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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-03-2015

CORAM

THE Hon'ble Mr. JUSTICE M. DURAISWAMY

W.P.Nos.16983, 19940 and 19943 of 2010
M.P.Nos.1 to 5 /2010 in WP No.16983/2010
M.P.Nos.1/2011, 1/2012 & 1/2013 in WP No.16983/2010
M.P.No.2/2010 in WP No.19940/2010
and M.P.No.2 and 3/2010 in WP No.19943/2010

W.P.No.16983 of 2010

Saheli Export Private Limited
New No.25, Old No.10,
Madhavan Nair Road,
Mahalingapuram,
Nungambakkam,
Chennai-600 034

...Petitioner in W.P.Nos.16983 and 19943 of 2010

Sangameswara Energy Private Limited,
New No.25, Old No.10, Madhavan Nair Road,
Mahalingapuram, Nungambakkam,
Chennai-600 034.

...Petitioner in W.P.No.19940 of 2010

vs

1. Ministry of New and Renewable Energy,
represented by the Secretary,
Block NO.14, CGO Complex,
Lodhi Road,
New Delhi

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2. Indian Renewable Energy Development Agency Limited,
3rd floor, August Kranti Bhavan,
Bhikaji Cam Place, New Delhi 110 066
3. Electricity Department,
represented by its Secretary,
Government of Puducherry,
Chief Secretariat,
Goubert Salai,
Puducherry-605 001
4. Renewable Energy Agency Pondicherry
rep by its Project Director,
No.10, Second Main Road,
Elango Nagar, Puducherry 605 011
5. The Joint Electricity Regulatory Commission
for the State of Goa and Union Territories,
represented by its Secretary
"Vanijya Nikunj", 2nd floor,
Udyog Vihar, Phase V,
Gurgaon 122 016. ...Respondents in all the writ petitions

W.P.No.16983 of 2010:

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent relating to the guidelines for Rooftop and other small power plants connected to distribution network in Ref.No.5/23/2009-P&C dated 16.6.2010 and quash clauses 3.2.1 and 3.2.2 therein which states that the application from project proponents from any State shall be considered only if the concerned SERC has issued the order determining the tariff for rooftop/Small solar generating system for purchase of electricity by the distribution utilities in that State and consequently direct the second respondent to complete the selection process as regards the petitioner without insisting on the said clauses.

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W.P.No.19940 of 2010

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Certiorarified Mandamus to call for the records of the first respondent relating to the guidelines for Rooftop and other small power plants connected to distribution network and quash clauses 3.2.1 and 3.2.2 therein which states that the application from project proponents from any State shall be considered only if the concerned SERC has issued the order determining the tariff for rooftop/Small solar generating system for purchase of electricity by the distribution utilities in that State and consequently direct the second respondent to complete the selection process as regards the petitioner without insisting on the said clauses.

W.P.No.19943 of 2010

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent relating to the guidelines for Rooftop and other small power plants connected to distribution network read with the instructions for final registration process for Generation Based Incentive (GBI) under Rooftop and other small solar power plant connected to voltage level below 33 kV issued by the second respondent and quash clauses 3.2.9 and 1(b) respectively which makes execution of the Power Purchase Agreement with the respective distribution utility a pre-requisite for being considered for issuance of the registration certificate under the programme and consequently direct the second respondent to complete the process of the issuance of the final list of registrants without insisting on the said clauses.

For petitioner : Mr.Vijaya Narayanan
in all the writ : Senior Counsel for
petitions : Mr.P. Vinod Kumar

For R.1 in all : Mr.K. Gunasekar
the writ petitions : ACGSC

For R.2 in all : Mr.G. Masilamani
the writ petitions : Senior Counsel for
Mr.Jose John for
M/s King & Partridge

For R.3 & R.4 in : Mr.A. Tamilvanan
all the writ petitions Govt. Advocate (Pondy)

For R.5 in all the : Mr.Krishna Ravindran
writ petitions

COMMON ORDER

Since the issues involved in all these three writ petitions are common, by consent of both sides, all the three writ petitions are disposed of by this common order.

W.P.No.16983 of 2010 has been filed by the petitioner to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent relating to the guidelines for Rooftop and other small power plants connected to distribution network in Ref.No.5/23/2009-P&C dated 16.6.2010 and quash clauses 3.2.1 and 3.2.2 therein which states that the application from project proponents from any State shall be considered only if the concerned SERC has issued the order determining the tariff for rooftop/Small solar generating system for purchase of electricity by the distribution utilities in that State and consequently direct the second respondent to complete the selection process as regards the petitioner without insisting on the said clauses.

W.P.No.19940 of 2010 has been filed by the petitioner to issue a Certiorarified Mandamus to call for the records of the first respondent relating to the guidelines for Rooftop and other small power plants connected to distribution network and quash clauses 3.2.1 and 3.2.2 therein which states that the application from project proponents from any State shall be considered only if the concerned SERC has issued the order determining the tariff for rooftop/Small solar generating system for purchase of electricity by the distribution utilities in that State and consequently direct the second respondent to complete the selection process as regards the petitioner without insisting on the said clauses.

W.P.No.19943 of 2010 has been filed by the petitioner to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent relating to the guidelines for Rooftop and other small power plants connected to distribution network read with the

instructions for final registration process for Generation Based Incentive (GBI) under Rooftop and other small solar power plant connected to voltage level below 33 kV issued by the second respondent and quash clauses 3.2.9 and 1(b) respectively which makes execution of the Power Purchase Agreement with the respective distribution utility a pre-requisite for being considered for issuance of the registration certificate under the programme and consequently direct the second respondent to complete the process of the issuance of the final list of registrants without insisting on the said clauses.

2. The brief case of the petitioners, which are necessary for the disposal of the above writ petitions, are as follows:

According to the petitioners, as a step towards promoting power generation using non-conventional sources, during February 2010, the Government of India brought out the Jawaharlal Nehru National Solar Mission, with an objective to establish India as a Global leader in Solar Energy, by creating the policy conditions for its diffusion across the country, as quickly as possible. The immediate aim of the Solar Mission was to focus on setting up an enabling environment for solar technology penetration in the country both at the centralised and de-centralised level.

3. On 16.6.2010, the first respondent issued the guidelines for Rooftop and other small solar power plants, connected to distribution network (below 33 KV). The programme known as the "Rooftop PV & Small Solar Power Generation Programme" (RPSSGP), which provides for selection of project proponents from across the country for development of solar power projects, to be connected to the distribution network at voltage level below 33 KV. The project proposes to develop solar capacity of 100 MW by dividing the projects into two broad categories i.e., (a) the projects with proposed installed capacity of minimum 100 KW and upto 2 MW connected to HT voltage at distribution network (i.e. Below 33 KV) and (b) the projects with proposed capacity of less than 100 KW and connected to LT voltage i.e., 400 volts (3-phase) or 230 volts (1 phase). The maximum capacity limit for the projects connected at HT level of distribution network, with installed capacity of 100 kw and upto 2 MW, has been set out as 90 MW.

