

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.07.2019

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition Nos.11133 to 11139 of 2018
and
W.M.P.Nos.13040 to 13048, 13050 to 13061/2018
19444 to 19450 of 2018, 35766, 35784, 35789,
35795, 35803, 35807 and 35808 of 2018

W.P.No.11133 of 2018:

Sri Venkateswara Cotton Yarn Mills Salem Pvt.Ltd.,
Chinnagoundapuram,
Represented by its Authorized Signatory
Mr.M.Balakrishnan,
Ramalingampuram,
Salem-636 106.

.. Petitioner in WP.11133/2018

1 TAMILNADU SPINNING MILLS ASS
O.(REGN.NO.330/1997) 2 KARUR ROAD MODERN
NAGAR DINDIGUL-624 001
REP.BY ITS CHIEF ADVISOR
DR.K.VENKATACHALAM. .. PETITIONER in WP No.11134 of 2018

1 ESWAR RUBBER PRODUCTS PVT LTD
REP BY R.SENTHILKUMAR
SURYA TOWERS 12
MARAVANERI 2ND CROSS
SALEM- 636 007 ... PETITIONER in WP No.11135 of 2018

1 PERUMAL SPINNING MILLS PVT L
TD REP BY R.RANGASAMY CUDDALORE MAIN ROAD
SESHANCHAVADI- 636111
SALEM DISTRICT ... PETITIONER in WP No.11136 of 2018

1 THANGAVEL FABRICS PVT LTD
REP BY T.VIJAYARAGHAVAN S.F. NO.278/3
POOLAKKATTUR AGRAHARAM POST PALLIPALAYAM
ERODE- 638008 ... PETITIONER in WP No.11137 of 2018

1 ALAND SPINNERS PVT.LTD.
 REP. BY MR.N.JAGADEESAN S.F.NO.191/1-B
 KARATTANGKADU THOTTAM MAKKIRIPALAYAM
 SOWTHAPURAM POST
 VEPPADAI-638 008 NAMAKKAL
 DISTRICT ... PETITIONER in WP No.11138 of 2018

1 BALAJI RUBBER INDUSTRIES PVT
 LTD. REP BY R.SENTHIL KUMAR SURYA TOWERS
 NO.12 MARAVENERI 2ND CROSS
 SALEM-636 007. ... PETITIONER in WP No.11139 of 2018

versus/

1.State of Tamil Nadu
Represented by its Secretary,
Department of Energy,
Fort St.George,
Chennai 600 009.

2.Tamil Nadu Generation and Distribution Corporation Ltd.,
Rep.by its Chairman and Managing Director,
144, Anna Salai, Chennai 600 002.

3.Tamil Nadu Transmission Corporation Ltd.(TANTRANSCO),
Represented by its Chairman,
144, Anna Salai,
Chennai 600 002.

4.State Load Despatch Centre (SLDC),
Represented by its Director-Operations,
144, Anna Salai,
Chennai 600 002.

5.Tamil Nadu Electricity Regulatory Commission,
Through its Secretary,
No.19A, Rukmini Lakshmipathy Salai,
Egmore, Chennai 600 008. .. Respondents in WP.11133/2018

1 THE STATE OF TAMIL NADU
 REPRESENTED THROUGH THE PRINCIPAL SECRETARY
 ENERGY DEPARTMENT FORT ST. GEORGE
 CHENNAI- 600 009.

