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W.P.Nos.32338 & 32340 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.Nos.32338 & 32340 of 2022

Dev International,
P.B.No.165, 5/184, Sri Ragavendra Nagar,
Madurai Bye Pass Road,
Karur - 639 002,
Rep. by its Authorized Signatory
S.Kamalanathan

...Petitioner in
W.P.No.32338/2022

Be-B Solutions P Ltd.,
WEG No.079224722739,
Reg Off:- 8-2-473/B/2,
Road No.3, Banjara Hills,
Hyderabad - 500 034,
Rep. by its Director Rama Ramanathan

...Petitioner in
W.P.No.32340/2022

Vs.

1.Tamilnadu 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.



W.P.Nos.32338 & 32340 of 2022

3. The Superintending Engineer,
TANGEDCO,
Tirunelveli Electricity Distribution Circle,
Tirunelveli.

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

...Respondents in both WPs

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India to issue Writ of Mandamus, directing the 1st, 2nd and 3rd respondents to allow the Utility Change to the petitioners by terminating the existing Energy Purchase Agreements dated 25.02.2009 and dated 27.09.2019 for their WEG Nos.1595 and 079224722739 respectively and execute fresh Energy Wheeling Agreements 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 25.02.2009 and 27.09.2019 as per their respective invoices along with interest at 1% per month for any delay in payments.

(in both WPs)

For Petitioners : Mr.R.S.Pandiyaraj

For Respondents : Mr.L.Jai Venkatesh,
Standing Counsel



W.P.Nos.32338 & 32340 of 2022

COMMON ORDER

WEB COPY Since the issue raised in these writ petitions is one and the same, with the consent of learned counsel appearing for both sides, these writ petitions were heard together and are disposed of by this common order.

2. The prayer sought for in these writ petitions is for Writ of Mandamus, directing the respondents 1 to 3 to allow the Utility Change to the petitioners by terminating the existing Energy Purchase Agreements dated 25.02.2009 and dated 27.09.2019 for their WEG Nos.1595 and 079224722739 respectively and execute agreements under group captive/third party, as per the orders passed by this Court as well as the Hon'ble Supreme Court and make payment of the outstanding dues towards the wind energy sold by the petitioner till the date of the termination of the agreements as per their respective invoices along with interest at 1% per month for any delay in payments.

3. There has been agreements between the petitioners and the respondents TANGEDCO, under which, the petitioners would supply power to the TANGEDCO being generated by the petitioners. However, for some time, no payment has been made for the power supplied by the



W.P.Nos.32338 & 32340 of 2022

petitioners. Therefore, in order to terminate the contract and to come out from the agreements, when the petitioners approached the TANGEDCO, the same was not acted upon.

4. In this context, it is the case of the petitioners that, when other generators like the petitioners faced similar crisis, they approached this Court and filed writ petitions in ***W.P.No.5196 of 2019, etc. batch in the case of M/s.Vivid Wind Energy Private Limited Vs. the Director/ Generation, TANGEDCO and others.*** The said batch of writ petitions were ordered by the Writ Court by order dated 30.08.2019, wherein relief was granted to the petitioners therein to come out from the agreements and the TANGEDCO was directed to pay the dues with interest to such generators.

5. As against the said order of the Writ Court, when intra court appeals were preferred by the TANGEDCO in W.A.Nos.4189 of 2019, etc. batch, the order of the Writ Court has been confirmed by the judgement of the Hon'ble Division Bench dated 18.02.2020 in the matter of ***TANGEDCO and others Vs. Atlas Processing Mills and others.***



W.P.Nos.32338 & 32340 of 2022

6. Against the order of the Division Bench of this Court, the TANGEDCO preferred Special Leave Petition before the Hon'ble Supreme Court, which was also dismissed by order dated 24.09.2020. Thus, the order passed by the Writ Court to the extent indicated above by order dated 30.08.2019 has been confirmed upto the Hon'ble Supreme Court.

7. Thereafter, number of similar issues have come up by way of writ petitions before this Court. One such order was passed by a learned Judge in the case of *M/s.Muzik 247 Vs. TANGEDCO and others in W.P.Nos.8656 of 2022, etc. batch, dated 08.04.2022*, where the learned Judge has passed the following order:

"3. An identical prayer was made in the case of other similarly placed petitioners and has come to be accepted by this Court in W.P.No.5196 of 2019 etc. batch by a learned single Judge of this Court vide order dated 30.08.2019, operative portion of which reads as follows:

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



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W.P.Nos.32338 & 32340 of 2022

over to captive 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.

4. The aforesaid order is confirmed in W.A.No.4189 of 2019 vide order dated 18.02.2020, which has also been confirmed in SLP Nos.8513 to 8518 of 2020 by order of the Hon'ble Supreme Court dated 24.09.2020.5. The aforesaid orders have also been consistently followed by this Court thereafter. In view of the admitted identity in facts and legal position, the aforesaid orders are taken to be passed in the present matter as well.

6. These Writ Petitions are allowed as above and the mandamus sought for is issued including the specific direction for settlement of dues to the petitioners. No costs.

8. The learned counsel for the petitioners submitted that the petitioners herein are also similarly placed. Therefore, the learned counsel



W.P.Nos.32338 & 32340 of 2022

for the petitioners seeks indulgence of this Court to extend the same relief

to the petitioners also.

9. Heard Mr.L.Jai Venkatesh, learned Standing Counsel appearing for the respondents, who would submit that, since the issue has already been decided and confirmed by the orders of the Hon'ble Supreme Court, as stated by the learned counsel for the petitioners, these writ petitions may be disposed of suitably.

10. Having considered the said submissions made by the learned counsel for both sides and taking note of the earlier orders of this Court, where the issue has already been settled by series of orders, as discussed herein above, this Court has no hesitation to hold that the petitioners are also entitled for the similar relief. Accordingly, both these writ petitions are disposed of, as per the terms indicated in the aforementioned order.
No costs.

01.12.2022

Index:Yes/No

Internet:Yes/No

Speaking order/Non-speaking order

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W.P.Nos.32338 & 32340 of 2022

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Tamilnadu Generation and Distribution
Corporation Ltd., (TANGEDCO),
10th Floor, 144, Anna Salai,
Chennai - 600 002..
- 2.The Chief Engineer/NCES,
TANGEDCO,
2nd Floor, 144, Anna Salai,
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- 3.The Superintending Engineer,
TANGEDCO,
Tirunelveli Electricity Distribution Circle,
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- 4.The Director Finance,
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W.P.Nos.32338 & 32340 of 2022

R. SURESH KUMAR, J.

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W.P.Nos.32338 & 32340 of 2022

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