



W.P.No.15634 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.04.2025

CORAM

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Writ Petition No.15634 of 2025
& W.M.P.Nos.17670 & 17671 of 2025

Sri Valli Associates,
No.35-A, Subraya Nagar, Thirupapuluir,
Cuddalore – 607 002.
Repd. By its Partner M.Ramesh.

... Petitioner

/versus/

1. The Tamilnadu Power Distribution Corporation Ltd, (TNPDC)
10th Floor, 144, Anna Salai, Chennai-600 002.
Represented By its Chairman & Managing Director.

2.Tamilnadu Green Energy Corporation Ltd, (TNGECL)
10th Floor, 144, Anna Salai, Chennai-600 002.
Represented By its Managing Director

3.The Chief Engineer/NCES, (TNGECL)
2nd Floor, 144, Anna Salai, Chennai-600 002.

4.The Superintending Engineer, TNGECL,
Palladam Electricity Distribution Circle,
Palladam.

... Respondents

Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent's impugned Board proceedings in (Per) FB TANGEDCO, proceedings No.44 dated 01.08.2023 and quash the same as illegal, arbitrary,



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contemptuous and as abuse of process of Court and consequently direct the 1st and 2nd respondent to strictly comply with the provisions of the Constitution of India as enshrined under Article 300A and to confine the respondents within the statutory provisions and limits of the Electricity Act 2003 in the matter of allowing the Utility Changes/Migrations from converting the existing Energy Purchase Agreement to Energy Wheeling Agreement and further direct the 2nd and 3rd respondent to allow utility change/Migration in petitioners WEG No.039214391067(OLD NO.1374) by terminating the existing Energy Purchase Agreements (EPA) dated 01.03.2007 and direct to execute a fresh Energy Wheeling Agreement (EWA) under the own captive/3rd party Sale Schemes and further direct to make payment of outstanding dues payable to the petitioner, towards the wind energy sold by the petitioner till the date of the termination of the (EPA) dated 01.03.2007 as per their respective invoices along with interest at 1% per month for any delay in payments within a reasonable time.

For Petitioner : Mr.S.Lakshmipathy
For Respondents : Mr.D.R.Arun Kumar, (TNPDCCL)
for R1 to R5

ORDER

The writ petition is filed with a prayer to call for the records on the file of the impugned board proceedings dated 01.08.2023 to quash the same and for consequential reliefs.



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2. When the matter came up for hearing, the Learned Counsel for the petitioner submits that the matter is no longer *res integra* since already two rounds of litigation has gone up to the Hon'ble Supreme Court of India.

3. This Court has considered the same in W.P.No.13729 of 2025 and passed an order on 22/04/2025, granting certain relief. In the instant case also though not the exact relief, similar relief can be granted to the petitioner.

4. The Learned Counsel appearing on behalf of the respondents/TANGEDCO submits that he has to verify the factual aspects of the present matter.

5. In view of the impending vacation, the Learned Counsel for the petitioner submits that instead of granting time thereby, the petitioner would be put to great prejudice. The petitioner would be satisfied if the representation of the petitioner dated 24.03.2025 is directed to be considered, in the light of the earlier order that are passed in W.P.No.13729 of 2025, and the same is extracted below for easy reference.



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“The writ petition is filed for a Certiorarified Mandamus calling for the records in respect of the impugned order dated 01.08.2023 and the consequential letter dated 28.02.2024 and to quash the same and consequently direct the 3rd respondent to allow the petitioner to migrate from Sale to board to own captive scheme in respect of the petitioner's Wind Energy Generation WEG No.039214340843 by converting the existing Energy purchase Agreements (EPA) dated 30.08.2024 to an Energy Wheeling Agreement (EWA) and to direct the respondents to make payment of the outstanding dues payable to the petitioner along with interest at the rate of 1% per month for any delay in payments.

2. The case of the petitioner is that the petitioner namely, M/s.Shambhuvengu Yarn Mills (P) Limited purchased the Windmill in question with from another entity known as M/s.Shambhuvengu and Co., by a sale dated 19.10.2023. Thereafter, instead of selling the power to the respondents, the petitioner made an application to captively consume the same. The respondents ought to have converted the agreement of sale into one as Wheeling agreement and ought to permit the petitioner to consume the Energy Generated by it as a Captive Consumer. However, the respondents are denying the same and the impugned orders are passed. The impugned order relies upon the Board proceedings dated 20.05.2017 &



01.08.2023. Therefore, challenging both the Board proceedings as well as the communication issued in respect of the petitioner, the petitioner has filed the writ petition.

3. The writ petition is resisted by the respondents by filing a counter affidavit.

4. It is the case of the respondents that as far as the dues in respect of the erstwhile entity concerned, the respondents are taking steps to clear the outstanding dues along with the interest at a reasonable time. As far as the present prayer to migrate is concerned, it is stated that in view of the Board proceedings, the request was not considered.

5. Mr.S.P.Parthasarathy, Learned Counsel appearing on behalf of the petitioner would submit that in respect of similarly placed persons, already when different board proceedings to the same effect were issue the same came to be challenged in a batch of writ petitions and by an order dated 30.08.2019 made in W.P.No.5196 of 2019 etc., this Court quashed the said proceedings and directed the respondents Board to convert it into Wheeling Agreement and permit own consumption. As against the same, the respondents preferred W.A.No.4189 of 2019 etc., which was again dismissed by order dated 18.02.2020. The respondents also approached the



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Hon'ble Supreme Court of India by way of SLP.Nos.8513 to 8518 of 2020 and by an order dated 24.09.2020, the Special Leave Petitions were also dismissed. In view thereof, once again identical impugned Board proceedings are issued and the very same ground is now raised in the present petition. When the petitioner has duly purchased the Windmill, he has a right to exploit the same as per his own need and he cannot be compelled to strick to the sale agreement itself without permitting him to use for captive generation.