- 2 TAMIL NADU GENERAION AND
DISTRIBUTION CORPORATION LIMITED (TANGEDCO)
10TH FLOOR 144 ANNA SALAI CHENNAI-600 002
REP. BY ITS CHAIRMAN AND MANAGING DIRECTOR.
- 3 STATE LOAD DESPATCH CENTER
(SLDC) 144 ANNA SALAI CHENNAI-600 002
REP. BY ITS DIRECTOR-OPERATIONS.
- 4 TAMILNADU ELECTRICITY
REGULATORY COMMISSION EGMORE
CHENNAI-600 008
REP. BY ITS SECRETARY ... RESPONDENT in WP No.11134 of 2019
- 1 STATE OF TAMIL NADU
REP BY THE PRINCIPAL SECRETARY TO GOVERNMENT
ENERGY DEPARTMENT SECRETARIAT FORT ST.
GEORGE CHENNAI-09
- 2 TAMIL NADU GENERATION AND
DISTRIBUTION CORPORATION LTD REP BY ITS
CHAIRMAN NPKRR MAALIGAI 144 ANNA SALAI
CHENNAI-02
- 3 TAMIL NADU ELECTRICITY
REGULATORY COMMISSION NO.19A RUKMINI
LAKSHMIPATHY SALAI EGMORE CHENNAI-08 REP
BY ITS SECRETARY ... RESPONDENT in WP No.11135 of 2018
- 1 STATE OF TAMIL NADU
REP BY THE PRINCIPAL SECRETARY TO GOVERNMENT
ENERGY DEPARTMENT SECRETARIAT FORT ST.
GEORGE CHENNAI-09
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LAKSHMIPATHY SALAI EGMORE CHENNAI-08 REP
BY ITS SECRETARY ... RESPONDENT in WP No.11136 of 2018

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REP BY THE PRINCIPAL SECRETARY TO GOVERNMENT
ENERGY DEPARTMENT SECRETARIAT FORT ST.
GEORGE CHENNAI-09
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DISTRIBUTION CORPORATION LTD REP BY ITS
CHAIRMAN NPKRR MAALIGAI 144 ANNA SALAI
CHENNAI-02
- 3 TAMIL NADU ELECTRICITY
REGULATORY COMMISSION NO.19A RUKMINI
LAKSHMIPATHY SALAI EGMORE CHENNAI-08 REP
BY ITS SECRETARY ... RESPONDENT in WP No.11137 of 2018

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REP BY THE PRINCIPAL SECRETARY TO GOVERNMENT
ENERGY DEPARTMENT SECRETARIAT FORT ST.
GEORGE CHENNAI-09
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CHAIRMAN NPKRR MAALIGAI 144 ANNA SALAI
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- 3 TAMIL NADU ELECTRICITY
REGULATORY COMMISSION NO.19A RUKMINI
LAKSHMIPATHY SALAI (MARSHALLS ROAD) EGMORE
CHENNAI-08 REP BY ITS SECRETARY... RESPONDENT in WP
No.11138 of 2018

- 1 STATE OF TAMIL NADU
REP BY THE PRINCIPAL SECRETARY TO GOVERNMENT
ENERGY DEPARTMENT SECRETARIAT FORT ST.
GEORGE CHENNAI-09
- 2 TAMIL NADU GENERATION AND
DISTRIBUTION CORPORATION LTD REP BY ITS
CHAIRMAN NPKRR MAALIGAI 144 ANNA SALAI
CHENNAI-02
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REGULATORY COMMISSION NO.19A RUKMINI
LAKSHMIPATHY SALAI (MARSHALLS ROAD) EGMORE
CHENNAI-08 REP BY ITS SECRETARY ... RESPONDENT in WP
No.11139 of 2018

Prayer in W.P.No.11133 of 2018:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records comprised in the impugned G.O.(Ms)No.37, Energy (D1) dated 17.04.2018 passed by the first respondent and quash the same as being unconstitutional and ultra vires the powers under Section 108 of the Electricity Act, 2003 in as much as it is without jurisdiction and ultra vires the Electricity Act, 2003 and consequently direct 1st to 5th respondents to act strictly in terms of the Electricity Act, 2003.

WP No.11134 of 2018:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to Calling for the records of the 1st respondent relating to the issuance of the impugned GO (Ms) No.37 dated 17.04.2018 of Energy (D1) Department and the Appended Notification and quash the same being ultra vires of the Electricity Act 2003 and consequently direct the respondents to permit the members of the petitioner Association to avail open access power from all their captive WEGs and also to permit open access power for the requirements of the members of the petitioner association for less than 1MW capacity / requirement