4. The guidelines provide that to be selected, the project proponents will have to first get themselves pre-registered with the

respective State Level competent authority, after complying with the eligible criteria. On being found eligible for pre-registration, the State Competent Authority is required to issue the pre-registration certificate and an upper cap of 20 MW has been fixed in respect of grant of pre-registration certificate by each State. Project proponents, who have been issued a pre-registration certificate by the respective State Competent Authority, are required to enter into a MOU with the concerned distribution utility for sale of power from the proposed project. After obtaining the pre-registration certificate, the project proponents from all the States are required to apply for registration with the second respondent, which has been designated as the Programme Administrator, through an online application, followed by submitting the applications in physical form along with the requisite documents.

5. The guidelines stipulate that project schemes from only those States, where tariff tenure for duration of 25 years with tariff structure on levelled basis has been determined by the respective State Electricity Regulatory Commission, shall be eligible to participate in this programme. Clause 3.2.1 of the guidelines stipulates issuance of relevant Tariff order from concerned SERC as one of the conditions for being eligible for registration with the second respondent. Further, it is provided under Clause 3.2.2 of the guidelines that applications from project proponents, who have been granted the pre-registration certificate, will be considered, only if the concerned State Electricity Regulatory Commission has issued orders determining tariff for rooftop/small solar generating system for purchase of electricity by the distribution utilities in that State.

6. As per clause 3.2.9 of the guidelines, all the short listed applicants are required to submit an online application, giving inter-alia details of signing of the Power Purchase Agreement, with the utility and thereafter, submit the application in physical form to the second respondent, along with the necessary documents. Thereafter, the second respondent is required to verify the documents and issue the final list. Further, the second respondent has uploaded in its website the instructions for final registration process. In terms of Clause 1(b) of the said instructions, the date of Signing the Power Purchase Agreement should not be later than the date of applying online for registration process. In effect, the signing of the Power Purchase Agreement has been made as a pre-condition for being eligible for grant of the regularisation

certificate. The clauses of 3.2.1, 3.2.2, 3.2.9 and 1(b) of the Instructions are impugned in the writ petitions.

7. The fourth respondent is the competent authority for issuance of pre-regularisation certificate in respect of Puducherry. The fourth respondent issued an invitation for Expression of Interest (EOI) for pre-registration for setting up of 100 KW to 2 MW small solar power plants under the Rooftop PV and small solar generation programme of the first respondent, on or before 9.7.2010. On 7.7.2010 the petitioner submitted its application for pre-registration with the fourth respondent along with relevant supporting documents for setting up 1 MW solar power project. After being satisfied that the petitioner is eligible to set up the solar power project, the fourth respondent, on 14.7.2010, issued the pre-registration certificate to the petitioner, assigning the pre-registration number. Thereafter, the petitioner entered into an MOU, as per the requirement of the guidelines with the third respondent, wherein the Electricity Department, Puducherry, inter alia agreed to enter into a Power Purchase Agreement (PPA) with the petitioner to purchase the entire electricity generated from the petitioner's proposed solar power project on a long term basis for a maximum period of 25 years from the date of commissioning of the solar power project at a price, to be fixed by the fifth respondent's tariff order.

8. On 15.7.2010, the petitioner applied online for registration of its proposed solar power project with the second respondent. In further compliance with the guidelines, the petitioner had forwarded the application in physical form along with the pre-registration certificate, issued by the fourth respondent.

9. The Central Government, in exercise of its power under Section 83 of the Electricity Act, 2003, has constituted the fifth respondent as the Electricity Regulatory Commission in respect of State of Goa and all Union Territories. The Constitution of the fifth respondent Commission, although notified during 2006, became functional only in the year 2009.

10. The State Electricity Regulatory Commissions across the country have issued tariff orders for procurement of electricity by the respective State utility from generators, using renewable sources of energy exercising their suo motu power. However, the fifth respondent is yet to pass appropriate tariff order. After applying

for the pre-registration with the fourth respondent, the petitioner had also requested the fifth respondent to expeditiously issue the relevant tariff order. The delay in finalising the tariff order, for procurement of power by the distribution utility from solar generating systems, has caused a huge setback to the petitioner. The procedure, prescribed for determination of tariff under Electricity Act 2003, requires the Commissions to issue a tariff order within 120 days of receipt of an application for determination of tariff.

11. According to the petitioners, clauses 3.2.1, 3.2.2 and 3.2.9 of the guidelines and clause-1-b of the Instructions, making determination of tariff for purchase of power by the distribution utility from small solar generating systems as a pre-condition for consideration of the application for registration for the programme, is unreasonable and contrary to the very objective of the National Electricity Policy and the National Solar Mission.

12. In terms of the guidelines the projects, which are selected, should be completed by 31.3.2013. The third respondent has confirmed that it will purchase the entire power generated by the petitioner's proposed plant at a price, to be determined by the fifth respondent. The petitioner, at the time of submitting its application, has confirmed that the expected time of commissioning the project, after signing the power purchase agreement, would be 6 to 9 months. Therefore, even if the fifth respondent were to issue the tariff order after the completion of the process of registration and selection, the petitioner's project would be able to meet the deadline provided in the guidelines.

13. The guidelines virtually rule out participation in the programme by persons/utilities from the Union Territory and State of Goa, due to the fifth respondent Regulatory Commission having failed to notify the tariff. The petitioner has invested huge amounts of money on the project towards identifying land, conducting feasibility study, payment of fees etc. The petitioner, who has been found eligible by the fourth respondent, issued with a pre-registration certificate and has been able to register its application for registration online in the selection process, based on the principles of "first come first served" will suffer a huge set back, if it's application is rejected on the ground of non-fixation of tariff by the fifth respondent.

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14. Even if the Power Purchase Agreement were to be signed at a later date, after the determination of the tariff by the fifth respondent, the petitioner will be able to set up its project within the time stipulated time under the guidelines. The Electricity Department, Puducherry has committed to purchase the power generated by the petitioner's proposed project, by signing the MOU with them.

15. The second respondent is entitled to speak only about its role as " Programme Administrator" for administrating the programme. The impugned clauses of the guidelines virtually make it impossible for setting up of solar projects under the programme in the States and Union Territories, which are yet to determine the tariff for purchase of solar power, are required to be tested. The guidelines were not finalised after considering the suggestions and objections of public and stake holders. Despite there being suggestions not to make the determination of tariff by the respective State Electricity Regulatory Commission a pre-requisite for the selection process, the first respondent has overlooked the suggestions.

