

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P. Nos.8066 and 8081 of 2019 and
W.M.P. Nos.8671& 8676 of 2019

Indian Wind Power Association
rep. by its Secretary General
Door No.E, 6th Floor,
Shakti Towers-II,
766, Anna Salai,
Chennai - 600 002. .. Petitioner in W.P. No.8066 of 2019

Tamil Nadu Spinning
Mills Association
represented by its Chief Advisor
Dr.K.Venkatachalam .. Petitioner in W.P. No.8081 of 2019

-vs-

1.The State of Tamil Nadu,
represented by
the Principal Secretary,
Energy Department,
Fort St. George,
Chennai - 600 009.

2.The Tamil Nadu Electricity
Regulatory Commission,
represented by its Secretary,
No.19-A,
Rukmini Lakshmipathy Salai,
Egmore, Chennai-600008... Respondents in W.P. No.8066 of 2019

1.The State of Tamil Nadu,
Energy Department,
Fort St. George,
Chennai - 600 009.
represented by the
Secretary to Government.
2.The Tamil Nadu Electricity
Regulatory Commission,
No.19-A,
Rukmini Lakshmipathy Salai,
Egmore, Chennai - 600 008.
represented by its Secretary

.. Respondents in W.P. No.8081 of 2019

Prayer in W.P. No.8066 of 2019: Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the first respondent State Government to strictly comply with the judgment of the Hon'ble Supreme Court dated 12.04.2018 in Civil Appeal No.14697 of 2015 in State of Gujarat vs. Utility Users' Welfare Association by issuing a suitable Corrigendum/Errata to the G.O. (Ms) No.11 Energy (D1) Department dated 05.02.2019 directing the Selection Committee to recommend a panel of two names who are persons of law, who is, or has been holding a judicial office or is a person possessing professional qualifications with substantial experience in the practice of law, who has the requisite qualifications to have been appointed as a Judge of the High Court or a District Judge as also restraining the second respondent State Commission from carrying out any adjudicatory function, including by way of listing, hearing or passing any orders in matters involving adjudication, in compliance with the judgment of the Hon'ble Supreme Court dated 12.04.2018 in Civil Appeal No.14697 of 2015 in State of Gujarat vs. Utility Users' Welfare Association, until a member having legal expertise is appointed as member of the second respondent.

Prayer in W.P. No.8081 of 2019: Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the first respondent State Government to issue suitable Corrigendum/Errata to G.O. (Ms) No.11 Energy (D1) Department dated 05.02.2019 to make the Selection Committee to select and recommend two names, who are persons of law and who is, or has been holding a judicial office or a person possessing professional qualifications with substantial experience in the practice of law or who has the requisite qualifications to be appointed as a Judge of the High Court or a District Judge, for consideration for appointment as Member in the State Commission and also to forbear the second respondent, State Commission from carrying out any adjudicatory function, including by way of listing, hearing or passing any orders in matters involving adjudication, in compliance with the judgment of the Hon'ble Supreme Court dated 12.04.2018 in Civil Appeal No.14697 of 2015 in State of Gujarat vs. Utility Users' Welfare Association, until a member having legal expertise is appointed as member of the second respondent, State Commission.

For Petitioner in W.P.
No.8066 of 2019 : Mr.Rahul Balaji

For Petitioner in W.P.: Mr.AR.L.Sundaresan,
No.8081 of 2019 Senior Counsel for
Mr.R.S.Pandiyaraj

For respondents in both W.Ps: Mr.Vijay Narayan,
Advocate General assisted by
Mr.V.Jayaprakash Narayanan,
Special Government Pleader and
Government Pleader i/c for R1

Mr.A.L.Somayaji,
Senior Counsel for
Mr.Abdul Saleem
Standing Counsel for R2

COMMON ORDER

The writ petitions have been filed by the petitioners seeking a direction to the first respondent, State Government to issue suitable Corrigendum/ Errata to the G.O. (Ms) No.11 Energy (D1) Department dated 05.02.2019 to make the Selection Committee to select and recommend two names, who are persons of law and who has been holding a judicial office or a person possessing professional qualifications with substantial experience in the practice of law or who has the requisite qualifications to be appointed as a Judge of the High Court or a District Judge, for consideration of appointment as Member in the State Commission and also to forbear the second respondent, State Commission from carrying out any adjudicatory function, including by way of listing, hearing or passing any orders in the matters involving adjudication, in compliance with the judgment of the Hon'ble Supreme Court dated 12.04.2018 in Civil Appeal No.14697 of 2015 in the case of State of Gujarat vs. Utility Users' Welfare Association, until a member having legal experience is appointed as member of the second respondent, State Commission.