WP No.11135 of 2018

calling for the records comprised in the impugned G.O.Ms. No.37, Energy (D1) dated 17.04.2018 passed by the First Respondent and set aside the same as being unconstitutional and ultra vires the powers under section 108 of the Electricity Act, 2003 in so far as it restricts the right of open access to only such EHT and HT consumers who require supply of electricity of in excess of one megawatt and consequently direct First to Third Respondents to act strictly in terms of the Electricity Act, 2003

WP No.11136 of 2018

calling for the records comprised in the impugned G.O.Ms. No.37, Energy (D1) dated 17.04.2018 passed by the First Respondent and quash the same as being unconstitutional and ultra vires the powers under section 108 of the Electricity Act, 2003 in so far as it restricts the right of open access to only such EHT and HT consumers who require supply of electricity of in excess of one megawatt and consequently direct First to Third Respondents to act strictly in terms of the Electricity Act, 2003

WP No.11137 of 2018

calling for the records comprised in the impugned G.O.Ms. No.37, Energy (D1) dated 17.04.2018 passed by the First Respondent and quash the same as being unconstitutional and ultra vires the powers under section 108 of the Electricity Act, 2003 in so far as it restricts the right of open access to only such EHT and HT consumers who require supply of electricity of in excess of one megawatt and consequently direct First to Third Respondents to act strictly in terms of the Electricity Act, 2003

WP No.11138 of 2018

Calling for the records comprised in the impugned G.O.Ms. No.37, Energy (D1) dated 17.04.2018 passed by the First Respondent and quash the same as being unconstitutional and ultra vires the powers under section 108 of the Electricity Act, 2003 in so far as it restricts the right of open access to only such EHT and HT consumers who require supply of electricity of in excess of one megawatt and consequently direct First to Third Respondents to act strictly in terms of the Electricity Act, 2003

WP No.11139 of 2018

Calling for the records comprised in the impugned G.O.Ms. No.37, Energy (D1) dated 17.04.2018 passed by the First Respondent and quash the same as being unconstitutional and ultra vires the powers under section 108 of the Electricity Act, 2003 in so far as it restricts the right of open access to only such EHT and HT consumers who require supply of electricity of in excess of one megawatt and consequently direct First to Third Respondents to act strictly in terms of the Electricity Act, 2003

For Petitioner :Mr.Rahul Balaji in
W.P.No.11133/2018
Mr.AR.L.Sundaresan, Sr.C for
Mr.R.S.Pandiyaraj in
W.P.No.11134 of 2018
Mr.N.L.Rajah, Sr.C for
Mr.Vinod Kumar in
W.P.Nos.11135 to 11139 of 2018

For Respondents:Mr.N.Inbanathan, AGP for R1 in
W.P.Nos.11133,11134,
11135,11136,11137 to
11139 of 2018

Mr.P.H.Arvind Pandian, AAG
Asst.by
Mr.S.K.Rameshwar, st.c
for R2 to R4
in W.P.No.11133/2018

Mr.P.H.Arvind Pandian, AAG
Asst.by
Mr.S.K.Rameshwar, st.c
for R2 & R3 in
W.P.No.11134/2018

Mr.P.H.Arvind Pandian, AAG
Asst.by
Mr.S.K.Rameshwar, st.c for R2
in W.P.Nos.11135/2018,
11136/2018, 11137/2018 and
11139/2018

Mr.T.Mohan for R3 in
W.P.Nos.11135 to 11139 of 2018

COMMON ORDER

The petitioners are the beneficiaries of the Regulation 9(6) of the Tamil Nadu Electricity Regulatory Commission(Grid Connectivity and Inter-State Open Access) Regulations, 2014, which has given permission to them to avail open access facility, inspite of the fact that their power generation is less than 1 MW. By virtue of G.O.(Ms)No.37, Energy(D1) dated 17.04.2018, which is impugned before this Court, the Government has expressed its policy decision to withdraw the permission and to amend the regulation in line with Section 42(2) of the Electricity Act, 2003, which reads as follows:

"42(2):The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:

Provided that (such open access shall be allowed on payment of a surcharge) in

additional to the charges for wheeling as may be determined by the State Commission:

Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee:

Provided also that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the State Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use:

(Provided also that the State Commission shall, not later than five years from the date of commencement of the Electricity (Amendment) Act, 2003 (57 of 2003) by regulations, provide such open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt)."

