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W.P.No.34637 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.34637 of 2022
and WMP.Nos.34082 of 2022 and 9582 of 2023

M/s.Grace Infrastructure P. Ltd.
Rep. by its Chairman & Managing Director
Mr.A.L.Shah
A-5, Industrial Estate
Thattanchavady
Pondicherry 605 009

.. Petitioner

VS

1.Tamil Nadu Generation & Distribution
Corporation Ltd.
Rep. by its Chairman cum Managing Director
144, Anna Salai
Chennai 600 002.

2.The Superintending Engineer
Tirunelveli Distribution Circle
Tamil Nadu Generation & Distribution
Corporation Ltd.
Tirunelveli 627011

.. Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India
praying to issue a writ of certiorarified mandamus calling for the records
of the 2nd respondent relating to their Impugned Notice
No.SE/TEDC/TIN/DFC/AO/Wind/As/F-Wind/D.No.1137/2022 dated



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17.10.2022, quashing the same and directing the respondents, in respect of supply of energy by the petitioner after 01.04.2018, to adopt only the rates stipulated in the proceedings of the 1st respondent dated 25.10.2018, under para 2(c) in respect of the Windmills Commissioned by the petitioner during the periods 19.09.2008 to 31.07.2012 and under para 2(d) in respect of the Windmills Commissioned by the petitioner during the periods 01.08.2012 to 31.03.2016.

For Petitioner : Mr.M.K.Ravi
Senior Counsel
For M/s.Rugan and Arya

For Respondents : Mr.S.Madhusudan

ORDER

The petitioner is a generating company as defined under Section 2 (28) of the Electricity Act, 2003 (in short 'Act'). It is aggrieved by an order passed by the 2nd respondent, the Superintending Engineer, Tirunelveli Distribution Circle, Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO)(R2) and seeks a quash of the same.

2. Inter alia, the petitioner also prays for a direction to the respondents to adopt only rates stipulated by R1, being the Managing Director, TANGEDCO under proceedings dated 25.10.2018, specifically



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para 2(c), in respect of the windmills commissioned by it during the period 01.08.2012 to 31.03.2016.

3. This matter has some history. Between the years 2005 to 2015, the petitioner had commissioned several windmills in Tirunelveli, Theni and Dindigul for generation of electricity and entered into 67 Power Purchase Agreements (PPA) with TANGEDCO for purchase of the power generated by the windmills.

4. The petitioner was in receipt of notice dated 19.05.2020 demanding a sum of Rs.4,44,25,933/- (rounded off to Rs.4.44 Crores (approx.)). However, according to the petitioner, it was TANGEDCO that, in fact, owed a sum of Rs.80 Crores to it. The dispute in computation, as aforesaid, arises on account of the understanding and interpretation of the parties of '*Average Pooled costs of Power Purchase*'. Notice dated 19.05.2020 related to the period 2018 - 2019 and confined itself to the demand from the electricity generated at Tirunelveli alone.

5. A Claim Petition thus came to be filed by the petitioner on 07.12.2020 before the Tamil Nadu Electricity Regulatory Commission (TNERC) in DRP.No.23 of 2020, claiming a sum of Rs.80,96,12,127.69/- (rounded off to Rs.80.96 Crores (approx.)) from



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TANGEDCO. The Claim Petition was decided by the TNERC on 06.07.2021 upholding the demand to the extent of Rs.4.44 Crores and directing the respondent to settle the balance of the claim within 30 days from 06.07.2021. In doing so, the TNERC proceeded on the basis that the petitioner had acquiesced to the demand of Rs.4.44 Crores.

6. The petitioner filed an appeal as against the above order in Appeal No.155 of 2022 before the Appellate Tribunal for Electricity (APTEL), and pending this Writ Petition that appeal has been decided on 15.02.2024. The APTEL finds that a perusal of the record did not support the conclusion of the TNERC that the petitioner had admitted liability for the amount of Rs.4.44 Crores. The APTEL was also of the opinion that no detailed calculations had been given as to how the respondent had quantified the demand.

7. The order of the APTEL also took note of the position that a Review Petition had been filed by petitioner on 19.01.2022 and a direction issued in that Petition by TNERC to the respondents to furnish the computation as to how the amount of Rs.4.44 Crores (approx.) had been arrived at. In fine, the order of the Commission was set-aside and



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the matter remanded with a direction to the TNERC to re-do the same de novo, after detailed hearing.

8. On 27.06.2024, the TNERC took the matter up yet again in R.A.No.2 of 2024 crystallizing the issue to be resolved as follows '1. *the issue lies in a narrow compass as to whether the disputed amount of Rs.4,44,25,933/- demanded by the respondents from the Remand Applicant is in consonance with the Tariff Orders of the Commission and the APPC rate fixed by the Commission from time to time as the case may be.* '

9. Ultimately, the matter was remanded by the TNERC by order dated 27.06.2024 to the officials of TANGEDCO for being re-done after obtaining various particulars from the petitioner in regard to the date of commissioning of the wind energy generators. The operative portion of the order of TNERC is as follows:-

“

7. On perusal of records, it is clear that the Respondent, as stated by the Remand Applicant, did not furnish the exact details of the claim in regard to a sum of Rs.4,44,25,933/- which was sought to be recovered from the outstanding bills of the Remand Applicant herein vide its communication dated 19-05-2020. Though a stray reference has been made by the Respondent with regard to the rates payable to the petitioner in regard to



