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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2022

C O R A M

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.6112 of 2017
and W.M.P.No.6588 of 2017

M/s.Selvam Broilers P Ltd., HTSC No.205,
No.46 Co-Operative Colony, P.B. No.18,
Gandhi Nagar, Namakkal - 637 001
Rep. by its Authorised Signatory
J.Balaji

...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,
7th Floor,144 Anna Salai,
Chennai 600 002.
- 4.The Superintending Engineer
TANGEDCO,
Tirunelveli Electricity Distribution Circle,
Tirunelveli.
- 5.The Deputy Financial Controller,
Superintending Engineer Office
TANGEDCO,
Namakkal Electricity Distribution Circle,
Namakkal.



6.The Tamilnadu Electricity Regulatory Commission

Represented by its Secretary,

No.19A, Rukmani Lakshmipathi Salai,

Egmore, Chennai - 600 008.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, prayed for the issuance of Writ of Certiorarified Mandamus, Calling for the records relating to the third respondent proceedings bearing Lr.No. CFC / FC / REV / AAO / HT / D.419/2014 dated 11.07.2014 in so far as the petitioner is concerned an the consequential impugned demand notice in No.SE/TEDC/DFC/AO/REV/AS/Wind/F.BOAB Audit/D.No.3279/16 dated 02.01.2017 issued by the fourth respondent and impugned CC bill dated 02.03.2017 insofar as serial No.21 'other adjustment' alone is concern issued by the fifth 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 forbear the respondents 4 and 5 from recovering/collecting the encashment amount already paid to the petitioner towards the unutilized banked wind energy for the periods from 2012-13.

For Petitioner : Mr.R.S.Pandiyaraj

For R1 to R5 : Mr.Abul Kalam
Standing Counsel

For R6 : No Appearance

ORDER

This Writ Petitioner has been filed seeking for the issuance of Writ of Certiorarified Mandamus, Calling for the records relating to the third respondent proceedings bearing Lr.No. CFC / FC / REV / AAO / HT / D.419/2014 dated 11.07.2014 in so far as the petitioner is concerned an the consequential impugned demand notice in No. SE / TEDC / DFC / AO / REV / AS.Wind / F.BOAB Audit / D.No.3279/16 dated 02.01.2017 issued by the fourth respondent and impugned CC bill dated 02.03.2017 insofar as serial No.21'other adjustment' alone is concern issued by the fifth 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 forbear the respondents 4 and 5 from recovering/collecting the encashment amount already paid to the petitioner towards the unutilized banked wind energy for the periods from 2012-13.



2.The case of the petitioner is that the petitioner supposed to have consumed 51% of the wind energy to fulfill the norms of the Electricity Board. In the event captive consumption has not been fulfilled, the respondents are entitled for the recovery of entire consumption charges from the petitioner in terms of Rule 3 of the Electricity Rule, 2005. According to the petitioner, they have consumed 48% of the wind energy. The petitioner was not in a position to consume 51% due to the persistent power cut and non-availability of grid, which is an admitted fact. Further, the respondent Board had also issued an order dated 25.02.2012 stating that HT Service Industries can utilize 40% energy on the base demand and base energy. Therefore, due to the said order of the respondent Board, the petitioner was not able to achieve 51% of the energy.

3.The learned Standing Counsel appearing for the respondents 1 to 5 would submit that, in an identical matter, the Tamilnadu Electricity Recovery Commission passed an order in D.R.P.No.18 of 2013 and he has also produced copy of the same.

4.In reply, the learned counsel for the petitioner also submitted that the issue in this case is covered by the order of the Tamilnadu Electricity Recovery Commission.

5.This Court perused the order of the Tamilnadu Electricity Recovery Commission, wherein, the Commission taking into consideration the persistent power cut, non-availability of the grid, has held that the respondents-TANGEDCO should not have invoked Rule 3 of the Electrical Rule, 2005 for the purpose of imposing impugned demand. Further, it has also held that the respondents supposed to have considered the request of the petitioner considering the non-availability of grid and power cut and set aside the demand received by the other consumer. At this juncture, it would be appropriate to extract the order passed by the Tamilnadu Electricity Recovery Commission in D.R.P.No.18 of 2013. The relevant portion of the said order is reproduced hereunder:

"11.15.8 The Commission is of the ell considered view that when the Government of Tamil Nadu, on the one hand, directed all the generating stations to operate at their maximum capacity to receive the power, and at the same time limited the allocation to the extent of 60% / 70% level with peak hour restriction and scheduled load shedding vide its letter dated 22.10.2008, we find that a



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consumer cannot be penalised. When a consumer is not given even 51% of his requirement, as stated supra, the Distribution licensee in our view cannot expect fulfilment of the conditions of 51% of consumption as required under Rule 3(1)(a).

11.15.9 Rule 3(1)(a) stipulates a power plant to satisfy both the conditions stated therein to qualify as a Captive Generating Plant "it is applicable under normal circumstances when the distribution/transmission grid is open to the captive user without any restriction and not when there is no fault on the part of the captive user in consuming power on its side and at a time when stringent measure was imposed both in the form of restricted Quota as well as grid restrictions. We find no merit in insisting on adherence of conditions under Rule 3 of the Electricity Rules 2005 for a captive generating plant in such conditions.

In view of the above order, the impugned demand notice is set aside."

6. The order referred to above is squarely applicable for the present case in hand.

7. In view of the above, this Writ Petition is allowed and the impugned demand notice bearing No. SE / TEDC / DFC / AO / REV / AS / Wind / F.BOAB Audit/D.No.3279/16 dated 02.01.2017 issued by the fourth respondent and impugned CC bill dated 02.03.2017 is hereby quashed. No costs. Connected miscellaneous petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR



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To:

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- 1.The Chairman,
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Namakkal Electricity Distribution Circle,
Namakkal.
- 6.The Secretary,
Tamilnadu Electricity Regulatory Commission
No.19A, Rukmani Lakshmipathi Salai,
Egmore, Chennai - 600 008.

+lcc to Mr.R.S.Pandiyaraj, Advocate Sr.4651

W.P.No.6112 of 2017

pmk[co]
srg 08/02/2022