IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :20.12.2024

PRONOUNCED ON :29.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.13624 of 2024
and WMP.No.14776 of 2024

Tamil Nadu Generation and Distribution Corporation Limited,
The Chief Engineer,
Non-Conventional Energy Source,
2nd 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,
P.F.C 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. Welspun Renewables Energy Private Limited,
C/o. The Tata Power Company Limited,
Corporate Center B, 34 Sant Tukaram Road,
Carnac Bunder, Mumbai – 400 009.

5. Welspun Solar Tech Private Limited,
C/o. The Tata Power Company Limited,
Corporate Center B, 34 Sant Tukaram Road,
Carnac Bunder, Mumbai – 400 009.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 and 2 to reject the tampered invoices Nos.WREPL/PPT-50, MW/LPS/FY24/CUF01, WREPL/IYRM–50, MW/LPS/FY24/CUF 01, WREPL/KYTR49MW/LPS/FY24/CUF 01, WSTPL/Musiri 50 MW/LPS/FY24/CUF01 and WSTPL/TTPET/ 50MW/LPS/FY24/CUF 01, dated 19.12.2023 tampered as 19.02.2024 uploaded by the respondents 4 and 5 in the PRAAPTI PORTAL.

For Petitioner : Mr.J.Ravindran
Additional Advocate General
Assisted by Mr.D.R.Arunkumar
standing counsel

For Respondents :Mr.A.R.L.Sundaresan,
Additional Solicitor General -I
Assisted by Mr.K.Ramanamoorthy
for R1 (CGC)
Mr.C.S.Vaidyanathan,
Senior Advocate,

for M/s.Shri Venkatesh for R4
Mr.Sathish Parasaran
Senior Advocate
for M/s.Abinav Parthasarathy for R5
No Appearance for R2 and R3

O R D E R

This writ petition is filed seeking to issue a Writ of Mandamus, directing the respondents 1 and 2 to reject the tampered invoices Nos.WREPL/PPT-50, MW/LPS/FY24/CUF01, WREPL/IYRM – 50, MW/LPS/FY24/CUF 01, WREPL/KYTR49MW/LPS/FY24/CUF 01, WSTPL/Musiri 50 MW/LPS/FY24/CUF01 and WSTPL/TTPET/ 50MW/LPS/FY24/CUF 01, dated 19.12.2023 tampered as 19.02.2024 uploaded by the respondents 4 and 5 in the " PRAAPTI PORTAL".

2. The petitioner is purchasing solar power from private generating companies like respondents 4 and 5 under long term Power Purchase Agreement (hereinafter referred as PPA) based on tariff order issued by Tamil Nadu Electricity Regulation Commission, vide order No.7 of 2014, dated 12.09.2014 and order No.2 of 2016, dated 28.03.2016. As per the tariff

order, the purchase of power is at the rate of Rs.7.01/6.28 per unit without/with AD benefit and Rs.5.10/4.56 per unit without/with AD benefit respectively. The petitioner entered into the Power Purchase Agreement with respondents 4 and 5 on various dates.

3. The petitioner issued a circular on 14.06.2017, vide letter No.CE/NCES/SE/SOLAR/EE/SCB/AEE3/F.Policy issue-PLF/D.540/17 to regulate the payment regarding the energy exported by generators when the Capacity Utilisation Factor (CUF) exceeds 19%. In the said circular, the petitioner clarified that any excess power supplied by the generating company to the petitioner in excess of 19% of CUF will not be taken into consideration for payment. The said circular was challenged by the generators before the Tamil Nadu Electricity Commission (TNERC) in M.P.No.11 of 2019 and the same was dismissed. Aggrieved by the same, the generators preferred an appeal before the “APTEL”. The said appeal was allowed by the “APTEL” by directing the petitioner to make payment at the rate of the relevant tariff order/EPA(Energy Purchase Agreement) for energy procured from the Solar Power Generators up to CUF of 19% and additional payment for the excess