2.Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioner in W.P. No.8081 of 2019 would submit that when the Apex Court in its judgment dated 12.04.2018 passed in Civil Appeal No.14697 of 2015 in the case of State of Gujarat vs. Utility Users' Welfare Association, has observed that there should be a person of law as a Member of the Commission, which requires a person, who is or has been holding a judicial office or is a person possessing professional qualifications with substantial experience in the practice of law, who has the requisite qualifications to have been appointed as a Judge of the High Court or a District Judge, the second respondent cannot be allowed to function. Therefore, an order should be passed restraining the second respondent State Commission from carrying out any adjudicatory function including by way of listing, hearing or passing any orders in the matters involving adjudication, in compliance with the above judgment passed by the Hon'ble Apex Court. Therefore, when the Apex Court has said so, it

is mandatory as per Section 84(1) of the Electricity Act, 2003, the Chairperson and the members of the State Commission shall be persons of ability, integrity and standing who have adequate knowledge of and have shown capacity in, dealing with problems relating to engineering, finance, commerce, economics, law or management. The Apex Court also in sub clauses v and vi in paragraph 114 made it clear that the judgment would apply prospectively and would not affect the orders already passed by the Commission from time to time and in case there is no member from law as a member of the Commission as required, which is stated in para 2 of their judgment, the next vacancy arising in every State Commission shall be filled in by a Member of law in terms of Clause (ii) of the judgment. Again the Apex Court, accepting the clarification application, has further clarified by order dated 10.09.2018 that till such time a reconstitution of the Tribunal does not take place arising from a retirement of a member from the legal field, the existing Tribunal would decide all the cases and therefore, as per the said order, the second respondent Commission shall not be permitted to decide any judicial functions. Concluding his arguments, he pleaded that as per Section 86 (1)(f) of the Electricity Act, 2003, when high stake issues are pending on the file of the second respondent, as per the ratio laid down by the Apex Court in the afore mentioned judgment, the second respondent may not be permitted to adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration, until such time, a judicial member is appointed.

3.Mr.Rahul Balaji, learned counsel appearing for the petitioner in W.P. No.8066 of 2019 would submit that even the clarificatory order subsequently passed by the Hon'ble Apex Court on 10.09.2018 in MA No.2217 of 2018 in T.C. (C) No.137 of 2015 indicates clearly that till such time a reconstitution of the Tribunal does not take place arising from a retirement of a member from the legal field, the second respondent cannot function without a judicial member from a legal field and therefore, the second part of the prayer needs to be allowed.

4.Mr.Vijay Narayan, learned Advocate General appearing for the first respondent, in reply, submitted that there was no dispute on the law laid down by the Hon'ble Supreme Court and the concluding part of the judgment also holds that the second respondent Commission should have a member from a legal field, therefore, when the first respondent has already issued G.O. Ms. No.11 Energy (D1) dated 05.02.2019 in exercise of the powers conferred by sub-section (1) of Section (85) of the Electricity Act, 2003, by constituting a Selection Committee consisting of the Chairperson and Members, for

the purpose of selecting a member of the Tamil Nadu Electricity Regulatory Commission to select and finalise a member within three months from the date on which the reference is made and also to recommend a panel of two names for every vacancy referred to, the committee will consider only a member from a legal field to be appointed as judicial member in the second respondent State Commission in full compliance of the ratio laid down by the Apex Court. Therefore, there may not be any apprehension on the petitioners' side that any other person other than the judicial member will be appointed, as the Committee constituted is going to select a member from the legal field to be appointed as a judicial member and hence, as per the direction issued by the Apex Court, the petitioner has to wait for another two more weeks since the upper time limit for selecting and appointing a judicial member will expire within three months from the date of reference.

