later than one week from the date of receipt of a copy of this order.

(iii) It is further clarified that it is open to the TANGEDCO to enforce the undertaking of the petitioner conveyed through the affidavit extracted supra, if need arises in relation to the pending dispute before the Commission.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

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Sub Assistant Registrar(CS)

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To

1.The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
Tirunelveli Electricity Distribution Circle,
Tirunelveli - 11.

2.The Chief Engineer,
Non Conventional Energy Sources (NCES),
Tamil Nadu Generation and Distribution
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