energy supplied by the generators at the rate of 75% of the tariff as applicable under the provisions of EPAs within six months from the date of judgment. The said order was challenged by the petitioner before the Supreme Court in Civil Appeal Nos.1271 of 2023 and 1354 of 2023 and the same were dismissed on 03.03.2023 by confirming the order passed by "APTEL". Thereafter, the petitioner paid a sum of Rs.81.33 Crores towards 75% of the tariff rate for the excess energy supplied by the respondents 4 and 5 to the petitioner over and above 19% of CUF. The said payment was made on 12.05.2023 within expiry of six months from the date of order passed by the Apex Court. Thereafter, the respondents 4 and 5 sent letters on 14.12.2023, 19.12.2023 and 20.12.2023 along with invoices claiming alleged Late Payment Surcharge amount, for the period 2015-2016 to 2021-2022 to the tune of Rs.31,13,97,373/- and in the same letter they also agreed to waive 50% of the amount and claimed Rs.15,56,98,687/-.

4. It is the case of the petitioner that as per the order passed by the "APTEL" and confirmed by the Apex Court, no Late Payment Surcharge [LPS] needs to be paid by the petitioner as claimed by the

respondents 4 and 5. Therefore, the petitioner sent a letter to the respondents 4 and 5 on 05.01.2024 rejecting their claim for Late Payment Surcharge. Thereafter, the respondents 4 and 5 uploaded the said invoices in PRAAPTI PORTAL by modifying the date as if invoices were raised on 19.02.2024. It is further stated by the petitioner that once the invoices are uploaded in the above said portal by the generators like the respondents 4 and 5, the consumer/beneficiary DISCOM like TANGEDCO is liable to pay the amount within a period of 75 days from the date of uploading of invoices. In case of non payment of the amount within trigger date under Regulation 7 of Late Payment Surcharge Rules, the procurement of power by the petitioner from the Central Grid will get suspended and the entire State will be plunged into darkness. It is further stated by the petitioner that original invoices were raised as early as 19.12.2023 and the same ought to have been uploaded within ten days from the date of invoices, but in order to invoke LPS Rules, the respondents 4 and 5 have tampered the invoices by altering the date as 19.02.2024 and uploaded them in the PRAAPTI PORTAL. Therefore, the petitioner seeks a direction to the respondents 1 and 2 to reject the tampered invoices.

5. The learned Additional Advocate General appearing for the petitioner submitted that the respondents 4 and 5 originally raised the invoices on 19.12.2023 claiming LPS and the same was rejected by the petitioner by letter dated 05.01.2024 by relying on order passed by the "APTEL" and confirmed by the Apex Court. Thereafter, the respondents 4 and 5 tampered with the invoices by altering the date as 19.02.2024 and uploaded it in the "PRAAPTI PORTAL". Therefore, the invoices uploaded in "PRAAPTI PORTAL" by tampering dates are deserved to be rejected by the petitioner. The learned Additional Advocate General further submitted that "APTEL" in its order dated 28.11.2022, only directed the petitioner to pay as per the agreed rate under PPA/EPA for the energy supply by the generators up to CUF of 19%. In case of excess supply by the generators beyond the CUF of 19%, the petitioner was directed to pay at the rate of 75% of the agreed tariff under PPA/EPA and there was no direction by "APTEL" to pay Late Payment Surcharge and therefore, the invoices raised by the respondents 4 and 5 are not sustainable.

6. The learned Senior counsel appearing for the respondents 4 and 5 by taking this Court to the Energy Purchase Agreement entered into between the petitioner and the respondents 4 and 5, the order passed by APTEL and confirming order of Apex Court submitted that the petitioner was directed to pay 75% of the agreed tariff as per EPA, in case of excess supply beyond CUF of 19%. The learned Senior Counsel further submitted that under clause 6 of Energy Purchase Agreement, the petitioner/distribution licensee shall make payment to the Solar Power Generators within 60 days from the date of receipt of the bill in complete shape and any delayed payment beyond the period of 60 days shall attract interest at the rate of 1% per month for the period beyond 60 days. Since there is a clear direction by "APTEL" to the petitioner to make payment at the rate of 75% of the tariff as applicable under the provisions of EPAs, the petitioner is bound to pay Late Payment Surcharge on the 75% of the tariff.

