IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2022

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

WP NO.9699 OF 2011
AND
MP NO.1 OF 2011

Sanpreet Castings Private Ltd., HT SC No.197
4/5, Gandhi Nagar, G.N.Mills Post,
Coimbatore - 641 029.
Rep. by its Manager R.Palanivel ... Petitioner

Vs.

1. Tamil Nadu Electricity Regulatory Commission
   19-A, Rukmini Lakshmipathy Salai,
   (Marshall's Road) Egmore,
   Chennai - 600 008.
   Rep. by its Secretary

2. The Chairman
   Tamil Nadu Electricity Board
   144, Anna Salai,
   Chennai - 600 002.

3. The Superintending Engineer
   Coimbatore Elec. Distribution Circle
   Tamil Nadu Electricity Board
   Coimbatore. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the 3rd respondent in his impugned bill dated 01.04.2011 issued by the 3rd respondent in so far as it relates to levy of energy charges under Serial No.1 for Rs.3,75,644/- without adjusting 93,911 units of peak hour energy available to the credit of the petitioner in the normal hours consumption, levying excess demand charges under Serial No.13(b) for 72.02 KVA to the tune of Rs.43,209/- without taking into consideration of the deemed demand of 131.48 KVA available to the petitioner, thus levying a total sum of Rs.4,18,853/- are illegal, arbitrary and without the authority of law and against Clause 8.7.3 and Clause 8.11.2 of Comprehensive Tariff Order on

Wind Energy Order No.1 of 2009 dated 20.03.2009 issued by the 1st respondent, quash the same.

For Petitioner : Mr.S.P.Parthasarathy
for Mr.R.S.Pandiyaraj

For Respondents : Mr.Abdul Kalam
Standing Counsel

O R D E R

The petitioner challenges the levy of charges under Serial No.1 for Rs.3,75,644/-.

2.In similar circumstances, a batch of writ petitions for the very same relief were transferred by this Court to the Tamil Nadu Regulatory Commission, by order dated 23.07.2012 in W.P.No.7200 of 2012 and others. Subsequently, the Tamil Nadu Electricity Regulatory Commission by its order dated 31.03.2016 decided the matter in the following lines:-

> "7.14 In the light of the above it is clarified that the Units generated by Wind Energy Generators during a higher tariff ToD slot could be consumed in a lower tariff ToD slot at the option of generators/users who have entered into EPA and EWA under the Commission's Order No. 3 dt.15.5.2006.
>
> 7.15 Let us now take up the purport of the orders giving liberty to renegotiate the existing agreements and applicability of the orders when it comes to the existing contracts and agreements between NCES based generators and distribution licensee signed prior to the date of issue of these orders.
>
> 7.16 In the Tariff order No. 3 dated 15.05.06, the Commission decided to categorise the Wind Electric generators in two groups as below and fixed the tariff accordingly:
>
> 1. Group I Projects : Wind power projects commissioned and to be commissioned based on agreements executed prior to the date of this order.
>
> 2. Group II Projects: Wind Power projects to be commissioned based on future agreements after the date of this order.

7.17 Hence, the above Tariff order (Order No. 3 dated dated 15.05.2006) stipulates the following in respect of the Applicability of Order:

"4.0 Applicability of Order: This order shall come into force from the date of its issue. This order shall be applicable to all future and renewal of existing contracts/agreements for the Non-conventional Energy Sources (NCES) based Generating plants and Non-conventional Energy sources based Co-generation plants located within the State of Tamil Nadu. It should be noted that the existing contracts and agreements between NCES based generators and the distribution licensee signed prior to the date of issue of this order would continue to remain in force. However, the NCES based generators and the distribution licensees shall have the option to mutually renegotiate the existing agreements/contracts, if any, in line with this order even before the expiry of the contracts. Any renewal of the said contracts/agreements, new contracts/agreements shall be in line with this order.

7.18 The TNERC's Power Procurement from New and Renewable Source of Energy Regulations, 2008 relating to applicability is given below:

1.These regulations shall be deemed to have come into force on the 15th May 2006, the date on which the Commission's Order No. 3 dated the 15th May 2006 has been issued.

2.These regulations shall apply to all new and renewable source based generating plants including co-generation plants located within the State of Tamil Nadu for which power purchase agreements/contracts were signed on or after the 15th May 2006. The contracts and agreements between new and renewable source based generators and the distribution licensee signed prior to the 15th May 2006 would continue to remain in force. However, the generators and the distribution licensees shall have the option to mutually renegotiate the agreements/contracts signed prior to the 15th May 2006 in line with these regulations even before the expiry of the agreements/contracts. Any renewal of the said contracts/agreements shall be in line with these regulations.

