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W.P.No.7519 of 2023
and
W.M.P.Nos.7621 of 2023 and 18668 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No. 7519 of 2023
and
W.M.P.Nos.7621 of 2023 and 18668 of 2024

The Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
represented by the Chief Financial Controller
Regulatory Cell, 7th Floor, NPKRR Maaligai
144 Anna Salai, Chennai – 600 002.

... Petitioner

[amended as per order of this Court dated
11.09.2024 in W.M.P.No.8708 of 2023
in W.P.No.7519 of 2023]

Versus

1. The Ministry of Power
Represented by its Secretary
Union of India
Shram Shakti Bhawan
Rafi Marg, New Delhi – 110 001.
2. N.L.C. India Limited
Rep.by its Chairman and Managing Director
No.135, E.V.R. Periyar High Road
Kilpauk, Chennai – 600 010.



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3. N.L.C.India Limited

Rep.by its General Manager/Commercial

No.135, E.V.R Periyar High Road

Kilpauk, Chennai – 600 010.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records of the third respondent pertaining to impugned communication vide Letter No.NLCIL/GM/Comml./TANGEDGO-VSVS Debit Note/F.1215/2022-615, dated 26.12.2022 that includes debit note Nos.901000291, 90060067082, 901200262, 901000303 and impugned communication vide Letter No.NLCIL/GM/Comml./TANGEDCO-VSVS Debit Note/F.1215/2022-616 dated 27.12.2022 includes Debit notes Nos.90067159, 901200270, 901000317, 90067160, 901200278, 901000330, 901300203, 90067163 quash the same, and consequently direct the respondents 2 and 3 to remove the afore stated Debit Notes from the PRAAPTI Portal.

[amended as per order of this Court dated 11.09.2024

in W.M.P.No.8708 of 2023 in W.P.No.7519 of 2023]

For Petitioner : Mr.P.Wilson,
Senior Counsel for
Mr.D.R.Arun Kumar

For Respondents : Mr.K.S.Jeyaganeshan
Senior Panel Counsel-Govt. of India
for R1



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Mr.V.Vijayanarayanan
Senior Counsel for
Ms.Lakshmi Kumaran for R2 and R3

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus calling for the records of the third respondent pertaining to impugned communication, vide Letter No.NLCIL/GM/Comml./TANGEDGO-VSVS Debit Note/F.1215/2022-615, dated 26.12.2022 that includes Debit Note Nos.901000291, 90060067082, 901200262, 901000303 and impugned communication, vide Letter No.NLCIL/GM/Comml./TANGEDCO-VSVS, Debit Note/F.1215/2022-616, dated 27.12.2022 includes Debit Note Nos.90067159, 901200270, 901000317, 90067160, 901200278, 901000330, 901300203, 90067163 and quash the same, and consequently direct the respondents 2 and 3 to remove the afore stated Debit Notes from the PRAAPTI Portal.

2. According to the petitioner-TANGEDCO, they are clearing



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all the invoices that are being raised then and there by the second respondent-N.L.C. India Limited and as on date, there are no arrears payable to the second respondent. While so, the second respondent sent an impugned communication holding that TANGEDCO is liable to pay the additional Tax liability of the second respondent, payable to the Income Tax Department to the tune of around Rs.184 Crores. Despite the fact that the said claims were returned by TANGEDCO on various grounds, the second respondent ignored the communication returning the claim and has deliberately had not withdrawn the said claims that were uploaded in PRAAPTI Portal. The said portal is established only to recover the legitimate dues payable by the DISCOMs to the Generators, however, once a claim is made in the said portal, either the said claim is legitimate or illegitimate, the TANGEDGO is bound to pay the claim amount, unless an order of interim stay is uploaded within the trigger date. In case the stay order of competent Court for the illegitimate claim is not uploaded, the first respondent will suspend the entire grid connectivity of the TANGEDCO, which leads to a severe power crisis across the State, thereby, the petitioner filed the present writ petition.



