IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.08.2022

Pronounced on : 30.09.2022

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.No.27360 of 2015
and
M.P.Nos.1 and 2 of 2015 and W.M.P.No.18049 of 2021

Seshasayee Paper and Boards Limited,
Represented by its Deputy Managing Director
and Secretary,
Pallipalayam,
Namakkal District,
Erode – 638 007. ... Petitioner

Vs.

The Chief Engineer (Grid Operations),
The Tamil Nadu Transmission
Corporation Limited (TANTRANSCO),
No.144, Anna Salai,
Chennai – 600 002. ... Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in its communication in Lr.No.CE/GO/STU/EE/OA/AEE1/F.Seshasayee/D.583/15 dated 10.06.2015 and its consequential communication in Lr.No.CE/GO/SE/OA&C/STU/EE/OA/AEE1/F.Seshasayee/D.847/15 dated

10.08.2015 and quash the same as arbitrary, illegal and contrary to the provisions of the Electricity Act, 2003 and consequently restrain the respondent, their officers, employees, subordinates, agents or any other persons claiming and/or acting under the respondent from in any manner seeking to demand any sum towards cost of 110 KV dedicated transmission line from the petitioner's plant to Bhavani Kattalai Barrage – II SS including cost of bay for evacuation of 5 MW power from the petitioner's 20 MW coal based power plant at Pallipalayam, Erode to the petitioner's unit at Tirunelveli District with HT Service Connection No.207 and permit such wheeling by collection of the approved transmission and other charges alone.

For Petitioner : Mr.Rahul Balaji

For Respondent : Mr.S.Madhusudanan

ORDER

The present Writ Petition was filed challenging the demand made by the Respondent in its communication dated 10.06.2015 and its consequential proceedings dated 10.08.2015, calling upon the petitioner to bear the line cost for the purpose of evacuation of power from its generating plant as arbitrary and illegal.

2. The petitioner belongs to "ESVIN Group". It is engaged in and

operates integrated pulp, paper and paper board mill at Pallipalayam in Namakkal District. The petitioner commenced commercial production in December 1962 and was expanded through periodical upgradations. The petitioner has a 20 MW captive power plant at its Pallipalayam Mill. The petitioner has another Paper Manufacturing Unit at Elanthaikulam in Tirunelveli District bearing HTSC No.207.

3. Though there was acute shortage of power in the State of Tamil Nadu during the relevant period, power was available in excess at the petitioner's captive power plant. The petitioner intended to wheel surplus 5MW power from its captive power plant at Pallipalayam to its Unit at Tirunelveli and sought for approval. The Respondent vide communication dated 26.11.2014, furnished a load flow study for evacuation of 5 MW power from the petitioner's 20 MW power plant as under:

"The 5 MW power shall be evacuated from the petitioner's 20 MW power plant through the existing transmission system of 110 KV SC line from the petitioner's plant to Bhavani Kattalai Barrage II (BKB-II) alongwith necessary protection and control system. The petitioner company shall establish, operate and maintain the dedicated transmission line at its

own cost as per Section 10.1 of the Electricity Act, 2003. Hence the expenditure incurred towards erection of existing transmission system of 110 KV SC line from the petitioner's plant to BKB-II shall be borne by the petitioner if it was not already paid by the petitioner and if paid, the proof for the same may be furnished to the respondent's office.

ii. The following protection and metering arrangements shall be provided at the petitioner's cost:

a. Breakers and necessary protection arrangement at the petitioner's plant switch yard end if it was not provided already.

b. ABT meters for recording the supply of power at the petitioner's plant.

iii. The operation and maintenance charges, rental charges and other charges, if any, towards the 110 KV bay already provided at BKB-II are chargeable on regular basis to the respondent."

4. The petitioner responded vide letter dated 27.11.2014 stating that the transmission line charges to the Substation was paid in 1985 itself and furnished documentary evidence in support thereof, while also confirming the availability of breakers and necessary protection and metering

arrangements and ABT Meters with 0.2 S accuracy at that switch yard.

5. While so, the petitioner was served with a communication dated 10.06.2015, wherein, the Respondent stated that the petitioner has to bear the entire cost of the dedicated transmission line from the petitioner's plant to Bhavani Kattalai Barrage – II SS. The petitioner responded vide letter dated 22.07.2015, wherein, it was submitted that it had availed HT supply through its Unit at Pallipalayam in the year 1984 and the sanctioned load strength was also enhanced from 11000 KVA to 15850 KVA. The petitioner installed a captive power plant with a capacity of 20 MW in the year 2004 and since then the petitioner is using TNEB power only as backup power. Importantly, the petitioner was continuing its status as a “consumer” and was paying “demand charges” regularly. The line between Bhavani Kattalai Barrage – II SS to the petitioner's plant was being used exclusively for supply of power to the petitioner's plant. In view of the fact that the petitioner has surplus power to the extent of 5 MW in its captive power plant, the petitioner had decided to wheel the surplus power to its Unit at

Tirunelveli using the existing line. Reliance was placed on the order of the TNERC in Order No.4 dated 15.05.2006 to suggest that a consumer availing himself of supply through a dedicated feeder and if the same is used to carry/evacuate power, then no additional installation needs to be made. It was submitted that the dedicated line which is already in existence was adequate for evacuating the power of 5 MW to its Unit at Tirunelveli and no additional facility is required and thus the demand for charges towards the existing infrastructure was unjustified.