7.19 This would mean that in case NCES

Generators who had signed the Power Purchase Agreement prior to the date of commencement of the said order i.e.15.05.2006, the said Order No.3 cannot be invoked unless they opt to come under the said Order No.3 dated 15.05.2006. In case of the their exercising the option to come under the said Order No.3 dated 15.05.2006, they have to sign the new EPA and EWA. The Commission in its Order dated 22.05.2008 in M.P. Nos.6,11,12,15 and 16 of 2008 has also observed that all those generators whose wind mills were commissioned prior to15.05.2006 should execute fresh agreement in line with Order No.3 with the licensee, if they wish to avail of such benefits in future.

7.20 Accordingly, the petitioner has submitted that all the consumers executed suitable EWA in pursuance of the Order No.3 dated 15.05.06 and hence has the eligibility of making the adjustment from higher to lower slot consumption. The petitioner has also submitted that all the wind energy captive users who ever opted for the facility of adjusting the higher slot units for consumption at lower slots were allowed for the facility during all these years after 15.05.2006 on execution of EWA and accordingly no issue was raised till the impunged clarification letter was issued on 22.02.12.

7.21 The Hon’ble High Court in the subject matter in W.P 7200 and others, dated 23.07.12 has also ordered that till such time the Commission decides the issue, all the petitioners are entitled to adjust the wind energy generated in terms of paragraph 8.7.3 of the Commission’s Order No. 1 of 2009 dated 20.03.09.

7.22 The petitioners were therefore availing the benefit of higher slot generation to lower slot consumption till the impugned clarification letter dated 22.02.12 and continue to avail since 23.07.12.

7.23 However, the written submission of TANGEDCO states that as per Clause 4 of the Energy wheeling Agreement executed by the wind energy generators (i.e. as per bilateral contract between WEG and TANGEDCO) as per Order No. 3 dt.15.05.06 reads as follows and no provision to adjust the energy generated in the higher slot against lower slot consumption is available:

"Adjustment of Energy Generated and Wheeled:

a) The Wind Energy Generator shall adjust the energy in the above mentioned HT services on Unit to Unit basis.

b) The energy generated in the windmills shall be adjusted for captive use in the above services of the wind energy generator as below:

(i) Peak hour generation with peak hour consumption (ii) off peak hour generation with off-peak hour consumption and

(iii) the normal hour generation with normal hour consumption.

This adjustment shall be done within the banking period (wherever the Wind Energy Generator has opted for banking)."

7.24. The Energy Wheeling Agreement has the following provision:

"9.Applicability of the Acts and Regulations:

Both the parties shall be bound by the provisions contained in the Electricity Act 2003, Regulations, notifications, orders and subsequent amendments, if any made from time to time."

7.25 As the petitioners has the eligibility of making the adjustment from higher to lower slot consumption, the discrepancy if any in the EWA regarding the higher slot 43 generation to lower slot consumption may be suitably amended by generator and the distribution licensees.

7.26 The petitioner further submits that there are certain connected incidental issues and request the Commission to also consider these matters to find out a comprehensive solution on the related issues and problems being faced by them even with the new Tariff Order No. 6 of 2012 dated 31.07.12 of the Commission. The issues raised by the petitioner are:

i) The facility of adjustment of higher slot units for consumption in lower slots is whether applicable only to current generation or is even for the units in banking.

ii) To prescribe the correct method of adjustments when there are several machines with the same consumers with different commissioning dates namely before 15.05.2006, after 15.05.2006 and before 19.09.2008 and after 19.09.2008.

7.27 Regarding the first issue, the petitioner submits that in certain Circles alone, it is informed that the facility of adjustment of higher slot units for consumption in lower slots is applicable only for current generation and not on banked units. In support of their claim, the SEs state that the Commission has mentioned the words "generation" alone in the concerned order and therefore units in banking do not qualify for such a facility. Accordingly, they allow the units currently generated during higher slots for adjustment in the lower slots. However, they are not permitting this facility in respect of units accumulated in the banking accounts. Hence, the petitioner requests to issue suitable orders by making eligible the banked units also available in higher slots for consumption in lower slots in line with the current generation. This problem is being faced with the new Tariff order dated 31.07.12.

