



W.P(MD)No.3612 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.10.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.3612 of 2022

Sri Jayavilas Subbaraj Spinning Mills P Ltd.,
2/864, Thiruchulli Road, Kanjanaickenpatti,
Aruppukkottai-626 101,
Rep. by its Authorised Signatory,
S.Saravana.

... Petitioner

Vs.

- 1.Tamil Nadu Generation and Distribution
Corporation Limited,
Represented by its Chief Financial Controller,
144, Anna Salai,
Chennai 600 002.
- 2.The Executive Engineer,
Open Access,
State Load Despatch Center,
No.144, Anna Salai,
Chennai-600 002.
- 3.The Superintending Engineer/Commercial Operation,
TANTRANSCO,
144, Anna Salai,
Chennai-60002.
- 4.The Superintending Engineer,
Virudhunagar Electricity Distribution Circle,
Tamil Nadu Generation and Distribution
Corporation Limited,
Virudhunagar.



W.P(MD)No.3612 of 2022

5.Nagai Power P Ltd.,
Reg Off:-6-3-1109/A/1, 3rd Floor,
Navbharath Chambers, Raj Bhavan Road,
Hyderabad-500 082.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the 2nd and 3rd Respondent to issue Standing Clearance and NOC to the petitioner permitting the Petitioner to purchase power from IEX power exchange.

For Petitioner : Mr.R.S.Pandiyaraj

For Respondents : Mr.S.Deenadhayalan
Standing Counsel for R1 to R4

ORDER

Heard the learned counsel for the petitioner and the learned standing counsel for TANGEDCO.

2. When the writ petition was taken up 'for admission' on 25.02.2022, the following order was passed allowing W.M.P.(MD)No.3147 of 2022.

“The main writ petition has been filed for a Mandamus seeking for a direction to the second and third respondents to issue the necessary Standing Clearance and NOC to the petitioner to purchase power from IEX power exchange.

2. An interim direction has also been sought for pending disposal of the main writ petition in W.M.P.(MD).No.3147 of 2022 seeking for



W.P(MD)No.3612 of 2022

a direction to the second and third respondents to forthwith issue the necessary Standing Clearance and NOC to the petitioner by permitting the petitioner to purchase power from IEX power exchange for the month of March, 2022.

3. The case of the petitioner is that they are a Spinning Mill engaged in the manufacture of yarn having a HT service connection within the jurisdiction of the fourth respondent. It is their case that more than 1000 persons are working in the petitioner Spinning Mill and they claim that they are a pioneer in industrialization in the Virudhunagar region and the petitioner is one of the first Textile Industry there. According to the petitioner, they applied to the fourth respondent, vide an Application, dated 17.04.2021 for the purchase of 1.5 MW of power on RTC basis from the fifth respondent. Thereafter, the petitioner has also entered into a Power Delivery Agreement with the fifth respondent on 29.04.2021 for the purchase of 1.5 MW power from the fourth respondent for the period from 01.05.2021 to 31.03.2022. The petitioner has also entered into a Share Subscription Agreement with the fifth respondent, in and by which, the petitioner held 68080 Class A Equity Shares of Rs.10/- (Rupees Ten only) each which enables the petitioner to be legally recognised as a captive power consumer of the fifth respondent. In this regard, the fifth respondent has also entered into a valid Short Term Open Access Agreement with the second respondent for use of the grid of TANTRANSCO.

4. It is the further case of the petitioner that based on the above arrangement of the third party power purchase from the fifth respondent through an open access, the petitioner made an application for NOC from the fourth respondent for purchase of power from the fifth respondent which has been internally communicated to the second and third respondents by the fourth respondent. According to the petitioner, based on such NOC issued by the fourth respondent, the second and third respondents have issued the Short Term Open Access Approval, dated 03.08.2021 in favour of the petitioner, for consumption of power from the fifth respondent for the period from 01.09.2021 to 30.09.2021. However, according to the petitioner, not even a single unit was injected by the fifth respondent since then. According to the



W.P(MD)No.3612 of 2022

petitioner, the fifth respondent is now facing liquidation proceedings. Therefore, the petitioner is unable to consume power from the fifth respondent, despite the agreement entered into with the fifth respondent. In such circumstances, the petitioner has addressed a letter on 05.09.2021 to TANTRANSO, seeking cancellation of the Short Term Open Access (hereinafter referred as 'STOA'). However, according to the petitioner, the second respondent has not cancelled the STOA till date, due to which, the petitioner is not able to source any other Open Access power to meet their power requirements.

