IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2022

CORAM:

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.28546 of 2018

Jay Jay Mills India P Ltd., HTSC No.306,
Plot No.K32, 4th Cross Street,
SIPCOT Industrial Growth Centre,
Perundurai- 638 052.
rep. by its Authorized Signatory
Mr.C.Manohkaran ...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 Superintending Engineer,
   TANGEDCO,
   Erode Electricity Distribution Circle,
   948, EVN Road, Erode-9.

4. The Superintending Engineer,
   TANGEDCO
   Ududmalpet Electricity Distribution Circle,
   Ududmalpet.

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

6. The Superintending Engineer,
   TANGEDCO
   Tirupur Electricity Distribution Circle,
   Tirupur.

7. Tamil Nadu Electricity Regulatory Commission
Rep. by its Secretary,
19-A, Rukmini Lakshmipathy Salai,
(Marshall's Road)
Egmore, Chennai- 600 008. ...Respondents

Prayer: Writ Petition filed Under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent's impugned demand notice bearing Lr.No.SE/EEDC/ED/DFC/AO/A4/F.HTSC No.306/D.No.201/2017 dated 01.09.2017 and quash the same as arbitrary, without jurisdiction, contrary to Rule 3(1)(b) of the Electricity Rules, 2005 and Electricity Act, 2003 and goes against the express orders of this Hon'ble Court in WP(MD) No.9320 of 2017 dated 25.05.2017 and consequently direct the 3rd respondent to give refund/adjust of Rs.8,07,588/- illegally collected from the petitioner against his future CC bills and make payment of Rs.32,01,274/- towards the balance untilised banked wind energy of 12,59,105 units in petitioner's WEG No.831 after adjustment for the period 2016-2017.

For Petitioner : Mr.S.P.Parthasarthy

For R1 to R6 : Mr.Abul Kalam,
Standing Counsel

For R7 : No appearance

O R D ER

This Writ Petition has been filed to quash the impugned demand notice dated 01.09.2017 passed by the 3rd respondent and consequently direct the 3rd respondent to give refund/adjust of Rs.8,07,588/- illegally collected from the petitioner against his future CC bills and make payment of Rs.32,01,274/- towards the balance untilised banked wind energy of 12,59,105 units in petitioner's WEG No.831 after adjustment for the period 2016-2017.

2. The case of the writ petitioner is that the petitioner owns Wind Mill bearing WEG No.4286 and 4288 at Tirunelveli District coming under the 5th respondent and WEG No.830 and 831 at Tirupur District initially coming under the 4th respondent and presently coming under the 6th respondent, producing electricity there from and exporting to the captive consumption of the petitioner through the grid of the respondent TANGEDCO.

2.1.As per the terms and conditions of wind purchase agreements, the petitioner is supposed to utilize 51% of the total generating unit under the captive consumption. According to the petitioner, he has captively consumed 51% of wind mills put together. However, the 3rd respondent has issued demand notice dated 01.09.2017 to one of the wind mills, i.e., bearing No.831 stating that it has not achieved 51% but only achieved 15.38%.

2.2. According to the writ petitioner, the petitioner has achieved 51% captive consumption in aggregate as stated above, in respect of all the wind mills put together. However, the 3rd respondent has taken each wind mill separately and calculated the captive consumption independently which ought not to have been done. Further, the learned counsel for the petitioner submitted that the issue involved in the present Writ Petition came for consideration before the Tamil Nadu Electricity Regulatory Commission which was constituted for the purpose of resolving the dispute and the TNERC has decided that, in the event, more than one wind mill produced the electricity and achieved captive consumption, in such case, all the units have to be taken into consideration together for the purpose of determining the captive consumption. Therefore, the learned counsel for the petitioner submits that this Writ Petition has to be decided on the same line, as decided by the Tamil Nadu Electricity Regulatory Commission.

3. Per contra, Mr. Abul Kalam, the learned Standing Counsel for the respondents 1 to 6 has also submitted that this issue is also covered by the order passed by the Tamil Nadu Electricity Regulatory Commission in M.P.No.24 of 2020 dated 07.12.2021.

