



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2022

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.18056 of 2020

M/s.Vamsadhara Paper Mills Ltd.,
HTSC No.1763,
No.3, Basement Floor,
MCB Nagar Layout,
Phase-III, Adayalampattu,
Maduravoil, Tiruvallur - 600 095,
rep. by. Managing Director,
R.Vijay Shekhar

...Petitioner

vs.

1. The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
10th Floor, 144, Anna Salai,
Chennai 600 002.
2. The Chief Engineer - NCES,
TANGEDCO, 2nd Floor,
144, Anna Salai,
Chennai 600 002.
3. The Chief Financial Controller/Revenue,
TANGEDCO, 7th Floor,
144, Anna Salai,
Chennai 600 002.
4. The Superintending Engineer,
TANGEDCO,
Chennai Electricity Distribution Circle/North,
Chennai 600 002.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the 4th Respondent's impugned Letter bearing Lr.No.SE/CEDC/N/DFC/AO/Rev/AAO/HT/AS.1/F.Audit/D.2161/2020, dated 19.10.2020 and quash the same as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/Chairman, TANGEDCO.



For Petitioner : Mr.R.S.Pandiyaraj

For Respondents : Mr.L.Jai Venkatesh

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O R D E R

This Writ Petition has been filed challenging the impugned Letter bearing Lr.No.SE/CEDC/N/DFC/AO/Rev/AAO/HT/AS.1/ F.Audit/D.2161/2020, dated 19.10.2020 passed by the 4th Respondent, as illegal, arbitrary, without authority of law, against the Circular Memo dated 19.07.2016 issued by the 2nd Respondent under the order of the 1st Respondent/Chairman, TANGEDCO.

2. According to the Petitioner Industry, their Industry is involved in the manufacturing of paper products, having High Tension Electricity Supply in HTSC No.1763 coming under the 4th Respondent's Circle. The grievance of the Petitioner is that, in the impugned demand notice, the 4th Respondent has relied on the Circular Memo dated 03.10.2017 issued by the 3rd Respondent to justify that, the revision of Petitioner's CC Bills and its adjustment of wind energy from the common banking account for the period 02/2017 and 03/2017 is in order. According to the Petitioner, the Circular Memo dated 03.10.2017 issued by the 3rd Respondent pertains to implementation of the order issued by TNERC in R.A.No.6 of 2013, dated 31.03.2016 and accordingly, instructions along with illustrations were issued for revision of CC Bills in respect of wind energy captive users from 01.08.2012 to 31.03.2016. Whereas, in the present case, the alleged revision of Bill pertains to the period from 01.04.2016 to 01.04.2017, when the Circular Memo dated 19.07.2016 was fully in force. Hence, it is the case of the Petitioner that, the impugned order is liable to be set aside.

3. When the matter was taken up for hearing, learned counsel for the Petitioner produced a copy of the order dated 17.08.2021 passed by this Court in W.P.No.8634 of 2019, batch of cases, and submitted that, the issue involved in the case on hand, is squarely covered by the said order. For better appreciation, relevant portion of the said order is extracted hereunder:

"30. The Circular Memo dated 19.07.2016, came into effect from 01.04.2016 and obviously this was issued after taking into consideration the rule position. On the coming into force of this Circular Memo, all the Superintending Engineers were directed to adhere to the procedure prescribed under the Memo for maintaining banking account and for adjustment of banked energy for captive



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use. This was acted upon and the current consumption bills were raised accordingly for the period 01.04.2016 to 31.03.2017.

31. Insofar as placing reliance on Circular Memo dated 31.03.2017 is concerned, it came into effect only from 01.04.2017 and therefore, it cannot be applied retrospectively for any period prior to 01.04.2017. It is therefore clear that none of the letters issued by the 3rd Respondent and the modified Circular Memo dated 31.03.2017, will have any bearing during the relevant period between 01.04.2016 to 31.03.2017 and consequently, there was no justification for the 4th Respondent to place reliance upon these proceedings. Grounds a, b and c are answered accordingly.

