IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

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MR.JUSTICE N.SESHASAYEE

W.P.No.26191 of 2023
and W.M.P.Nos.25592 and 25604 of 2023

ARS Energy Private Limited,
Rep by its Deputy Director - Finance,
Registered Office,
D-109, 4th Floor, LBRR Complex,
Anna Nagar (East),
Chennai-600 102. ... Petitioner

Vs.

1.The Tamil Nadu Generation and
Distribution Ltd. (TANGEDCO),
Rep. by its Chairman & Managing Director,
NPKRR Maaligi, 144, Anna Salai,
Chennai-600 002.

2.The Superintending Engineer,
TANGEDCO,
Chennai EDC (North),
144, Anna Salai, Chennai 600 002.

3.The Tamilnadu Transmission Ltd.,
TANTRANSCO,
10th Floor, No.144, Anna Salai,
Chennai-600 002.

4.The Director-Operations,
The Tamilnadu Transmission Ltd.,
10th Floor, No.144, Anna Salai,
Chennai-600 002.

5.Director-Distribution, TANGEDCO,
10th Floor, No.144,
Anna Salai,
Chennai-600 002.

6.Tamil Nadu Electricity Regulatory Commission,
4th Floor, SIDCO Corporate Office Buildings,
Thir.vi.ka Industrial Estate,
Guindy, Chennai-600 032. ... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, calling for the records of the 2nd respondent, being Government Order bearing Lr.No.SE/CEDC/N/HT/DFC/N/AO/AAO/F.OA/D.79/2023 dated 25.05.2023 and quash the same as illegal, arbitrary and violative of the principles of natural justice.

For Petitioner : Mr.Rahul Balaji

For Respondents : Mr.Richordson Wilson
for TANGEDCO

ORDER

By consent, this writ petition is taken up for final disposal at the admission stage itself.

2.This petition is filed challenging the order of the second respondent vide Lr.No.SE/CEDC/N/HT/DFC/N/AO/AAO/F.OA/D.79/2023, dated 25.05.2023 and seeking quashment of the same.

3.The case of the petitioner is that the petitioner is a generator of electricity and has entered into a PPA with TANGEDCO and it sells the energy supplied to various consumers through open access. In relation to the sale of energy, which the petitioner generates, it has entered into a wheeling agreement dated 26.03.2019 with TANGEDCO. In terms of this agreement, the petitioner was not permitted to inject more than 53.334 MW per day and as approved by the State Load Dispatch Centre (SLDC).

4.The relevant years that concern this Court in this case are the financial years

2017 - 2018 and 2018 - 2019 and 2019 - 2020. The petitioner contends that month wise wheeling of energy has been quantified and reconciled during these periods, but that is now sought to be disrupted by TANGEDCO based on certain audit objection. This is now under challenge.

5.1 Mr.Richordson Wilson, the learned counsel takes notice for the respondents 1 to 6, who briefly explained how the dispute has arisen. While the wheeling agreement between TANGEDCO and the petitioner permitted petitioner to inject no more than 53.334 MW a day, the same has to be evenly distributed throughout the day in terms of the schedule specified in the agreement. This has intended to maintain the grid stability of TANGEDCO and even availability of power to consumers. What has happened in these three years is that, there are certain periods during which the petitioner has suffered outages owing to which it did not generate electricity. During this period, the petitioner obviously has not injected an ounce of electricity into the grid of TANGEDCO. However, it still met the monthly permitted quantum of electricity. This implies for the days other than the outage days, the petitioner has injected in excess of what he was permitted to inject under the wheeling agreement. Therefore, TANGEDCO raised a demand for (a) imbalance charges for excessive injection of electricity during the outage period; and (b) grid availability charges for deviating from the schedule in the wheeling agreement.

5.2 The learned counsel for the respondents submitted that on the mode of computation of the energy, there is a dispute and it is pending consideration of TNERC in T.A.No.8 of 2022 filed by the petitioner. The dispute involved therein is whether energy injected must be computed in a slot of 15 Minutes or monthly.

6. Now, the issue is all about the tenability of the demand made and it may be briefly stated below:

- On 21.04.2021, TANGEDCO raised a demand for about Rs.17.69 Crores on the aforesaid two heads of charges. On 23.06.2021, the petitioner raised a cause to TANGEDCO. One critical aspect involved at this stage is that the pattern of computation of electricity supplied and injected. According to the petitioner, what is required to be done is whether the petitioner has injected anything more than the monthly quantum of electricity permitted to be injected. Whereas, a new system of accounting has been introduced which is not notified yet whereby, it has to be calculated in a slot of 15 Minutes. The TANGEDCO would understand this, and therefore, vide its proceedings dated 03.05.2023 reworked its accounting and reduced its claim from 17.69 Crores to Rs.2,71,02,948/-.

- The petitioner would now issue a reply dated 16.05.2023, questioning this demand of Rs.2.71Crores. And vide its communication dated 01.06.2023, he also demanded a personal hearing. On 15.06.2023, TANGEDCO intimated the petitioner about a personal hearing that was scheduled to take place on 22.06.2023. On 22.06.2023, a personal hearing was given, during which, the petitioner sought certain working sheets as to how TANGEDCO arrived at a claim of about 2.71 Crores. On the following date (vide its impugned proceedings dated 23.06.2023), TANGEDCO issued a notice along with that it also enclosed the working sheet demanded by the petitioner during the personal hearing on 22.06.2023.

- One of the fundamental grievances of the petitioner is that on the revised working sheet, the petitioner was not granted an opportunity of hearing.

7.This Court now considers that the petitioner indeed has made out a case in that it ought to have been granted a due opportunity to defend the working sheet and also a right of hearing on the same. After all, when a liability is required to fasten based on a certain material, then a party on whom the liability is sought to be fastened must have an opportunity to defend it.

8.In view of the same, this Court directs that the impugned demand of TANGEDCO be treated as a second show cause notice *vis-a-vis* the revised working sheet and the petitioner is now required to respond to the same. Inasmuch as the issue involved in T.A.No.8 of 2022 is alient to the present dispute that may not figure during the enquiry. The TANGEDCO is also directed to grant the petitioner an opportunity of personal hearing. The entire exercise is required to be completed within a period of four (4) weeks from the date of receipt of an online copy or the date on which the order is hosted in the official website, whichever is earlier. It is open to the petitioner to raise all objections available to him both in law and in fact.

9. This Writ Petition stands disposed of accordingly with the above direction. No Costs. Consequently, the connected miscellaneous petitions are closed.

11.09.2023

Anu
Index : Yes / No
Neutral citation : yes/no

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