16. The impugned clauses are discriminatory and give unfair advantage in the selection process to States where the Electricity Regulatory Commission has determined the tariff. The petitioners, being otherwise eligible to participate in the selection process, are entitled to challenge impugned clauses in the guidelines. Since the entire selection process is based on the principle of " first come first served" and the tariff fixed by the respective Electricity Regulatory Commission is not a factor which is taken into account while selecting the projects under the scheme, there is no rational for making the determination or tariff a pre-requisite for being eligible to participate in the selection process. The petitioners have not filed a false declaration or information in its online application for registration with the second respondent. The letter issued by the third respondent on 15.7.2010, confirming the execution of MOU upon it, being approved was relied on, while submitting the online application and the petitioners had in its physical application submitted the letter dated 15.7.2010 and the MOU executed by the third respondent. There is no laches on the part of the petitioners.

17. Availability of land for the project is one of the eligibility criteria under the Programme. Although it is open to a project proponent to apply from any State, the plant can be set up only in a State where land is readily available to the Project

Proponent.

18. The CERC had by its tariff order in Suo Motu Petition No.53 of 2010, fixed Rs.17.91/kwh, as the tariff for solar power generated using photo voltaic technology for the years 2010-2011 and 2011-2012. This tariff was fixed when the cost of the PV technology was very high. The second respondent has been paying the generation based incentive, based on the CERC tariff of Rs.17.91/Kwh to the state utilities, who have been purchasing power from small solar plants commissioned under the Programme. Subsequently, the cost of setting up photo voltaic technology based solar power plant had reduced. Accordingly, the CERC has issued tariff order dated 27.3.2012 in Suo Motu Petition No.32/2012, fixing the tariff for photo voltaic technology based solar plants at Rs.10.39/kWh for the year 2012-13. The said tariff fixed by the CERC, being the current tariff, will be the basis for determining the generation based incentive under the guidelines for project being commissioned during the tenure of the said tariff order. The said tariff order of the CERC was considered by the fifth respondent while determining the tariff at Rs.10.58/kWh in respect of purchase of power by the Electricity Department, Puducherry from rooftop/small solar generating system.

19. The overall capacity of 100 MW has not been achieved from rooftop/small solar plants across India. Based on the undertaking given by the second respondent before this Court, 2 MW capacity has been reserved for the two writ petitioners. The said 2 MW capacity continues to be reserved by the first and second respondents.

20. As per National Solar Mission Phase-I, the Mission is targetted towards setting up small capacity solar power plants and the subsequent phases are targetted towards higher capacities. Hence the second respondent cannot equate participation in phase-I project with participation in the proposed phase-II. Similarly, the reliance on larger capacity projects based on bidding route under which bids for low tariff of Rs.7.49/kwh were received is totally misconceived. The tariff, based on competitive bidding in respect of bigger projects, cannot be cited against the project under the impugned guidelines which relate to small projects.

21. The projects have been allotted under the impugned guidelines at tariff as high as Rs.18.45/kWh in Tamil Nadu and Odisha and as low as Rs.14.50/kWh in Karnataka during the same period.

22. Aggrieved by clause 3.2.1, 3.2.2, and 3.2.9 of the guidelines for Rooftop and other small solar power plants connected to distribution network and clause 1(b) of the instructions for final registration process, which makes it mandatory for the respective State Regulatory Commission to have issued orders determining the tariff at which the power is to be purchased by the utility as a precondition for consideration of the applications from the State and makes signing of the Power Purchase Agreement with the distribution licensee a prerequisite for being eligible to be issued with the registration certificate, the petitioners have filed the above writ petitions.

23. The brief case of the first respondent is as follows:

The guidelines of the said programme were formulated and finalised after broad consultation with various stakeholders and were issued on 16.6.2010. Thereafter they were placed on the website of the Ministry i.e., the first respondent. Since GBI i.e., the difference between the rate fixed by CERC minus base rate Rs.5.50 per kWh payable to the local distribution utility in the respective State/UT is a financial transaction between the incentive providers i.e., the first respondent, through its Programme Administrator, the second respondent and the local distribution utility, it is essential to obtain in advance the commitment of the utility by means of a Power Purchase Agreement before the project developer is selected. The additional cost of tariff above the GBI will have to be borne by the distribution utility. To determine the additional cost to be borne by the local distribution utility over and above GBI can be ascertained only after the concerned SERC announces the tariff for purchase of solar power. Hence in clause 4.3 of the guidelines of RPSSGP, it is clearly stated that the concerned utility will enter into Memorandum of Understanding (MoU) with the Programme Administrator for disbursement of GBI.

24. As per clause 4.2 of the guidelines for RPSSGP, to facilitate the said MoU with the Programme Administrator, the Distributing Utility (as per clause 4.3) will sign a MoU with the Project Proponent for purchase of Power at the rate determined by the concerned SERC which will clearly specify the rate of purchase of solar power and tenure of proposed PPA.

25. According to the first respondent, Section 64 of the Electricity Act, 2006, the SERCs are empowered to issue a tariff

order or accept/reject the application for a tariff order. As such SERC order announcing the tariff for procurement of solar power in the respective State/UT, which intends to establish Solar Power Projects and also avail GBI is necessary and an important pre-requisite.

26. The respondents 1 and 2 have no role in announcement of tariff for purchase of solar power by respective SERCs in respective States/UTs and participation by the respective States/UTs in RPSSGP is not mandatory.

27. The petitioners cannot plead ignorance about the knowledge of the eligibility criteria/clauses stipulating different provisions. The pre-conditions stipulated in Clause 3.2 including 3.2.1 and 3.2.2 to be read with all relevant clauses of the guidelines for RPSSGP are applicable to prospective project proponents uniformly all over the country and have no ambiguity.

28. Guidelines apply only to projects with installed capacity of 100 kW and upto 2 MW having grid connectivity at HT level (below 33 kV) of the distribution network. The matter of Power Purchase Agreement is in the realm of contract and a distribution utility may, out of a free contracting mind conclude or refuse to conclude a contract with any solar power generator notwithstanding the MoU. Similarly, a solar power generator may consider the tariff fixed by a State Government unviable and may refuse to enter into a Power Purchase Agreement. Such uncertainties will jeopardise the prestigious Mission and therefore the achievement of the milestone of conclusion of the Power Purchase Agreement is a must for the success.

29. Since the projects are to be set up on build, own and operate basis and the solar power is to be directly purchased by the concerned State Utility, it is at the discretion of the States/Union Territories to decide whether they wish to purchase solar power and thereby participate in the schemes announced under the Mission. There is no legal duty cast upon a State Government or upon a distribution utility to participate in the programme. However, in case any State/UT or distribution utility intends to participate, the fixation of tariff by SERC is a must and an essential pre-requisite to enter into an MoU/PPA as per the guidelines of the programme.

30. Clauses stipulated in the guidelines are in line with the policy of the said Mission. The various conditions have been

fixed after receipt of public and stake holders' suggestions and objections. The tariff order cannot be issued after completion of the process of registration.

