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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2022

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THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.15926 of 2012
and MP.No.3 of 2012

M/s.Pioneer Jellice Pvt. Limited
HT Sc No.77
Semmankuppam
Chidambaram Main Road
Cuddalore.

... Petitioner

Vs.

1. TANGEDCO Limited
Rep.by its Chairman and Managing Director
144, Anna Salai
Chennai - 02.

2. Assistant Audit Officer
AP/VPM/BOAB/TANGEDCO
Villupuram.

3. The Superintending Engineer
TANGEDCO
Cuddalore Electricity Distribution Circle
Cuddalore 607 004.

...Respondents

Prayer :-

This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records comprised in Audit Slip Nos.21 and 22 dated 15.04.2011 issued by the second respondent and the consequent demand notice in Lr.No.SE/CEDC/Cud/DFC/AO/R/AS/RCS/A4/F.Audit/12 dated 07.02.2012 issued by the third respondent and quash the same as being arbitrary, illegal.

For Petitioner : Mr.Rahul Balaji

For Respondents : Mr.Abul Kalam
Standing Counsel for R1
Mr.L.Jai Venkatesh
Standing Counsel for R2 & R3



ORDER

The facts and circumstances narrated by the petitioner in the present writ petition are similar to that of the issues considered and decided by the Tamil Nadu Electricity Regulatory Commission in D.R.P.No.41 of 2014 dated 13.02.2015. Thus the issues are not more *res integra* and the petitioner is entitled to get the benefits pursuant to the orders passed by the Tamil Nadu Electricity Regulatory Commission. Further, the 1st order passed by the Tamil Nadu Electricity Regulatory Commission in M.P.Nos.6 of 2010, 9 of 2010 and 17 of 2010 and D.R.P.No.9 of 2010 dated 07.09.2010 and paragraph 4.4 provides findings of the Commission which reads as under:

"4.4 The consumer is at present permitted to utilise power from captive sources. The present order would enable a consumer to purchase power from third party sources as well. Procurement of power by a consumer through Open Access is protected by the Electricity Act, 2003. The role of the licensee is limited to that of a carrier. Procurement through Open Access will be treated as an additionality. The ceiling, upto which a consumer can utilise power including the TNEB quota demand, captive power and third party purchase would be the sanctioned demand. In such a situation, there would be no need for advance declaration by the consumer of procurement of captive power as stipulated in SMP.No.1 of 2009 or procurement of third party power as stipulated in the Interim Order dated 17.08.2010. As the TNEB had allowed procurement of power upto the sanctioned demand in their communication dated 17.07.2009 "procedure for allowing third party sale/purchase under intra state open access", there should be no difficulty in allowing the consumer to procure power upto the sanctioned demand."

2.Considering the above proposition, the Regulatory Commission subsequently passed an order in D.R.P.No.41 of 2014 and the relevant portion of the order stands extracted here under

"5. Findings of the Commission:-

5.1.The prayer of the Petitioner is to rectify the defect and error in the order dated 25-02-2013 passed by the Commission in R.A.No.4 of 2013 by directing that the date of effect of the order dated 07-09-2010 will apply to all consumers with sanctioned demand of 500 KW and above from 30-12-



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consumers with sanctioned demand of 250 kW and above, and 30-12-2008 for the consumers with sanctioned demand of 500 kW and above. Accordingly, in line with the direction of the Hon'ble Appellate Tribunal for Electricity, the Commission hereby directs that the date of effect of the order dated 07-09-2010 of the Commission in M.P.No.6 of 2010, M.P.No.9 of 2010 and M.P.No.17 of 2010 and D.R.P.No.9 of 2010 shall be 17-07-2009 for the consumers with sanctioned demand of 250 kW and above, and 30-12-2008 for the consumers with sanctioned demand of 500 kW and above. To that extent the Commission's Order dated 25-02-2013 in R.A.No.4 of 2013 has been modified. The other part of the Commission's Order dated 25-02-2013 in R.A.No.4 of 2013 holds good. Consequently, TANGEDCO is directed to effect refund to the HT consumers accordingly. This exercise shall be done within the period of two months from the date of the issue of this order.

6. Appeal:-

An appeal against this order shall lie before the Appellate Tribunal for Electricity under section 111 of the Electricity Act, 2003 within a period of 45 days from the date of receipt of a copy of this order by the aggrieved person."

3. In view of the proposition considered and laid down, the present writ petition also requires consideration. Accordingly, the impugned orders passed by the second and third respondent in proceedings dated 15.04.2011 and 07.02.2012, respectively are quashed and the respondents are directed to comply with the directions issued by the Tamil Nadu Electricity Regulatory Commission in the subject matter.

4. With these directions, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

pvs



To

1. The Chairman and Managing Director, TANGEDCO Limited
144, Anna Salai
Chennai - 02.

2. The Assistant Audit Officer
AP/VPM/BOAB/TANGEDCO
Villupuram.

3. The Superintending Engineer
TANGEDCO
Cuddalore Electricity Distribution Circle
Cuddalore 607 004.

+1cc to Mr.R.Parthasarathy, Advocate, S.R.No.12253

W.P.No.15926 of 2012

PM(CO)
CT 18/03/2022