6. Per contra, Mr.D.R.Arun Kumar, Learned Counsel appearing on behalf of the respondents relying upon the counter affidavit would submit that as far as the Energy Charges payable that is a different question altogether. The payment to the erstwhile M/s.Shambhuvengu and Co., is being paid in 48 equal monthly installments. When the Board has considered the issue and has reiterated the earlier rules by considering the belated payment Surcharge Rules, the impugned proceedings need not be set aside by this Court.

7. I have considered the rival submissions made on either side and perused the material records of the case.

8. It can be seen that identical board proceedings have been set aside by this Court by the order dated 30.08.2019 and the said order stood confirmed upto the



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Hon'ble Supreme Court of India. The only argument that is made is that the Board has revisited based on the late payment surcharge charges. That again was again the subject matter of Division Bench of this Court of which I am also one of the member (Mr.Justice D.Bharatha Chakravarthy) and by an order dated 03.01.2023 it was held as follows and it is essential to extract paragraph Nos.2 & 5 which reads as under:

“2. Mr.P.S.Raman, learned Senior Counsel appearing for the petitioners/appellants submitted that the impugned orders of the learned Single Judge passed in the writ petitions are patently unsustainable, in view of the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 (for short, 'the said Rules') notified by the Ministry of Power. Rules 3 and 5 of the said Rules enable the petitioners/appellants to make the payment of arrears to the respondent along with late payment surcharge from the date of default. The said Rules are retrospective in nature and applicable for all the cases irrespective of the dates of default, Therefore, the impugned orders of the learned Single Judge are liable to go.

5. Learned counsel appearing for the respondent heavily opposed the prayer to condone the delay and submitted that the delay of 237, 252 and 258 days in filing the writ appeals against the orders dated 7.3.2022, 25.3.2022 and 28.3.2022 passed in W.P.Nos.4933, 6977 and 6938 of 2022 has not been sufficiently explained by the petitioners/appellants. Secondly, the learned Single Judge, in the impugned orders, has followed the similar order dated 30.8.2019 passed in W.P.No.5196 of 2019 etc., which was affirmed by a Division Bench of this Court in its judgment dated 18.2.2020 in W.A.No.4189 of 2019, which has also been confirmed by the Apex Court vide order dated 24.9.2020 in S.L.P.Nos.8513-8518 of 2020. Therefore, there is no bonafide in filing the petitions to condone the delay and there is no merit in the writ appeals. Thus, a prayer has been made to dismiss the delay condonation petitions as well as the writ



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appeals.”

9. On the above findings, again the orders impugned were set aside and taking note of the earlier round of litigation which ultimately was dismissed by the Hon'ble Supreme Court of India in SPL.Nos.8513-8518 of 2020. In view thereof, the contention that is made on behalf of the Learned Counsel for the respondents are unsustainable. Since the matter has already been decided in the previous round, once again similar orders cannot be repeatedly passed by the respondent Board.

10. Therefore, this writ petition is allowed on the following terms:

(i) The impugned orders dated 01.08.2023 and 28.02.2024 shall stand quashed and consequently the respondents 3 to 5 are directed to convert the Energy Purchase Agreement (EPA) in respect of petitioner's WEG No.039214340843 as one of Energy Wheeling Agreement (EWA) and permit the petitioner to consume the power for its own purposes.

(ii) With reference to the arrears, in view of the statements that is made in paragraph No.9 that the TNPDCCL is taking steps to clear the outstanding dues along with interest, it shall be done within a period of eight (8) weeks from the date of receipt of the web copy of the order.



*There shall be no order as to costs. Consequently,
connected miscellaneous petitions are closed.”*

6. In view thereof, this writ petition is disposed on the following terms:

(i) The petitioner's representation dated 24.03.2025 is directed to be taken up for consideration by the second and third respondents.

(ii) The second and third respondents shall also give due considerations to the earlier order that is passed in W.P.No.13729 of 2025, whereunder the previous orders have also been referred by this Court. If any factual particulars have to be verified, the same can also be verified and the final orders can be passed, within a period of four weeks from the date of receipt copy of the order without waiting for the certified copy of the order.

(iii) Consequently, connected Miscellaneous Petitions are closed.

There shall be no order as to costs.

29.04.2025

Neutral citation :No.
bsm



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To,

1. The Chairman & Managing Director.
The Tamilnadu Power Distribution Corporation Ltd, (TNPDCCL)
10th Floor, 144, Anna Salai, Chennai-600 002.
2. The Managing Director
Tamilnadu Green Energy Corporation Ltd, (TNGECL)
10th Floor, 144, Anna Salai, Chennai-600 002.
3. The Chief Engineer/NCES, (TNGECL)
2nd Floor, 144, Anna Salai, Chennai-600 002.
4. The Superintending Engineer, TNGECL,
Palladam Electricity Distribution Circle,
Palladam.
5. The Government Pleader, High Court, Madras.



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D.BHARATHA CHAKRAVARTHY, J.

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