4. Heard the learned counsel for the petitioner as well as the respondent. This Court also perused all the order passed by the Tamil Nadu Electricity Regulatory Commission and it is relevant to extract the portion of the order for the purpose of deciding the present issue hereunder:-

> "9.9.7 Accounting of aggregate generation and consumption
>
> 9.9.7.1Verification criteria of consumption shall be based on the aggregate energy generated from generating unit(s) in a generating station identified for captive use before the commencement of captive wheeling to be determined on annual basis i.e. gross energy generated less auxiliary consumption.
>
> In the case of wind energy, if the CGP having multiple generating units having separate Energy Wheeling Agreements with the ownership structure/shareholding being the

same in each agreement aggregate energy of all generating units of the CGP shall be considered irrespective of separate wheeling agreements. If shareholding of each Energy Wheeling Agreement where substantial difference exists between the wheeling agreement and the shareholding, then at the option of the captive generator, Energy Wheeling Agreement wise verification shall be done. The quantum of auxiliary consumption shall be the metered auxiliary consumption or the normative auxiliary consumption whichever is less. The captive consumption (the captive user) may be within the premises where the CGP is located or at a different location. In the absence of measured data on auxiliary consumption, until metering as prescribed in para9.9.9.1 of this procedure is completed, the normative auxiliary consumption specified in the Tariff Regulations of the Commission may be considered for the purpose of CGP verification status.

9.9.7.2 As per the explanation to Rule 3, 'annual basis' refers to determination in a financial year. For determination of captive status on an annual basis, for the first year, the date of grant of open access shall be considered as the start date for the Financial Year(FY). For the subsequent years, generation from 1st April to 31st March of a FY shall be considered for determining captive status.

9.9.7.3 The Aggregate Generation for each Generating Plant/Unit identified (unit identification applies to SPV) for captive use on Annual basis shall be calculated as follows:

(a) For all generators except wind generator:

Aggregate generation =Gross generation of generating plant or*units identified (-) Auxiliary consumption

* in case of SPV

(b) In the case of wind generator CGPs, banking of energy and adjustment of start up power with the energy generated is permitted in the Tariff orders issued by the Commission for wind power. Therefore, the banking charges in kind and the start up

power in the case of wind energy generators may be deducted from aggregate generation provided the CGP has appropriate metering, and provides details of power consumed for startup power.
For wind energy, the aggregate generation shall be as follows:
Aggregate generation = Gross generation (-) banking charges in kind(in units) (-)start up power(in units)
9.9.7.4 For all captive users, applicable T&D losses shall be grossed up on adjusted units. "

5. A perusal of the above order shows that in the case of wind energy, if the CGP having multiple generating units having separate Energy Wheeling Agreement with the ownership structure/shareholding being the same in each agreement aggregate energy of all generating units of the CGP shall be considered irrespective of separate wheeling agreements.

6.In the present case also, though the petitioner has separate wind mill agreement for three separate units at different places, however, all the three wind mills are one and the same ownership. Further, the shareholding/structure of the CGP being the same in respect of each agreement entered by the petitioner, and when such being the case, the issue involved in the present Writ Petition has been squarely covered by the order passed by the Tamil Nadu Electricity Regulatory Commission. In such view of the matter, no further adjudication is required in the present Writ Petition. Accordingly, this Writ Petition is also allowed on the same lines as per the order passed by the Tamil Nadu Electricity Regulatory Commission. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

jd

To

1. The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited,
144, Anna Salai,
Chennai 600 002.

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Tamil Nadu Generation and Distribution
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6. The Superintending Engineer,
TANGEDCO,
Tirupur Electricity Distribution Circle,
Tirupur.

7. The Secretary,
Tamil Nadu Electricity Regulatory Commission,
19-A, Rukmini Lakshmipathy Salai,
(Marshall's Road),
Egmore, Chennai- 600 008.

+1cc to Mr.R.S.Pandiyaraj, Advocate, S.R.No.814

W.P.No.28546 of 2018

NK(CO)
RGA(15/02/2022)