

IN THE HIGH COURT OF JUDICATURE AT MADRAS**RESERVED ON : 15.09.2017****PRONOUNCED ON : 20.09.2017****CORAM:****THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN****Writ Petition No.24280 of 2016 and
W.M.P.Nos.20754 of 2016 and 22220 of 2017**

S.P.Sreenivas

...Petitioner

.. Vs ..

1.The Director of Vigilance and
Anti Corruption,
NCB 21 to 28, P.S.Kumarasamy Raja Salai,
(Greenways Road), Raja Annamalaipuram,
Chennai – 600 028.

2.The State of Tamil Nadu,
Rep. By its Chief Secretary
cum Vigilance Commissioner,
Secretariat Fort St. George,
Chennai – 600 009.

3.The Home Secretary,
Secretariat,
Fort St. George,
Chennai – 9.

4.The Joint Director and
Head of Zone (Chennai),
Central Bureau of Investigation,
IIIrd Floor, EVK Sampath Building,
College Road, Chennai – 6.

.. Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a writ of mandamus to direct the respondents 1 to 3 to transfer the investigation relating to the petitioner's complaint dated 01.03.2016 from the file of the first respondent to the file of CBI, the fourth respondent herein for fair, proper and impartial investigation and consequently, to direct the fourth respondent to undertake impartial investigation within a time frame manner and file a final report before the appropriate court.

For Petitioner : Mr.M.Manivasagam, for
M/s.M.Manivasagam Associates

For Respondents : Mr.C.Manishankar,
Additional Advocate General,
Assisted by Mr.S.Babu,
Government Advocate

सत्यमेव जयते **ORDER**

The writ petitioner claiming himself as a consumer of electricity alleges that illegality or irregularity has been committed by the members of the Tamil Nadu Electricity Regulatory Commission (hereinafter referred to as "the TNERC") in connivance with the officials of the Tamil Nadu Generation and Distribution Corporation (hereinafter referred to as "the TANGEDCO") and

politicians in purchase of electricity produced by Solar Power Generators in order to benefit certain Solar Power Generators thereby causing proportionate loss to the State running to several thousand crores. Hence, the petitioner gave a complaint on 01.03.2016, to the Director of Vigilance and Anti Corruption, Chennai, the first respondent herein, seeking prosecution of the offenders. Since, there was no action taken by the first respondent, the petitioner filed Crl.O.P.No.9506 of 2016, on the file of this Court seeking direction to register a case based on his complaint dated 01.03.2016 and investigate the same in accordance with law. After filing counter by the respondents therein, the said Criminal Original Petition was withdrawn by the petitioner.

2.Now, the present writ petition has been filed by the petitioner seeking transfer of investigation relating to the petitioner's complaint dated 01.03.2016 from the file of the first respondent to the file of Central Bureau of Investigation, the fourth respondent herein for fair, proper and impartial investigation and consequently, to direct the fourth respondent to undertake impartial investigation, within a time frame manner and file a final report before the appropriate court.

3.The grievance of the petitioner is that, a major scam involving Rs.25 crores causing un-imaginary loss to the Government exchequer has happened due to the illegal act of certain officials of the TANGEDCO and the members of the TNERC in connivance with the then Minister for Electricity. The complaint lodged by him has been closed by the Chief Secretary cum Vigilance Commissioner and Commissioner for Administrative Reforms, Chennai, stating that there is no truth in the allegations on the complaint made by the petitioner. Hence, the report of the Chairman cum Managing Director, TANGEDCO as forwarded by the Energy Department is endorsed to the Director, Directorate of Vigilance and Anti Corruption, Chennai, for further action.

4.According to the petitioner, the said communication is suffice to infer that the respondents are not inclined to take action upon the complaint of the petitioner, disclosing gross abuse of solar power and wrongful loss to the Government Exchequer in purchase of solar energy at the rate of Rs.7.01 per unit. Therefore, according to the petitioner, it has become imminent to investigate the complaint preferred by him by any specialised agency like Central Bureau of Investigation, which could not be influenced by the State

bureaucrats or politicians.