2. Writ petitions are filed expressing apprehension that they being generators of power less than 1 MW will be deprived of the open access facility, if the impugned G.O. is put to force. This Court ordered status quo while admitting the writ petitions.

3. In the counter, the State Government while justifying the reasons for issuing G.O.(Ms)No.37, Energy(D1) dated 17.04.2018, would state that when the State was suffering from shortage of energy, to encourage more generation of power, they extended the benefit of open access facility to the generators with less than 1MW capacity and now, having a better improvement in the power generation, they want to withdraw the said permission. In exercise of the power under Section 108 of the Electricity Act, 2003, the Regulation 9(6) of the Tamil Nadu Electricity Regulatory Commission (Grid Connectivity and Inter-State Open Access) Regulations, 2014 is sought to be amended, which will be in line with proviso (5) of Sub-Section (2) of Section 42 of the Electricity Act, 2003.

4. A common counter is filed by the Tamil Nadu Electricity Regulatory Commission. In this counter, it is stated that the policy decision expressed by the State through G.O.Ms.No.37 is under consideration by the Commission. These writ petitions are filed pre-maturely, without ascertaining

whether the Commission has accepted the policy or not. The Commission has to satisfy itself in the first instance whether the policy decision is within the statutory provisions of Act and it will be accepted only after following the procedure established under the statute. In view of the status quo ordered by this Court on 27.04.2018, the Regulatory Commission is unable to proceed. If the said status quo ordered by this Court on 27.04.2018 is vacated, the Commission will go ahead with the process of pursuing the policy decision expressed by the Government in G.O.(Ms)No.37, Energy(D1) dated 17.04.2018, and decide whether the Regulation 9(6) of the Tamil Nadu Electricity Regulatory Commission (Grid Connectivity and Inter-State Open Access) Regulation, 2014 should be amended or not.

5. As far as the G.O.Ms.No.37 issued by the Government, the learned Additional Advocate General would submit that it is a policy decision of the State and under Section 108 of the Tamil Nadu Electricity Act, 2003, the State has a prerogative to take a policy decision and it will prevail upon the State Electricity Regulatory Commission. Further, the learned Additional Advocate General would submit that the policy decision of the Government is in tune with proviso (5) of Sub-Section(2) of Section 42 of the Tamil Nadu Electricity Act, 2003, and the petitioners cannot have any grievance over that.

6. However, the learned Senior Counsel appearing for the petitioners would submit that even if it is the policy decision, it must have the approval of the Regulatory Commission and the Regulation should be properly amended. Without amendment to the Regulation, the State cannot withdraw the permission extended under the Regulation.

7. In the said circumstances, these writ petitions are disposed of with a direction to the Regulatory Commission that it shall take up the policy decision of the Government expressed in G.O.(Ms)No.37, Energy(D1) dated 17.04.2018 for consideration forthwith and complete the proceedings, within a period of 10 weeks from the date of receipt of a copy of this order. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To:

1.The Secretary,
Department of Energy,
Fort St.George,
Chennai 600 009.

2.The Chairman and Managing Director,
Tamil Nadu Generation and Distribution Corporation Ltd.,
144, Anna Salai, Chennai 600 002.

3.The Chairman
Tamil Nadu Transmission Corporation Ltd.(TANTRANSCO),
144, Anna Salai,
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4.The Director-Operations
State Load Despatch Centre (SLDC),
144, Anna Salai,
Chennai 600 002.

5.The Secretary
Tamil Nadu Electricity Regulatory Commission,
No.19A, Rukmini Lakshmipathy Salai,
Egmore, Chennai 600 008.

+1 cc to Mr.R.Parthasarathy Rahul Balaji Advocates sr65185
+1 cc to Mr.R.S.Pandiyaraj Advocate sr65274
+2 ccs to Mr.S.K.Rameeshwar Advocate sr65509
+5 ccs to Mr.T.Mohan Advocate 64901
+1 cc to M/s.Government Pleader cc65509
+1 cc to Mr.Vinod Kumar Advocate sr 65738

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bs(co)
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