**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**(Special Original Jurisdiction)**

**W. P. No. of 2019**

……………… Pvt. Ltd

Represented by its Authorised Signatory,

(●)

…Petitioner

Versus

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|  | Tamil Nadu Electricity Regulatory Commission represented By its Secretary,  19-A, Rukmini Lakshmipathy Salai,  (Marshall’s Road)  Egmore, Chennai - 600 008. |
|  | The Chairman,  Tamil Nadu Generation and Distribution  Corporation Limited, 144, Anna Salai  Chennai 600 002. |
|  | Director Finance  Tamil Nadu Generation and Distribution  Corporation Limited, 144, Anna Salai  Chennai 600 002. |
|  | The Chief Financial Controller,  Tamil Nadu Generation and Distribution  Corporation Limited  144, Anna Salai,  Chennai 600 002. |
|  | The Superintending Engineer  (●) Electricity Distribution Circle,  Tamil Nadu Electricity Board,  (●) |

…Respondents

**AFFIDAVIT ON BEHALF OF THE PETITIONER**

I, (●), S/o (●), aged (●) about years, having office at (●), do hereby solemnly affirm and sincerely state as follows

1. I am the (●) of the Petitioner and as such I am well acquainted with the facts and circumstances of the case and as such competent to swear to this affidavit.
2. The petitioner herein is involved in the business of (●).
3. Being encouraged by the wind energy policies prevalent in the State of Tamil Nadu and also as part of their business diversification strategies and in order to secure a reliable source of power for their facilities, they decided to put up Windmills in the State of Tamil Nadu.
4. The Petitioner has been granted a sanctioned demand of (●) and in view of substantial demand for power for its operations and being encouraged by the benefits given for wind energy generation also with a view to captively adjust such generation, the petitioner has put up windmills at (●)with a capacity of (●) with HT SC No. (●) and (●), which was installed and commissioned on (●) and (●). The electricity generated by the said windmill has been wheeled by the Petitioner for its captive consumption at (●) in (●). The balance of the wind mill generation after consumption is under a banking arrangement in terms of the Energy Wheeling Agreements dated (●).
5. The petitioner herein is filing the present writ petition seeking for a direction from this Hon’ble Court to direct the respondents herein to make payments for the unutilized energy in terms of the Tariff Order dated 20.03.2009 and the Agreement between the parties, for the unutilized banked energy as on (●). The present petition is being filed in order to redress the grievance of the Petitioner who has been seriously discriminated against by the respondents due to their failure to pay for the power generated and supplied to the respondent Board. The said action on the part of the respondent Board is a serious violation of the orders issued by the 1st Respondent. The brief facts leading to the filing of the present writ petition are as follows.
6. The State of Tamil Nadu is blessed with friendly wind conditions thereby enabling it to be a forerunner and pioneer in the field of wind power generation as a non-conventional energy source providing clean and environmental friendly power to the state. The Petitioner submits that this policy framework and supporting legislation, along with the unique conditions existing in the state of Tamil Nadu due to power shortage, have led to an exponential growth in the number of wind energy generators and the State of Tamil Nadu is presently the highest wind power generating state in the country.
7. The WTGs have historically been erected in the state principally by various manufacturing units who, considering high cost of power and the need to remain competitive, have erected WEGs which generate power and the owners of the wind mills use the infrastructure provided by the TNEB by way of its transmission lines and utilize the same power and thereby have access to a cheaper source of power.
8. The Petitioner company is then allowed to wheel power from the WTG to its factory as per terms and conditions of the EWA entered into with the 2nd Respondent and payment of wheeling charges as fixed by the 1st Respondent *vide* various Tariff orders.
9. According to the Tariff Orders issued by the 1st Respondent Commission, it was ordered that if wind energy is not utilized fully during a month, the balance of it will be transferred to a banking account and accordingly, during the lean seasons of wind energy, such banked energy is allowed for adjustment from the banking account after paying notified banking charges to the Respondent by the WEG owners.
10. The petitioner states that in Order No.3 dated 15-5-2006, the 1st Respondent one year (from April to March) banking period for the WEGs with 5% banking charges. This Order No. 3 of 2006 decided maintenance of slot to slot banking account and adjustment in the same way as for other renewable generators against peak/off peak/normal consumption and beyond the banking period, the unutilised portion of the banked energy as on 31st March is to be treated as sold to distribution licensee at the rate fixed by the Commission. The 1st Respondent allowed banking for wind energy generators at banking charges of 5%. For the unutilized energy at the end of the year, it was decided that the distribution licensee would pay at a rate of 75% of normal purchase rate.
11. It is submitted that even after such banking adjustments are provided, there remains large quantities of energy at the banking account as unutilized at the end of the banking period on 31st March. According to the Tariff Orders of the 1st Respondent Commission, such unutilized banked energy is eligible for encashment at 75% during normal occasions and 100% during a period by which restriction and control measures are enforced. In the State of Tamilnadu, the restriction and control measures are in force from 01.11.2008 onwards and were finally withdrawn in June 2014. Even thereafter there have been unscheduled power cuts.
12. The extract of the Order of the 1st Respondent Commission as issued in Order No.1 of 2009 dated 20.03.2009-Comprehensive Tariff Order on Wind Energy and extract of Order no.6 of 2012 dated 31.07.2012 is reproduced below for the sake of convenience.

