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Writ Petition No.13273 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28/11/2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Writ Petition No.13273 of 2016
a n d
W.M.P.Nos.11651 and 11652 of 2016

Aditya Intermediate Private Limited
rep. By its Authorised Representative
Mr.T.Saravanan
7 Malhotra House
II Floor, OPP GPO, Fort,
Mumbai 400 001.

...

Petitioner

Vs

1. The Chairman
Tamil Nadu Generation and Distribution
Corporation Limited
144 Anna Salai
Chennai 600 002.
2. The Director – Finance
Tamil Nadu Generation and Distribution
Corporation Limited
144 Anna Salai
Chennai 600 002.
3. The Chief Financial Controller
Tamil Nadu Generation and Distribution
Corporation Limited
144 Anna Salai
Chennai 600 002.



Writ Petition No.13273 of 2016

4. The Superintending Engineer
Tirunelveli Electricity Distribution Circle
Tirunelveli 627 011.
5. The Superintending Engineer
Tirupur Electricity Distribution Circle
Tirupur.
6. The Tamil Nadu Electricity Regulatory Commission
rep. By its Secretary
No.19 A Rukmini Lakshmipathi Salai, Egmore
Chennai 600 088.
7. The Chairman
Tamil Nadu Electricity Board
144 Anna Salai
Chennai 600 002.

...

Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records of the impugned order of the third respondent dated 11/7/2014 bearing Lr.No.CFC/FC/REV/AAO/HT/ D.419/2014 and the consequent impugned demand of the fourth respondent bearing Lr.No.SE/TEDC/DFC/AO/REV/AS/Wind/F.BOAB Audit/D.No.2708/15 dated 20/10/2015 and Lr.No.SE/TEDC/DFC/AO/REV/AS/Wind/F/BOAB Audit/D.No.3727/16 dated 27/1/2016 and quash the same.

For Petitioner

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Ms.Simran Srinivasan
for Mr.R.Parthasarathy

For respondents

...

Mr.L.Jai Venkatesh
Standing Counsel



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ORDER

Writ Petition has been filed to quash the order of the third respondent dated 11/7/2014 bearing Lr.No.CFC/FC/REV/AAO/HT/ D.419/2014 and the consequent impugned demand of the fourth respondent bearing Lr.No.SE/TEDC/DFC/AO/REV/AS/Wind/F.BOAB Audit/D.No.2708/15 dated 20/10/2015 and Lr.No.SE/TEDC/DFC/AO/REV/AS/Wind/F/BOAB Audit/D.No.3727/16 dated 27/1/2016.

2. The case of the petitioner is that the petitioner has a Wind Energy Generator (WEG). According to the Tariff orders issued by the Commission, it was ordered that if wind energy is not utilised fully during a month, balance of it will be transferred to a banking account and accordingly, during the lean sessions of wind energy, such banked energy is allowed for adjustment from the banking account after paying notified banking charges to the respondent by the WEG owners. When the petitioner has raised an invoice for sale of unutilised banked units, till date, no payment has been made by the respondents. Hence, the petitioner has filed the instant writ petition, praying for the relief as stated therein.



3. Heard Ms.Simran Srinivasan, learned counsel appearing for the petitioner and Mr.L.Jai Venkatesh, learned Standing Counsel for the respondents.

4. Learned counsel appearing for the petitioner submitted that payments have not been made as per Circular, dated 11.7.2014. When the very Circular is put in challenge before this Court in W.P.No.27613 of 2017, this Court, vide, order, dated 29.7.2022, has ordered as follows:- Paragraph Nos.4 and 5 of the said order, reads thus:-

“4. This question was considered by the Tamil Nadu Electricity Regulatory Commission (TNERC) in DRP.No.1 of 2016 and the TNERC in its order dated 03.08.2021 concluded as follows:-

“6.9 At this juncture, it would be relevant to refer the Clause 10 of the Energy Wheeling Agreement executed between the parties:~

“10. Agreement Period:

a. This agreement shall come into force from the date of execution and shall remain in full force for a period of twenty (20) years.

b. In case of any breach or violation of any of the clauses in this agreement, by any party, the other party shall be at liberty to terminate this agreement after giving three months notice.

c. It is agreed that the change of utilisation of wind energy, from captive consumption to sale may be done after giving three months notice by the Wind Energy



Generator to the Board and after executing energy purchase agreement on the terms applicable as per Order Nos.2 and 3 dated 15.05.2006.?”

Though the petitioner in HT SC.1797 M/s.R.K.K.R. Steels is the 100% user of the power generated from WF.HT.SC.D.112, the disconnection and Account closure of the user end HT.SC.1797 was not immediately informed to first respondent by the second respondent. This might be one of the reasons that, the first respondent has not issued any notice to terminate the Energy Wheeling Agreement. In the absence of any such notice from the respondents towards -termination of EWA-, the Energy Wheeling Agreement cannot be considered as void.

6.10. The petitioner has executed the EWA based on the Commission-s T.O.No.3 of 2006 dated 15.05.2006, hence the provisions of banking referred in that order is applicable to the petitioner-s case as below:~

“ 10.4 Banking

xxx xxx xxx

The Commission fixes the banking charges as 5% for WEG. The Licensee shall pay at a rate of 75% of normal purchase rate for the unutilised portion of energy banked by the NCES based wind electric generators.....?

“ The same has been well inserted into the Energy Wheeling Agreement of the petitioner as below ~

“ 5. Banking:

a. The Wind Energy Generator shall bank the energy generated in the Wind Mill and the Banking period shall be one year from April to March.

b. The unutilised portion of banked energy if any shall be purchased by the Licensee at the rate of 75% of the normal purchase rate.

c. The Banking shall be done slot wise to enable unit~to~unit adjustment. “

It is evident from the Wind Energy Statement issued by the first respondent during the period from 04/2014 to



07/2015 that the entire energy generated by the petitioner was accepted by the first respondent into its grid. In this circumstance, the unutilised portion of power generated becomes eligible for payment under para 10.4 of the T.O.No.3 of 2006 and clause 5(b) of the Energy Wheeling Agreement.”

5. In view of the above opinion expressed by the TNERC, the TANGEDCO demand is opposed to the finding of the Commission and hence the demand will have to be set aside. The writ petition is therefore **allowed**. The demand made is set aside and the TANGEDCO is directed to recalculate the value of the un-utilised and banked units and make payment to the petitioner. Such exercise shall be carried out within a period of 4 months from the date of receipt of a copy of the order. No costs. Consequently, the connected writ miscellaneous petitions are closed.”

5. Considering the above judgment and also considering the fact that unutilised portion of power generated becomes eligible for payment, this Court is of the considered view to direct the respondents to make payment to the petitioner, and the same will serve the ends of justice.

6. Accordingly, this writ petition is allowed and the order dated



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11.7.2014, passed by the third respondent is quashed. The second respondent is bound to return the amount of Rs.39,40,813/- after verification of their accounts towards the banked unutilised energy to the petitioner, within a period of three months, from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petitions are closed.

28/11/2022

Index : Yes / No
Internet: Yes
Speaking/non speaking order

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