

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No.30577 of 2018

and

W.M.P. Nos.35660, 35662 & 35666 of 2018

TANFAC Industries Ltd.,
Represented by its Authorised Signatory,
Plot No.14, SIPCOT Industrial Complex,
Cuddalore - 607 005. Petitioner

Vs.

1. Tamil Nadu Electricity Generation
And Distribution Company (TANGEDCO),
Rep. by its Chairman and Managing Director,
No.144, Anna Salai,
Chennai - 600 002.
2. The Superintending Engineer,
Cuddalore Electricity Distribution Circle,
Capper Hills,
Cuddalore.
3. The Chief Financial Controller/Revenue
TANGEDCO,
No.800, Anna Salai,
Chennai - 600 002. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in impugned demand notice bearing Lr.No.SE/CEDC/CUD/DFC/ AO/REV/AS/D.427/2018 dated 30.10.2018 and quash the same as being arbitrary, illegal, violative of the principles of natural justice besides being violative of the provisions of the Electricity Act, 2003 and Tamil Nadu Electricity Regulatory Commission Grid Connectivity and Intra-State Open Access Regulations, 2014, and forbear the respondents from proceeding against the petitioner in any manner till the

final disposal of the petition before the TNERC.

For Petitioner : Mr.R.Parthasarathy

For Respondents : Mr.M.Varun Kumar,
Standing Counsel for TNEB

O R D E R

The prayer sought for herein is a writ of certiorarified mandamus, to call for the records of the 2nd respondent in impugned demand notice bearing Lr.No.SE/CEDC/CUD/DFC/AO/REV/AS/D.427/2018 dated 30.10.2018 and quash the same, as being arbitrary, illegal, violative of the principles of natural justice, besides being violative of the provisions of the Electricity Act, 2003, and Tamil Nadu Electricity Regulatory Commission Grid Connectivity and Intra-State Open Access Regulations, 2014, and forbear the respondents from proceeding against the petitioner in any manner till the final disposal of the petition before the TNERC.

2.Heard Mr.R.Parthasarathy, learned counsel for the petitioner and Mr.M.Varun Kumar, learned standing counsel, appearing for the respondents.

3.According to the learned counsel for the petitioner, the issue raised in this writ petition has already been taken up in a batch of similar matters in W.P. Nos.2128 of 2017, etc. batch, where, the learned Judge of this Court, by order dated 23.03.2017, after hearing the parties concerned in the said batch of cases, was of the view that, the issue raised therein can be referred to the Tamil Nadu Electricity Regulatory Commission (for brevity "TNERC") for appropriate adjudication.

4.The learned counsel would further submit that, pursuant to the said order referred above, the respondent TANGEDCO already referred the matter to the TNERC and it is further informed by the learned counsel appearing for the that petitioner that, arguments have been heard by the said forum and orders are yet to be passed.

5.In this regard, the learned counsel for the petitioner relied upon the order passed by the learned Judge in the said batch of cases and the said order is extracted hereunder, for easy reference.

"The issue involved in these writ petitions is with respect to the Parallel Operation charges. Now in these writ petitions the proceedings of the third respondent and the consequential proceedings of the second respondent are put into challenge.

2.Considering the facts of the case, this Court of the view that it would be appropriate if the issues are referred to the Tamil Nadu Electricity Regulatory Commission by the respondents and its decision would enable this Court to come to a proper decision.

3.In such view of the matter, a direction is issued to the respondents to refer the issues pertaining to Parallel Operation Charges and the impugned circular dated 03.12.2016 to the Tamil Nadu Electricity Regulatory Commission within a period of two weeks from the date of receipt of a copy of this order. The Commission is expected to give its decision within a period of eight weeks thereafter. While doing so, the Commission shall take into consideration the views of the petitioner as well as the respondents.

4.In view of the above, there is no need to keep the present Writ Petitions pending till the outcome of the decision. It is needless to mention that if the petitioners are aggrieved by the said decision to be taken by the Commission, it is well open to them to have recourse, if they are so advised.

5.Accordingly these Writ Petitions stands disposed of. Till such decision is taken by the Commission the impugned demand notice shall be kept in abeyance."

6.Mr.M.Varun Kumar, learned standing counsel appearing for the respondent TANGEDCO would submit that, pursuant to the reference made, as directed by this Court in the said batch of cases, orders are yet to be passed, even though, arguments were heard by the TNERC, and they are awaiting for the orders to be passed in this regard.