*“8.2.2. The banking charges shall be realized every month for the quantum of units generated during the billing month less the consumption of the captive users / third party sale. Slot-wise banking is permitted to enable unit to unit adjustment for the respective slots towards rebate / extra charges. No carry over is allowed beyond the banking period. Unutilised energy at the end of the financial year may be encashed at the rate of 75% of the relevant purchase tariff. The Commission proposes to retain the same features with some modifications based on the suggestions made by the stakeholders. As and when the distribution licensee enforces restriction control measures for restricting the consumption of wind energy generators, the Commission finds justification in the plea that the unutilized energy at end of the financial year may be encashed at full value of the relevant tariff for sale to the licensee. ……….”*

Extract of TNERC Order no.6 of 2012 dated 31.07.2012 Para 8.2.14:

*“8.2.14 Unutilized energy as on 31st March every year may be encashed at the rate of 75% of the relevant purchase tariff. As and when the distribution licensee enforces restriction and control measures and such measures restrict the WEGs to consume their power in any manner, the unutilized energy at the end of the banking period may be encashed at full value of the relevant tariff as sale to the licensee.”*

1. Therefore, it is clear from the above that the Respondent Board is obligated to encash 75 % of the value of the surplus energy sold/unutilized banked energy as on 31st March of every year. However, on the contrary, the payment for surplus energy, which is sold by the Petitioner from (●) is still pending despite several reminders. .
2. The orders of the 1st Respondent Commission setting out various terms and conditions towards captive consumption of wind energy are being converted in to an Energy Wheeling Agreement and all the terms and conditions are being provided in the agreement and accordingly, the wheeling, banking, adjustment and other such matters are being regulated through this agreement between the Respondent Corporation and the Wind Energy Generators like those of the petitioner.
3. It is respectfully submitted that the Respondents have failed to pay the Petitioner for the sale of unutilized wind units in (●) and (●) in respect of HT SC No (●) and therefore huge amounts are outstanding for payments. It is respectfully submitted that the payment is pending since (●), and, such an act of the Respondents is completely unlawful and the Petitioner is put into great financial hardship due to the inordinate delay on the part of the Respondents.
4. It is further submitted that the Petitioner have availed term loans for establishing their wind mills and paid large sums towards servicing the debts. Since there is abnormal delay in getting payment from the Respondent Corporation, the Petitioner faced enormous difficulties to repay their term loans regularly.
5. It is relevant to state that the Respondent resorts to disconnection of the supply of electricity, in case the Current Consumption charges are not paid within the due date. However, on the other hand, the Respondent is not settling the payments, which are due to the Petitioner with respect to encashment of surplus wind energy sold by the Petitioner. Therefore, such an action on the part of the Respondents in not making payments for the unutilized banked energy, since (●) , is arbitrary and unreasonable.
6. The Petitioner is put to great financial hardship due to the inordinate delay on the part of the 4th and 5th Respondents to settle the bills raised by the Petitioner towards the surplus energy supplied by the Petitioner.
