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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2023

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THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

W.P.No.29458 of 2022

M/s.Surabhi Breeding Farms,
No.10, Subramaniyam layout,
IInd Floor, Trichy Road,
Ramanathapuram,
Coimbatore District – 641 045,
Rep.by its Partners R.Raghul Karthikeya

.. Petitioner

Vs.

1.The Tamil Nadu Generation and Distribution Corporation Ltd.,
TANGEDCO,
10th Floor, 144, Anna Salai,
Chennai – 600 002.
Represented by its Chairman -cum- Managing Director

2.The Chief Engineer / NCES,
TANGEDCO, 2nd Floor, 144,
Anna Salai, Chennai – 600 002.

3.The Superintending Engineer,
TANGEDCO, Tatabad,
Coimbatore.

4.Tamil Nadu Electricity Regulatory Commission,
19-A, Rukmini Lakshmipathi Salai,
Egmore, Chennai - 600 008.
Represented by its Secretary.

.. Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 1st, 2nd and 3rd respondents to allow the Utility Change to the petitioner by terminating the existing Energy Purchase Agreement dated 30.03.2010 for their WF HTSC No.931 and execute fresh Energy Wheeling Agreement under Group Captive scheme as per the Common Order of this Court dated 30.08.2019 which was upheld by the Hon'ble Division Bench dated 18.02.2020 and also by the Hon'ble Supreme Court dated 24.09.2020 and make outstanding payment to the petitioner towards the wind energy sold by the petitioner for the period from August / 2020 to till date as per their respective invoices along with interest at 1% per month for any delay in payments.

For Petitioner .. Mr.N.Umapathi

For Respondents .. Mr.L.Jai Venkatesh, Standing Counsel

ORDER

This Writ Petition has been filed in the nature of Mandamus seeking a direction to the 1st and 3rd respondents to allow the Utility change to the petitioner by terminating the existing Energy Purchase Agreement dated 30.03.2010 for their WF HTSC No.931 and execute fresh Energy Wheeling Agreement under Group Captive Scheme.



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2.The petitioner relies on earlier orders of this Court in a batch of Writ Petitions in *W.P.Nos.5196, 11725, 8459 & 8463 of 2019 and 6694 & 1275 of 2018* dated *30.08.2019* which order was upheld by a Division Bench on 18.02.2020 and by the Hon'ble Supreme Court on 24.09.2020. The petitioner also seeks payment of outstanding towards wind energy sold by the petitioner for the period August 2020 to till date as per the invoices along with the interest 1% per month.

3.The petitioner had installed wind mill within the jurisdiction of the 3rd respondent. It was commissioned after getting clearances from the respondents. The energy generated was sold to the respondents by executing Energy Purchase Agreement. It was to be sold at the tariff notified by the 4th respondent / Tamil Nadu Electricity Regulatory Commission. The petitioner placed a request to convert the existing Energy Purchase Agreement to Energy Wheeling Agreement to supply their wind energy. The request was kept pending. It was under these circumstances, the petitioner had filed the present writ petition seeking a Mandamus.



4.The issue is no longer res-integra and a learned Single Judge of this Court passed similar orders and I would take advantage of the reasoning given therein. Let me extract the order in ***W.P.No.24409 of 2021, M/s.Maharishi Builders Vs. Tamil Nadu Generation and Distribution Corporation Ltd and others***. It had been stated as follows:

“3.The issue involved that has been raised in the present Writ Petition is covered by the earlier order passed by this Court in a batch of Writ Petitions in W.P.Nos.5196, 11725, 8459 & 8463 of 2019 and 6694 & 1275 of 2018 dated 30.08.2019. This order was subsequently confirmed by the First Bench of this Court in W.A.Nos.4189, 4194, 4197, 4201, 4204 and 4205 of 2019 dated 18.02.2020.

4.It was further confirmed by the Hon'ble Supreme Court by order dated 24.09.2020 wherein the Special Leave Petition filed by TANGEDCO was dismissed.

5.In view of the above, this Writ Petition is allowed with the following directions:

(a)The respondents/TANGEDCO are directed to permit the petitioner to switch over to captive consumption/group captive consumption/third party sale, as the case may be, as per the request made by the petitioner.



(b)The respondents/TANGEDCO are directed to settle the respective dues to the petitioner as per their respective invoices raised by them, along with interest as per Clause 6(b), within a period of four months from the date of receipt of a copy of this order.”

5.In view of the above pronouncement, which was attained the force of law consequent to the Hon'ble Supreme Court having upheld the judgment of the Division Bench, the petitioner is permitted to migrate from EPA to EWA. A mandamus is issued accordingly and any order to the contrary is set aside.

6.With the above observations, this Writ Petition stands allowed. No costs.

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Index:Yes/No
Internet:Yes/No
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To

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C.V.KARTHIKEYAN,J.

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