



W.P.No.34636 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.04.2024

Pronounced on : 23.05.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.34636 of 2022 and
WMP.No.34080 of 2022

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

... Petitioner

Vs.

1.Tamilnadu Generation & Distribution
Corporation Ltd.,
Rep. By its Chairman cum Managing Director,
144, Anna Salai,
Chennai 600 002
2.The Superintending Engineer,
Theni Distribution Circle,
Tamilnadu Generation & Distribution
Corporation Ltd.,
Theni

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondents relating to the Notice Lr.No. SE/ EDC/ DFC/ AO/ Rev/ Asst/ WIND/ F.Outstanding dues/ D.68/ 2022, dated 27.07.2022 issued by the 2nd respondent to the petitioner, quashing the



W.P.No.34636 of 2022

same and directing the respondents to comply with the provisions of the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 by paying the entire outstanding dues calculated in terms of the orders already passed by TNERC and as found in the statement of accounts as on 03.06.2022 in 12 equated monthly instalments

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

For Respondents : Mr.S.Madhusudhanan,
Standing Counsel

ORDER

This writ petition has been filed challenging the notice issued by the second respondent dated 27.07.2022, thereby informed that the outstanding amount will be paid by the respondents in 48 instalments as per the MoP notification and the first instalment to commence from 05.08.2022.

2. The petitioner had commissioned several windmills to generate electricity. The petitioner had entered into Energy Purchase Agreements or Wind Energy Purchase Agreements (hereinafter called as 'agreements') with the respondents . Accordingly, the respondents agreed



W.P.No.34636 of 2022

WEB COPY

to purchase energy from the petitioner's windmills as per the rate varied from agreement to agreement. The petitioner has been continuously supplying energy from the respective windmills under the agreement and raising invoice for such supply at the rates noticed from time to time by the Electricity Commission in exercise of power vested under Section 86 of the Electricity Act, 2003 (hereinafter called as 'Act'). As per clause 6(2) of the agreement, the respondents are duty bound to make payments fully for every invoice within 30 days, failing which they are liable to pay interest at the rate of 1% per month beyond the period of thirty days. However, the respondents committed default and there are huge arrears to the tune of Rs.80 crores towards principal and interest. But the respondents caused notice on 19.05.2020 claiming a sum of Rs.4,44,25,933/- as if they had made excess payment to the petitioner.

2.1 As per the orders, the Tamilnadu Electricity Regulatory Commission (hereinafter called as 'TNERC') had fixed the Average Pooled Costs of Power Purchase at Rs.3.96/- per unit for the year 2016-2017 and at Rs.3.70/- per unit for the year 2017-2018 respectively



W.P.No.34636 of 2022

subject to maximum of 75% of the preferential tariff. On receipt of the said notice, the petitioner had caused legal notice dated 05.11.2020. However, there was no response from the respondents and as such, the petitioner filed claim petition before the TNERC vide D.R.P.No.23 of 2020 thereby claiming a sum of Rs.80,96,12,127.69/-. After filing counter by the respondents, the claim petition was allowed by the order dated 06.07.2021, thereby directed the respondents to settle the claim amount within a period of thirty days. At the same time, the demand of the respondents was also upheld by the TNERC. Aggrieved by the same, the petitioner preferred appeal before the Appellate Tribunal for Electricity at New Delhi and it is pending in appeal No.155 of 2022. Subsequently, the petitioner found that they raised invoices only at 75% of the preferential tariff and for the remaining amount they made claim by way of notice to the tune of Rs.28,07,87,731/-. They filed claim petition before the TNERC in DRP.No.7 of 2021 and the same was also allowed by an order dated 19.01.2022 and directed the respondents to comply the order. Thus, the petitioner is entitled to recover more than Rs.107 crores from the respondents.



W.P.No.34636 of 2022

WEB COPY

2.2 However, the respondents failed to comply with the said direction and as such, the petitioner filed petition seeking penalty in terms of Section 142 of the Electricity Act, in which TNERC ordered that the respondents to pay 50% of the claim amount within a period of 15 days. Even after issuance of legal notice, the respondents failed to comply with the direction issued by the TNERC. Now the TNERC is not functioning since the Member got retired. While being so, the petitioner was issued with notice dated 01.07.2022 from the respondents thereby seeking permission to settle the amount by 48 instalments.

3. Heard, the learned counsel appearing on either side.

4. On perusal of the counter filed by the respondents and on hearing the submissions made by the learned counsel appearing on either side, revealed that the Ministry of Power(MoP) vide its Gazatte notification dated 03.06.2022 notified The Electricity (Late Payment Surcharge and Related Matters) Rules, 2022. It provides mechanism for settlement of outstanding dues of Generating Companies, Interstate



W.P.No.34636 of 2022

Transmission Licensees and Electricity Trading Licensees. It provides for clubbing of all outstanding dues as on 03.06.2022 including Principal, Late Payment Surcharge, etc into a consolidated amount which can be paid in interest free equated monthly instalments. As per the rules, the total outstanding dues including late payment surcharge upto the date of the notification of the rules shall be rescheduled and the due dates redetermined for payment by a distribution licensee in the following maximum number of equated monthly instalments.

Outstanding dues amount (in Rs. Crores)	Maximum no. of Equated monthly instalments(months)
Up to 500	12
501-1000	20
1001-2000	28
2001-4000	34
4001-10000	40
more than 10,000	48

5. Insofar as due to the petitioner by the respondents is concerned, it is below Rs.500 crores i.e. Rs.107 crores. The number of instalments applicable to the case of the petitioner under the rules would



W.P.No.34636 of 2022

be 12 and not 48 since the outstanding dues, as defined in Rule 2(h), of the petitioner that remains unpaid is less than Rs.500 crores. It is relevant to extract Rule 2(h) of The Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 hereunder:

2(h) 'outstanding dues' means the dues of a generating company, electricity trading licensee, or a transmission licensee, not stayed by a competent court of Tribunal or dispute resolution agency as designated in the Power Purchase Agreement, which remains unpaid by the beneficiary beyond the due date and includes the amount of instalment not paid after the re-determined due date under rule 5.

6. Therefore, the respondents cannot adopt 48 instalments. As such, the impugned notice cannot be sustained and the same is liable to be quashed. Accordingly, the impugned notice dated 27.07.2022 is quashed. The respondents are directed to comply with the order passed by TNERC as per the provisions of Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 by paying the entire outstanding dues by 12 equated instalments commencing from June 2024.



W.P.No.34636 of 2022

7. With the above direction, this writ petition stands allowed.

Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

23.05.2024
(1/3)

Neutral Citation: Yes/No
Index: Yes/No
Speaking/Non-speaking order
lok



WEB COPY



W.P.No.34636 of 2022

To

- 1.Chairman cum Managing Director,
Tamilnadu Generation & Distribution
Corporation Ltd.,
144, Anna Salai,
Chennai 600 002
- 2.The Superintending Engineer,
Theni Distribution Circle,
Tamilnadu Generation & Distribution
Corporation Ltd.,
Theni



WEB COPY



W.P.No.34636 of 2022

G.K.ILANTHIRAIYAN, J.

lok

Pre-delivery order made in
W.P.No.34636 of 2022

23.05.2024

(1/3)