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W.P.Nos.21020 of 2015 & 27373 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

WP.Nos.21020 of 2015 & 27373 of 2016 &

M.P.Nos.2 & 3 of 2015 & WMP.Nos.23574 to 23576 of 2016

M/s.MALCo Energy Limited,
Post Box No.4, Mettur R.S.,
Mettur Dam – 639 402.

... Petitioner in W.P.
No.21020 of 2015

M/s.Tamil Nadu News Print& Papers Ltd.,
Kagithapuram, Karur – 639 136.

... Petitioner in W.P.
No.27373 of 2016

Vs

1. Tamil Nadu Electricity Generation
and Distribution Company [TANGEDCO],
Rep. by its Chairman and Managing Director,
No.144, Anna Salai, Chennai – 600 002.
2. The Chief Engineer / PPP,
Tamil Nadu Electricity Generation
and Distribution Company [TANGEDCO],
No.144, Anna Salai, Chennai – 600 002.
3. The Superintending Engineer,
Mettur Electricity Distribution Circle,
Mettur Dam – 639 401.



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4. The State Load Dispatch Centre,
C/o.TANTRANSCO, Rep. by its Director,
No.144, Anna Salai, Chennai – 600 002.

... Respondents in W.P.
no.21020 of 2015

1. Tamil Nadu Electricity Generation
and Distribution Company [TANGEDCO],
Rep. by its Chairman and Managing Director,
No.144, Anna Salai, Chennai – 600 002.

2. The Chief Engineer / PPP,
Tamil Nadu Electricity Generation
and Distribution Company [TANGEDCO],
No.144, Anna Salai, Chennai – 600 002.

3. The Superintending Engineer,
Karur Electricity Distribution Circle,
Karur – 639 002.

4. The State Load Dispatch Centre,
C/o.TANTRANSCO, Rep. by its Director,
No.144, Anna Salai, Chennai – 600 002.

... Respondents in W.P.
no.27373 of 2016

Prayer:- Writ Petitions filed, under the Article 226 of Constitution of India, to issue a Writ of Certiorari to call for the records of the second and third respondents comprised in the second respondent's Lr.No.SE/PP/E1/Tender No.6 of 2014/D.256/2015 dated 13.02.2015 and Lr.No.CE/PPP/SE/PP/E1/Tender No.6 of 2014/D:303 201 dated 24.4.2015 and the consequential demand notice dated 29.06.2015 and 21.07.2016 bearing Lr.No.SEM/DFC/ AO/R/AA0 HT/F.Malco/D.No.039/15, SE/KEDC/KRR /DFC/AS/HT/F.15/D.213/2016 respectively issued by the third respondent and quash the same as being arbitrary, illegal, violative of the principles of



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natural justice besides being violative of the provisions of the Electricity Act, 2003 and the rules framed hereunder.

For Petitioner : Mr.Rahul Balaji

For Respondents : Mr.J.Ravindran,
Additional Advocate General
Asst. by Mr.L.Jai Venkatesh

COMMON ORDER

These writ petitions have been filed challenging the impugned Order passed by the third respondent dated 29.06.2015 and 21.07.2016 directing the petitioners to refund the amount towards excess units supplied to the petitioners.

2. Since the issue involved in both the writ petitions is with regard to the challenge to the demand raised by the TANGEDCO, with the consent of both parties, Common Order has been passed.