5. In the affidavit filed in support of this writ petition, the petitioner has stated that they had given an undertaking to the second and third respondents' EDCs (Electricity Distribution Circles) that the petitioner will not consume power from the fifth respondent, so that the petitioner can obtain the necessary Standing Clearance under ST Form 6 for purchase of power from IEX.

6. The petitioner has also sent a communication to the third respondent, dated 04.10.2021 requesting the third respondent to cancel STOA, so that the petitioner can avail Open Access from IEX to meet their power requirements, since the fifth respondent is not functioning. It was brought to the knowledge of the petitioner that they will not be able to consume power from IEX for the month of December 2021 as the second and third respondents have refused to issue Standing Clearance to the petitioner for the month of December 2021 onwards. According to the petitioner, immediately upon coming to know about the same, they issued a letter, dated 16.12.2021 to the third respondent, seeking issuance of Standing Clearance, so as to enable the petitioner to avail power consumption for the month of December 2021 for which, no response has been received till date. The petitioner has also cancelled the business agreement with the fifth respondent with effect from 16.12.2021 and the same has also been communicated to the second and third respondents as well.

7. It is the further case of the petitioner that even though the



W.P(MD)No.3612 of 2022

petitioner had furnished letters of undertaking to the third and fourth respondents stating that they will not purchase power from the fifth respondent, the Standing Clearance has not been issued till date by TANGEDCO to enable the petitioner to obtain open access for purchase of power from IEX.

8. According to the petitioner, without the Standing Clearance in ST Form 6, the petitioner will not be able to meet their power requirements from any source and will not be able to run the Industry.

9. It is also the contention of the petitioner that under the provisions of Electricity Act, 2003, the petitioner's right to obtain open access for power purchase from any source cannot be curtailed. However, according to the petitioner, despite their repeated attempts to get open access for power purchase from IEX power exchange, on account of liquidation of the fifth respondent Company, the same has not been permitted till date by the respondents and under those circumstances, the petitioner has sought for interim direction pending disposal of the main writ petition.

10. Heard Mr.S.P.Parthasarathy, learned counsel appearing for the petitioner and Mr.S.Deenadhayalan, learned Standing Counsel, who accepts notice for the respondents 1 to 4.

11. The learned counsel appearing for the petitioner drew the attention of this Court to the interim directions granted by this Court in identical matters and they are as follows:

'(a).An order dated 01.12.2020 passed in W.M.P.Nos.21785 and 21788 of 2020 in W.P.No.17577 of 2020.

(b).An order dated 08.03.2021 passed in W.M.P.No.6183 of 2021 in W.P.No.5546 of 2021.'

12. In both the cases referred to supra, the learned counsel for the petitioner would submit that similar interim direction as sought for in this writ petition, was granted. The petitioner is running a Textile Industry and they claim that they are the first Textile Industry in the Virudhunagar Region. They have been successfully running the same for a number of years. Earlier, they



W.P(MD)No.3612 of 2022

were attempting to source their excess power requirements through the fifth respondent. But admittedly, as seen from the documents filed along with this writ petition, the said Company is now facing liquidation proceedings and they are not in a position to supply power as per the agreement entered into between the petitioner and the fifth respondent. The petitioner cannot be left high and dry when there are so many employees whom the petitioner will have to protect and the Industry will also get affected caused by the financial strain due to the non-availability of power which is essential for their smooth functioning. In similar circumstances, in the aforesaid orders relied upon by the learned counsel for the petitioner, similar interim direction has to be given as sought for in this writ petition. Therefore, after giving due consideration to the contention of the learned counsel for the petitioner and the documents filed in support of this writ petition, this Court is of the considered view that a *prima facie* case has been made out by the petitioner for the grant of interim direction as prayed for in W.M.P.(MD).No.3147 of 2022.

13. Accordingly, this Court directs the second and third respondents to issue the necessary Standing Clearance and NOC to the petitioner within a period of five (5) days from the date of receipt of a copy of this order and issue necessary orders permitting the petitioner to purchase power from IEX power exchange for the month of March 2022 pending disposal of this writ petition.

14. With the aforesaid directions, W.M.P.(MD).No.3147 of 2022 is allowed as prayed for.”

Pursuant to the said interim order, No Objection Certificate as sought for by the petitioner was also granted. The said interim order is made absolute.

3. The Writ Petition is allowed. No costs.

11.10.2023

Index : Yes / No
Internet : Yes/ No
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W.P(MD)No.3612 of 2022

G.R.SWAMINATHAN, J.

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W.P(MD)No.3612 of 2022

11.10.2023