32. Insofar as ground 'd' is concerned, even if the justification given by the 3rd and 4th Respondents are accepted for the sake of argument, even then, the modified Circular Memo dated 31.03.2017, cannot be given a retrospective effect to the period prior to 01.04.2017. This position was made clear even while discussing grounds a, b and c and rendering a finding. Hence, ground 'd' is answered accordingly.

33. Before proceeding further to deal with the next ground, this Court must also deal with yet another Circular Memo dated 03.10.2017, which has been relied upon by the 4th Respondent along with modified Circular Memo dated 31.03.2017. The Circular Memo dated 03.10.2017, was again issued by the 3rd Respondent and it pertains to implementation of the order issued by TNERC in R.A.No.6 of 2017, dated 31.03.2016. Instructions were issued for current consumption bills in respect of wind energy captive users from 01.08.2012 to 31.03.2016. The Circular Memo will not apply to the case on hand since it pertained to the period from 01.04.2016 to 31.03.2017, when Circular Memo dated 19.07.2016 was in force. In view of the same, the Circular Memo dated 03.10.2017, can have no applicability and the 4th Respondent went wrong in placing reliance upon the same.

34. Now, this Court will proceed to deal with the last ground 'e' which pertains



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to the order passed by this Court in W.P. (MD) Nos.6221 and 6222 of 2018. A careful reading of the facts in this case shows that, the Petitioner therein had sought for adjustment of banked energy prior to the revised energy wheeling agreement dated 26.09.2017 and this is after the issuance of the modified Circular Memo dated 31.03.2017, by the 2nd Respondent. ...

...
36. The facts of the present case will also attract the principles of promissory estoppel. The 2nd respondent who issued the Circular Memo on the approval and order of the 1st Respondent, had given an assurance to all group captive consumers, who entered into an energy wheeling agreement during the period from 01.04.2016 to 31.03.2017, the manner in which the banking of wind energy, maintenance of banking account and adjustment of banked wind energy for captive use will be dealt with. This was acted upon by TANGEDCO and the captive users and bills were raised accordingly and payments were also made. The captive users had also arranged that affairs in line with the Circular Memo in force. The captive users cannot at a later point of time be informed that, their current consumption bills are revised by relying upon a subsequent Circular Memo and superceded letters of the 3rd Respondent and such an action on the part of the 4th Respondent is certainly vitiated by the principles of promissory estoppel.

38. In the light of the above discussion, this Court is of the considered view that, the demand made by the 4th Respondent from the petitioners, by virtue of the respective impugned letter is held to be unsustainable in law and accordingly, all the impugned letters are quashed.

39. In the result, all the Writ Petitions are allowed and if any payments have been made by any of the Petitioners on the basis of the impugned letter issued by the 4th Respondent, the same is liable to be reimbursed or in the alternative, adjusted in the future bills. Any consequential benefits to which the petitioners are entitled to, if any, will enure in their



favour by virtue of quashing the impugned letters issued by the 4th Respondent."

4. In terms of the said order passed by this Court, the impugned order dated 19.10.2020 passed by the 4th Respondent herein is held to be unsustainable and the same is quashed. It is made clear that, if any payments have been made by the Petitioner on the basis of the impugned letter issued by the 4th Respondent, the same is liable to be reimbursed or in the alternative, adjusted in the future bills and any consequential benefits to which the Petitioner is entitled to, if any, will enure in their favour by virtue of quashing the impugned letter issued by the 4th Respondent.

The Writ Petition is allowed with the above direction. No costs. Consequently, connected W.M.P.No.22426 of 2020 is closed.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

(aeb)

To:

1. The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
10th Floor, 144, Anna Salai, Chennai 600 002.
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4. The Superintending Engineer,
TANGEDCO,
Chennai Electricity Distribution Circle/North,
Chennai 600 002.

+1cc to Mr.R.S.Pandiyaraj, Advocate SR.No.6753

W.P.No.18056 of 2020

PL(CO)
GMY(18/02/2022)