



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2022

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.1199 of 2022

And

W.M.P.Nos.1602 and 1603 of 2022

ARS Energy Private Limited
Represented by its
Deputy Director - Finance

...Petitioner

Vs.

1. Tamil Nadu Generation and Distribution Corporation Limited,
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,
Chennai - 600 002.

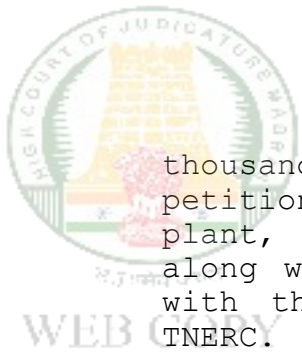
4. Tamil Nadu Transmission Company
(TANTRANSCO)
144, Anna Salai,
Chennai - 600 002.

5. State Load Dispatch Centre
c/o TANTRANSCO,
144, Anna Salai,
Chennai - 600 002.

...Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the third respondent to refund the excess open Access charges amounting to Rs.77,68,827/- (Rupees seventy seven lakhs sixty eight thousand eight hundred and twenty seven only) along with an interest amounting to Rs.15,78,455/- (Rupees fifteen lakh seventy eight



thousand four hundred and fifty five only) paid by the petitioner under protest in respect of petitioner's thermal plant, during the lockdown period of March 2020 to May 2020 along with interest till the date of realization in accordance with the final order dated 29.06.2021 passed by the Hon'ble TNERC.

For Petitioner : Mr.R.Parthasarathy

For Respondents : Mr.L.Jai Venkatesh

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Mandamus directing the third respondent to refund the excess Open Access charges amounting to Rs.77,68,827/- (Rupees seventy seven lakhs sixty eight thousand eight hundred and twenty seven only) along with an interest amounting to Rs.15,78,455/- (Rupees fifteen lakh seventy eight thousand four hundred and fifty five only) paid by the petitioner under protest in respect of petitioner's thermal plant, during the lockdown period of March 2020 to May 2020 along with interest till the date of realization in accordance with the final order dated 29.06.2021 passed by the TNERC.

2.The case of the petitioner is that 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 had entered into two medium term open access agreements with the fifth respondent dated 30.08.2019 and 26.07.2019 to transmit and wheel the energy generated by the petitioner. The petitioner filed W.P.No.9321 of 2020 challenging the multiple demand notices levying OA charges issued by the first respondent and this Court vide common order dated 17.09.2020 issued direction to the TNERC to dispose of the applications.

3.The further case of the petitioner is that subsequently, the petitioner filed T.A.No.5 of 2021 and the Hon'ble TNERC vide order dated 29.06.2021 allowed the application filed by the petitioner and pursuant to the order dated 29.06.2021, the petitioner had sent representation, requesting for the refund of excess OA charges paid by the petitioner with regard to its thermal plant. However, the petitioner has not received any response till date, but the respondent TANGEDCO has regularly collecting OA charges from the petitioner without making any provision for adjustment of excess amount. Therefore, the petitioner is constrained to approach this Court.



4.The learned counsel appearing for the petitioner submitted that the respondent has neither filed an appeal against the order dated 29.06.2021, nor sought for a review of the order before TNERC and thereby, the order dated 29.06.2021 has attained finality and hence prays for implementation of the said order in letter and spirit.

5.The Standing Counsel appearing for the respondents submitted that as against the order of TNERC, the Electricity Board has preferred an appeal before the Appellate Tribunal and till date it is not taken for hearing and hence prays for appropriate order of this Court.

6.This Court has carefully considered the rival submissions and also perused the materials placed on record.

7.Though the respondent Board preferred an appeal before the Appellate Tribunal, no interim order was secured as against the order passed by TNERC and it is pending without any progress and as on date, the order dated 29.06.2021 is final. Hence, this Court issues direction to the TANGEDCO to implement the order dated 29.06.2021 passed by TNERC, within a period of four weeks from the date of receipt of a copy of this order.

8.The writ petition is disposed of with the above terms. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman,
Tamil Nadu Generation and Distribution Corporation Limited,
NPKRR Maaligai,
144, Anna Salai,
Chennai - 600 002.
2. The Chief Finance Controller / Revenue
TANGEDCO (Accounts Branch)
144, Anna Salai, Chennai - 600 002.



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5. State Load Dispatch Centre
c/o TANTRANSCO,
144, Anna Salai,
Chennai - 600 002.

+1cc to M/s.S.Madhusudanan, Advocate, S.R.No.5858

+1cc to M/s.R.Parthasarathy, Advocate, S.R.No.5973

W.P.No.1199 of 2022

And

W.M.P.Nos.1602 and 1603 of 2022

PMK(CO)

RGA(07/03/2022)