7.However, the fact remains that, by impugned order dated 30.10.2018, the petitioner have been permitted to remit Parallel Operation Charges, since, the issue as to whether the

petitioner is liable to pay the said Parallel Operation Charges is to be decided by the said TNERC in the said batch of cases and once a decision is taken by the said Commission, the issue raised in this writ petition also would be covered.

8. In view of the facts and circumstances, this court is of the considered view that, in this matter also, it is open to the respondents to refer this matter to the TNERC or to wait, till decision is to be taken in the already referred matters.

9. In the result, the following orders are passed in this writ petition.

10. The respondents can refer this matter to the Tamil Nadu Electricity Regulatory Commission, as it is done in earlier occasion in respect of similar matters, of course, pursuant to the directions issued in this regard by this Court, and if the respondents decide to wait till the outcome of the decision to be made by the TNERC in the already referred matters, they can do so. However, it is made clear that, till the final decision is taken by the TNERC on the issue, the impugned order dated 30.10.2018 shall not be given effect to, and shall be kept in abeyance.

With these directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

pds/mkn

To

1. The Chairman/Managing Director,
Tamil Nadu Electricity Generation
and Distribution Company (TANGEDCO),
No.144, Anna Salai,
Chennai - 600 002.

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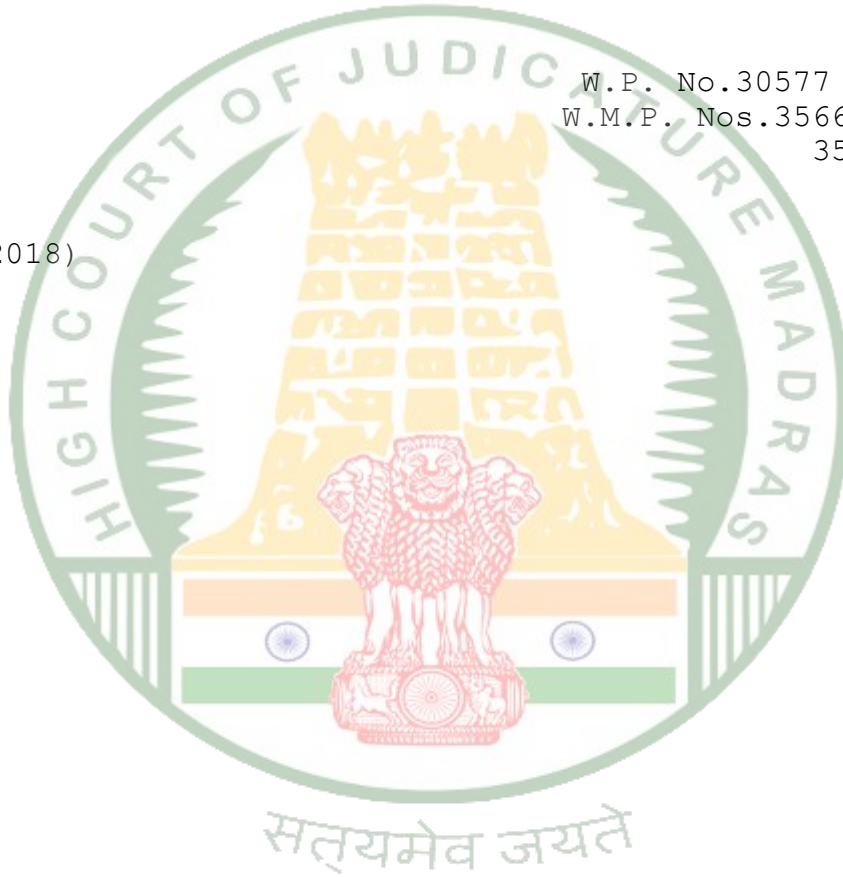
2. The Superintending Engineer,
Cuddalore Electricity Distribution Circle,
Capper Hills,
Cuddalore.

3. The Chief Financial Controller/Revenue,
TANGEDCO,
No.800, Anna Salai,
Chennai - 600 002.

+lcc to Mr. R.Parthasarathy, Advocate, S.R.No. 79094 (27/11/2018)

W.P. No.30577 of 2018 and
W.M.P. Nos.35660, 35662 &
35666 of 2018

MKN (CO)
GN (26/11/2018)



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