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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)Nos.16799 & 16809 of 2020

and

W.M.P. (MD)Nos.14027, 14032, 14044, 14047 & 15974 of 2020

in WP(MD)No.16799 of 2020

S.J.Engineers Renewable Energy (P) Ltd.,
Having its Registered Office
at 27, Krishna Colony, P.B.No.1850,
Trichy Road, Coimbatore and its
Administrative Office at Varsha B-19,
Vasudhara Enclave, Agrini Apartments,
T.P.K.Road, Madurai
Through its Director
Vs.

... Petitioner

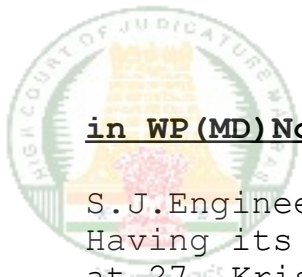
1.The Chief Engineer,
Non-Conventional Energy Sources,
TANGEDCO, 2nd Floor, Eastern Wing,
144, Anna Salai, Chennai-600 002.

2.The Superintending Engineer,
Karur Electricity Distribution Circle,
TANGEDCO, No.3, Kovai Road, Karur-639 002.

3.M/s.Shankar Abodes Solar Private Limited,
Rep.by its Director, 28/38, Bharathi Nilayam,
3rd Cross, Thillai Nagar, Trichy-620 018.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent's proceedings in Memo No. Lr.No.CE/NCES/SE/Solar/EE/SCB/AEE/2F, M/s.Shankar Abodes Solar Pvt Ltd. D.989/19 dt 1.8.2019 and quash the same in so far as the condition no.4 is concerned and the consequential proceedings of the 1st respondent's proceedings dt 28.7.2020 in Memo.No.DIR/GEN/EC/NCES/SE/Solar/EE/SCB/AEE-2/F M/s. Shankar Abodes Solar Pvt Ltd, D.713/20 and quash the same in so far as it relates to the condition no.3 as illegal, arbitrary and without jurisdiction and further direct the respondents 1 and 2 not to permit transmission by any generating plant and forbear the respondents 2 and 3 from transmitting, through the petitioner's 33KV transmission line at Iyerimalai Sub-Station, without a line sharing agreement with the petitioner.

**in WP (MD) No.16809 of 2020**

S.J.Engineers Renewable Energy (P) Ltd.,
Having its Registered Office
at 27, Krishna Colony, P.B.No.1850,
Trichy Road, Coimbatore and its
Administrative Office at Varsha B-19,
Vasudhara Enclave, Agrini Apartments,
T.P.K.Road, Madurai
Through its Director

... Petitioner

Vs.

- 1.The Chief Engineer,
Non-Conventional Energy Sources,
TANGEDCO, 2nd Floor, Eastern Wing,
144, Anna Salai, Chennai-600 002.
- 2.The Superintending Engineer,
Karur Electricity Distribution Circle,
TANGEDCO, No.3, Kovai Road, Karur-639 002.

- 3.Sri Parvathi Angalamman Mill Private Limited,
through its Managing Director,
No.8, AKE Road No.2,
Tiruchengode - 637 211.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent's proceedings in Lr.No.CE/NCES/SE/Solar/EE/SCB/AEE/2F, M/s.Parvathi Angalamman Mill Pvt Ltd. D.831/19 dt 02.07.2019 and quash the same in so far as the condition no.4 is concerned and quash the same as illegal, arbitrary and without jurisdiction and further direct the respondents 1 and 2 not to permit transmission by any generating plant and forbear the 3rd respondent from transmitting, through the petitioner's 33KV transmission line at Iyermai Sub-Station, without a line sharing agreement with the petitioner.

in both cases :

For Petitioner : Mr.H.Lakshmi Shankar

For Respondents : Ms.Parameshwari
for SMS.Johnny Basha for R1 & R2

Mr.G.Prabhu Rajadurai for R3

for Ms.R.Sridevi

COMMON ORDER

M/s.Shankar Abodes Solar Private Limited, the third respondent herein wanted to erect and commission a 2 Mega Watt solar



power generation unit at Iranyamangalam and Sivayam Village, Kulithalai Taluk, Karur District. They wanted the petitioner to provide "Engineering, Procurement and Consultation" services. A letter of intent (LOI) dated 10.02.2017 was signed between them. When the project work was more than midway, disputes arose between the two. The petitioner was shown the door and the third respondent completed the work by engaging the services of another company. While the petitioner would claim that they have not been paid their entire dues, the third respondent would contend that they have paid more than what the petitioner was entitled to and that they have counter claim. This issue however does not fall within the scope of these writ petitions.

