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W.P.No.18428 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2023

CORAM : JUSTICE N.SESHASAYEE

W.P.No.18428 of 2020
and WMP.No.22843 of 2020

M/s.Lotus Clean Power Venture P. Ltd.,
No.484, Kamaraj Road
Uppilipalayam Post
Coimbatore – 641 015
Repd by its Authorised Signatory R.Nanadkumar ... Petitioner

Vs

- 1.The Tamil Nadu Generation and Distribution Corporation Ltd (TANGEDCO)
144, Anna Salai, Chennai – 600 002.
Represented by its Chairman.
- 2.The Director Finance
Tamil Nadu Generation and Distribution Corporation Ltd (TANGEDCO)
144, Anna Salai, Chennai – 600 002.
- 3.The Superintending Engineer
Udumalpet Electricity Distribution Circle
TANGEDCO, Udumalpet.
- 4.The Superintending Engineer
Dindigul Electricity Distribution Circle
TANGEDCO
Dindigul.



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5.The Superintending Engineer
Vellore Electricity Distribution Circle
TANGEDCO, Gandhi Nagar
Vellore.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the third respondent's impugned notice bearing Lr.No. SE/UEDC/UDT/DFC/AO/R/HT/AS/F.BOAB Wind/2018 dated 20.11.2018 and the consequential L.No.SE/UEDC/UDT/DFC/AO/R/Wind/Asst/F.BAOBAudit/D.No.486/2020 dated 17.08.2020 towards illegal revision of petitioner's generation and allotment statements for the period of 07/2015 to 11/2015 and quash the same as illegal, arbitrary, against principle of natural justice, contrary to the fifth respondent's clarification dated 02.02.2019 and contrary to second respondent's own Circular Memo dated 03.02.2016 and against the provisions of Electricity Act, 2003.

For Petitioners : Mr.R.S.Pandiyaraj
For Respondents : Mr.L.Jaivenkatesh
Standing Counsel

ORDER

The petitioner is a private medical company and is a licensee for wind energy generation. It has its units across Tamil Nadu. For supplying the wind energy it generates, it has entered into separate agreements with the



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Superintending Engineer, TANGEDCO in the respective Electricity Distribution Circle (henceforth 'EDC'], where the petitioner generate electricity. In the context of the case, three places become relevant, and they are (i) EDC at Dindigul; (ii) EDC at Udumalpet; and (c) EDC at Vellore.

2. The petitioner has entered into an agreement for supply of electricity generated both at EDC, Dindigul and also within EDC, Udumalpet to a certain M/s.Arcelor Mittal Dhamm Processing Pvt Limited at Vellore (henceforth 'captive consumer']. As per the arrangement between the petitioner and its captive consumer, the latter has been allotted 9,31,492 units of electricity for its use.

3. The issue now in controversy relates to the supply and consumption of electricity for July 2015. As against the allotted 9,31,492 units for July 2015, the captive consumer has utilised 2,33,231 units. That left a balance of 6,98,261 units. In terms of Clause-6B of the agreement, any surplus electricity not utilised by the consumer has to be banked within the EDC, where it was generated. Administratively, this adjustment for banking is provided through a communication from the EDC at the consumption end to the EDC at the generation end. In the instant case, according to the



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petitioner, electricity was generated within Dindigul EDC, and the surplus unutilised electricity of 6,98,261 units should have been banked at the point of generation namely Dindigul EDC. However, the fifth respondent herein while communicating the same, has addressed this communication wrongly to his counter-part in Udumalpet EDC (the third respondent) instead of fourth respondent at Dindigul EDC. Whatever energy that was wrongly credited at Udumalpet EDC in the name of the petitioner has since been utilised and all the revenue between the parties have been adjusted.

4. While so, the third respondent vide its communication dated 20.11.2018 raised a demand for Rs.48,20,340/- for wrong banking, and utilisation at Udumalpet EDC. This was responded to by the petitioner with his separate communication dated 18.12.2018 to the third and fourth respondents. Subsequently, he also reports the same to the Chief Finance Controller/Revenue of TANGEDCO, the second respondent herein vide his communication dated 04.01.2019. This has triggered some activity among the officials.

5. The second respondent would now communicate a correspondence to his counter-part in Dindigul (fourth respondent) and informs him that a wrong



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credit was given to the petitioner at Udumalpet EDC. Thereafter, the petitioner approached the third respondent with his communication dated 04.02.2019, requesting him to reconcile the same with his counter-parts in Vellore and Dindigul. And he follows this with a reminder to the fourth respondent dated 02.11.2019.

6. To ascertain if there were any double entry, the one issue that appears to have occupied in the minds of the officials is, if there were any double banking of the same unutilised electricity both at Udumalpet EDC and Dindigul EDC. This was resolved by a communication of the fourth respondent to the second respondent dated 20.11.2019, wherein the fourth respondent would state that for July 2015, no surplus banking units were received from Vellore EDC, to be kept in the credit of the petitioner's account.

7. Thereafter, on 04.01.2020, the petitioner again took up the issue with the second respondent, and pointedly brought to the notice of the second respondent about the communication from the fourth respondent to the second respondent referred to above. It is in this backdrop, the third respondent has come out with a demand notice dated 17.08.2020, which is a ditto replication of the earlier demand notice dated 20.11.2018, except for the date.



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8. No counter has yet been filed, but this Court chose to hear the learned counsel for the respondents.

9. The learned counsel for the petitioner submitted that it is one company that generate electricity in multiple EDCs and it has one distribution licensee that distribute the electricity generated by the petitioner. Admittedly, the mistake is on the part of the fifth respondent who has given a wrong credit advice to the third respondent for banking 6,98,261 units for July 2015. The fourth respondent has also informed vide his communication dated 25.11.2019 that no double credit has been given for the said units in his EDC. The mistake committed by the fifth respondent is easily rectifiable by reconciling the accounts of the respondents 3 to 5. But the third respondent mechanically parrots the audit-objection and keep maintaining the records instead of going for a reconciliation. Indeed, it has not even taken into account some of the earlier correspondences made by the fifth respondent dated 02.02.2019.

10 After hearing the rival submissions, this Court is satisfied that the impugned notice dated 17.08.2020 cannot be sustained as there is no application of mind to anything that has happened since the earlier demand



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notice dated 20.11.2018. This notice therefore cannot be sustained and has to go.

11. However, this Court directs the second respondent to ensure that there is a proper reconciliation of the accounts for the electricity generated, consumed, banking etc., for July 2015 at all the three EDCs namely Vellore, Udumalpet and Dindigul. And if after such reconciliation, anything is found due from the petitioner, then he must be given notice to show cause with proper reasons as to why the demand presently made can be sustained.

12. This Court, therefore sets aside the impugned notice Lr.No.SE/UEDC/UDT/DFC/AO/Wind/Asst/F.BOAB Audit/D.No.486/2020 dated 17.08.2020 of the third respondent, and give his further direction to the second respondent to ensure reconciliation of the issue involved within the three EDCs, and then to raise a demand if the petitioner is found liable. It is added that till the second respondent completes the exercise as it directed, no further demand notice shall be raised by the third respondent on the same issue.



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13. The writ petition stands disposed of with the above directions. No costs.

Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Speaking order / Non-speaking order
ds



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N.SESHASAYEE.J.,

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