



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2022

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No. 8560 of 2022 and
WMP.No.8470 of 2022

Techno Electric & Engineering Company Ltd.,
(Formerly known as Simran Wind Project Ltd.),
Rep. by its authorized signatory - Niraj Gulati,
1B, Park Plaza, South Block, 71 Park Street,
Kolkata 700 016.

... Petitioner

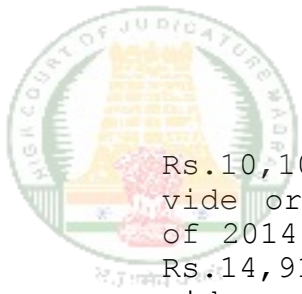
Vs.

1. Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO),
Represented by its Chairman Cum Managing Director,
144, Anna Salai, Chennai 600 002.
2. The Chief Financial Controller (Revenue),
TANGEDCO,
144, Anna Salai, Chennai 600 002.
3. The Superintending Engineer,
Tirunelveli Electricity Distribution Circle,
TANGEDCO,
Maharaja Nagar, Tirunelveli.
4. The Superintending Engineer,
Udumalpet Electricity Distribution Circle,
TANGEDCO,
Udumalpet - 642 126.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the Respondent TANGEDCO to comply with the orders and directions passed by the High Court and the Tamil Nadu Electricity Regulatory Commission, Chennai ("TNERC") and release payment amount to a) Rs.11,34,99,754/- being amount payable to the Petitioner vide order dated 17.08.2021 passed by the TNERC in D.R.P.No.18 of 2020 along with pendente lite interest payable thereon; b) Rs.24,46,50,933/- being the amount payable to the Petitioner vide order dated 20.10.2020 passed by the TNERC in D.R.P.No.59 of 2014 along with pendente lite interest payable thereon and c)



Rs.10,10,04,112/- being the amount payable to the Petitioner vide order dated 13.10.2020 passed by the TNERC in D.R.P.No.56 of 2014 along with pendente lite interest payable thereon and d) Rs.14,91,80,184/- being the amount payable to the Petitioner vide order dated 13.10.2020 passed by the TNERC in D.R.P.No.60 of 2014 along with pendente lite interest payable thereon and e) Rs.30,32,12,755/- being the amount payable to the Petitioner vide order dated 16.3.2021 passed by the High Court in Writ Petition No.19283 of 2020 along with pendente lite interest payable thereon.

For Petitioner : Mr.Rahul Balaji

For Respondents : Mr.Abul Kalam
Standing Counsel

ORDER

Mr.Abul Kalam, learned Standing Counsel accepts notice for the respondents and is armed with sufficient instructions to enable the final disposal of this matter even at the stage of admission. Hence, by consent expressed by both learned counsel, this writ petition is disposed finally.

2.The prayer of the petitioner is for a mandamus directing the TANGEDCO to comply with the order/direction of the Tamil Nadu Electricity Regulatory Commission, Chennai (in short 'TNERC') that has been rendered on various dates and release payments are due and payable to the petitioner in terms of the aforesaid orders.

3. The details of the orders are:

(i) order dated 17.08.2021 in D.R.P.No.18 of 2020 as per which the petitioner seeks payment of Rs.11,34,99,754/-, and the operative portion of the order is as follows:

'19.....

6.2.We have heard both sides and examined the written pleadings as well. The issue lies in a very narrow compass and hence it is not necessary to set out the contentions of both sides elaborately. On going through the pleadings of both sides, we find that except for settling up the defence of financial constraint, the respondent has not disputed the claim made by the petitioner in this petition. The question as to whether interest is payable for delayed payment has been well settled by the Hon'ble APTEL and Hon'ble Supreme Court and hence there can be no discussion on the same.