31. On the other hand, since the Power Purchase Agreement has to be concluded before registration, the prior issue of tariff order is mandatory. The project proponents are to be selected on first cum first served basis only on fulfilment of selection criteria, wherein the determination of tariff by the respective Electricity Regulatory Commission is one of the pre-requisites. All project proponents are required to follow these guidelines. The petitioners, being well aware of the guidelines/requirement including clause 3.2.1 and 3.2.2 and 3.2.9 before making application, their plea to expunge these clauses after announcement of list by IREDA, is an after-thought, which cannot be accepted. In these circumstances, the first respondent prays for dismissal of the writ petitions.

32. The brief case of the second respondent is as follows:

According to the second respondent, the Rooftop and Small Solar Power Generation Programme (RPSSGP), Guidelines were published as draft for public and stake holders' suggestions and objections and was finalised thereafter. The Guidelines are unbiased and have legal certainty. They confer neither any right upon the petitioner nor enjoin any legal duty on the part of the 1st and 2nd respondent towards the petitioner.

33. Clauses 3.2.1, 3.2.2 and 3.2.9 are perfectly valid and do not suffer from any vice of arbitrariness. The first respondent can choose its own method and fix its own conditions for participation and the same have been upheld by the Apex Court and cannot be open to judicial scrutiny.

34. If the petitioner is unable to satisfy the said conditions, nobody compelled them to pre-register. If the petitioners cannot satisfy the conditions, then it cannot choose to challenge the conditions themselves. The first respondent as the Master, is entitled to prescribe its own conditions. The second respondent, being the agent and instrumentality of the first respondent, is bound to implement the conditions stated by the first respondent.

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35. The petitioners have filed false declaration and informations in its online application for registration with the second respondent. The acknowledgement slip of online submission filed by the petitioners contains a declaration that the petitioners have completed necessary formalities under the Guidelines to be eligible for short listing and a further declaration that in case any information given by the petitioners in the application is found to be incorrect, false, the first and second respondent or any other agency, authorised by them, may not consider the petitioners' application.

36. Contrary to such declarations, the petitioners have falsely stated in their applications that MOU was signed on 15.7.2010, whereas the MOU actually has been executed on 21.7.2010. The online application for registration was closed on 20.7.2010. One of the conditions to be fulfilled for registration with the second respondent is the execution of the MOU with the utility. Since the petitioners had no MOU on the date of submission of online application, the petitioners are not eligible for being considered under the Scheme. The petitioners have suppressed this fact before this Court.

37. The petitioners were aware of the Guidelines and the conditions since 13.3.2010 when the draft Guidelines was published for suggestions and objections of the public and the stakeholders. The Guidelines were announced on 16.6.2010 after considering the comments received. While the petitioners have taken care to refer to the National Electricity Policy of 2005, it has suppressed the above material facts relating to the Guidelines. The writ petitioners have filed the writ petitions on 28.7.2010, therefore, the petitioners are guilty of laches.

38. In the absence of a tariff order, the Guidelines will lose certainty and the programme will be a non-starter. The programme has fixed a base rate of Rs.5.50 per Kwh, to be escalated by 3% every year.

39. The Project has two stages before inclusion in the final registration for GBI. In the first stage, the project proponent should obtain a pre-registration certificate from the State Competent Authority. Each State Competent Authority was empowered to issue Certificates of Pre-Registration aggregating to not more than 20 MW capacities. The process of pre-registration may remain open until

Programme Administrator announces the closure of programme after receipt of applications aggregating to 110 MW capacity nationwide.

40. In the second stage, a project proponent, who has received a certificate of pre-registration from the State Competent Authority, has to apply for registration with the Programme Administrator. The date for commencement of registration process by Programme Administrator was fixed for 15.7.2010 as per the Guidelines. The applicant shall submit online application through web based portal maintained by the Programme Administrator on fulfilment of following conditions:

- i) Issuance of relevant tariff order from concerned State Commission;
- ii) MOU with distribution utility;
- iii) Pre-registration Certificate from State Competent Authority; and
- iv) Commitment Guarantee of requisite amount

41. The process for initial shortlisting of the application for registration with the Programme Administrator shall be closed upon reaching shortlist of proposed installed capacity of 110 MW for projects on all India basis. The initial list of projects considered for registration has been prepared based on projects fulfilling conditions mentioned in the guidelines considering the principle of first-cum-first served. Only projects selected in the initial shortlist shall be considered during subsequent process for registration. For final registration for GBI, the applicant shall fulfil two conditions viz., (1) signing of PPA with concerned distribution utilities and (2) additional commitment guarantee for an amount of Rs.40 lakh per MW. The issuance of registration certificate and letter confirming eligibilities to avail for the project shall be undertaken on a first-come-first served basis until cumulative capacity of 100 MW is reached.

42. Consequent on the Guidelines for the RPSSGP announced on 16.6.2010, the State Competent Authority, the Renewable Energy Agency, Pondicherry, the fourth respondent invited expressions of interest for pre-registration between 1.7.2010 to 9.7.2010. The petitioners appeared to have applied to the fourth respondent for pre-registration on 7.7.2010 and was issued the pre-registration certificate on 14.7.2010.

43. The registration with the Programme Administrator commenced as scheduled on 15.7.2010 and was closed on 20.07.2010 upon receiving sufficient applications for reaching 110 MW. The second respondent received 323 applications on 15.7.2010 itself aggregating to capacities of 367.670 MW.

44. The inclusion in the initial shortlist was subject to physical verification of the requisite documents. However, upon verification of the documents submitted by the petitioners it was noticed that the petitioners have falsely declared the date of MOU between it and the Electricity Department, Government of Puducherry.

45. The petitioners have stated in their online application that the MOU with the State Distribution Utility had been concluded on 15.7.2010 while in fact the same was concluded on 21.7.2010 i.e., after closing of the registration by the second respondent.

46. Since a State Commission has the power to issue a tariff order accepting an application and also the power to reject the application for a tariff order under Section 64 of the Electricity Act, 2003, the prior existence of tariff order was made a condition for timely achievement and certainty of the projects.

47. Clauses 3.2.1 and 3.2.2 of the Guidelines are necessary conditions for timely implementation of the programme and for giving a legal certainty to the programme and are therefore justified. The guidelines apply only to projects with installed capacity of 100 KW and upto 2 MW having grid connectivity at HT level (below 33 kV) of the distribution network.

48. As per the guidelines, the petitioners were eligible for registration with the Programme Administrator only after it had fulfilled the conditions of 3.2.1 including the condition of issuance of relevant tariff order from the State Commission and execution of Power Purchase Agreement. The on line submission form for initial short listing with the Programme Administrator contains a column for entering the date of signing of MOU to evidence the fulfilment of that condition. The petitioners had entered 15.7.2010 as the date of the signing of MOU. Further, according to the guidelines, the petitioners have to print the acknowledgement of the online submission and submit the application in physical form along with all necessary enclosures within 7 days from the date of submission of online application. The inclusion in the final registration list was

subject to physical verification of the requisite documents received by the Programme Administrator. The petitioners have deliberately given incorrect date as MOU signing date knowing fully well that it had not executed the MOU submitted by the petitioners subsequent to the closure of the online application, the MOU was entered into on 21.7.2010. The non-execution of MOU at the time of application alone is sufficient to dis-entitle the petitioners from being considered under the Scheme.

