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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.21270 of 2024
and W.M.P.(MD)Nos.17994 & 17995 of 2024

M/s.Bhairavi Green Energy P. Ltd.,
8/60 A-2, First Floor, Shree Sambavi Illam,
Star City, Kavikinaru, Mahendragri Post,
Tirunelveli - 627 105
Rep by its Director
K.Padmanabhan ... Petitioner

Vs.

1.Tamilnadu Generation and Distribution,
Corporation Ltd (TANGEDCO),
10th Floor, 144, Anna Salai,
Chennai 600 002.
Represented by its Chairman
Cum Managing Director.

2.The Chief Engineer, NCES,
Tamil Nadu Green Energy Corporation Ltd,
Formally TANGEDCO,
2nd Floor, 144, Anna Salai,
Chennai 600 002.

3.The Superintending Engineer,
TANGEDCO,
Tuticorin Electricity Distribution Circle,
Tuticorin.

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4.M/s.Ratnakala Power Generation P Ltd.,
202, Shanti Vimal Apartment,
Sir P.M.Roan, Vile Parle East,
Mumbai 400 057. .... Respondents

PRAYER: 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 3rd respondent impugned notice bearing Lr.No. SE / TEDC/TTN/DFC/AO-REV/AAO-HT/Asst. WM/F.239 and 240/D.24 dated 07.06.2024 and quash the same illegal, arbitrary and contrary to the orders passed by this Honble Court in W.P.No. 10335/2022 dated 02.04.2024 and the Honble Supreme Court in IA No.3 in C.A.No. 002029/2013 dated 23.08.2013 and consequently direct the 3rd respondent to effect name transfer for the petitioner's WEG Nos. 079234700239 and 079234700240 from the erstwhile M/s.Ratnakala Power Generation Pvt. Ltd to the name of the petitioner and execute the Energy Wheeling Agreement under the same group captive scheme.

For Petitioner : Mr.S.P.Parthasarathy

For Respondents : Mr.S.Deenathayalan,
Standing Counsel for R1 to R3
Mr.V.Nirmal Kumar for R4

O R D E R

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent impugned notice bearing

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Lr.No. SE / TEDC/TTN/DFC/AO-REV/AAO-HT/Asst. WM/F.239 and 240/D.24 dated 07.06.2024 and quash the same illegal, arbitrary and contrary to the orders passed by this Honble Court in W.P.No.10335/2022 dated 02.04.2024 and the Honble Supreme Court in IA No.3 in C.A.No. 002029/2013 dated 23.08.2013 and consequently direct the 3rd respondent to effect name transfer for the petitioner's WEG Nos. 079234700239 and 079234700240 from the erstwhile M/s.Ratnakala Power Generation Pvt Ltd to the name of the petitioner and execute the Energy Wheeling Agreement under the same group captive scheme.

2. The brief facts of this case are as follows:

The petitioner company has purchased Wind Mills bearing WEG Nos. 079234700239 and 079234700240, vide registered sale deeds dated 23.04.2024. After purchase, the petitioner applied for name transfer on the very next day ie., on 24.04.2024 with the second respondent. The second respondent processed the said application and vide his communication dated 08.05.2024, directed the petitioner to pay a sum of Rs.5,41,298/-, towards name transfer charges and the open access fees, within a period of 30 days from the date of receipt of that communication. The petitioner has also paid a sum of Rs.5,41,298/- on 09.05.2024. Thereafter, the 2nd respondent granted approval by order dated 14.05.2024 for effecting name

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transfer and execution of the Energy Wheeling Agreement. In the said order, the second respondent directed the petitioner to contact the 3rd respondent to execute the addendum to the existing Energy Wheeling Agreement and also directed the third respondent to collect any dues payable by the 4th respondent to TANGEDCO before executing the addendum. However, without executing the Energy Wheeling Agreement, the third respondent has passed the impugned notice dated 07.06.2024, stating that a sum of Rs.2,59,97,232/- towards non-levy of cross subsidy charge, which was raised against the 4th respondent, has to be paid by the petitioner within 7 days. Challenging the same, the petitioner has filed this Writ Petition.