3. The case of the petitioners is that the petitioners participated in the tender called for by the second respondent for supply of power to the State Grid and such power is thereafter supplied to the consumers of the first



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respondent. Now the demand notice has been issued contrary to the contractual terms. Though various grounds have been raised in the Writ Petitions, the crux of the issue is whether demand notice issued by the TANGEDCO contrary to the terms agreed between the petitioner and the TANGEDCO. It is the contention of the writ petitioners that the generators shall schedule the power in full except in case of transmission constraints. The scheduling and dispatch of power shall be coordinated with the SLDC as per the relevant provisions of IEGC and frame work of ABT. The Generator shall submit day ahead declaration of his capacity for the next day to SLDC positively. As per the contractual terms, billing will be on monthly basis and the monthly billing period means 00.00 hrs of first day of the month to 24.00 hrs of the last day of the month. When the matter stood thus, on 13.02.2015 the second respondent had issued a clarification clarifying that supply of power claiming to be working instructions. It is the case of the writ petitioners that the very basis for issuance of such working instructions was a so called confusion amongst the Superintending Engineers of TANGEDCO and the generators on the applicability of the compensation. Hence, based on such clarifications, the impugned Orders



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have been passed and the same have been challenged in these Writ petitions.

4. Though the stand taken by the respondents in their counter is that they have acted as per the terms of the contract, the learned Additional Advocate General submitted that as the petitioners dispute the claim, the disputed facts have to be raised only before Tamilnadu Electricity Regulatory Commission. It is his further contention that the entire billing has to be done as per the contract and any dispute arose as to the billing, the same has to be referred to Tamilnadu Electricity Regulatory Commission even as per the contractual terms between the parties.

5. The learned counsel appearing for the petitioners submitted that since at the relevant point of time, Tamilnadu Electricity Regulatory Commission was not functioning and there was a challenge to the appointment of the Chairperson, Tamilnadu Electricity Regulatory Commission was not entertaining any petition and hence, the Writ Petitions have been filed before this Court.



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6. The learned Additional Advocate General would submit that despite that fact that the dispute has to be referred to Tamilnadu Electricity Regulatory Commission, Writ Petitions have been filed. According to him, since the petitioners have raised a dispute with regard to the disputed facts, it is for the petitioner to raise the dispute before Tamilnadu Electricity Regulatory Commission by paying appropriate Court fee. However, considering the dispute, he has no objection for referring the matter to Tamilnadu Electricity Regulatory Commission.

7. A perusal of the records indicate that the demand has been raised as if the petitioner has to pay certain amount and there was some confusion in calculating supply of energy. It is relevant to note that in the contract, it is clearly admitted the mode of payment and billing has to be done on the basis of monthly payment. Only on the basis of certain clarifications, TANGEDCO had raised bills and they also disputed technical aspects during the contract. It is relevant to note that when there is a dispute in respect of payment of or difference of any kind whatsoever shall arise between the parties in connection with or arising out of this agreement or



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out of breach, termination or invalidity of the agreement hereof, the same shall be adjudicated by the Tamilnadu Regulatory Commission and the same has been clearly agreed by the parties in Clause 8 of the agreement. In such view of the matter, this Court is of the view that Writ Petitions are not maintainable before this Court since the adjudications depend on various technical aspects, which has to be decided only by the Tamilnadu Electricity Regulatory Commission. Such a reference has been provided and agreed by the petitioner and the TANGEDCO in the contract itself.

8. In such view of the matter, the petitioner is directed to raise the dispute before Tamilnadu Electricity Regulatory Commission within a period of one month from the date of receipt of a copy of this Order. On such dispute being raised, the Tamilnadu Electricity Regulatory Commission shall decide the issue raised by the parties. The Tamilnadu Electricity Regulatory Commission can also decide whether mere issuance of the demand by the respondent itself amounts to dispute, without referring the dispute to Tamilnadu Electricity Regulatory Commission and get the rights adjudicated. Besides, Tamilnadu Electricity Regulatory



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Commission shall also strictly follow the regulations while deciding, imposing the costs and enforce the same.

9. With the above directions, these Writ Petitions are disposed of. Since the Writ petitions are pending before this Court, the limitation, if any for approaching Tamilnadu Electricity Regulatory Commission has to be excluded as the Writ Petitions have been filed directly before this Court due to lack of Judicial Member in the Tamilnadu Electricity Regulatory Commission. Consequently, connected miscellaneous petitions are closed. No costs.

09.11.2022

vrc

To,

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