49. As per Sec.64 of the Electricity Act, 2003, the appropriate commission shall within 120 days from the receipt of application, issue tariff orders after considering all suggestions and objections received from the public. Sec.64 of the Electricity Act, 2003 shall also give powers to the State Commission to reject the application. The petitioners could have approached the appropriate State Commission well before the time and for the inaction of the petitioners, an important National Mission with global ramifications ought not to be allowed to suffer. There is no binding condition that project proponents can apply for setting up a project in any particular State. Any Project developer can apply to any State for setting up of a project, subject to acceptance of that proposal by the State. The condition of issuance of tariff order has been made to instill certainty in the programme for the target persons viz, distribution utilities to enter into contracts with full knowledge of the rights and liabilities. Therefore, the tariff order should be issued before the completion of the process of registration. On the other hand since the Power Purchase Agreement has to be concluded before registration, the prior issue of tariff order is mandatory.

50. According to the second respondent, a total aggregating capacity of 98.05 MW has been awarded to 78 project developers; out of which, 69 project proponents have reported commissioning of their projects with aggregate capacity of 88.8 MW and their documents have been accepted at IREDA. One project of 1 MW is sub-judice and kept in abeyance, in view of a pending criminal case and for two projects of 1 MW (each), project commissioning certificate is under consideration. Six projects with aggregate capacity of 6.25 MW have been cancelled for non-commissioning within the stipulated time period.

51. The waiting list of project proponents has been cancelled by the first respondent in May 2012 and the bank guarantee/commitment guarantees have been returned to the waitlisted project proponents.

No other projects are proposed to be sanctioned under the programme.

52. Pilot Project intended to give a huge thrust to the development of solar energy in the country. At the time of the formulation of the programme, the solar energy was priced very high. Subsequently, because of the environment created by the first respondent for development of solar energy, the solar energy price has become very competitive now. In view of the drastic drop in the cost of solar energy and the fact that there are a number of entrepreneurs, who are setting up solar power plants without generation based incentive, the first respondent has cancelled the wait-listed projects for financial reasons in public interest. The Government introduced a new scheme to promote larger capacity projects on tariff based bidding route which has led to intense competition amongst solar power developers and consequently to significant reduction of bidden solar tariff to as low as Rs.7.49 per kwh as against the tariff of Rs.10.58 per kwh announced by the JERC in July 2012. The cancelled projects are not intended to be allotted to any other person in view of the above said facts. Phase-I of the JNNSM is scheduled for completion in March 2013 and the Government is now in the process of finalising new guidelines for phase-II of the Mission which will be commenced from April 2013, subject to approval of competent authorities. The petitioners are welcome to participate under the new scheme of JNNSM phase - II when the same is announced.

53. Mr.Vijay Narayan, learned Senior Counsel for the petitioner submitted that by making determination of tariff a pre-requisite for being eligible to participate in the registration process, the first respondent has created a classification of the States and Union Territories into those where tariff has been fixed and those where tariff has not been fixed. Further, the learned Senior Counsel submitted that the classification is bad and also submitted that as per the guidelines the entire selection process is to be on first come first served basis and even while fixing the GBI, the tariff fixed by the SERC is not taken into account before the projects are selected and that the rate at which the utility of the state is going to purchase the solar power is not relevant even after implementation of the projects as the incentive which is given by the second respondent to the utility is determined only on the basis of the tariff of the CERC and irrespective of whether the tariff is for purpose of purchase of power by the utility, the incentive remains unchanged.

54. Further, the learned Senior Counsel submitted that the classification is also irrational since the determination of tariff is a statutory function to be carried out by the respective ERCs and project proponents cannot have any control over the same and hence the non-performance of the statutory duty by the ERC cannot be made the basis for the projects proponent of some states alone being not considered for selection. Further, as per the guidelines, the state utility is only required to sign an MoU with the project proponent and in the case on hand, the third respondent, which is the state utility in Puducherry, has signed MoUs dated 21.7.2010 with the petitioners confirming that it would purchase the entire power generated by the plants to be set up by the Petitioners at the tariff to be determined by the ERC.

55. Further, the learned Senior Counsel submitted that the guidelines give preference to States where the ERCs have fixed the tariff which will lead to concentration of the projects only in such States and the other States and Union Territories will be ignored. Further, the learned Senior Counsel submitted that the policy decisions of the Government can be interfered with, if it is arbitrary and irrational. Though the petitioner had participated in the process of selection, since the guidelines are irrational and not having any nexus to the object of selecting projects, the petitioners can question the guidelines.

56. In support of his contention, Mr. Vijay Narayan, learned Senior Counsel for the petitioners relied on the following judgments:

(i) AIR 1995 SC 1811 (L.I.C. Of India and another vs Consumer Education and Research Centre and others), wherein the Apex Court has held as follows:

29. The contention of the appellants is that the offending clause is a valid classification. The salaried group of lives from the government, semi-government or reputed commercial institutions from a class with a view to identify the health conditions, the policy was applied to that class of lives. No mandamus would be issued to declare the classification as unconstitutional when it bears reasonable nexus to the object and there is intelligible differentia between the

salaried lives and the rest. The High Court, therefore, was wrong in declaring the offending clause as arbitrary violating Article 14. It is true that the appellant is entitled to issue the policy applicable to a particular group or class of lives entitled to avail contract of insurance with the appellant but a class or a group does mean that the classification meets the demand of equality, fairness and justness. The doctrine of classification is only a subsidiary rule evolved by the courts to give practical content to the doctrine of equality, over-emphasis on the doctrine of classification or anxious or sustained attempt to discover some basis for classification may gradually and imperceptly erode the profound potency of the glorious content of equality enshrined in Article 14 of the Constitution. The over-emphasis on classification would inevitably result in substitution of the doctrine of classification to the doctrine of equality and the Preamble of the Constitution which is an integral part and scheme of the Constitution. Menaka Gandhi ratio extricated it from this moribund and put its elasticity for egalitarian path finder. Lest, the classification would deny equality to the larger segments of the society. The classification based on employment in government, semi-government and reputed commercial firms has the insidious and inevitable effect of excluding lives in vast rural and urban areas engaged in unorganised or self-employed sectors to have life insurance offending Article 14 of the Constitution and socio-economic justice.

ii) A.I.R 1982 SC 1301 (State of Maharashtra vs Rak Kumar), wherein, the Apex Court has held as follows:

We have gone through the rules framed by the Government and adopted by the Public Service

Commission and we find that the Rules framed suffer from clear and serious constitutional infirmities as a result of which the impugned Rules have been rightly struck down by the High Court. In the first place the object of the rule was to take officers who had full knowledge of rural life, its problems, aptitudes, working of the people in villages and the suitability for working as officers in the rural areas so as to be materially useful and in order to make a constructive contribution to the upliftment of rural life. In order to achieve this purpose a Rule was made that a candidate coming from the rural areas will be a rural candidate and he must have passed S.S.C. Examination which is held from a village or a town having only a 'C' type Municipality. This rule, however, when translated into action does not seem to fulfil or carry out the object sought to be achieved because as the Rule stands any person who may not have lived in a village at all can appear for S.S.C. Examination from a village and yet become eligible for selection in the competitive examination. Thus there is no nexus between the classification made (assuming for the purpose of this case that such a classification is unreasonable) and the object which is sought to be achieved as a result of which the rule is clearly violative of Articles 14 and 16 of the Constitution of India".