5.Mr.A.L.Somayaji, learned senior counsel appearing for the second respondent also referring to the stand taken by the Advocate General, referring to the clarificatory application dated 10.09.2018 passed by the Apex Court, pleaded that when the State Commission second respondent herein has been allowed to function till such time a reconstitution of the Tribunal does not take place, it is not open to the petitioners to press the second part of the prayer not to list any legal matters in the hearing and also to pass orders.

6.Since the learned Advocate General appearing for the first respondent fairly agreed that the direction issued by the Apex Court for appointment of judicial member is going to be considered and notification also has been issued for selecting a judicial member to be appointed in the second respondent State Commission Tamil Nadu Electricity Regulatory Commission, this Court hereby directs the first respondent to fill up the post of judicial member in the second respondent-Commission on or before three months from the date of issuance of the notification. With this direction, the writ petitions stand disposed of. Consequently, W.M.Ps are closed. No costs.

Sd/-

Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Secretary,State of Tamil Nadu,
Energy Department,
Fort St. George,Chennai - 600 009.

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

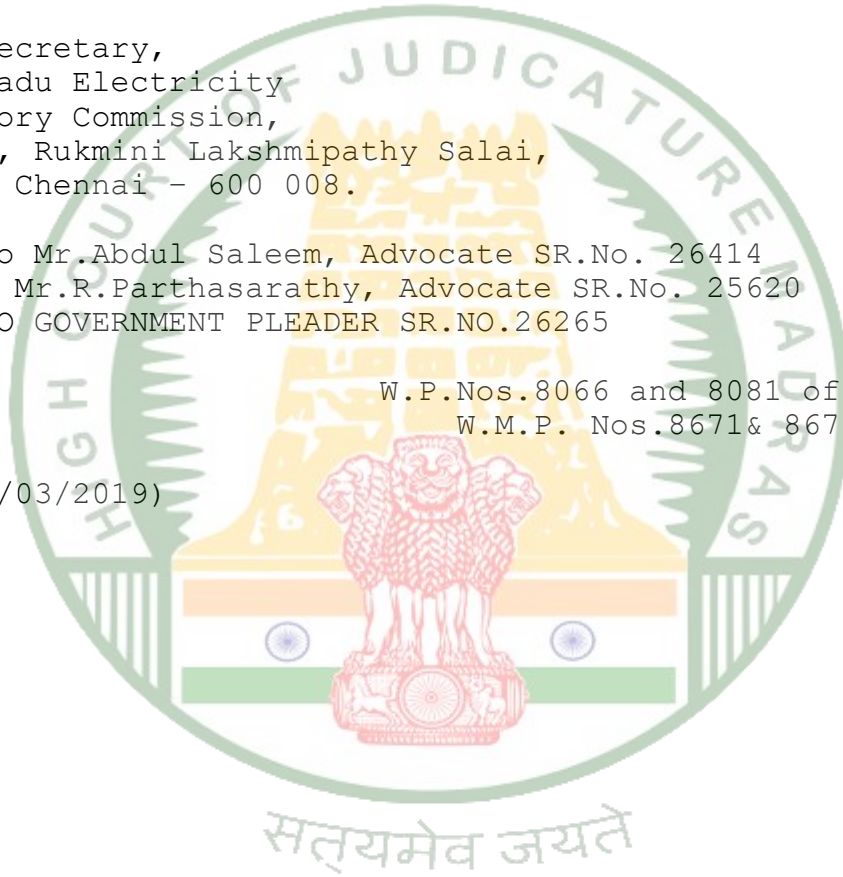
3.The Secretary to Government,
State of Tamil Nadu,
Energy Department,
Fort St. George,
Chennai - 600 009.

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

+2ccs to Mr.Abdul Saleem, Advocate SR.No. 26414
+1cc to Mr.R.Parthasarathy, Advocate SR.No. 25620
+1 CC TO GOVERNMENT PLEADER SR.NO.26265

W.P.Nos.8066 and 8081 of 2019 and
W.M.P. Nos.8671& 8676 of 2019

A.SK(28/03/2019)



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