



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2023

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Contempt Petition No.744 of 2023

JVS Export

Rep.by its Partner Britto

WF HTSC No.39224320291

32, Sarojini Street

Chinnachokkikulam

Madurai-625 002.

..Petitioner/Petitioner

.Vs

1. Thiru.Rajesh Lakhoni IAS
Chairman Cum Managing Director
Tamilnadu Generation and Distribution
Corporation Ltd, (TANGEDCO)
10th floor, 144 Anna Salai
Chennai 600 002.
2. Thiru.S.Surendiran
The Chief Engineer NCES, TANGEDCO
2nd Floor, 144 Anna Salai
Chennai - 600 002.
3. Theanmozhi
The Superintending Engineer
TANGEDCO
Virudhunagar Electricity Distribution Circle
Virudhunagar - 626 001 .

...Respondents/Respondents

Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971, to punish the respondents for their act of committing Contempt of Court by disobeying the order of this Hon'ble Court dated 01.10.2021 made in



For Petitioner : Mr. S.P.Pandiyaraj
For Respondents : Mr.P.S.Raman
Senior Counsel
for Mr.D.R.Arun Kumar
Standing Counsel

ORDER

Pursuant to the earlier order passed by this Court on 13.4.2023, the contempt petition was taken up for hearing today. The Chairman and the Managing Director of TANGEDCO was also present at the time of hearing in person.

2.While passing the earlier order, this Court had sought for certain particulars and also the plan of action for compliance of the directions issued by this Court in various writ petitions.

3.When the matter was taken up for hearing today, Mr.P.S.Raman, learned Senior Counsel appearing on behalf of TANGEDCO submitted the report of the Chairman-cum-Managing Director. For proper appreciation, the relevant portions in the report are extracted hereunder:

5.I humbly submit that some of the Wind Energy Generators had obtained orders Writ Petitions allowing migration from Sate to Board & Captive use/Third-party without submitting the relevant documents to TANGEDCO. I submit that due to some communication gap, while deposing of the Writ Petitions at the Admission stage itself as a covered mater, TANGEDCO did not brought it to the knowledge of this Honble



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Court that the process of migration can be inflated only after submission of all the required documents. I reliably understand that only because of the afore stated facts, many contempt petitions were filed against the TANGEDCO and many Generators submitted the remaining/relevant documents that are mandatory for issuing migration orders only when this Honble Court post the respective contempt petitions for reporting compliance. On the other hand, we have issued migration orders to the WEGs, who tied all the mandatory documents that are required for the issuance of migration orders. Hence, I respectfully submit that there is no selective/differential treatments in issuing migration orders for wind energy generators

6. I submit that around 350 wind energy generators had obtained the above orders by filing Wit petitions. I submit that one aspect of the order dealt with the issue of migration and the other dealt with payment of outstanding dues. Insofar as the former is concerned, as stated earlier TANGEDCO has neither wilfully nor wantonly delaying in issuing of orders for migration, and any delay only due to non-submission of all required records referred earlier by the WEGs non-remittance of open access application charges. In so far as the payment of dues is concerned TANGEDCO has sought legal opinion for fling a review as the Electricity (late payment) Surcharge Rule 2022 has come into effect from 3.6.2022 and the TANGEDCO would seek a judicial verdict on its applicability to cases where orders have already been passed in Writ petitions. In the appeals filed against the above orders in CMP No's 2, 3, and 7 of 2023 in WA.Sr.Nos. 146613, 146614, 146615 of 2028, while dismissing the same in limine on 03.01.2023, the Division Bench of this Hon'ble Court by not condoning the delay in filing the same, while recording the submission of TANGEDCO regarding the applicability of the above rules but no finding has been given.



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Without prejudice to the move to seek a review TANGEDCO is independently making payment of dues to the 856 generators as per the aforesaid rules, irrespective of whether they have filed WPS/Contempt petitions or not.

7. I submit that TANGEDCO neither willfully nor wantonly delayed in issuing migration orders and also payment of outstanding dues to wind generators. It is Submitted that after the implementation of the Electricity (Late Payment Surcharge) Buies, 2021 by the Ministry of Power, Gol, with effect from 03.06.2022, TANGEDCO is making payment of outstanding due to 856 Nos. of Wind Energy Generators who are sailing power to TANGEDCO in 48 equal monthly installment starting from 4.08.2022. So far in this scheme, 9 Nos of installment have been paid to all wind generators irrespective of whether they have filed Writ Petition/Contempt Petition or not.

8.I submit it is pertinent to mention that in case of any default committed by the TANGEDCO, the Ministry of Power, has the power to suspend the Grid operation of TANGEDCO and hence there cannot be any default. As stated in my affidavit filed in support of dispense with a petition in Sub Appl No. 301 of 2023, I have instructed concerned officials of TANGEDCO to issue a communication to the WEGs to submit the required documents for issuing migration orders in all the pending matters and migration orders to be issued at the earliest as and when all such documents are submitted by the respective WEGs.

9.I submit that we are also taking steps to file review petitions seeking relief to permit the TANGEDCO to make payments as per the LPS rules hereafter, instead of paying in lump sum so as to avoid the financial burden of the TANGEDCO. I also assure this Honble Court that TANGEDCO will comply with the orders passed by this Honble Court in a



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time-bound manner without any selective treatments where all the necessary documents are submitted in cases where no a the said order. appeal/review is filed against

4.The report was also annexed with the particulars that were sought for by this Court at paragraph 3 of the earlier order passed on 13.4.2023.

5.The learned Senior Counsel submitted that out of 535 applications, orders have been issued for migration in 520 applications. Insofar as the balance 15 applications are concerned, those applications are at various stages and as and when the relevant documents are furnished, the migration orders will be issued in those cases also.

6.Insofar as the payment of the outstanding dues is concerned, the learned Senior Counsel submitted that for those orders which were passed prior to 3.6.2022, the TANGEDCO is bound to make the entire payment and TANGEDCO is in the process of arranging for the funds and comply with the orders passed by this Court prior to 3.6.2022. Insofar as the orders that were passed from 3.6.2022 onwards, steps will be taken by TANGEDCO, to file review applications in all those writ petitions and seek for the payment by pointing out to the Electricity (late payment) Surcharge Rule, 2022, which came into effect from 03.06.2022. Depending upon the orders passed in the review applications, the TANGEDCO will make the payments to the generators to whom the amount is due and payable. The learned Senior Counsel further



submitted that after the coming into the force of 2022 Rules, the TANGEDCO is making payment of the outstanding dues to the wind energy generators, who are selling power to TANGEDCO in 48 equal monthly installments and so far, 9 installments have been paid to the wind energy generators irrespective of whether they have filed writ petition/contempt petition or not.

7.The learned counsel for the petitioner made certain submissions on the stand that was taken by TANGEDCO in the report that was submitted today. Considering the scope of the contempt petition, this Court cannot travel too far and issue directions. The stand taken by the TANGEDCO cannot be put to test in this contempt petition. Hence, those submissions that were made on the side of the petitioner should only be reserved for a proper occasion as and when the issue arises for consideration.

8.It is brought to the notice of this Court that insofar as the petitioner in this contempt petition is concerned, migration order has been passed on 03.4.2023 and the payment has also been made (principal with interest) on 20.4.2023. In view of the same, no further orders can be passed in this contempt petition except recording the report that was submitted by the 1st respondent and the submissions made by the learned Senior Counsel appearing on behalf of TANGEDCO.



7. Accordingly, this contempt petition is closed.

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27.04.2023

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Internet : Yes/No

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

To

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N. ANAND VENKATESH, J.



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