(iii) AIR 1996 SC 51 (Sterling Computers Ltd vs M/s M and N Publications Ltd and others), wherein, the Apex Court has held as follows:

23. The case of State of Madhya Pradesh v. Nandal Jaiswal (supra) related to grant of liquor licences. The procedure adopted for such grant were being challenged as being violative of Article 14 of the Constitution. It was said by this Court:-

"But, while considering the applicability of Article 14 in such a case, we must bear in mind that, having regard to the nature of the trade or business, the Court would be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor. The Court would, in view of the inherently pernicious nature of the commodity allow a large measure of latitude to the State Government in determining its policy of regulating, manufacture and sale of liquor would essentially be a matter of economic policy where the court would hesitate to intervene and strike down what the State Government has done, unless it appears to be plainly arbitrary, irrational or mala fide." But even in that case it was said:- No one can claim as against the state the right to carry on trade or business in liquor and the State cannot be compelled to part with its exclusive right or privilege of manufacturing and selling liquor. But when the State decides to grant such right or privilege to others the State cannot escape the rigour of Article 14. It cannot act arbitrarily or at its sweet will. It must comply with the equality clause while granting the exclusive right or privilege of manufacturing or selling liquor."

The execution of the supplemental agreement cannot be considered at par with the grant of a liquor licence, which related to any economic policy".

(iv) A.I.R. 2002 SC 2877 (Kailash Chand Sharma vs State of Rajasthan and others), wherein the Apex Court has held as follows;

"12. The first and foremost question that would arise for consideration in this group of appeals is, whether the circular dated 10.6.1998 providing for bonus marks for residents of the concerned district and the rural areas within that district is constitutionally valid tested on the touchstone of Art.16 read with Art.14 of the Constitution? It is on this aspect, learned Senior Counsel appearing for the candidates concerned have argued at length with admirable clarity, making copious reference to several pronouncements of this Court. There can be little doubt that the impugned circular is the product of the policy decision taken by the State Government. Even then, as rightly pointed out by the High Court, such decision has to pass the test of Arts.14 and 16 of the Constitution. If the policy-decision, which in the present case has the undoubted effect of deviating from the normal and salutary rule of selection based on merit is subversive of the doctrine of equality, it cannot sustain. It should be free from the vice of arbitrariness and conform to the well settled norms both positive and negative underlying Arts.14 and 16, which together with Art.15 form part of the constitutional Code of equality".

57. Countering the submissions made by the learned Senior Counsel for the petitioners, Mr.G. Masilamani, learned Senior Counsel appearing for the second respondent submitted that the petitioners had misrepresented in the online registration with the second respondent for initial shortlisting. In the online application dated 21.7.2010 the petitioners had stated that they have already purchased the land and in paragraph - 8 of their affidavit, filed in support of a petition to fix an early date in W.P.No.16983/2010, they have stated that they have not concluded the purchase of the land.

58. In the application made by the petitioner to the second respondent dated 15.7.2010, the petitioner mentioned the date of signing of MoU as 15.7.2010, whereas, on verification of the physical documents, it was noticed that MoU was dated 21.7.2010. Therefore, according to the learned Senior Counsel, the petitioners crossed each of the registration stages by making false declarations. Further, according to the learned Senior Counsel appearing for the second respondent, the petitioner in WP No.19943 of 2010 gave a false information in Sl.No.8 that it had signed the PPA on 13.8.2010, whereas the petitioner has not entered into a PPA. Having made a false representation in his applications, the petitioners are not entitled to claim any right. The petitioner is not at all eligible for registration of the initial shortlisting for the reason that it voluntarily applied for registration in Puducherry. Knowing fully well that according to a key feature of the selection procedure of the guidelines, project schemes from States, where tariff tenure was determined for a period of 25 years, alone shall be eligible to participate in the programme the petitioner applied eventhough it did not possess the eligibility conditions. Having participated in the process voluntarily, the petitioner is not entitled to any relief, questioning the guidelines.

59. The learned Senior Counsel also submitted that both the petitioners function out of the same office address and since the petitioners are questioning the policy decisions, the writ petitions are liable to be dismissed.

60. In support of his contentions, the learned Senior Counsel relied upon the following judgments:

(i) (2008) 4 SCC 171 (Dhananjay Malik and others vs State of Uttaranchal and others), wherein, the Apex Court has held as follows:

"7. It is not disputed that the respondent-writ petitioners herein participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as BPE or graduate with diploma in Physical

Education. Having unsuccessfully participated in the process of selection without any demur they are estopped from challenging the selection criterion inter alia that the advertisement and selection with regard to requisite educational qualifications were contrary to the Rules.

8. In Madan Lal vs State of J & K this Court pointed out that when the petitioners appeared at the oral interview conducted by the members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned, the petitioners took a chance to get themselves selected at the said oral interview. Therefore, only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed writ petitions. This Court further pointed out that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.

9. In the present case, as already pointed out, the respondent-writ petitioners herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done."

(ii) (2010) (2) SCC 114 (Dalip Singh vs State of Uttar Pradesh and others), wherein the Apex Court has held as follows:

7. In Prestige Lights Ltd v SBI it was held that in exercising power under Article 226 of the Constitution of India the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under Article 226 of the Constitution is duty-bound to place all the facts before the Court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain a petition filed under Article 226 of the Constitution. This Court referred to the judgment of Scrutton, L.J., in R v Kensington Income Tax Commissioners and observed (Prestige Lights Ltd case SCC p 462, para 35)

In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, then the Court may dismiss the action without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very

functioning of the writ courts would become impossible.

