

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI  
AND  
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.Nos.271 and 272 of 2015  
and  
M.P.Nos.1 and 1 of 2015

1. The Chairman and Managing Director,  
Tamil Nadu Generation and Distribution  
Corporation Limited,  
No.144, Anna Salai, Chennai-600 002.
2. The Chairman,  
Tamil Nadu Transmission Corporation Limited,  
144, Anna Salai, Chennai-600 002.
3. The Director Operations,  
State Load Dispatch Centre,  
144, Anna Salai, Chennai-600 002.

... Appellants in both appeals/  
Respondents 2 to 4

Vs.

Mountain Spinning Mills Limited,  
rep by its Managing Director,  
G.Vettivel, S/o.A.M.M.S. Ganesan,  
97/1A, Kottudankadu,  
Mangalagiri Post,  
Tuticorin District-628 103.

... 1<sup>st</sup> respondent in W.A.No.271  
of 2015/Petitioner

Tuticorin Spinning Mills Limited,  
rep by its Director G.Vettivel,  
S/o.A.M.M.Ganesan,  
106, Palayamcottai Road,  
Tuticorin Dt.628 008

... 1<sup>st</sup> respondent in W.A.No.272  
of 2015/Petitioner

Tamil Nadu Electricity Regulatory Commission,  
rep by its Secretary,  
No.19A, Rukmini Lakshmipathy Salai,  
Egmore, Chennai-8.

... 2<sup>nd</sup> Respondents in both writ  
appeals/1<sup>st</sup> Respondent

Both these Writ Appeals are preferred under Clause 15 of the  
Letters Patent against the orders dated 11.12.2014 passed in  
W.P.Nos.28893 and 28894 of 2014.

Prayer in W.P.No.28893/2014: Writ Petition filed under Article  
226 of the Constitution of India for a Writ of Mandamus, forbearing  
the respondents 2 to 4 from enforcing forced back out of wind energy  
generated by the petitioner's four wind mills with HT SC.No.1104 and  
No.1750 in Tirunelveli Electricity Distribution Circle and No.419 and  
No.422 in Udumalpettai Electricity Distribution Circle and exported  
to the grid pending adjudication of M.P.No.21 of 2014 by the Tamil  
Nadu Electricity Regulatory Commission, Chennai.

Prayer in W.P.No.28894/2014: Writ Petition filed under Article  
226 of the Constitution of India for a Writ of Mandamus, forbearing  
the respondents 2 to 4 from enforcing forced back out of wind energy  
generated by the petitioner's four wind mills with HT SC.No.946 and  
No.1724 in Tirunelveli Electricity Distribution Circle and No.420 and  
No.421 in Udumalpettai Electricity Distribution Circle and exported  
to the grid pending adjudication of M.P.No.21 of 2014 by the Tamil  
Nadu Electricity Regulatory Commission, Chennai.

For Appellant : Mr.AL.Somayaji, Advocate General  
Assisted by Mr.P.Gunaraj

For Respondents : Mr.K.Shakespeare  
for M/s.E.Shengagavalli for R-1  
in both appeals

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COMMON JUDGMENT

(Judgment of the Court was delivered by SATISH K. AGNIHOTRI, J.)

With the consent of parties, both the writ appeals are taken up  
for final consideration.

2. The instant intra-court appeals arise from the order dated  
11.12.2014 passed in W.P.Nos.28893 and 28894 of 2014.

3. The writ petitioners/first respondent herein filed writ petitions seeking to forebear the respondents 2 to 4 therein / appellants herein from enforcing forced back out of wind energy generated by the writ petitioner's four wind mills with HT SC.No.1104 and No.1750 in Tirunelveli Electricity Distribution Circle and No.419 and No.422 in Udumalpettai Electricity Distribution Circle and HT SC No.946 and No.1724 in Tirunelveli Electricity Distribution Circle and Nos.420 and 421 in Udumalpettai Electricity Distribution Circle respectively and exported to the grid pending adjudication of M.P.No.21 of 2014 by the Tamil Nadu Electricity Regulatory Commission, Chennai.

4. Indisputably, the dispute with regard to the enforcement of forced back out of wind energy generated by the writ petitioners four wind mills, is pending consideration before the Tamil Nadu Electricity Regulatory Commission. The learned Single Judge in the earlier round of litigation filed by the Indian Wind Power Association in W.P.Nos.22420 of 2013 directed the Electricity Regulatory Commission to dispose of the matter pending before it in respect of the legal issue in question. As recorded, despite clear order passed by this Court, no order has been passed. Thus, the learned Single Judge allowed the instant writ petitions filed by the first respondent herein, restraining the appellants from enforcing the forced back out of wind energy generated by the writ petitioners four wind mills, recording as under :

(i) This Court had directed the first respondent to dispose the earlier writ petition Nos.22420, 22421, 22419 and 22418 of 2013, within a period of six months, after comprehensive enquiry and this order has been passed on 27.01.2014. As such, the first respondent has not passed any orders even after the specified period. Hence, the petitioner is entitled to receive relief in the above writ petition. Therefore, this Court restrains the respondents 2 to 4 from enforcing forced back out of wind energy generated by the petitioner's four wind mills.