5.The learned Additional Advocate General appearing for the respondents submitted that the allegation made by the writ petitioner is highly motivated and imaginary one. Regarding power purchase; distribution of power and fixation of price are all now well controlled and regulated by the Electricity Act, 2003 (hereinafter referred to as "the Act"). Under the said Act, the TNERC is constituted and its regulations are controlled and decided by the State Commission and not by TANGEDCO. If any person aggrieved by the fixation of tariff, appeal provision is provided under the Act. Any aggrieved person may prefer the appeal to the Appellate Tribunal. The vexatious allegations made by the petitioner in the affidavit that the purchase price of solar energy was fixed at an higher rate in order to benefit certain manufacturers and those manufacturers were facilitated to participate in the tender by extending the control period are all malicious allegations based on facts misconceived for the reason best known.

6.If the petitioner claims to be a consumer and the purchase price of Rs.7.01 per unit fixed by the TNERC, is on the higher side, it is always open to him to approach the Appellate Tribunal under

the Act. In fact, the TNERC by its order No.4 of 2015 dated 01.04.2015 after considering the factual scenario of manufacturing solar power and distribution in the State and the objection of implementing the solar policy of Government by certain vested interest leading to appeal before the Appellate Tribunal for Electricity (APTEL) had taken a conscious decision to modify the control period for the purpose of purchase of solar power as one year from the date of the order (dated 01.04.2015) instead of one year from the date of order No.7 of 2014 (dated 12.09.2014). Out of three members, one of the member has recorded his dissent for extending the control period. However, this decision has been taken by the majority and if at all any person is aggrieved by the said extension, it could be aggitated before APTEL by any power generators and not the petitioner who claims to be the consumer. Thus, either way, the petitioner, if aggrieved by the price fixation, can approach the statutory appellate tribunal (APTEL) and he can have no *locus standi* to question re-fixation of the control period since, he has no element of grievance about it. In fact, the modification of control period is in accordance with the provision of law and there is no illegality or irregularity in modifying the control period. The reason for modifying the control period is explicitly recorded in order No.4 of 2015 dated 01.04.2015 passed

by the TNERC as per the Act. Hence, the learned Additional Advocate General seeks for dismissal of the writ petition.

7. After the advent of Electricity Act 2003, the law governing purchase, distribution and consumption of power are well defined and regulated. So far as the fixation of tariff is concerned, Section 61 of the Act reads as under:-

"Section 61. (Tariff regulations):

The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-

- (a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;
- (b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;
- (c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;

- (d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;
- (e) the principles rewarding efficiency in performance;
- (f) multi year tariff principles;
- (g) that the tariff progressively reflects the cost of supply of electricity and also, reduces cross-subsidies in the manner specified by the Appropriate Commission;]
- (h) the promotion of co-generation and generation of electricity from renewable sources of energy;
- (i) the National Electricity Policy and tariff policy:

Provided that the terms and conditions for determination of tariff under the Electricity (Supply) Act, 1948, the Electricity Regulatory Commission Act, 1998 and the enactments specified in the Schedule as they stood immediately before the appointed date, shall continue to apply for a period of one year or until the terms and conditions for tariff are specified under this section, whichever is earlier."

Section 62 of the Act, empowers the State Regulatory Commission to determine the tariff in accordance with the provision of the Act.

It give right to the Commission to purchase electricity by entering into agreement between the generating company and a licensee or between the licensees, for a period not exceeding one year to ensure reasonable prices of electricity in case of shortage of supply of electricity. Thus, the order of the TNERC dated 01.04.2015 passed in accordance with the power conferred under the statute. The decision of State Regulatory Commission is amenable for challenge by preferring appeal to the appellate authority (APTEL) constituted under Section 110 of the Electricity Act, 2003 which empowers any person aggrieved by an order made by the adjudicating authority shall approach the Appellate Tribunal for Electricity (APTEL). So, viewed from any angle, the grievance projected by the writ petitioner alleging illegality committed by the officials of TANGEDCO and some members of TNERC in connivance with the Minister for Electricity, can very well be decided by the appropriate forum constituted under the Act viz., the Appellate Tribunal for Electricity (APTEL).