2.The power generated in any generating unit will have to be transmitted to the sub station maintained by TANGEDCO. To enable this transmission, there will have to be an electric supply line for point to point transmission. They are known as dedicated transmission lines. In the case on hand also, such dedicated transmission line was erected and the power generated by the petitioner is being transmitted. The dedicated transmission lines is having the capacity to carry 15 MW power supply. As on date, the infrastructure created in the form of dedicated transmission line is being grossly under utilized. The third respondent had entered into agreements with third parties for sharing the said infrastructural facility. This has been approved by the first respondent by issuing the impugned proceedings. The permission granted by the first respondent in favour of Shankar Abodes Solar Pvt Ltd has been put to challenge in these writ petitions at the instance of the writ petitioner.

3.The writ petitions were entertained and an interim order was also granted. To vacate the same, M/s.Shankar Abodes Solar Pvt Ltd., has filed a petition. TANGEDCO has also filed its counter affidavit and called upon this court to sustain the impugned proceedings.

4.The learned counsel for the petitioner reiterated all the contentions set out in the affidavits filed in support of the writ petitions and wanted this Court to set aside the orders impugned in these writ petitions.

5.The learned counsel appearing for the third respondent would draw my attention to the relevant provisions in the Electricity Act, 2003, in particular, Sections 2(16), 2(72), 7, 10, 14 of the Act. They read as follows :

"2(16). "dedicated transmission lines" means any electric supply-line for point to point transmission which are required for the purpose of connecting electric lines or electric plants of a captive generating plant referred to in section 9 or generating station referred



to in section 10 to any transmission lines or sub-stations or generating stations, or the load centre, as the case may be.

2(72). "transmission lines" means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or a substation, together with any step-up and step-down transformers, switch-gear and other works necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers, switch-gear and other works.

7.(Generating company and requirement for setting up of generating station): Any generating company may establish, operate and maintain a generating station without obtaining a licence under this Act if it complies with the technical standards relating to connectivity with the grid referred to in clause (b) of section 73.

10.(Duties of generating companies): ---

(1) Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder.

(2) A generating company may supply electricity to any licensee in accordance with this Act and the rules and regulations made thereunder and may, subject to the regulations made under sub-section (2) of section 42, supply electricity to any consumer.

(3) Every generating company shall -

(a) submit technical details regarding its generating stations to the Appropriate Commission and the Authority;

(b) co-ordinate with the Central Transmission Utility or the State Transmission Utility, as the case may be, for transmission of the electricity generated by it.

14.(Grant of licence): The Appropriate Commission may, on an application made to it under section 15, grant a licence to any person -

(a) to transmit electricity as a transmission licensee; or

(b) to distribute electricity as a distribution licensee; or

(c) to undertake trading in electricity as an electricity trader, in any area as may be specified in



the licence:

Provided that any person engaged in the business of transmission or supply of electricity under the provisions of the repealed laws or any Act specified in the Schedule on or before the appointed date shall be deemed to be a licensee under this Act for such period as may be stipulated in the licence, clearance or approval granted to him under the repealed laws or such Act specified in the Schedule, and the provisions of the repealed laws or such Act specified in the Schedule in respect of such licence shall apply for a period of one year from the date of commencement of this Act or such earlier period as may be specified, at the request of the licensee, by the Appropriate Commission and thereafter the provisions of this Act shall apply to such business:

Provided further that the Central Transmission Utility or the State Transmission Utility shall be deemed to be a transmission licensee under this Act:

Provided also that in case an Appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity, whether before or after the commencement of this Act, such Government shall be deemed to be a licensee under this Act, but shall not be required to obtain a licence under this Act:

Provided also that the Damodar Valley Corporation, established under sub-section (1) of section 3 of the Damodar Valley Corporation Act, 1948, shall be deemed to be a licensee under this Act but shall not be required to obtain a licence under this Act and the provisions of the Damodar Valley Corporation Act, 1948, in so far as they are not inconsistent with the provisions of this Act, shall continue to apply to that Corporation:

Provided also that the Government company or the company referred to in sub-section (2) of section 131 of this Act and the company or companies created in pursuance of the Acts specified in the Schedule, shall be deemed to be a licensee under this Act:

Provided also that the Appropriate Commission may grant a licence to two or more persons for distribution of electricity through their own distribution system within the same area, subject to the conditions that the applicant for grant of licence within the same area shall, without prejudice to the other conditions or requirements under this Act, comply with the additional



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requirements 1[relating to the capital adequacy, credit-worthiness, or code of conduct] as may be prescribed by the Central Government, and no such applicant, who complies with all the requirements for grant of licence, shall be refused grant of licence on the ground that there already exists a licensee in the same area for the same purpose:

Provided also that in a case where a distribution licensee proposes to undertake distribution of electricity for a specified area within his area of supply through another person, that person shall not be required to obtain any separate licence from the concerned State Commission and such distribution licensee shall be responsible for distribution of electricity in his area of supply:

Provided also that where a person intends to generate and distribute electricity in a rural area to be notified by the State Government, such person shall not require any licence for such generation and distribution of electricity, but he shall comply with the measures which may be specified by the Authority under section 53:

Provided also that a distribution licensee shall not require a licence to undertake trading in electricity."

6.The learned counsel for the third respondent also placed considerable reliance on the order dated 30.11.2011 passed by this Court in WP(MD)Nos.22967, 23243 to 23246 of 2011. His core argument is that it is the duty of generating company to establish, operate and maintain dedicated transmission lines and pursuant to the said statutory duty, they have established the dedicated transmission lines in question. It is only the generating company that can establish a dedicated transmission line. EPC contractor like the petitioner cannot independently establish any dedicated line without getting license from TANGEDCO. He referred to Section 12 and 14 of the Electricity Act, 2003 in this regard. He would also point out that approval had already been issued in favour of the third respondent by TANGEDCO authorizing them to transmit power. Nowhere the right of the petitioner has been recognized. On account of the interim order granted by this Court, the dedicated transmission line is now being grossly under utilized and that eventually harms public interest. He called upon this Court to vacate the interim order and to dismiss the writ petitions.

7.I carefully considered the rival contentions and went through the materials on record. The only issue that arises for my consideration is as regards the ownership of the dedicated transmission line in question. I posed a direct question to the



learned standing counsel as to whether the ownership of the dedicated transmission line should follow the ownership of the generating company. In other words, the question is whether there can be dichotomy in the matter of ownership between the generating company and that of the dedicated transmission line. The learned standing counsel unambiguously informed the court that it is not necessary that the entity owning the generating company should also own the dedicated transmission line. But then, there has to be a line sharing agreement between the two. This stand of TANGEDCO completely undermines the contention put forth by the learned counsel appearing for the third respondent. In fact, a careful perusal of Section 10 of the Electricity Act, 2003 only indicates that what has been mandated is that a generating company should establish operate and maintain the dedicated lines. It does not state that the ownership should also vest cast with the generating company.

8.It appears to be beyond dispute that all over Tamil Nadu, there are several line sharing agreements between generating companies and the entities owning dedicated transmission lines.

9.Having noted this legal and factual position, the next question that arises for my consideration is whether as to who owns the dedicated transmission line in question. I am afraid that this issue regarding title cannot be decided in writ proceedings. They necessarily involve a factual investigation. I am of the view that though the standing counsel on instructions contends that Shankar Abodes owning the dedicated lines also. TANGEDCO also cannot go into this title issue. It is entirely best decided by the jurisdictional civil court. Of course, in the case on hand, there is an arbitration clause in the agreement entered into between the parties. But then, TANGEDCO is not a party to the same. The writ petitioner points out that they have placed a host of materials before TANGEDCO to show that they had erected the transmission line and that they own the same.

10.The learned counsel for the petitioner would draw my attention to the provisions of the Central Electricity Authority (Technical Standards for Connectivity to the Grid) Regulations, 2007. Clause 7 of the said regulations reads as under :

"7.Site Responsibility Schedule

(1)A Site Responsibility Schedule (SRS) for every connection point shall be prepared by the owner of the substation where connection is taking place.