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3. The learned Senior Counsel appearing for the petitioner TANGEDGO submitted that the claims made by the second respondent are time barred and it is only additional tax liability, and the same cannot be claimed much earlier to the point of time on the sole ground that the present writ petition is filed. He further submitted that the second respondent is entitled to upload the claim in PRAAPTI Portal, if only there is any legitimate claim, and in the present case, there is no legitimate claim, and it is a time barred claim, and if it is uploaded, either it is a legitimate or illegitimate claim, the TANGEDGO is bound to pay the claim amount, otherwise the entire central grid access will be suspended by the first respondent, which would lead to severe power crisis across the State.

4. Per contra, the learned Senior Counsel appearing for the respondents 2 and 3 submitted that as per the Central Electricity Regulatory Commission (CERC) Tariff Regulations upto the year 2009, tax from core activities is to be computed as an expense and shall be recoverable by the Generating Company from the beneficiaries. Thus, the respondents 2 and 3 have raised Debit notes on the petitioner in respect



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of the tax component to be paid by the beneficiaries, computed based on the Assessment in tariff regulations. However, the TANGEDCO raised objection and filed the present writ petition instead of approaching CERC. He further submitted that, irrespective of the lapse on the merits of the case, either the second respondent for the impugned claim, or the petitioner as against the impugned claim, the remedy available to them to approach CERC. When there is an effective mechanism available for adjudicating the issue before CERC, approaching this Court by the petitioner is not sustainable. On the earlier occasion, this Court directed the TANGEDCO to approach the CERC, for appropriate grievance. Hence, this Court may issue a direction to the petitioner to approach CERC or close the writ petition enabling the second respondent to approach CERC. Keeping the writ petition pending, will affect the interest of the petitioner as well as the second respondent. Accordingly, he prayed for passing appropriate orders.

5. However, the learned Senior Counsel appearing for the petitioner submitted that since the non payment of the claim is made by the second respondent, the respondents 2 and 3 approached CERC by



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way of filing a petition in Miscellaneous Petition 135 of 2023. However, the said CERC dismissed the said petition on the ground that an interim stay being granted by this Court in favour of TANGEDCO and permitted the second respondent to approach the commission after disposal of the present writ petition.

6. Considering the facts and circumstances of the case, as against the claim made by the second respondent, there is an effective mechanism available with CERC in terms of Section 79(1)(f) of the Electricity Act, 2003 read with Clauses 1.7 and 10 of the CERC Regulations 2001 and 2004.

7. In view of the above, this Court is granting liberty to the petitioner to approach the Central Electricity Regulatory Commission (CERC) and to file appropriate petition in terms of Section 79(1)(f) of the Electricity Act, 2003, read with Clauses 1.7 and 10 of the CERC Regulations 2001 and 2004, along with stay petition, within a period of four weeks from the date of receipt of a copy of this order. If any such petition is filed, the Central Electricity Regulatory Commission is directed



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to dispose of the main petition itself within a period of eight weeks from the date of filing of such petition. Till such time, the respondents shall not take any coercive steps by uploading the claim in PRAAPTI Portal.

8. At this juncture, the learned Senior Counsel appearing for the petitioner submitted that if there is any illegitimate claim, it is for the second respondent to approach the CERC as per the Regulations, instead of taking any coercive steps to upload the claim in the PRAAPTI Portal, which is impermissible.

9. The writ petition is disposed of on the above terms. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Index: Yes/No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

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To

1. The Secretary
The Union of India
Ministry of Health & Family Welfare
Room No.348, 'A' Wing
Nirman Bhavan, New Delhi – 110 001.
2. The Secretary
The National Medical Commission
Pocket – 14, Sector – 8
Dwarka, Phase – 1,
New Delhi – 110 077.
3. The Director
National Medical Commission
Under Graduate Medical Education Board
Pocket – 14, Sector – 8
Dwarka, Phase – 1,
New Delhi – 110 077.
4. The Director of Medical Education
Directorate of Medical Education
162, Poonamallee High Road
Kilpauk, Chennai – 600 010.
5. The Registrar
Tamil Nadu Dr.M.G.R.Medical University
Maduravoyil, Chennai – 600 032.
6. The Dean
Karpagam Faculty of Medical Sciences and Research
Coimbatore – 641 032.



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M.DHANDAPANI, J.

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