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6.3. Having failed to dispute the claim of the petitioner, relying upon its financial crisis as a defence for avoiding payment of interest, in our view, cannot help the case of the respondent. In this connection, we also have to take note of the submission of the petitioner in para 12 of the rejoinder that the financial crisis as cited by the respondent is unsupported in law and facts. The petitioner has submitted that the respondent has received Long Term Loans from REC and PFC after the intervention of MoP under "Alternative Scheme" and therefore it is erroneous to state that the respondent is struck with severe paucity of funds. During the course of further hearings before the Commission, the respondent neither disputed the said contention of the petitioner nor agreed to the same. However, we are of the view that the said fact is not relevant to the issue on hand and the adjudication has to proceed on the basis of the settled position of law. Let us examine the position of law.

6.4. In the light of the specific provision contained in Tariff Order No.1 of 2009 on interest in delayed payments, which is applicable to all WEGs commissioned after 19.09.2008 such as those of the petitioner, and in view of the ruling of the Hon'ble APTEL in Appeal 11 of 2012 the petitioner, in our view, is entitled to interest on delayed payments including those payments which have already been remitted.

.....

6.8. In the above circumstances, TANGEDCO is directed to verify the claim made by the petitioner and after deducting the amount already paid, if any, settle the same within 30 days from the date of this order as directed in para 6.6 above. In the circumstances, there will be no order as to costs.'

(ii) Order dated 20.10.2020 in D.R.P.No.59 of 2014 as per which the petitioner seeks payment of Rs.24,46,50,933/-, the operative portion of the order, being as follows:

'22.

8.4. On perusal of material records, it is seen that the Respondent, TANGEDCO has not denied its liability for payment of interest. In such circumstances, having failed to avail the settlement on a reduced rate of interest at 6% per annum, the respondent is liable to pay interest as per the contractual terms or orders of the Commission in force, as the case may be. In this



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connection, our attention is drawn to the provisions of Tariff Order No.1 of 2009 dated 20.03.2009 issued by the Commission which provides as follows:-

"8.11.1. When a wind generator sells power to the distribution licensee, the generator shall raise a bill every month for the net energy sold after deducting the charges for startup power and reactive power. The distribution licensee shall make payment to the generator within 30 days of receipt of the bill. Any delayed payment beyond 30 days is liable for interest at the rate of 1% per month."

8.5.The Hon'ble APTEL in its order dated 17.04.2012 in Appeal No.11 of 2012 has upheld the payment of interest on delayed payment to the wind energy generators and this order has also been confirmed by the Hon'ble Supreme Court in CFC Vs. Gangadhar Narasinghadas Agarwal in Review Petition (Civil) 1606 of 2018 in Appeal No.5465 of 2014 dated 16.08.2018.

8.6.In view of the above, the Respondent TANGEDCO is liable to pay 1% interest per month for delayed payment beyond 30 days of receipt of the bills as per the above Tariff Order.

.....
8.8.In view of the above, the respondent is directed to rework the calculation for payment of interest at 12% per annum for the delayed payment of invoices taking into account the limitation factor as set out in para 8.7 above, after deducting payments, if any already made, within a period of 3 months from the date of this 14 order. This is also subject to acknowledgment of liability, if any, made in writing by TANGEDCO after 16.06.2011."

(iii) Order dated 13.10.2020 in D.R.P.No.56 of 2014 as per which the petitioner seeks payment of Rs.10,10,04,112/-, and the operative portion of the order is as follows:

'25.....

8.4.On perusal of material records, it is seen that the Respondent, TANGEDCO has not denied its liability for payment of interest. In such circumstances, having failed to avail the settlement on a reduced rate of interest at 6% per annum, the respondent is liable to pay interest as per the contractual terms or orders of the Commission in force, as the case may be. In this connection, our attention is drawn to the provisions



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of Tariff Order No.1 of 2009 dated 20.03.2009 issued by the Commission which provides as follows:-

"8.11.1. When a wind generator sells power to the distribution licensee, the generator shall raise a bill every month for the net energy sold after deducting the charges for startup power and reactive power. The distribution licensee shall make payment to the generator within 30 days of receipt of the bill. Any delayed payment beyond 30 days is liable for interest at the rate of 1% per month."

8.5. The Hon'ble APTEL in its order dated 17.04.2012 in Appeal No.11 of 2012 has upheld the payment of interest on delayed payment to the wind energy generators and this order has also been confirmed by the Hon'ble Supreme Court in CGC V.s. Gangadhar Narasinghadas Agarwal in Review Petition (Civil) 1606 of 2018 in Appeal No.5465 of 2014 dated 16.08.2018.