6. It was submitted by the learned counsel for the Respondent that the evacuation is an independent process and thus the petitioner is liable to pay for feeder lines even though already existing if used for evacuation of power and reiterated that the payments made by the petitioner was only in relation to the line portion erected within the petitioner's premises.

7. The Respondent issued the impugned proceedings dated 10.08.2015 calling upon the petitioner to bear the entire cost by placing reliance upon Section 10.1 of the Electricity Act, 2003. It is this order which

is under challenge on the premise that in the absence of any additional facility, the demand by the Respondent for using the existing facility for evacuation of power is unsustainable.

8. Against this background, the question that may arise for consideration is whether a captive power generator, who is also a consumer, can be charged for using the facility for evacuation of power in the absence of any additional infrastructure being created.

9. This Court finds that the impugned order is liable to be set aside for the following reasons:

a) There is no dispute to the fact that the petitioner is a consumer and has already paid for the dedicated line from Bhavani Kattalai Barrage - II SS to the petitioner's Unit at Pallipalayam. It may also be relevant to note that the impugned order does not dispute that the petitioner is a consumer and that no additional infrastructure was created and the evacuation of power was only meant to be made with the existing lines. The following portions of the impugned order would make the above position clear and thus extracted:

"1. As per section 10.1 of EA Act 2003, the Generator have to erect, operate and maintain the dedicated transmission line at their own cost.

2. The Existing transmission line from Bhavani Kattalai Barrage - II SS to your existing EHT SC No. 17 at Pallipalayam has been erected and used exclusively for supplying power to the EHT SC No.17 and not meant for power evacuation from your generator."

b) The impugned order does not set out anywhere that additional facilities were being created for evacuation of power. Instead, it appears to proceed that even if a facility used for supply was meant to be utilized thereafter for evacuation, it would enable collection of charges towards the facility. The above reasoning of the impugned order is unsustainable inasmuch as it is contrary to TNERC Order No.4 dated 15.05.2006 and D.R.P.No.10 of 2010 dated 07.10.2011, wherein, it was held as under:

a. Clause 8(e)(e), 8(e)(f). 8(e)(g), 8(e)(h) and 8(e)(i) (General Conditions) of the TNERC Order No.4 dated 15.05.2006 reads as under:

"e. The cost of interfacing lines, switch gear, metering and protection arrangement shall have to be borne by the owner of

captive power generators, but the work will be executed by Distribution Licensee on Deposit Contribution Work basis.

f. When the owner of the captive power generator happens to be a consumer and when the power fed to the Distribution Licensee grid is less than 2 MVA, dedicated line from the location of the captive power generator to near by Distribution Licensee substation will not be required. The service line itself will cater to the need to export the power to the Distribution Licensee grid.

g. When the owner of the captive power generator happens to be a consumer and when the power fed to the Distribution Licensee Grid is more than 2 MVA, then a dedicated feeder to a nearby substation will be required. If already the consumer is availing himself of supply through a dedicated feeder and if the capacity of the feeder is adequate to carry the quantum of export of power then the same feeder can be used for export of power and no additional installation is required.

h. In case the dedicated feeder is not adequate to carry the power exported, then the existing dedicated feeder has to be strengthened or a new line has to be erected.

i. For a non-consumer (user) the new interfacing line of appropriate capacity and voltage shall be at his cost and will be executed by Distribution Licensee."

b. Order of the TNERC in D.R.P.No.10/2010 dated 07.10.2011, wherein, it was held as under:

> *"In accordance with para 12 (8) (e) f above, when the owner of the captive power generator happens to be a consumer and when the power fed to the Distribution Licensee Grid is less than 2 MVA, dedicated line from the captive power generator to nearby Distribution Licensee sub-station will not be required. The service line is adequate to export power. Order No.4 dated 15-05-2006 does not envisage payment for any dedicated line under these circumstances. In this case, the learned Counsel for TNEB during the hearing on 26th April 2011 clearly stated that they are not raising the issue of payment of charges for a dedicated line any more though the same was raised in their pleadings. Therefore, the issue of any payment with regard to dedicated line does not survive in view of the clear position expressed by the respondent counsel."*

From a reading of the above extracts of the TNERC Orders in Order No.4 and D.R.P.No.10/2010, it appears that if the applicant is a pre-existing consumer then recovery of charges in the capacity as a captive generator will not arise to avoid and protect such multi-capacity users from being double charged. Further the above orders would leave no room for doubt that facility availed for supply, if adequate to carry/evacuating power, then the same capacity of the feeder/infrastructure can be used for export of power and no additional installation is required. The impugned proceedings is contrary to the TNERC order in D.R.P.No.10 of 2010 dated 07.10.2011 and Order No.4 dated 15.05.2006 and thus unsustainable.

10. For the above reasons, this Court is of the view that the impugned order is liable to be set aside.

11. This Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

30.09.2022

Index : Yes/No
Speaking/Non-Speaking Order
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MOHAMMED SHAFFIQ, J.

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To:
The Chief Engineer (Grid Operations),
The Tamil Nadu Transmission
Corporation Limited (TANTRANSCO),
No.144, Anna Salai,
Chennai – 600 002.

Pre-Delivery **Order in**
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