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APPC rate for the period 2018-19, in our opinion, it is not sufficient to conclude that the communication dated 19-05-2020 is self-explanatory. The Respondent has not clearly stated in the said communication, the basis on which a sum of Rs.4,44,25,933/- has been worked out. In other words, in our well-considered opinion, the date of commissioning which is the basis for the applicability of preferential tariff to various categories of generators and which automatically gets pressed into service in case the APPC rate as fixed from time to time exceeds the preferential tariff, does not find mention anywhere in the said communication. The Respondent ought to have clearly referred to the date of commissioning of the 67 plants of the Remand Applicant and the claim should have been made with a comprehensive reference to the date of commissioning, applicable preferential tariff to each category as per the Tariff Orders issued from time to time and the orders passed by the Commission from time to time on APPC rate and further setting out the date of breach of preferential tariff by the APPC. But that has not been done in the instant case.

8. In the counter affidavit filed by the Respondent, the claim has been reduced to Rs.2,20,22,955/- from Rs.4,44,25,933/-. However, the petitioner filed an additional written submission still disputing the demand raised by the respondent herein with a prayer to direct the Respondents to pay Rs.2.54 per unit instead of Rs.2.10 per unit, being 75% of the APPC rate.

9. Having considered the issue at length, we are of the view that the Respondent shall have to re-work the entire claim with reference to the date of commissioning of each Wind Energy Generator of the Remand Applicant and the orders issued by the Commission from time to time in regard to pooled cost of power and the preferential tariff fixed from time to time in various



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Tariff Orders to arrive at the exact amount due to the respondent TANGEDCO in regard to APPC. However, it is made clear that the findings rendered herein are subject to verification of details of commissioning of units, by the parties and in case of any discrepancy, the parties are at liberty to approach the Commission again.

10. In fine, it is ordered as follows:-

The Respondent is directed to verify and confirm the date of commissioning set out by the Remand Applicant in regard to each of its Wind Energy Generator in the Written Submission filed on 02-04-2024 in the present R.A. and pay the actual rate of APPC or 75% of applicable preferential tariff fixed by the Commission for the respective control period in which the WEG was commissioned in case of breach of preferential tariff by APPC rate whichever is less as discussed above.”

10. Thus, the challenge to notice dated 19.05.2020 relating to the period 2018-2019 is now the subject matter of proceeding before the officials of TANGEDCO.

11. I now come to the present matter where the challenge is to notice dated 17.10.2022 demanding an amount of Rs.29,38,686/- for the period April 2021 to March 2022. This demand is a continuation of the earlier demands and, as in the case of the earlier demands is also bereft of the computation adopted. The demands is premised on the statement that



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'there has been an excess paid amount of a monthly Wind energy statement' without any details of the excess or how such excess was arrived at.

12. I am of the considered view that such a vague statement would not suffice and it is incumbent on the authorities to have furnished the computation based on which the impugned demand has been quantified. Since the computational methodology has not been furnished thus far, while not intervening in the impugned notice, there is a direction to the authorities to furnish the particulars relating to the demand to the petitioner forthwith.

13. Since the demand for the prior period is at large before the authorities, it would be appropriate for the proceedings in regard to the impugned notice also to continue before the authorities itself. The petitioner apprehends that the manner of quantification of the dues would not be in line with the tariff orders issued by the respondents from time to time.

14. However, surely such apprehensions are pre-mature as the respondents would have to follow the manner and modality of the quantification strictly in line with the prescription under the Tariff orders.



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In fact, the order of the TNERC dated 27.06.2024, is itself clear in its conclusion and detailed directions have been given to the authorities as to the manner in which the proceedings should be conducted and the demand, if any, be ultimately raised.

15. The impugned notice dated 17.10.2022 is only a show-cause notice and the Officer, in conclusion states that objections or enquiry, if any, on the part of the noticee may be intimated to the officer within 30 days for his consideration. The petitioner has, instead of approaching the authorities with a reply as has been done in respect of the earlier notice dated 19.05.2020, instituted this writ petition on 23.11.2022, a few days beyond the period of 30 days granted to them under the impugned notice.

16. In light of the discussion as above, this Court is of the categorical view that the petitioner should pursue the matter before the authorities, also, specifically for the reason that the present impugned proceedings are nothing but a continuation of the earlier proceedings, which are before the authorities for deliberation and finalization.

17. Let a reply be filed to the impugned notice within a period of two (2) weeks from date of receipt of a copy of this order. The petitioner will be heard and a speaking order be passed by the second respondent in



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accordance with law and all applicable Rules and Regulations within a period of four (4) weeks thereafter, in regard to both the show cause notices, dated 19.05.2020 and 17.10.2022. The entirety of the exercise shall be completed within an outer time limit of ten (10) weeks from date of receipt of this order.

18. This writ petition is disposed in terms of this order. No costs.

Connected Miscellaneous Petitions are closed.

29.07.2024

Index: Yes

Speaking order: Yes

Neutral Citation: Yes

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DR. ANITA SUMANTH,J.

mpl

To

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Tamil Nadu Generation & Distribution
Corporation Ltd.
144, Anna Salai,
Chennai 600 002.
- 2.The Superintending Engineer,
Tirunelveli Distribution Circle,
Tamil Nadu Generation & Distribution
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