



W.P. No. 13244 of 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2022

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.P. No. 13244 of 2017

and

W.M.P. Nos. 14234 & 14235 of 2017

Hindustan Textiles, HTSC No.68
by its Authorised Signatory S. Prabhu

... Petitioner

Versus

- 1 Tamil Nadu Electricity Regulatory
Commission,
Rep. by its Secretary,
19-A, Rukmini Lakshmipathy Salai,
(Marshalls Road), Egmore,
Chennai 600 008.
- 2 The Tamil Nadu Generation And
Distribution Corporation Ltd.
(TANGEDCO), 144, Anna Salai,
Chennai 600 002.
represented by its Chairman



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3 Director of Finance,
Tamil Nadu Generation And Distribution
Corporation Ltd.,
144, Anna Salai,
Chennai - 600 002.

4 The Superintending Engineer,
Coimbatore Electricity Distribution
Circle/North, TANGEDCO,
Coimbatore.

... Respondents

PRAYER : Writ Petition filed under Art. 226 of Constitution of India, praying to issue a Writ of Certiorari calling for the records of the 3rd Respondent's impugned circular Memo No. CFC/R/ FC/R/ DFC-R1/F.HTLT-RTI/D. 03/2015 dt. 03.02.2016 in so far as the para 3(III) is concern and the consequential impugned demand notice bearing Lr. No. SE/CEDC/N/CBE/AAO/HT/A. 5/F.HTSC 68/D.205/17 dated 19.04.2017 issued by the 4th respondent, quash the same as illegal, arbitrary and without authority of law and against the Energy Wheeling Agreement executed between the petitioner and Respondent, against the order of 1st respondent made in M.P. Nos. 6, 9 and 17 of 2010 and D.R.P. No. 9 of 2010 dated 07.09.2010 and contrary to the Electricity Act 2003.

For Petitioner : Mr.S.P.Parthasarathy

For Respondents : Mr.L. Jai Venkatesh



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ORDER

This Writ Petition has been filed challenging the impugned circular of the 3rd Respondent dated 03.02.2016 in so far as para 3 (iii) is concerned and the consequential impugned demand notice dated 19.04.2017 issued by the 4th respondent, and quash the same as illegal, arbitrary and without authority of law and against the Energy Wheeling Agreement executed between the petitioner and Respondent, and also against the order of 1st respondent made in M.P. Nos. 6, 9 and 17 of 2010 and D.R.P. No. 9 of 2010 dated 07.09.2010 and contrary to the Electricity Act 2003.

2. The main contention of Writ Petitioner is that they own 12 wind mills for captive consumption and the energy generated through their wind mills are given adjustments in the petitioner's consumption at their HT SC. No.68 and 99 collectively as per the respective Energy Wheeling Agreement executed between the petitioner and the respondents. When the matter stood so, after the period of five years, a show cause notice has



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been issued for revising the original bill payment on the ground that there was audit objection in the year 2016. Hence, the challenge is made mainly on the ground that no particulars whatsoever was served on the petitioner and the details of audit objections also has not been served. Further, their representations was also not considered and finally, final order came to be passed without following any procedures.

3. The learned counsel for respondents would submit that they will serve all the copies and also give necessary opportunity to the petitioner, if the matter is remanded back once again to the 4th respondent.

4. Such view of the matter, without going into the merits of the case, now the relief is claimed mainly on the ground that no opportunity has been given to the petitioner and copies of audit objections also was not served on the petitioner, which is a base for the final order issued in the year 2017. Therefore, this Court is of the view that without furnishing the copy of so-called audit report, the order passed by the authorities cannot be sustained in the eye of law. In such view of the matter, the



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impugned order passed by the 4th respondent is liable to be set aside and accordingly set aside. The matter is liable to be remanded back to the 4th respondent and they shall pass a fresh order after giving opportunity to the petitioner and also by furnishing copies of the so-called audit report and proceed as per law.

5. It is the further contention of the learned counsel for respondents that the copies of so-called audit report has not been furnished mainly on the ground that a Circular Memo No.CFC/R/FC/R/DFC-R1/F.HTLT-RTI/D.30/2015, dated 03.02.2016 issued by the 3rd respondent, wherein para 3 sub-clause (iii) of circular reads as follows :-

“(iii) in such communication to the consumer, it need not be stated that the demand has been raised by BOAB, etc. rather, it should be a communication from the officer-in-charge/Competent Authority to levy such demand.”

Only based on the above circular, it appears that the copies have not been furnished before passing the final order. Restricting the copy to the other



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side, when the same mainly relied upon for passing final order, it clearly violates the basic Principles of Natural Justice.

6. In such view of the matter, the respondents cannot take advantage of the Circular and they are bound to furnish a copy of the so-called audit report, which is the base for passing the impugned order. As the very clause (iii) itself violates the very concept of fair hearing, the same is also liable to be set aside. Accordingly, the impugned order dated 19.04.2017 passed by the 4th respondent is set aside and the 4th respondent shall pass a fresh final order within a period of six months from the date of receipt of copy of this order, after furnishing a copy of the audit reports and after affording an opportunity of hearing to the petitioner.

7. With the above direction, this Writ Petition is allowed. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

24.11.2022

Index: Yes/No
Internet: Yes/No
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To
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Tamil Nadu Electricity Regulatory
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- 2 The Chairman
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