IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2022

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P. Nos.6785 and 6787 of 2012 and
M.P. Nos.1, 1, 2 & 2 of 2012

OPG Energy Pvt. Ltd.,
rep. by its General Manager
Mr.D.Eswaramoorthy ... Petitioner in both cases

Vs.

1.State of Tamil Nadu,
rep. by the Secretary to Government,
Energy Department,
Fort St. George, Secretariat,
Chennai 600 009.

2.The Tamil Nadu Transmission
Corporation Ltd.,
(TANTRANSCO),
rep. by its Managing Director,
No.144, Anna Salai, Chennai 600 002.

3.The Tamil Nadu Generation and
Distribution Corporation Ltd.,
(TANGEDCO),
rep. by its Chairman-cum-Managing Director,
No.144, Anna Salai, Chennai 600 002. ... Respondents in both cases

Prayer in both cases: Writ petitions filed under Article 226 of the Constitution of India, seeking a writ of Mandamus directing the third respondent herein to pay the petitioner the sum of Rs.84269068.35 and Rs.2,69,47,352/- respectively being the amount due and payable by the third respondent as of 29.02.2012 inclusive of interest at 12% per annum towards delayed payment for the energy that has been supplied by the petitioner to the third respondent herein or permit the petitioner to have Inter State Open Access for the energy generated by the petitioner in its Power Plant at Marudur Village, Nagapattinam District and OPG Nagar, Peria Obalpuram, Gummidipoondi, Thiruvallur District.

For Petitioner in both W.Ps : Mr.Rahul Balaji

For Respondents in both W.Ps : Mr.P.Sathish,
Additional Government Pleader
for R1

Mr.L.Jaivenkatesh,
Standing Counsel
for R2 and R3

COMMON O R D E R

The writ petitions have been filed by the petitioner Company seeking a direction to the Tamil Nadu Generation and Distribution Corporation Ltd., (TANGEDCO), the third respondent herein to pay the sum of Rs.8,42,69,068.35 and Rs.2,69,47,352/- respectively, being the amount due and payable by the third respondent as of 29.02.2012, inclusive of interest at 12% per annum towards delayed payment for the energy supplied by them to the third respondent herein or permit them to have Inter State Open Access for the energy generated by them in its Power Plant, situated at Marudur Village, Nagapattinam District and OPG Nagar, Peria Obalpuram, Gummidipoondi, Thiruvallur District.

2.The primary relief sought for in the writ petitions is only a direction to the third respondent to pay the interest for the delayed payment made by the TANGEDCO.

3.It is the case of the writ petitioner that as per Government Order in G.O. Ms. No.10 Energy Department dated 20.07.2009 issued by the first respondent, all Power Generating Units shall operate and maintain generating stations to the maximum capacity and plant load factor and all Generation Stations shall supply all exportable electricity, generated to the State grid for supply to either Tamil Nadu Electricity Board or to any other HT consumer within the State of Tamil Nadu. As per the regulations notified in this regard by the Tamil Nadu Electricity Regulatory Commission, the petitioner and the third respondent have entered into an Energy Purchase Agreement dated 15.10.2011 for purchase of surplus energy from captive power plants/cogeneration plants and other power plants in Tamil Nadu. According to the petitioner, the agreement clearly stipulates that the payment shall be made by the respondents within a period of 30 days from the date of submission of invoices by the Supplier, viz, the petitioner herein. As the respondents have not paid 12% interest per annum for the belated payment, the petitioner is before this Court seeking the above direction.

4.The learned counsel for the petitioner submitted that as per Clause 10(f) of the agreement, stipulating penalties for belated payments, if the payment is made belatedly, the surcharge payable by TANGEDCO will be at 12% per annum. It is submitted by the learned counsel for the petitioner that though the principal amount has been paid belatedly, the interest has not been paid by the respondents. According to the learned counsel for the petitioner, as per their tabulation of calculation, interest payable by the TANGEDCO would come around Rs.1,16,28,003/-. Therefore, the said amount has to be paid by the respondents.

5.The respondents have filed a compliance report dated 30.08.2022 admitting that there is a default in payment regarding the power purchase bills by the respondents. It is stated that payments had already been made to the petitioner to the tune of Rs.10,58,63,316/- during 14.11.2011 to 24.07.2012.

6.It is the contention of learned counsel for respondents 2 and 3 that the petitioner supplied excess energy against the power purchase agreement and therefore, over and above the agreement quantum of 29,51,197 units were treated as lapsed as per the agreement.

7.Heard the learned counsel appearing on either side and perused the entire materials available on record.

8.It could be seen from records that the entire issue is only with regard to the payment of interest/surcharge as agreed by the respondents in the Energy Purchase Agreement. Clause 10 (d) to (f) of the Agreement reads as follows:

> '(d)The billing will be made on a monthly basis.
> (e)The TANGEDCO agrees to make payment within 30 days from the date following the date of submission of invoice by the Company.
> (f)If the payment is made belatedly, the surcharge payable by TANGEDCO will be at 12% per annum.'

9.A perusal of the above covenant makes it clear that the payment has to be made within 30 days from the date following the date of submission of invoice by the company and if the payment has been made belatedly, the TANGEDCO will pay the surcharge at the rate of 12% per annum. When the respondents have agreed to pay the surcharge at 12%

per annum for the belated payment, now it cannot be said that since the excess supply has been made by the petitioner over and above the agreement, the same has been adjusted and lapsed. Even assuming that excess power supply has been adjusted and lapsed, the same will not take away the right of the petitioner's interest, which has already been agreed between the parties. When the covenant is agreed between the petitioner and respondents, the respondents cannot go beyond the contract and say that they are not liable to pay interest of charges. Therefore, this Court is of the view that the respondents are liable to pay the interest for the delayed payment at the rate of 12% surcharge per annum.

10.The learned counsel for the petitioner has filed a calculation to the effect that the amount of Rs.1,16,28,003/- is liable to be paid by the respondents towards interest. As the amount is not verified by this Court, this Court directs the respondents to verify the actual interest amount payable by them and to pay the interest within a period of three months from the date of receipt of a copy of this order.

N.SATHISH KUMAR,J.

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11.With the above direction, the writ petitions stand allowed. Consequently, connected M.Ps are closed. No costs.

29.09.2022

Index: Yes/No
Speaking order/Non speaking order
vga

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