7. It is further submitted that the Petitioner has installed the windmills only after securing huge financial loans. Therefore, the continuous default on the part of the Respondents in making prompt payments, for the unutilized energy, which is encashable, has affected the financial administration of the Petitioner. The Petitioner has made several representations to the Respondents seeking for payments. However, no fruitful results are forthcoming and the Respondent.
8. The petitioner states that in terms of the applicable tariff orders and regulations, it is entitled to receive the payments for the unutilized banked units at the end of each year.
9. It is also noteworthy to mention herein that in case of any payment due from TANGEDCO to the generator, interest at 1% per month is payable in terms of the Tariff Orders and the judgments of the Hon’ble TNERC as upheld by the Hon’ble APTEL.
10. It is respectfully submitted that the Petitioner had accordingly raised an invoice for sale of unutilized banked units at the applicable Tariff value at the appropriate time with the Respondents. However, both despite the Tariff Orders issued from time to time and also the terms of the Agreement executed between the Petitioner and the Officials of the Respondent, no payment has been made till today. It is submitted that from time to time the Petitioner has made several representations requesting the respondents to make payment without delay and to make payment of the outstanding amounts with interest for which the Petitioner are legally entitled to.
11. The Petitioner states that the Captive Consuming HTSC No. (●) in (●) is connected with WEG HT, which was commissioned on (●).Accordingly, the Petitioner states that the sale of unutilized banked energy as on (●) to the 2nd Respondent generated by its windmills at HT SC No. (●) amounts to Rs. (●)
12. It is respectfully submitted that continuous default on the part of the Respondents to make prompt payment for the unutilized energy to be encashable is causing a huge strain on the financial administration of the Petitioner and the failure of the Respondents, is causing irreparable loss and huge financial burden to the Petitioner Company.
13. The Petitioner has made out a prime facie case and the balance of convenience is in favour of the Petitioner. Unless the respondent makes payment of the outstanding arrears payable to the Petitioner, the Petitioner would be put into great irreparable loss causing the entire operation of the Petitioner industry to come to a stand still and consequently more than 700 workers employed in these industries would be thrown out of employment. On the other hand, no prejudice would be caused to the Respondent in grant of such interim order.
14. In view of the aforesaid reasons, it is humbly prayed that this Hon’ble Court may be pleased to:
15. issue an Order of Interim Injunction, restraining the Respondents from demanding and collecting current consumption charges, demand charges and any arrears from the petitioner till the entire outstanding dues of (●) payable to the petitioner towards cost of the wind energy supplied by the Petitioner to the Respondents along with interest thereon at 1% per month payable from the time such payments became due pending disposal of the writ petition and thus render justice;
16. Issue a WRIT OF MANDAMUS or any other appropriate writ, order or direction in the nature of a writ of Mandamus directing the Respondent and their men, agents not to collect current consumption charges, demand charges and any arrears from the petitioner until the Respondents make payment of the outstanding dues of (●) payable to the Petitioner along with interest thereon at 1% per month payable from the time such payments became due or to give adjustment in the current consumption charges payable by the Petitioner till the entire amount is adjusted and pass such further or other orders as this Hon’ble Court may deem fit and proper in the circumstances of the case and thus render justice.

Solemnly affirmed at Chennai on this, **BEFORE ME**

The day of March , 2019 he having

signed his name in my presence.

**ADVOCATE, CHENNAI**