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W.P.No.29107 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.11.2022

CORAM:

THE HON'BLE **MR.JUSTICE N.SATHISH KUMAR**

W.P.No.29107 of 2015

M/s.Mirra and Mirra Industries
Plot No.119 & 120, SIDCO Industrial Estate
New Manali New Town, Vichur
Chennai 600013

... Petitioner

Vs.

1.TANGEDCO
Rep. by its Chairman & Managing Director
No.144, Anna Salai
Chennai – 02

2.The Chief Financial Controller (Revenue)
TANGEDCO
144, Anna Salai
Chennai – 02

3.The Superintending Engineer
CEDC/North, TANGEDCO
Chennai 600 002

4.The Superintending Engineer
Tamil Nadu Electricity Board
Tirunelveli Electricity Distribution Circle
Tirunelveli



W.P.No.29107 of 2015

5. The Accounts Officer / Revenue
CEDC / North, TANGEDCO
Chennai 600 002

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Mandamus, directing the respondents to implement the order of the Hon'ble TNERC in DRP.No.19 of 2013 dated 19.01.2015 and rework the adjustment of the REC and non-REC wind units for the period 2013-14 and 2014-15 in accordance therewith and make payment of the amounts due and payable to the petitioner towards the unutilized banked units, along with interest at the rate of 12% per annum from the due date until the date of payment within such period as this Court may fix.

For Petitioner : Mr.Rahul Balaji

For Respondents : Mr.L.Jaivenkatesh
for R1 to R5

ORDER

The Writ Petition is filed for implementing the orders of the Hon'ble TNERC in DRP.No.19 of 2013 dated 19.01.2015 as far as the priority of adjustment between REC and non-REC unit while allowing the D.R.P.No.19 of 2013. The observation of the order reads as follows;

“5.7....



W.P.No.29107 of 2015

WEB COPY

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“Applying the above principle in this case, we order that the TANGEDCO shall first adjust the wheeled energy generated from the petitioner's WEG under REC scheme which has an adjustment or banking period of one month and then adjust the energy generated from other captive / third party generators which have a banking period of one year. The TANGEDCO is directed to revise the bill of the petitioner based on the energy adjustment priority specified in this order and settle the account within a period of three months from the date of issue of this order”.

2.As the amount has not been paid pursuant to the direction of TNERC orders, this writ petition came to be filed.

3.It is also the contention of Mr.Rahul Balaji, the learned counsel for the petitioner that the order of the TNERC has been challenged before the Appellate Tribunal, which has upheld the order of the TNERC, thereafter, the same was challenged in Civil Appeal No.15618 of 2017 before the Hon'ble Supreme Court of India. The Apex Court dismissed the



W.P.No.29107 of 2015

Appeal. The respondent also filed an affidavit before the Hon'ble Apex Court. He has also brought to the notice of this Court the affidavit filed in Civil Appeal No.15618 of 2017. Paragraph No.7 of the affidavit reads as follow:

“It is respectfully submitted that the appellant is following certain procedure of adjustment right from the year 2008 which is one and the same as ordered by the Ld. TNERC vide notification dated 21.03.2022. With regard to the priority among WEGs under REC and non-REC, the appellant is following the order of the Ld. TNERC dated 19.01.2015 in DRP.No.19 of 2013. In this connection, it is relevant to mention that the respondents herein had also not disputed the adjustment procedure. Hence, it is respectfully submitted that it may be construed that the appellant has adopted procedure laid down in the notification dated 21.03.2022 for adjustment priority among WEGs under REC and non-REC with effect from 01.08.2012 retrospectively. Per contra, the above mentioned notification dated 21.03.2022 shall be adopted prospectively for other energy sources of the High Tension consumers.”

4.The very challenge is made against the order of TNERC has been upheld by the Hon'ble Apex Court. The TANGEDCO has also agreed to



W.P.No.29107 of 2015

WEB COPY

follow the order of TNERC dated 19.01.2015 and now they are bound to pay the amount as sought in the writ petition.

5. Such view of the matter, the Writ Petition stands allowed, directing TANGEDCO to pay the amount due to the writ petitioner, after proper verification of the accounts with interest at 12% p.a.. Such payment shall be made within a period of two (2) months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition if any is closed. No costs.

22.11.2022
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To

1. The Chairman & Managing Director
TANGEDCO
No.144, Anna Salai
Chennai – 02

2. The Chief Financial Controller (Revenue)
TANGEDCO
144, Anna Salai
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WEB COPY



W.P.No.29107 of 2015

N.SATHISH KUMAR, J.

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W.P.No.29107 of 2015

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