7.28 Let us once again examine the issue No. 12 of clause 8 of the Tariff Order No.3 dt.15.05.06 on Peak & Off peak power, Unit to unit adjustment and related clauses in the Order No.1 dt.20.3.2009

"Issue 12 : Peak & Off peak Power, Unit to unit adjustment:

Commission's views/decisions

Since all the generators and the tied up users shall be provided with TOD meters, the adjustment of energy shall be done on slot to slot basis within monthly billing cycle as follows for Biomass and Bagasse based cogeneration:

(i) Peak hour generation with peak hour consumption (ii) Off peak hour generation with off-peak hour consumption and

(iii) the normal hour generation with normal hour consumption.

It should be noted that units generated during a higher tariff ToD slot could be consumed in a lower tariff To D slot at the option of generators/users, but the reverse would not be allowed (i.e. units generated during a lower tariff ToD slot cannot be drawn by the CGP Holder during a higher tariff ToD slot. No carry over is allowed for the next month.

Regarding the WEG, since banking is permitted, it is necessary to maintain a slot to slot banking account and adjust in the same way as above against peak/off-peak/normal consumptions.

Here again we have to see the emphasis on the words 'as above' appearing in the last line above. It conveys that banking account of excess energy generated shall be maintained and such energy shall also be adjusted in the same way as prescribed for the energy adjustment with regard to Biomass and Bagasse based co-generation.

It therefore follows that the energy in the banking account shall also eligible for adjustment towards lower tariff slot consumption.

7.29. In the following orders issued on 20.3.2009, the Commission expressed its opinion to retain the provision made in the order dt.15.5.2006. As the banking facility is retained in the Order No.6 of 2012 dt 31.7.2012, it goes without saying that the same procedure for banked units adjustment shall be followed.

The Tariff Order No. 1 of 2009 dated 20.03.09 on Banking and Energy Charges are reiterated below:

"8.2 Banking

8.2.3 Therefore, the Commission decides to retain the banking charge at 5%. Banking charges will be levied on the net energy saved by the generator in a month after adjustment of the consumption during that month. The banking period commences on 1st April and ends on 31st March of the following year. The energy generated during April shall be adjusted against consumption in April and the balance if any shall be reckoned as banked energy for April. The generation in May shall be first

> adjusted against consumption in May. If consumption exceeds the generation during May, the energy banked in April shall be drawn to the required extent. If consumption during May is less than the generation during May, the balance shall be reckoned as the banked energy for May and banking charges for May will be leviable only for this component. This procedure shall be repeated every month.
>
> 8.7.3 Energy Charges
>
> When the generator is synchronized with the grid, the captive/third party consumer shall be liable to pay to the distribution licensee for the net energy consumed during the billing month at the applicable rate. The net energy consumption shall be slot wise. That is peak generation shall be adjusted against peak consumption. Normal generation shall be adjusted against normal consumption. Off peak generation shall be adjusted against off peak consumption. Peak and normal generation may be adjusted against lower clot consumption."
>
> 7.30 The Commission in the Tariff Order No. 1 of 2009 dated 20.03.09 have also come out with an illustration on methodology of adjustment of banked energy clarifying that if the consumption exceeds the generation the energy banked shall be drawn to the required extent. This would also include the energy banked during peak hour and normal generation for adjustment against lower slot consumption. The Commission directs that any clarification required regarding the Commission's order, the Licensee shall request for such clarifications before issuing any contrary circulars / instructions to the field which results in unnecessary litigations and causes inconvenience to the concerned."

In view of the above findings, the petitioner is also entitled to the very same relief.

3.The learned counsel appearing for the respondent Electricity Board would also submit that the matter is covered by the order passed by the Tamil Nadu Electricity Regulatory Commission dated 31.03.2016 in S.M.P.No.1 of 2014.

4.Considering the facts and circumstances of the case, the present writ petition is also ordered as per the order dated 31.03.2016 passed in S.M.P.No.1 of 2014 by the Tamil Nadu

Electricity Regulatory Commission. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

TK

To

1. The Secretary
   Tamil Nadu Electricity Regulatory Commission
   19-A, Rukmini Lakshmipathy Salai,
   (Marshall's Road) Egmore,
   Chennai - 600 008.

2. The Chairman
   Tamil Nadu Electricity Board
   144, Anna Salai,
   Chennai - 600 002.

3. The Superintending Engineer
   Coimbatore Electricity Distribution Circle
   Tamil Nadu Electricity Board
   Coimbatore.

+1cc to Mr.R.S.Pandiyaraj, Advocate, S.R.No.11476

WP NO.9699 OF 2011

PCH(CO)
SU(10/03/2022)