8.From the counter filed by the respondents as well as from the perusal of the records, this Court finds that the alleged illegality of entering into contract with certain generators is ill-conceived. The fixation of purchase price @ Rs.7.01 per unit cannot

be presumed to be fixed with an ulterior motive. Even if it is so, it could be challenged before the Appellate Tribunal for Electricity (APTEL). If some ineligible persons were entertained and awarded contract of power purchase as alleged by the petitioner, it is for the other competitors who have participated in the tender and lost the tender to challenge the same. The transaction being a commercial transaction, the person aggrieved must be before the Court and not a third party viz., the petitioner herein claimed to be a consumer. This Court finds no ground to interfere and direct the complaint given by the petitioner to be registered and investigated by any specialised agency whatsoever. Hence, the writ petition is liable to be dismissed.

9. In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes
Speaking order/non speaking order
jbm

20.09.2017

To

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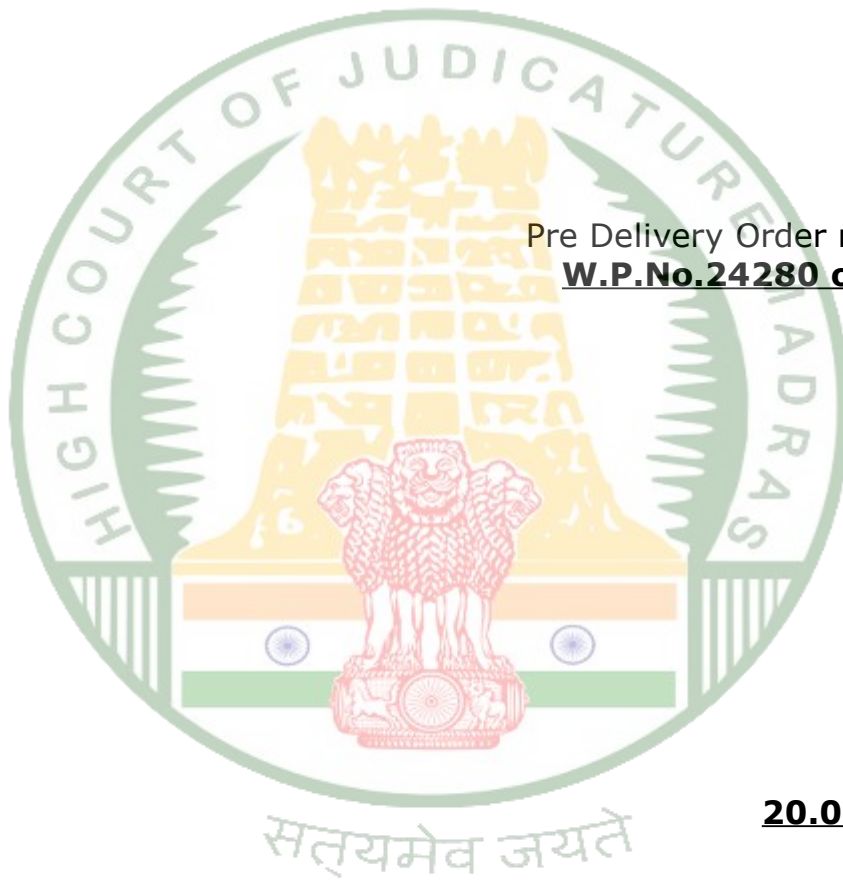
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Head of Zone (Chennai),
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IIIrd Floor, EVK Sampath Building,
College Road, Chennai – 6.

5.The Additional Advocate General,
High Court, Madras.

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Dr.G.JAYACHANDRAN.J.,

jbm



Pre Delivery Order made in
W.P.No.24280 of 2016

20.09.2017

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