BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.11648 of 2018
and
W.M.P(MD)Nos.10604, 10605 & 10929 of 2018

M/s.Tuticorin Spinning Mills Ltd.,
Rep.by its Director,
106, Palayamkottai Road,
Tuticorin District – 628 008. ... Petitioner

Vs.

1.The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited,
Maharaja Nagar,
Tirunelveli Electricity Distribution Circle,
Tirunelveli.

2.The Superintending Engineer,
Tamil Nadu Generation and Distribution
Corporation Limited,
Udumalpet Electricity Distribution Circle,
Udumalpet.

3.The Chairman and Managing Director,
Tamil Nadu Generation and Distribution
Corporation Limited,
Chennai.

4.The Chief Financial Controller / Revenue,
Tamil Nadu Generation and Distribution
Corporation Limited,
Chennai.

5.The Chief Engineer,
NCES,
TANGEDCO,
Chennai. ... 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 comprised in Lr.No.SE/TEDC/TIN/DFC/AO/Rev/AS/AS/HTS/F.WEG.Ht Sc No.946/D.No. 1577/18 dated 05.04.2018 issued by the first respondent and quash the same as being arbitrary and illegal.

For Petitioner : Mr.Sricharan Rangarajan
Senior Counsel
for Mr.S.I.Muthaiah

For Respondents : Mr.S.Dheenadhayalan
Standing Counsel

ORDER

Heard the learned Senior Counsel appearing for the writ petitioner and the learned Standing Counsel appearing for TANGEDCO.

2. The writ petitioner was established in the year 1991. It set up four wind mills at different sites in Tamil Nadu. It entered into an Energy Wheeling Agreement with TANGEDCO in the year 2006. As per the terms of the

agreement, part of the wind energy generated by the mills would be utilized by the petitioner. The unutilized part would be fed into the grid of TANGEDCO. For the units consumed by the petitioner, the petitioner has to pay what is known as wheeling charges.

3.The petitioner company ran into loss and had to close down their production on 16.06.2016. On 16.06.2016, it called upon the TANGEDCO to record the meter readings of the aforesaid four wind mills as on 16.06.2016 because thereafter the HT supply to the petitioner would be permanently disconnected. The petitioner further called upon the TANGEDCO to make payments to them by taking into account the actual number of units directly fed into the TANGEDCO's grid. It appears that the TANGEDCO did not respond. The wind energy generated in four wind mills continued to be fed into the grid of TANGEDCO. A fresh Energy Wheeling Agreement was entered into between the petitioner and the TANGEDCO on 28.11.2016. However, for the period from 16.06.2016 to 28.11.2016, the TANGEDCO did not make any payment for the energy purchased by them.

4.The petitioner made several representations in this regard calling upon them to make payment. Instead of responding to the petitioner's request, the second respondent called upon the petitioner to pay the wheeling charges to the tune of Rs.7,91,042/-. Questioning the same, the present writ petition came to be filed.

5. The learned Senior Counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He drew my attention to the relevant clauses in the Energy Generated Agreement entered into between the parties. He also placed considerable reliance on the order passed by the TANGEDCO in Memo dated 25.04.2017 in the case of M/s.Sundaram Fasteners Limited. He pointed out that since the petitioner has already effected disconnection of their HT supply, the question of paying wheeling charges does not arise at all. He submitted that the petitioner has not committed any breach of contract. A variation in the situation had arisen and that this Court may take note of the same and grant relief as prayed for.

6.The learned Standing Counsel appearing for the respondents submitted that the impugned communication deserves to be sustained. He pointed out that the petitioner had unilaterally taken recourse to disconnecting the HT supply. The Energy Wheeling Agreement entered into between parties had not been terminated in the manner known to law. Therefore, the petitioner was bound to pay the wheeling charges. The demand made by the second respondent is in consonance with the terms of the Energy Wheeling Agreement. He pressed for dismissal of the writ petition.

7. I carefully considered the rival contentions and went through the materials on record.

8. It is true that the parties are governed by the terms of contract entered into between them. It is equally true that the Energy Wheeling Agreement had not been cancelled formally. But the facts obtaining on record cannot be lost sight of. The Energy Wheeling Agreement entered into between the petitioner and TANGEDCO contemplates that part of the energy generated from four wind mills will be used for the petitioner's consumption while the remaining part will be utilized by TANGEDCO. TANGEDCO was supplying HT electricity to the petitioner. TANGEDCO is a single entity. It is not as if the entity that was receiving wind energy from the petitioner, is one entity, whereas entity supplying HT electricity to the petitioner is somebody else.

9.The petitioner had informed the TANGEDCO that their unit production activity will be shut down on 16.06.2016. This intimation was given in time. Accordingly, HT supply was also duly disconnected. It was certainly open to the TANGEDCO to write to the petitioner that they should enter into a fresh agreement immediately. But they have not done so. The fact remains that the entire energy generated by the wind mill was fed into the grid of TANGEDCO and it was also utilized by TANGEDCO. Having not raised any objection at the appropriate time, TANGEDCO cannot refuse to make payment.

10.Section 70 of the Indian Contract Act, 1872 is clearly applicable to the facts of this case. The said provision reads as follows :

> "70.Obligation of person enjoying benefit of non-gratuitous act.-Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."

In this case, the petitioner has done something lawful. Energy generated by the petitioner was supplied to the TANGEDCO. The petitioner did not intend to supply gratuitously. Having enjoyed the benefit, TANGEDCO was bound to make compensation to the petitioner in respect of the supply received by them.

It is well settled that the aforesaid provision applies as much to individuals as to corporation and governments.

11.Now the question that arises for consideration is what is the rate that should be paid by TANGEDCO. If the petitioner and the TANGEDCO had entered into a fresh agreement, this Court would have directed the parties to abide by the terms thereof. Since no such agreement was entered into, this Court will have to necessarily go by the agreement that originally prevailed. In my view, Clause 5(b) of the agreement will have to be applied. It states that the unutilized portion shall be purchased by the licencee at the rate of 75% of the normal purchase rate. Therefore, the respondent will have to pay the petitioner at the rate of 75% of the normal purchase rate for the units consumed by them. The question of paying the wheeling charges will not arise at all. Because no unit of energy generated by the petitioner's wind mills was ever wheeled to the petitioner's unit. Therefore, the impugned communication is set aside. The respondents ought to have made the payment at the rate mentioned above by November 2016 itself. There has been gross delay on the part of respondent. Therefore, they are bound to pay interest. TANGEDCO represented by the fourth respondent is directed to make the payment as quantified above at the rate of 6% per annum.

12.This writ petition is allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

04.09.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

To

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G.R.SWAMINATHAN, J.

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