



WEB COPY



W.P.No.26068 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : **27.10.2022**

CORAM:

THE HON'BLE MR. JUSTICE **R.SURESH KUMAR**

W.P.No.26068 of 2022

Be-B Solutions (P) Ltd.,
WEG No.079224722722,
Reg Off : 8-2-473/B/2,
Road No.1, Banjara Hills,
Hyderabad - 500 034,
Rep. by its Managing Director
Rama Ramanathan

... Petitioner

Vs.

1. Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO)
10th Floor, 144, Anna Salai,
Chennai - 600 002.
Rep. by its Chairman-cum-
Managing Director.
2. The Chief Engineer / NCES
TANGEDCO,
2nd Floor,
144, Anna Salai, Chennai - 600 002.
3. The Superintending Engineer
TANGEDCO,
Tirunelveli Electricity Distribution Circle,
Tirunelveli.



W.P.No.26068 of 2022

4. The Director Finance
Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO)
144, Anna Salai,
Chennai - 600 002.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus, directing the 1st, 2nd and 3rd respondents to allow the utility change to the petitioner by terminating the existing Energy Purchase Agreement, dated 27.09.2019 for their WEG Nos.079224722722 and execute fresh Energy Wheeling Agreement under group captive / third party as per the common order of the Hon'ble High Court of Judicature at Madras, dated 30.08.2019 which was upheld by the Hon'ble Division Bench, dated 18.02.2020 and also by the Hon'ble Supreme Court of India, dated 24.09.2020 and make payment of the outstanding dues payable to the petitioner towards the wind energy sold by the petitioner till the date of the termination of the EPA, dated 27.09.2019 as per their respective invoices along with interest at 1% per month for any delay in payments.

For Petitioner	: Mr.R.S.Pandiyaraj
For Respondents	: Ms.V.Revathy for Mr.M.Abul Kalam, Standing counsel for TNEB

ORDER

The prayer sought for herein is for a writ of mandamus, directing the respondents 1 to 3 to allow the utility change to the petitioner by terminating



W.P.No.26068 of 2022

the existing Energy Purchase Agreement, dated 27.09.2019 for their WEG Nos.079224722722 and execute fresh Energy Wheeling Agreement under group captive / third party as per the common order of this Court, dated 30.08.2019 which was upheld by the Hon'ble Division Bench, dated 18.02.2020 and also by the Hon'ble Supreme Court of India, dated 24.09.2020 and make payment of the outstanding dues payable to the petitioner towards the wind energy sold by the petitioner till the date of the termination of the EPA, dated 27.09.2019 as per their respective invoices along with interest at 1% per month for any delay in payments.

2. The petitioner is a generator of Electricity and it is being supplied to respondent TANGEDCO. As per the power supply agreement, whatever the electricity being supplied to the respondent TANGEDCO, for which the payment has to be made by the TANGEDCO to the supplier like the petitioner within a period of seven days.

3. Despite these condition available in the power supply contract between the petitioner and the respondent TANGEDCO, against the supply



W.P.No.26068 of 2022

of electricity made by the petitioner, no such payment has been given by the TANGEDCO within the stipulated time.

4. In this context, it is to be noted that, despite these kind of conditions available in the contract, the respondent TANGEDCO issued a circular, under which, they imposed a condition that, TANGEDCO need not make the migration within the time stipulated.

5. As against the said circular issued by the TANGEDCO, several aggrieved persons like the petitioner had approached this Court by filing writ petitions in W.P.No.5196 of 2019 etc., batch in the matter of M/s.Vivid Wind Energy Private Limited v. The Director / Generation, TANGEDCO Chennai, where a learned Judge of this Court by order dated 30.08.2019, having set aside the said circular, given the following directions to the TANGEDCO :

"29. Thus, for the reasons stated above, the writ petitions deserve to be allowed with the following directions;

(a) the respondents/TANGEDCO are directed to permit the petitioners to switch over to captive



W.P.No.26068 of 2022

consumption so as to use the same for their own industry;

(b) the respondents/ TANGEDCO are directed to settle the respective dues to the petitioners as per their respective invoices raised by them, along with interest as per Clause 6(b), within a period of two months from the date of receipt of a copy of this order.

