IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-04-2024

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

WP No.7933 of 2024
And
WMP Nos.8912 and 8914 of 2024

The Chief Engineer,
Private Power Projects,
Tamil Nadu Generation and Distribution Corporation Ltd.,
6th Floor, Eastern Wing,
NPKRR Maaligai,
No.144, Anna Salai,
Chennai-600 002. .. Petitioner

-vs-

1.The Ministry of Power,
Represented by its Secretary,
Union of India,
Shram Shakti Bhawan,
Rafi Marg,
New Delhi-110 001.

2.The Chief General Manager,
PFC Consulting Limited,
9th Floor, A Wing Statesman House,
Barakhamba Lane,

Connaught Place,
New Delhi-110 001,
India.

3.The Southern Regional Load Dispatch Centre,
Represented by its Executive Director,
No.29, Race Course Cross Road,
Bangalore-560 009.

4.PTC India Limited,
(through its Chairman),
2nd Floor, NBCC Tower,
15. Bhikaji Cama Place,
New Delhi-110 066.

5.IL & FS Tamil Nadu Power Company Limited,
(through its Chairman),
4th Floor, KPR Tower,
Old No.21, New No.2,
1st Street, Subba Rao Avenue,
College Road,
Chennai-600 006. .. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the fourth respondent pertaining to the impugned invoices No.BT/SUR/TN-MT/031 dated 09.01.2024 of the fourth respondent, quash the same and consequently direct respondents 1 and 2 not to entertain any disputed invoices pertaining to the subject matter issue of Appeal No.64 of 2024 on the file of APTEL and Civil Appeal No.004188 of 2024 on the file of the Hon'ble Supreme Court of India pending disposal of the same.

For Petitioner	:	Mr.P.Wilson, Senior Counsel for Mr.D.R.Arun Kumar.
For Respondent-1	:	Mr.A.R.Sakthivel, Senior Panel Counsel for Central Government.
For Respondent-4	:	Mr.Vijay Narayan, Senior Counsel for Mr.Prahalad Bhat.
For Respondent-5	:	Mr.Biju Mattam
For Respondents-2 and 3:		Not Ready in Notice

O R D E R

The demand raised by the fourth respondent-PTC India Limited, dated 09.01.2024, is under challenge in the present writ proceedings.

2. The writ against such demand notices are not entertainable in a routine manner. The aggrieved person has to approach the Competent Forum under the Statutes, if any dispute exist.

3. In view of the fact that certain mitigating circumstances are placed before this Court, the present writ petition is entertained for the

purpose of settling the issues temporarily between the parties, leaving the merits and the grounds raised open for effective adjudication in the appeal already instituted and pending before Appellate Tribunal for Electricity, hereinafter referred to as 'APTEL', in short.

4. Mr.P.Wilson, learned Senior Counsel, appearing on behalf of the writ petitioner, would submit that the demand made by the respondents, is excess, unreasonable and not in consonance with the directives of the Central Electricity Regulatory Commission's order, hereinafter referred to as 'CERC', in short, and also provisions of the Electricity Act and the Rules.

5. The learned Senior Counsel would further contend that the demand raised is over and above the entitlement of the fourth respondent and not in consonance with the order passed by the CERC. Thus the petitioner has chosen to file the present writ petition.

6. The liability, in entirety, has not been questioned by the writ petitioner, however challenged the quantum raised in the demand as well as the method of calculation and recovery, are questioned.

7. Mr.Vijay Narayan, learned Senior Counsel, appearing on behalf of the fourth respondent, would oppose the contentions raised on behalf of the petitioner, by stating that the interest of the Power Generators, are to be protected by recovering the dues from the writ petitioner. The fourth respondent has to settle the dues to the Generators, who supplied power. Therefore, the demand raised, cannot be questioned and the grounds raised on merits, are to be adjudicated in the pending appeal before APTEL.

8. The learned Senior Counsel for the fourth respondent, would submit that the liability is not in dispute. Though the quantum of liability is disputed, that cannot be resolved in writ proceedings. Thus the present writ petition is to be rejected.

9. It is not in dispute that originally the demand was raised by the fourth respondent for the period from February 2021 to May 2021 and September 2021. In respect of the said period, objections were raised by the writ petitioner-TANGEDCO and the counter claim is made by the writ petitioner to the tune of Rs.732/- crores along with interest.

10. Therefore, the fourth respondent has approached CERC in petition No.234/MP/2022 and the Commission adjudicated the issues and passed final orders on 05.01.2024, granting relief to the fourth respondent, as under:-

> *"29. In view of the aforesaid findings and observations, we hold that the respondent No.1 is liable to make payment of monthly invoices raised by the petitioner for the months of February 2021 to May 2021 and September 2021 along with the LPS to be calculated in terms of the provisions of the PPSA within two months.*
>
> *30. This issue is answered accordingly."*

11. Pursuant to the final order passed by CERC, the fourth respondent issued impugned demand in letter dated 09.01.2024, which came to be challenged in the present writ petition. Meanwhile, the writ petitioner preferred an appeal, challenging the order of CERC before the Appellate Tribunal for Electricity in Appeal No.64 of 2024. Along with the appeal, the writ petitioner filed Interlocutory Applications in IA Nos.240 and 241 of 2024 for grant of interim order. The APTEL dismissed the Interlocutory

Applications. Challenging the said order, the petitioner preferred Civil Appeal before the Hon'ble Supreme Court of India, which was also admittedly dismissed by the Supreme Court. Thus the demand raised is based on the order passed by CERC, on 05.01.2024.

