



WEB COPY



W.P.No.2673 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.2673 of 2018

and

W.M.P.Nos.3308 & 3309 of 2018

M/s.Creamline Dairy Products Ltd.,
HTSC No.1697,
Plant as S.No.9/1, Orakkadu Village,
Sholavaram,
Ponneri Taluk,
Thiruvallur District,
Chennai - 600 067,
Rep by its Company Secretary

... Petitioner

Vs.

- 1.Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO),
10th Floor, 144, Anna Salai,
Chennai – 600 002.
- 2.The Superintending Engineer,
Chennai West Electricity Distribution Circle,
TANGEDCO,
Chennai.
- 3.The Deputy Financial Controller,
Chennai West Electricity Distribution Circle,
TANGEDCO,
Chennai.



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

5.Tamil Nadu Electricity Regulatory Commission (TNERC),
19-4, Rukumini Lakshmipathy Salai,
Egmore, Chennai – 600 008.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent relating to the demand of Rs.54,36,343/- under the heading “Adjustment Charge” raised by the 3rd respondent in the Bill dated 02.01.2018 for the month of January 2018 in respect of the petitioner's HTSC No.1697 and quash the same as illegal and direct the respondents to strictly comply with the statutory provisions of Electricity Act 2003, Electricity Rules, 2005 and the binding judgments of the Hon'ble APTEL in the matter of determination and verification of status of the Captive Generating Plants by approaching the Tamil Nadu Electricity Regulatory Commission for directions and determination of the status of the Captive Generating Plants as stipulated under the provisions of Electricity Rules, 2005 and confirmed by the binding judgements of the Hon'ble APTEL.

For Petitioner : Mr.Krishna Srinivasan
for M/s.S.Ramasubramaniam &
Associates

For Respondents : Mr.L.Jai Venkatesh
Standing Counsel [R1 to R4]



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ORDER

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Instant Writ Petition has been filed challenging the impugned demand raised by the third respondent/The Deputy Financial Controller, TANGEDCO.

2. The case of the petitioner is that it is a Company inter-alia engaged in the manufacture of dairy products, for which, the petitioner requires uninterrupted electricity supply, which apart from being sourced from TANGEDCO is also being provided from the petitioner's own windmills. Accordingly, they entered into agreements with TANGEDCO for captive consumption from the CGPs by way of Energy Wheeling Agreements (EWA) signed between the captive consumers and the TANGEDCO. As per the agreements with the TANGEDCO, 5% wheeling loss shall be deducted from the total electricity from the said windmills and the balance shall be available for captive consumption.

2.1. Further case of the petitioner is that, by Audit Slip No.73, it was informed that the petitioner had failed to pay the 51% captive consumption requirement for the period 04/2012 to 03/2013 and TANGEDCO had



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directed the petitioner to remit a sum of Rs.54,47,918/- for failing to pay the 51% captive consumption requirement, thereby losing the captive status.

The petitioner sent proper replies on 25.01.2016, 21.12.2017 and 17.01.2018. However, the Superintending Engineer, Tirunelveli Electricity Distribution Circle sent a letter to the Superintending Engineer, Chennai West Electricity Distribution circle, wherein, it has been stated that the demand of Rs.54,36,343/- may be included in the Electricity Consumption Bill for January 2018 for the petitioner's HTSC No.1697 supplying electricity at its Plant at Chennai. Pursuant to which, the third respondent has raised the impugned demand/bill dated 02.01.2018 for the month of January 2018 in respect of the petitioner's company stating that a sum of Rs.54,36,343/- has been included under the heading "Adjustment Charge". Challenging the same, the petitioner filed the above writ petition before this Court for appropriate directions.

3. The learned counsel for the petitioner would submit that, during the pendency of this writ petition, the respondents 1 to 4 have filed their affidavit, in which, it is has been stated that, in view of the subsequent development, the demand made by the respondent TANGEDCO against the



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petitioner towards payments of 75% unutilized banked wind units for the year 2012-13 of Rs.54,36,343/- has become infructuous. Hence, he prays that, in view of the affidavit filed by the respondents, this Court may set aside the demand and pass appropriate orders.

4. Heard the learned counsel for the petitioner as well as the learned Standing Counsel appearing for the respondents 1 to 4 and perused the materials available on record.

5. The relevant portion of the affidavit filed by the respondents 1 to 4 is extracted hereunder :

"6) I respectfully submit that, said instruction issued by the respondent TANGEDCO vide letter dated 11.07.2014 was superseded by subsequent instruction issued vide Memo.No.CFC/REV/FC/REV/ DFC/AAO/HT/D.324/18, dt.16.05.2018 and the relevant contents is reproduced below for ease reference:-

"3.7 While fact being so, it is stated that instructions had been issued that 3rd party wind power does not have banking facility vide Technical Branch Proceeding CMD No.71 dated.28.12.2010. In this connection, it is most relevant to mention that in accordance with the Energy Wheeling Agreements and also the wind energy tariff orders dated 15.05.2006, 20.03.2009, 31.07.2012 and 31.03.2016 the



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respondent TANGEDCO against the petitioner towards payment of 75% unutilized banked wind units for the year 2012-13 of Rs.54,36,343/- has become infructuous."

6. In view of the above submissions made in the affidavit filed by the respondents 1 to 4, the writ petition is closed. No costs. Consequently, the connected miscellaneous petitions are also closed.

23.03.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp

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M.DHANDAPANI, J.

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