8.6. In view of the above, the Respondent TANGEDCO is liable to pay 1% interest per month for delayed payment beyond 30 days of receipt of the bill as per the above Tariff Order.

8.8. In view of the above, the respondent is directed to rework the calculation for payment of interest at 12% per annum for the delayed payment of invoices taking into account the limitation factor as set out in para 8.7 above, after deducting payments, if any already made, within a period of 3 months from the date of this 14 order. This is also subject to acknowledgment of liability, if any, made in writing by TANGEDCO after 16.06.2011."

(iv) Order dated 13.10.2020 in D.R.P.No.60 of 2014 as per which the petitioner seeks payment of Rs.14,91,80,184/-, the operative portion of the order being as follows:

'26.

.....

7.6. In view of the above, the Respondent, TANGEDCO is liable to pay 1% interest for delayed payment beyond 30 days of receipt of the bill as per the above Tariff Order for the balance amount that remains unpaid by the Respondent, TANGEDCO.

7.7. It is seen from the typed set of papers filed along with the petition (vide pages 1-17 of the typed set) that Rs.7,39,42,388/- (Rupees Seven crores thirty nine lakhs forty two thousand and three hundred and eighty eight only) is the interest due on the belated



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payment of invoices for the year 2009 onwards. The limitation period for the money claim is 3 years from the date on which cause of action arose. In the case of interest on delayed payments, the cause of action for claiming interest for the delayed payment commences from the date of receipt of the payment on invoice. The present petition has been filed on 16.06.2014 and hence if the date of payment of invoice is prior to 16.06.2011, the claim of interest on such delayed payment is barred by limitation. Law is well settled on the point that it is for the concerned Court or Forum to examine the preliminary question of limitation even in the absence of pleadings to that effect and hence limitation fact is required to be considered.

7.8. In view of the above, the respondent is directed to rework the calculation of interest at 12% per annum to the delayed payment of invoice taking into account the limitation factor as set out in para 7.7. above, after deducting the payments, if any, already made, within a period of 3 months from the date of this order. This is also subject to acknowledgement of liability, if any, made in writing by TANGEDCO after 22.10.2016.'

(v) In addition, the petitioner has filed a writ petition in W.P.No.19283 of 2020 that had come to be disposed on 16.03.2021. The prayer of the petitioner therein was also for a mandamus seeking release of certain funds of the petitioner payable to it along with interest thereon for the energy supplied under various energy purchase agreements with the respondents.

(vi) The petitioner was permitted to furnish details of the amounts that were payable and upon receipt of the invoices, the authorities were directed to disburse the amount as claimed by the petitioner with interest, in accordance with law and in terms of the scheme.

4. The aforesaid orders of the Commission and learned Single Judge have attained finality and thus there the direction of the Commission and this Court are liable to be complied with by TANGEDCO.

5. In light of the aforesaid narration and admitted position of the facts as reflected, as well as the assurance extended by Mr. Kalam to the effect that the aforesaid amounts are indeed due and payable to the petitioner, this Court records the undertaking of the respondents that the aforesaid amounts shall be paid over to the petitioner along with interest in terms of



the Energy Purchase Agreements within a period of eight (8) weeks from today.

6. This writ petition is disposed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

vs/ska

To

1. The Chairman Cum Managing Director,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
144, Anna Salai, Chennai 600 002.
2. The Chief Financial Controller (Revenue),
TANGEDCO,
144, Anna Salai, Chennai 600 002.
3. The Superintending Engineer,
Tirunelveli Electricity Distribution Circle,
TANGEDCO,
Maharaja Nagar, Tirunelveli.
4. The Superintending Engineer,
Udumalpet Electricity Distribution Circle,
TANGEDCO,
Udumalpet - 642 126.

+1cc to the Government Pleader, S.R.No.24581

W.P.No. 8560 of 2022 and
WMP.No.8470 of 2022

AK(CO)
CT 04/05/2022