3. The main contention of the learned counsel appearing for the petitioner that as far as the the levy of cross subsidy charge is concerned, the issue is pending before the Hon'ble Supreme Court in a Civil Appeal No.2029 of 2013, wherein a status quo order has been granted. The cross subsidy charge has been raised based on the audit objection. The 4th respondent has already challenged the said proceedings in W.P.No.10335 of 2022. When the said Writ Petition was taken up for hearing on 02.04.2024, this Court has taken note of the counter filed by the respondents therein admitting that the order passed by the APTEL in Appeal No.

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193 of 2011 was challenged before the Hon'ble Supreme Court and it is also specifically admitted that further proceedings with regard to the cross subsidy charge will be kept in abeyance until the disposal of the civil appeal pending before the Hon'ble Supreme Court. Pursuant to said admissions, the Writ Petition was disposed of. Therefore, it is the contention of the petitioner that once the order has been stayed and the 4th respondent has also given an undertaking that the 4th respondent will abide by the final order to be passed by the Hon'ble Supreme Court in the above civil appeal and pay the amount if orders are passed against them, now insisting the petitioner to pay the said amount cannot be sustained in the eye of law.

4. Whereas the learned counsel appearing for the respondents would submit that the third respondent imposed such a condition only at the instructions of the 2nd respondent. However, there is no written instructions whatsoever available on record.

5. Heard the learned counsel appearing on either side and perused the materials available on record.

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6. As far as the amount of cross subsidy charge is concerned, the matter is pending before the Hon'ble Supreme Court, which is not disputed by the respondents and the order of status quo granted by the Hon'ble Supreme Court is also not disputed. The TANGEDCO also specifically admitted in W.P.No.10335 of 2022 to the effect that further proceedings with regard to the cross subsidy charge will be kept in abeyance until the disposal of the civil appeal by the Hon'ble Supreme Court. Having taken a stand, this Court is of the view that once again insisting the petitioner to deposit the said amount cannot be sustained in the eye of law, particularly when the 4th respondent himself has given an undertaking to the effect that he will pay that amount in the event the matter is went against them before the Hon'ble Supreme Court. The under taking affidavit of the 4th respondent has also filed before the third respondent on 09.06.2024. When the matter was taken up in the last hearing, this Court directed the 4th respondent to file an affidavit during the next hearing. Pursuant to the said directions, the 4th respondent has filed an affidavit, wherein it is specifically admitted by the 4th respondent in paragraph Nos.6 and 7, which reads as follows:

> *"6.The 4th respondent was incorporated on 09 May 2013 and is a well reputed electricity trading company and also engaged in supply of gas in across the Country. The 4th respondent's Corporation Identification Number is (CIN) U4030MH2013PTC 243131 and its registration number is 243131.*

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7. In view of the above, the 4th respondent is filing the present affidavit undertaking to abide by the final order to be passed by the Hon'ble Supreme Court in C.A.No.002029/2013 and pay the demand notice dated 04.04.2022 and Audit slip No.23 dated 25.01.2022 if orders are passed against them in C.A.No.002029/2013. Accordingly, the 4th respondent prays this Hon'ble Court to dispose of W.P.(MD)No.21270 of 2024 in accordance with law."

The affidavit of the 4th respondent is recorded.

7. The 4th respondent has already given an undertaking to pay the amount. Therefore, imposing the condition in the impugned notice directing the petitioner to pay the said amount for executing the agreement, despite the approval has already been granted by the Chief Engineer, cannot be sustained and therefore, the impugned order is liable to be quashed.

8. Accordingly, this Writ Petition is allowed and the impugned notice of the third respondent dated 07.062024 stands quashed. It is also brought to the notice of this Court that even before the agreement been executed, the petitioner already injected the power to the TANGEDCO and they also given credit in the name of the petitioner. This fact also cannot be ignored. Therefore, the third

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respondent is directed to effect the name transfer for the petitioner's WEG Nos. 079234700239 and 079234700240 from the erstwhile M/s.Ratnakala Power Generation Pvt Ltd to the name of the petitioner and execute the Energy Wheeling Agreement, within a period of two weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

11.09.2024

NCC : Yes/No
Index : Yes/No

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To

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Represented by its Chairman
Cum Managing Director.

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