(2)Following information shall be included in the Site Responsibility Schedule, namely,-- (a) Schedule of electrical apparatus services and supplies; (b) Schedule of telecommunications and measurement apparatus; and (c) Safety rules applicable to each plant and apparatus.



(3) Following information shall also be furnished in the Site Responsibility Schedule for each item of equipment installed at the connection site, namely:-- (a) the ownership of equipment; (b) the responsibility for control of equipment; (c) the responsibility for maintenance of equipment; (d) the responsibility for operation of equipment; (e) the manager of the site; (f) the responsibility for all matters relating to safety of persons at site; and (g) the responsibility for all matters relating to safety of equipment at site."

11. Since I have held that a title dispute of this nature cannot be adjudicated by the first respondent, the parties have to be relegated to move the jurisdictional civil court. I consciously refrain from deciding as to whether the issue has to be resolved through arbitration. Whether it has to be resolved through arbitration or through civil court is an issue I leave open.

12. The final question that arises for my consideration is as to whether till the title dispute is resolved, the status quo as on date should continue. I am clearly of the opinion that it cannot be so. When a common infrastructural facility has been created, it should be put to its fullest use and capacity. The dedicated transmission lines are said to be having carrying capacity of 15 MW. The Superintending Engineer (Non-conventional Energy Sources), Udumalpet has given a report stating that the cost of erection of 33 KV breaker and allied works at Ayyarmalai 110/33-11 KV Substation is Rs.23,27,750/- and the total cost of estimate sanctioned for erection of 33 KV feeder line from breaker and to plant end will be Rs.60,83,400/-. Thus, the total cost comes to Rs.84,11,150/-. The agreement between the parties contemplates establishing a 2.2 MW solar power plant. Shankar Abodes being the first developer, the proceedings rightly mentioned the name of Shankar Abodes. The dispute is only as regards the utilisation of the balance capacity of the feeder line from breaker end to plant end to the extent of 13 MW. The third respondent states that at present they are using the said dedicated transmission line to the extent of 5 MW. Shankar Abodes has entered agreements with M/s. Sri Parvathi Angalamman Mill Private Limited so that they can share the said dedicated transmission line for transmitting 1 MW. That still leaves us with a balance of 9 MW.

13. The learned counsel appearing for the third respondent on instructions states that without prejudice to their claim that the dedicated transmission line in question is actually owned by them. The third respondent shall deposit a sum of Rs.60,00,000/- in an account to be created for the purpose within a period of twelve weeks from the date of receipt of a copy of this order. It will have to be an interest bearing account in a nationalised bank. The office



of the second respondent shall be associated in the creation of the said account. All that he requests is that on remittance of the amount of Rs.60,00,000/- in the said account, TANGEDCO should sanction the utilisation of the dedicated transmission line for transmitting the remaining 9 MW(over and above the existing 5+1MW being transmitted) by them. It is open to either parties to move the jurisdictional civil Court or avail the arbitral remedy for establishing their claim of ownership over the dedicated transmission line in question. The appropriation or withdrawal of the amount of Rs.60,00,000/- to be deposited by the third respondent in the account in question will abide by the outcome of the suit proceedings. The orders impugned in these writ petitions are interfered to the limited extent as mentioned above.

14. These writ petitions are disposed of with the following directions:-

a) On depositing a sum of Rs.60,00,000/- in the account to be created for the purpose, the official respondents are directed to grant requisite permission in favour of Shankar Abodes for utilisation of the dedicated transmission line in question for the remaining capacity.

b) Without casting any aspersion on the petitioner, I restrain the petitioner from interfering with the utilisation of the aforesaid common infrastructural facility by the third respondent.

c) The rights of the parties will abide by the eventual result of the civil/arbitral proceedings. The Court/Forum will adjudicate the issue without being uninfluenced in any manner by any of the observations made in this order.

Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1.The Chief Engineer, Non-Conventional Energy Sources,
TANGEDCO, 2nd Floor, Eastern Wing,
144, Anna Salai, Chennai-600 002.



2.The Superintending Engineer,
Karur Electricity Distribution Circle,
TANGEDCO, No.3, Kovai Road, Karur-639 002.

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-3566[F] dated
05/02/2021)

+2 CC to M/s.R.SRIDEVI, Advocate (SR-3583[F] dated 05/02/2021)

W.P. (MD)Nos.16799 & 16809 of 2020
27.01.2021

(KM) CO

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