7. Alternatively, the learned Senior Counsel appearing for the respondents 4 and 5 submitted that in case of dispute between the generator

companies and distribution licensee, there is an alternative remedy of approaching the State Electricity Regulatory Commission under Section 86(1) (f) of Electricity Act and the petitioner having disputed its liability to pay Late Payment Surcharge instead of availing the alternative remedy of approaching State Electricity Regulatory Commission under Section 86(1) (f) of Electricity Act, straight away approached this Court by invoking writ jurisdiction and in view of effective alternative remedy available before the expert body/State Electricity Regulatory Commission, the present writ petition filed by the petitioner is not maintainable.

8. The learned Additional Solicitor General appearing for the first respondent would submit that any order passed by this Court on the dispute between the petitioner and the respondents 4 and 5 will be implemented by the first respondent.

9. The respondents 4 and 5 are Solar Power Generators. The petitioner is a distribution licensee in the State of Tamil Nadu and it entered into Energy Purchase Agreement with respondents 4 and 5. Clause 6 of

Energy Purchase Agreement between the petitioner and the respondents 4 and 5 reads as follows:

6.Billing and Payment:

(a) The SPG shall raise a monthly bill along with the supporting documents every month to the distribution licensee for the net energy sold/exported after deducting the charges payable to the distribution licensee such as for startup/standby power, Grid availability charges and reactive power or any other lawful charges recoverable by the licensee. The bill shall be with a certification as to whether the SPG has availed Accelerated Depreciation benefit or not.

(b) The Distribution Licensee shall make payment to the SPG for the solar energy purchased/exported at the metering point within 60 days from the date following the date of receipt of the bill in complete shape. Any delayed payment beyond sixty days shall attract interest at the rate of 1% per month for the period beyond sixty days.

(c) Stand-by (back up) Letter of Credit shall be opened by Distribution Licensee for an estimated value of

one month bill, which will be valid for a period up to one year. The Letter of Credit so opened shall be renewed year after year for the value based on average value of previous 12 months bills. The LC will be revolved in the event of invocation due to non-payment of energy charges within the stipulated time frame. All the charges relating to establishment, amendment and operation of Letter of Credit shall be to the account of the beneficiary that is, SPG.

(d) The Distribution Licensee wherever necessary, shall raise a bill at the end of a billing period of one month for the power drawn by the SPG in excess over the exported power and the SPG shall make payment to the Distribution Licensee at HT temporary supply tariff within the time stipulated to the HT consumers in the Commission's Supply Code, 2004."

10. A perusal of above clause in the Energy Purchase Agreement would make it clear that distribution licensee is expected to pay the amount due to the generators within 60 days from the date of receipt of bill in complete shape and any delayed payment shall attract interest at the rate of 1% per month for the period beyond 60 days.

11. Narration of facts mentioned above would make it clear that the petitioner issued a circular stating that any excess power supplied by Solar Power Generators beyond CUF of 19% will not be considered for payment. The said circular was challenged by the power generators before State Electricity Regulatory Commission and the same was dismissed. The order passed by State Electricity Regulatory Commission was challenged before "APTEL" by the power generators. The operative portion of the order of "APTEL" reads as follows:

> *"84. We are inclined to adopt the above mechanism prescribed by MoP for the generators covered in the present Appeals. Accordingly, TANGEDCO is directed to make compensation to the SPGs at the rate of 75% of the PPA/EPA tariff for excess power consumed, i.e., over and above 19% of CUF in addition to the tariff payment as per the corresponding Tariff Order for the power procured up to 19% of CUF from the SPGs covered by these captioned Appeals.*
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> *85. The TANGEDCO is directed to make payments including the payment at the rate of the relevant Tariff*

Order/EPAs for energy procured from the solar projects of the Appellants up to CUF of 19% and additional payment for the excess energy procured from or supplied by the Appellants at the rate of 75% of the tariff as applicable under the provisions of the EPAs and in accordance with the conclusions made in the following paragraphs in a time bound manner, however, within six months of this judgment."