(c) Consequently, in view of permitting the petitioners to migrate from EPA to EWA, the proceedings dated 20.05.2017 of the first respondent deciding not to concede any request for migration is set aside.

30. In fine, with the above directions, the writ petitions stand allowed. No Costs. Consequently, connected miscellaneous petitions are closed."

6. Aggrieved by the said order passed by the learned single Judge, the TANGEDCO preferred intra court appeal in W.A.No.4189 of 2011 etc., batch in the matter of TANGEDCO v. Atlas Processing Mills, and another. The Division Bench by order, dated 18.02.2020, having confirmed the order passed by the writ court, rejected those writ appeals filed



W.P.No.26068 of 2022

by the TANGEDCO. As against the said order passed by the Division Bench, TANGEDCO preferred further appeal by way of Special Leave Petition to the Hon'ble Supreme Court, where they suffered a dismissal order by order of the Supreme Court dated 24.09.2020 in the matter of TANGEDCO v. Atlas Processing Mills & another. Therefore the issue has been concluded by these orders passed by this Court, confirmed by the Hon'ble Supreme Court, under which, the time is the essence of the contract, based on which, within the time limit prescribed in the contract condition, the amount against the electricity supplied by the generator like the petitioner has to be paid back.

7. Despite these legal position, insofar as the petitioner's case is concerned, though the petitioner has supplied the electricity, the amount has not been paid, therefore in order to get the same, the petitioner has moved this writ petition with the aforestated prayer.

8. Mr.R.S.Pandiyaraj, learned counsel appearing for the petitioner would further submit that, based on the legal position, similar writ petition had come up before the writ court, orders have been passed, taking consistent



W.P.No.26068 of 2022

stand and in this regard, he has relied upon the following orders (i)

W.P.No.18465 of 2020, dated 03.07.2020 in the matter of Eclouds Energy LLP v. TANGEDCO, Chennai and (ii) W.P.Nos.18055 and 18056 of 2020, dated 18.07.2022 in the matter of M/s. Chemistar Intermediates Pvt., Ltd and another v. TANGEDCO, Chennai. Therefore the learned counsel would submit that, the petitioner also is entitled to have the similar relief in this writ petition.

9. Ms.V.Revathy, learned standing counsel appearing for the respondent TANGEDCO could not controvert the aforestated legal position and she fairly submitted that, the issue raised in this writ petition is covered by numerous orders passed by this Court as stated by the petitioner.

10. In that view of the matter, since the issue has been covered by various orders passed by this Court as stated supra, this Court feels that, the petitioner also is entitled to get the same relief as that of the others who have got the same relief in the said writ petitions referred to above.



W.P.No.26068 of 2022

11. In view of the same, while disposing this writ petition the following order is passed :

"(i) In all the aforementioned writ petitions, almost identical directions were issued by the respondents which are as follows:

(a) The respondent/TANGEDCO is directed to permit the petitioner to switch over to group consumption/ captive consumption/ third party sale, as the case may be, as per the request made by the petitioner;

(b) the respondent/TANGEDCO is directed to settle the respective dues to the petitioner as per their respective invoices raised by them, along with interest as per Clause 6(b) within a period of two months from the date of receipt of a copy of the order;

(c) Consequently, in view of permitting the petitioner to migrate from EPA to EWA, the proceedings issued by the 1st respondent deciding not to concede any request for migration is set aside.

(ii) Since the petitioner is also similarly placed, the directions



W.P.No.26068 of 2022

issued by this Court earlier shall hold good for this petitioner also."

12. With the above directions, this writ petition is disposed of. No costs.

27.10.2022

Index : Yes / No

Speaking Order : Yes / No

tsvn

To

The Regional Director
National Council for Teacher Education
Southern Regional Committee,
G-7, Section-10 (Near Sector-10 Metro Station)
Dwaraka,
New Delhi - 110 075.



WEB COPY



W.P.No.26068 of 2022

R.SURESH KUMAR, J.
tsvn

W.P.No.26068 of 2022

27.10.2022