12. Since the above facts are not disputed between the parties, this Court has to consider whether the impugned demand notice dated 09.01.2024 has been issued in accordance with the provisions of the Act and within the scope of the order passed by CERC in order dated 05.01.2024.

13. Let us now consider the impugned demand notice dated 09.01.2024. The said order clearly states that the demand is raised with reference to Hon'ble Central Electricity Regulatory Commission's order dated 05.01.2024 in petition No.234/MP/2022, wherein the CERC has directed the petitioner-TANGEDCO to settle the dues along with Late Payment Surcharge, hereinafter referred to as 'LPS', in short, for the period from February 2021 to May 2021 and September 2021.

14. Mr.P.Wilson, learned Senior Counsel, would submit that

the demand traverse beyond the scope of the order passed by CERC. Therefore, it is to be set aside. Further, the impugned demand is contrary to Rules 2022.

15. Per contra, Mr.Vijay Narayan, learned Senior Counsel for the fourth respondent, would submit that the demand is in accordance with the order passed by CERC.

16. Perusal of demand reveals that it was issued with reference to order dated 05.01.2024 passed by CERC. However, the statement of details enclosed along with the impugned order, reveals that the demand is raised for the period from the year 2019 onwards. Certain arrears of payment due from the year 2019, also has been included in the impugned demand notice, dated 09.01.2024.

17. It is clarified by the fourth respondent that those amounts are relating to LPS and not principal.

18. May that as it be. When the demand impugned is issued

pursuant to order dated 05.01.2024, by CERC, the demand is to be confined only to that extent and in respect of other dues, the fourth respondent ought to have raised separate demand providing the break up details, whether it is principal, LPS or otherwise.

19. It is for the fourth respondent to raise such demands separately by following the procedures as contemplated in respect of all other dues, which is unconnected with the order dated 05.01.2024 passed by CERC.

20. With reference to CERC order, the writ petitioner-TANGEDCO submitted the details regarding the outstanding amount. As per the Calculation Memo filed by the writ petitioner-TANGEDCO, they have admitted the liability to the tune of Rs.6,01,14,53,154/-. The dues are calculated upto 08.01.2024 as per CERC's order.

21. This Court is not inclined to verify the correctness of calculation made between the parties. Since the said amount is admitted by the petitioner-TANGEDCO and they are liable to pay the same to the fourth

respondent as per the order passed by CERC.

22. The petitioner would submit that the TANGEDCO is a "State" and currently facing financial difficulties in settling the amount in one lump sum. The State is implementing various Welfare Schemes for the benefit of the people in the State of Tamil Nadu and more-so, during summer season, the TANGEDCO is facing multiple difficulties for providing uninterrupted electricity power supply to the consumers.

23. The State has to provide electricity to all Sectors, without imposing power cut during summer to sub-serve the public good. Therefore, the petitioner made a submission that the said amount may be allowed to be paid by way of instalments.

24. The learned Senior Counsel for the fourth respondent, raised an objection by stating that the fourth respondent has to settle the dues to Power Generators and they have filed appeal petitions before CERC for recovery of their dues to the tune of more than Rs.1,600/- crores. Therefore, the petitioner has to settle the amount to the Power Generators.

25. Considering the mitigating factors and to adopt a balanced approach and taking note of the public interest involved, this Court is inclined to permit the petitioner-TANGEDCO to settle the admitted liability of a sum of Rs.6,01,14,53,154/- as per the orders of CERC in four equal instalments, commencing from April 2024 to July 2024. The petitioner-TANGEDCO is directed to settle the monthly instalment of Rs.150.2863 crores, on or before 15th day of every calendar month, commencing from April 2024.

26. It is made clear that this Court has not granted waiver of LPS in respect of the dues, including the dues to be paid, as per orders of CERC. With reference to other demands, the fourth respondent is at liberty to raise separately by providing break-up details.

27. The petitioner-TANGEDCO is at liberty to raise all the grounds on merits before APTEL in pending appeal. The payment now made based on this order, is without prejudice to the rights of the parties in the pending appeal before APTEL.

28. Thus the arrangement in the present order is for settling the admitted liability by the writ petitioner. Therefore, all other grievances are to be redressed in the manner known to law.

29. With the above liberty, the present writ petition stands disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

03-04-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Svn

Office to Note: Issue order copy by today itself i.e., on 05.04.2024.

To

1.The Secretary,
Ministry of Power,
Union of India,
Shram Shakti Bhawan,
Rafi Marg,
New Delhi-110 001.

2.The Chief General Manager,
PFC Consulting Limited,
9th Floor, A Wing Statesman House,
Barakhamba Lane,
Connaught Place,
New Delhi-110 001,
India.

3.The Executive Director,
Southern Regional Load Dispatch Centre,
No.29, Race Course Cross Road,
Bangalore-560 009.

4. The Chairman,
PTC India Limited,
2nd Floor, NBCC Tower,
15. Bhikaji Cama Place,
New Delhi-110 066.

5.The Chairman,
IL & FS Tamil Nadu Power Company Limited,
4th Floor, KPR Tower,
Old No.21, New No.2,
1st Street, Subba Rao Avenue,
College Road,
Chennai-600 006.

S.M.SUBRAMANIAM, J.

Svn

WP 7933 of 2024

03-04-2024