(ii) If the above said interim relief is granted by this Court to the petitioner, the respondents will not be prejudiced.

(iii) If this Court declines to grant interim relief, the petitioner will be put into irreparable loss and hardship. Further, the balance of convenience also rests on the side of the petitioner."

5. We have considered the rival submissions advanced by the learned Advocate General, appearing for the appellant and also the learned counsel appearing for the first respondent herein.

6. On perusal of the impugned order, it is evident that the writ petitions have not been allowed on merits, but on the fact that the respondent Tamil Nadu Electricity Regulatory Commission had not disposed of the pending matter before the Commission despite clear order passed by this Court in W.P.No.22420 of 2013 .

7. Be that as it may, without going into the merits of the case, if the Regulatory Commission has not complied with the order passed by this Court, there is some other remedy to ensure that the order of this court is complied with. However, for want of non compliance of the earlier order, the writ petitioners cannot be allowed to restrain the respondents therein from enforcing forced back out of wind energy generated by the petitioners four wind mills'. The Writ Court has not considered the consequential loss to the appellants/ respondents 2 to 4, who are engaged in supply of essential electricity service to the consumers, i.e., public at large.

8. In that event, without expressing any opinion on the merits of the case, we direct the second respondent Electricity Regulatory Commission to take up pending matters, i.e., M.P.No.21 of 2014 and also other related matters for consideration and pass appropriate orders, in accordance with law and on merits, within a period of eight weeks from the date of receipt of copy of this order. Accordingly, the impugned orders passed by the Writ Court are set aside. Both the writ appeals are allowed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-  
Asst. Registrar

/true copy/

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Sub Asst. Registrar.

To

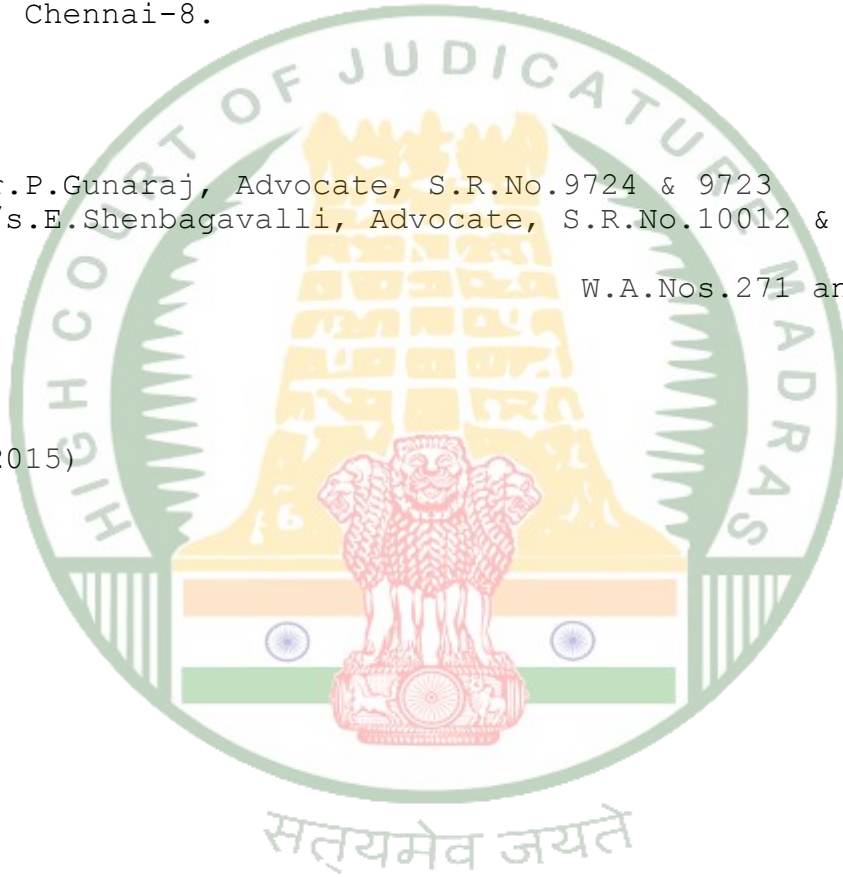
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+2cc to Mr.P.Gunaraj, Advocate, S.R.No.9724 & 9723  
+4cc to M/s.E.Shenbagavalli, Advocate, S.R.No.10012 & 10011

W.A.Nos.271 and 272 of 2015

BR (CO)  
CA (04/03/2015)



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