(iii) An unreported Judgment dated 1.12.2011 in WP No.15416 of 2010, wherein, this Court held as follows:

6. It is not in dispute that the petitioner being a Project Proponent submitted the application, in accordance with the guidelines issued. Therefore, this Court finds considerable force in the submissions made by the learned Senior Counsel appearing for the 3rd respondent that the writ petition filed is not maintainable in law and facts, since allowing the writ petition would amount to declaring the guidelines which have been published as illegal, as a matter of policy, after hearing all possible objections. The petitioner having participated in the pre-registration procedure by making the application is not entitled for such a relief. The petitioner, even assuming has got grievance against the rejection of the application made for pre-registration, cannot seek a writ of mandamus forbearing the 3rd respondent from publishing the list which is already done. As per the guidelines, the applicants holding certificates of pre-registration will have to register themselves on line with the third respondent and therefore, in view of such an optional Act, it cannot be said that the list sent by the espondents 1 and 2 shall not be given effect to.

11. When the petitioners have not satisfied the criteria, stipulated under the regulations which they are bound to comply with, they cannot question the consequential procedure adopted by the 3rd respondent. As submitted by the learned Senior Counsel appearing for the 3rd respondent, registrations have been made by various private respondents on their own with the 3rd respondent. The hard copies of the documents were received by the 3rd respondent in accordance with the

regulations and after scrutinising the same, the list has been published. Therefore, when the petitioners have lost their right at the pre-registration stage itself, consequently, they do not have any legal right to question the subsequent action of the 3rd respondent. It is also to be seen that pursuant to the publication of the list, substantial work has been done by various parties. As the petitioners are aware of the regulations, it is not mandatory on the part of the respondents 1 and 2 to give sufficient reasons while rejecting the applications and in any case, in the absence of any material to substantiate that the rejection was arbitrary, no relief can be granted by this Court in exercise of the discretionary power under Article 226 of Constitution of India.

12. Considering the jurisdiction of this Court to interfere with the Commercial transaction, the Hon'ble Apex Court reported in 2000 (2) SCC617 in *Air India Ltd vs Cochin International Airport Ltd*, has held as follows:

" 7.... The State, its corporatins, instrumentalities and agencies have the public duty to be fair to all conerned. Even when some defect is found in the decision making process the court must exercise it discretionary power under Article 226 with great caution and should eercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene."

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61. The above writ petitions have been filed to issue a Writ of Certiorarified Mandamus to quash the clauses 3.2.1, 3.2.2 and 3.2.9 of the guidelines and 1(b) of instructions for final registration process for GBI.

62. Clauses 3.2.1 of the guidelines stipulated that four conditions were to be fulfilled for initial shortlisting. Among them, the conditions that the execution of MoU with a distribution utility and the issuance of relevant tariff order from the concerned SERC as pre-conditions for registration for initial shortlisting and that the applications from the Project Proponents from any State shall be considered only if the concerned SERC has issued the order determining tariff for rooftop/small solar generating systems for purchase of electricity by the distribution utilities in that State.

63. W.P.Nos.16983 and 19940 of 2010 have been filed by Saheli Exports Private Limited challenging clauses 3.2.1, 3.2.2, 3.2.9 of the guidelines and 1(b) of the instructions for final registration process for GBI.

64. W.P.No.19940 of 2010 has been filed by Sangameswara Energy Private Limited, challenging clauses 3.2.1 and 3.2.2. It is pertinent to note that both the Companies are functioning in the same address.

65. The second respondent published the draft guidelines for programme on 13.3.2000 and pre-registration for the programme commenced on 1.7.2010. The writ petitioners applied for pre-registration with the State Competent Authority on 7.7.2010 and for the initial registration with the second respondent on 15.7.2010. The guidelines were issued on 16.6.2010 under the Jawaharlal Nehru National Solar Mission. This Mission is one of the 8 National Missions which comprise India's National Action Plan on climate Change. The Solar Mission was launched on 11.1.2010 and was to be implemented in 3 stages leading to an installed capacity of 20,000 MW of grid power, 2000 MW of off-grid solar applications and 20 million sq.m solar thermal collector area and solar lighting for 20 million households by end of 2022. The second respondent was appointed as the Programme Administrator by the Ministry.

66. The implementation of the Solar Mission was divided into 3 clear phases. Phase-I for implementing 100 MW of Small Solar Power Plants ended on 31.3.2013 and the Government also launched Phase-2 of the Solar Mission thereafter. Phase-I of the Mission was successful

that the target date for selling solar power at the same rate as conventional electricity (grid parity) was advanced by 5 years to 2017.

67. The Power Purchase Agreement (PPA) is a key feature of the Guidelines for Phase-I, whereas, SERC is also a key feature of the guidelines. The Explanation to paragraph 1 of the Guidelines made it clear that the project schemes from States wherein tariff tenure for duration of 25 years with tariff structure on flat basis has been determined by SERC shall alone be considered to be eligible to participate in the programme. Clauses 3.2.1 and 3.2.2 only reiterated this key feature of the guidelines. It is pertinent to extract clauses 3.2.1 and 3.2.2 which read as follows:

" 3.2.1 All applications fulfilling four conditions viz., (a) issuance of relevant Tariff Order from concerned SERC (b) MOU with utility, (c) Pre-Registration Certificate from State Competent Authority and (d) Commitment Guarantee of requisite amount shall be eligible for registration with the Programme Administrator.

3.2.2. The Project Proponents shall submit applications for registration with Programme Administrator under the "RPSSGP". Programme Administrator shall provide format for application. The Application for Registration shall be accompanied by a copy of MoU between the Project Proponent and the local distribution utility and Certificate of Pre-Registration issued by the State Competent Authority. The applications from the Project Proponents from any State shall be considered only if the concerned SERC has issued the order determining tariff for rooftop/small solar generating systems for purchase of electricity by the distribution utilities in that State.

68. Clause 3.2.1 stipulated the execution of MoU with a distribution utility and the issuance of relevant tariff order from the concerned SERC as pre-conditions for registration for initial shortlisting with the second respondent. The registration for initial

shortlisting with the second respondent was the second stage of the selection process. The preparation of the initial shortlist of applications for selection of project proponents was made on a first come first served basis after due verification of the documents like MOU etc. Further, the registration for initial shortlisting with the second respondent would be closed when the shortlist of project proponents reaches an installed capacity of 110 MW for projects on all India basis.

69. As already stated in the guidelines and the selection procedure of the guidelines the project shemes from States wherein tariff tenure for duration of 25 years with tariff structure on flat basis has been determined by SERC shall alone be considered to be eligible to participate in the programme. Knowing fully well about these clauses, the petitioners voluntarily applied for registration in Puducherry.

70. So far as clause No.3.2.9 is concerned, it stipulated that the petitioner shall submit an online application for final registration. Online application shall include details of power purchase agreement with distribution utility and the inclusion in the final registration list was subject to the physical verification of the requisite documents including the PPA by the second respondent. The issuance of the Registration Certificate and letter confirming applicability GBI for the project was undertaken on a first come-first served basis.