12. A perusal of the above order passed by "APTEL" would make it clear that as far as excess power supplied by Solar Power Generators to the petitioner is concerned, the petitioner is liable to pay 75% of the tariff as applicable under the provisions of Energy Purchase Agreement. The Energy Purchase Agreement between the petitioner and the respondents 4 and 5 would make it clear that the petitioner shall make payment within 60 days from the date of receipt of invoice and any delayed payment beyond 60 days shall attract interest at the rate of 1%. When "APTEL" directed the petitioner to pay 75% of the tariff as applicable under the provisions of Energy Purchase Agreement, it necessarily means that the said 75% of the tariff shall be paid with Late Payment Surcharge, if any.

13. As rightly contended by the learned Senior counsel appearing for the respondents 4 and 5, the petitioner while challenging the order passed by the "APTEL", before the Supreme Court, raised a specific ground with regard to the applicability of Late Payment Surcharge. The ground (HH) raised by the petitioner in Civil Appeal before the Supreme Court challenging the "APTEL" order reads as follows:

> *"HH. Because the Respondent No.1 over and above the 75% amount which has been ordered to be paid by the Hon'ble APTEL has maliciously also applied Late Payment Surcharge from April, 2018 to December 2022 on the 75% amount ordered to be paid by the Hon'ble APTEL. The Table highlighting the same has already been annexed with the present Civil Appeal."*

Therefore the question of applicability of Late Payment Surcharge was specifically raised by the petitioner before the Apex Court while challenging the order passed by the "APTEL" and the said appeal filed by the petitioner was dismissed by the Apex Court by confirming the order passed by the "APTEL". Therefore, the point raised by the petitioner in the present writ petition was already raised by it before the Apex Court in Civil Appeal Nos.1271 of 2023 and 1354 of 2023 and the same was negatived by the Apex Court by dismissing of the Civil Appeals. In such circumstances, the petitioner is not entitled to contend that Late Payment Surcharge is not applicable to the payment made by the petitioner towards excess energy supplied by the generators beyond Capacity Utilization Factor of 19%. The petitioner is not entitled to raise the point which was unsuccessfully raised before the Apex Court, in this writ petition.

14. As far as the contention raised by the learned Additional Advocate General appearing for the petitioner that the invoices uploaded by the respondents 4 and 5 in "PRAAPTI PORTAL" are tampered invoices and therefore the respondents 1 and 2 shall not take any further action, pursuant to the tampered invoices of the respondents 4 and 5. Merely because the date of invoice was changed at the time of uploading, the invoices cannot be termed as tampered invoices. There is no correction with regard to the material details like payment due to the respondents 4 and 5. The only

contention of the petitioner is that date of invoice was changed as 19.02.2024 instead of 19.12.2023. It is seen from the pleadings of the parties and also the typed set of papers that invoice was originally raised by the respondents 4 and 5 on 19.12.2023 and the same was sent to the petitioner. Thereafter, by communication dated 05.01.2024, the petitioner disputed its liability to pay a Late Payment Surcharge. In these circumstances, the invoices were uploaded in "PRAAPTI PORTAL" on 19.02.2024, mentioning the date of invoice as 19.02.2024. The date of invoice is material only for the purpose of determining the trigger date. However, with regard to the LPS claim by the respondents 4 and 5 is concerned, there is no change in the invoice. In fact, the respondents 4 and 5 have not claimed any amount for a period from 19.12.2023 to 19.02.2024 and the same runs to the advantage of the petitioner. In such circumstances, the said submission made by the learned Additional Advocate General is not acceptable to this Court.

15. In view of the discussions made earlier, this Court is not inclined to entertain the prayer for issue of Writ of Mandamus and accordingly, the writ petition stands dismissed. The petitioner is granted two

weeks time from the date of receipt of order to make payment as per impugned invoices. No costs. Consequently, connected miscellaneous petition is closed.

29.01.2025

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To
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,
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S.SOUNTHAR, J.

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Pre-delivery order made in

W.P.No.13624 of 2024

29.01.2025