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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P.No.30474 of 2015

&

M.P.No.2 of 2015

Sri Muhuntha Paper Boards., HTSC No.271
D.No.294, Manikkampalayam,
Pullagoundampatti (Po.,)
Tiruchchengode (Tk.,),
NAMAKKAL – 637 202
repd. by its Manager
C.Selvaraj

... Petitioner

Vs.

1. The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited, 144, Anna Salai
Chennai 600 002

2. Director Finance
Tamil Nadu Generation and Distribution Corporation Limited,
144, Anna Salai
Chennai 600 002.

3.The Chief Financial Controller/Revenue
Tamil Nadu Generation and Distribution
Corporation Limited
144, Anna Salai,
Chennai 600 002.

4. The Superintending Engineer
Namakkal Electricity Distribution Circle
Namakkal

5.The Tamilnadu Electricity Regulatory Commission
represented by its Secretary,
No.19A, Rukmini Lakshmipathi Salai,
Egmore,. Chennai – 600 008.

... Respondents

Prayer : Writ Petition filed under Article 226 of the
Constitution of India for issuance of a Writ of Certiorarified
Mandamus, calling for the records of the third respondent
bearing Lr.No.CFC/FC/REV/ AAO/HT/D.419/2014 dated 11.07.2014 in



so far as the petitioner is concerned and consequent demand letter Lr. No.SE/NEDC/NKL/DFC/HT/AS/Asst./F/HT No.271/2015 dated 18.08.2015 issued by the 4th respondent and quash the same as being arbitrary, illegal and without authority of law and contrary to the provisions of the Electricity Act, 2003 and consequently, direct the 4th respondent to make payment of total amount of Rs.41,79,640/- together with further interest thereon at 18% per annum from the due date of payment.

For Petitioner : Mr.M.Saravanakumar

For Respondents : Mr.L.Jai Venkatesh
1 to 4 for TANGEDCO

For Respondent 5 : No Appearance

ORDER

The order impugned dated 11.07.2014 issued regarding Wind Mill Captive Norms of 51% consumption, the Board claimed Cross Subsidy Surcharge and decline to pay Bank unutilised Units.

2. It is brought to the notice of this Court that the deficiency occurred due to shortage of power supply and at the instance of the Electricity Board. Thus, the petitioner Company cannot be faulted nor the liability can be fixed on the petitioner Company.

3. Under those circumstances, the petitioner pleaded exoneration from payment of surcharge and payment for unutilised funds. The issues, in this regard, were elaborately adjudicated by the Tamil Nadu Electricity Regulatory Commission in DRP No.1 of 2016 and an order was passed on 03.08.2021. The relevant portions of the order are extracted as under:

''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



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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.?''

4. In view of the order of the Tamil Nadu Electricity Regulatory Commission, cited supra, the orders impugned passed by the third respondent bearing Lr.No.CFC/FC/REV/AAO/HT/D.419/2014 dated 11.07.2014 and the fourth respondent bearing Lr.No.SE/NEDC/NKL/DFC/HT/AS/Asst./F/HT No.271/2015 dated 18.08.2015 are quashed and further, the respondents are directed to settle the dues, within a period of



four months from the date of receipt of a copy of this order.

5. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited, 144, Anna Salai
Chennai 600 002

2. Director Finance
Tamil Nadu Generation and Distribution Corporation Limited,
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5.The Tamilnadu Electricity Regulatory Commission
represented by its Secretary,
No.19A, Rukmini Lakshmipathi Salai,
Egmore,. Chennai – 600 008.

+1cc to Mr.P.S.Pandiyaraj, Advocate, S.R.No.2832

W.P.No.30474 of 2015

PL(CO)
SB(07/02/2022)