71. It is pertinent to extract clause No.3.2.9 which reads as follows:

" 3.2.9. After fulfilment of requisite conditions for registration, the applicant shall submit an online application through a web-based portal maintained by the Programme Administrator. The online application shall include details of power purchase agreement with distribution licensee, additional commitment guarantee, etc. The web-based portal system would generate a unique project code for each application confirming submission of application for final registration with system generated date and time of submission. The Applicant shall print the project code details and submit the Application in physical form along with all necessary enclosures within 7 days from

date of submission of online application. The inclusion in the final registration list shall be subject to physical verification of the requisite documents received by Programme Administrator. The issuance of Registration Certificate and letter confirming applicability of GBI for the Project shall be undertaken on a first-come-first served basis until cumulative capacity of projects under Category-1 reaches 90MW. The Programme Administrator shall ensure that final registration of Projects per State shall normally not exceed 20 MW."

72. On a perusal of the online application submitted by the petitioner, it could be seen that the petitioner had informed the State Competent Authority that it had possession of 5 acres of land as on the date of application and that the land was fully acquired and in its letter to the Joint Electricity Regulatory Commission (JERC), the petitioner informed the Commission that it had already purchased the land. The application to the State Competent Authority was made on 7.7.2010 and based on the information provided to the State Competent Authority, the Authority issued the pre-registration certificate.

73. It was brought to the notice of this court that in paragraph-8 of the affidavit, filed in support of the petition to fix an early date for final hearing of W.P.N.16983/2000, the petitioner made a statement stating that it is not being able to conclude purchase of the land. That apart, in the application made for online registration to the second respondent on 15.7.2010, the petitioner mentioned the date of signing of MoU as 15.7.2010. As per the guidelines, signing of MoU was a condition of eligibility for initial registration with the second respondent. When the second respondent received the physical documents for verification, it was noticed that the MoU was dated 21.7.2010.

74. The petitioner in W.P.No.19943 of 2010 had stated in the online application that it had signed PPA on 13.8.2010. However, in the letter written by the third respondent, Electricity Department, Government of Puducherry have stated that PPA was not entered on 13.8.2010.

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75. From the above, it is clear that the petitioners have made false representations before the respondents. Therefore, the entry of the petitioners in the shortlist itself is through misrepresentation and giving false information in the online application.

76. It is pertinent to note that the petitioner in W.P.No.19943 of 2010 viz., Sangameswara Energy Private Limited has not challenged the validity of clause 3.2.9 of the guidelines and 1(b) of the instructions for final registration of GBI relating to PPA. However, they have not signed PPA as stipulated in clause 3.2.9. When the petitioner in WP No.19943 of 2010 has not signed PPA and also has not challenged the said clause in the guidelines, I do not find any merit in entertaining the said writ petition.

77. Moreover the said conditions were clearly set-forth in the Guidelines. The draft guidelines of the programme were published for obtaining public and stakeholders suggestions and objections from 13.3.2010 to 31.3.2010. The comments were studied by the 1st and 2nd respondent and the Guidelines were announced on 16.6.2010. All stakeholders were aware of the conditions for registration and short listing as early as from March 2010.

78. As per clause 3.2.7, the initial shortlist shall be updated when a project proponent signs the PPA. The execution of PPA with the concerned distribution utility was a pre-condition for final registration under clause 3.2.9 of the Guidelines. The online registration for final shortlist was opened on 23.8.2010 and the second respondent also registered online on the same date.

79. In the judgment reported in (2008) 4 SCC 171 (Dhananjay Malik and others vs State of Uttaranchal and others), the Apex Court held that "having unsuccessfully participated in the process of selection without any demur, the petitioner is estopped from challenging the selection criterion inter alia that the advertisement and selection with regard to requisite qualifications".

80. The ratio laid down by the Apex Court squarely applies to the facts and circumstances of the present case. In the case on hand, the petitioners had participated in the selection process without any demur and after submitting their applications and getting themselves registered, they cannot now turn around and question the guidelines which were issued as early as on 16.6.2010 by the first respondent Ministry.

81. The guidelines are policy decisions of the Government, prescribing certain eligibility criteria. The petitioners participated in the selection process on their own without any compulsion by the respondents. That being the case, the petitioners cannot challenge the clauses mentioned in the guidelines.

82. The petitioners not only misrepresented regarding the date of entry in the MoU, but also gave false information that it entered into the PPA on 13.8.2010. When the petitioners in WP Nos.16983 and 19943 of 2010 were not eligible for selection as Project Proponent under the guidelines and that they made false representation at the time of submitting their on line applications to enable them to be shortlisted, the case of the petitioner is unsustainable by any means.

83. The Apex Court in the judgment reported in (2010) (2) SCC 114 (Dalip Singh vs State of Uttar Pradesh and others) cited supra held that a person, who invokes Article 226 of the Constitution is duty-bound to place all the facts before the Court without any reservation. The ratio laid down in the said judgment applies to the present case.

84. As rightly contended by the learned Senior Counsel for the second respondent, the petitioner in WP Nos.16983 and 19943 of 2010, which is a Chennai based Company could have applied from any other State or Union Territory in India where tariff was fixed by SERC and where the distribution utility was willing to conclude a PPA. Further it is not a clause that a Project proponent must apply only from the State where they are situated.

85. The policy decisions of the Government cannot be questioned by the petitioners, unless the policy is against the principles of the Constitution of India or arbitrary in nature. For the reasons stated above, the clauses 3.2.1, 3.2.2, 3.2.9 and 1(b) of the

instructions for final registration process of GBI relating to PPA cannot be said to be unconstitutional or arbitrary. More so, the petitioners themselves have submitted their application without any demur whatsoever.

86. Though there is no dispute with regard to the ratio laid down in the judgments relied upon by the learned Senior Counsel

appearing for the petitioner, since the facts and circumstances of the present cases are different, the same are not applicable to the case on hand.

87. In the unreported judgment dated 1.12.2011 in W.P.No.15416 of 2010, this Court held that in the absence of any material to substantiate that the rejection was arbitrary, no relief can be granted by this Court in exercise of the discretionary power under Article 226 of the Constitution of India and the Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene.

88. In the present case, the petitioners have not substantiated that the clauses are arbitrary and that overwhelming public interest requires interference. In the absence of the same, the writ petitions are liable to be rejected.

89. In these circumstances, I do not find any merit in the writ petitions and the same are liable to be dismissed. Accordingly, all the writ petitions are dismissed. No costs. Consequently, connected MPs are closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

sr

To

1. The Secretary,
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WEB COPY

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2 CCs to Sr. Government Pleader cum Sr.Public Prosecutor for
Puducherry, SR.No. 14854 & 14853

1 CC to Mr.Krishna Ravindran, Advocate SR.No. 14918

1 CC to K.Gunasekar, Advocate SR.No. 14695

1 CC to A.K. Sridharan, Advocate SR.No. 14894

W.P.Nos.16983, 19940 and 19943 of 2010

SAI (CO)
PSI (26.03.2015)

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