

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.Nos.33864 and 34071 of 2018 & 121, 129, 232, 246, 629, 639,
657, 659, 1095, 1101, 1201 and 1203 of 2019
and connected W.M.Ps.

SAINT GOBAIN INDIA PRIVATE LIMITED.,
HTSC NO.499,
A-1, SIPCOT INDUSTRIAL AREA,
SRIPERUMPUDUR, KANCHIPURAM DISTRICT.
REPRESENTED BY ITS TEAM LEADER -
FINANCE & COMPANY SECRETARY,
L.VENKATESWARAN.

... PETITIONER IN W.P.NO.33864 OF 2018

1 SUNDARAM INDUSTRIES PRIVATE LIMITED
HTSC NO.044 NO.7-B WEST VELI STREET
MADURAI-625001
REPD BY ITS PRESIDENT AND
COMPANY SECRETARY K.S.VISWANATHAN

... PETITIONER in WP No.246 of 2019

1 C.V.SPINNERS PVT. LTD. HTSC
NO. 179 PALANI ROAD SRI VENKATAS MILLS
POST UDUMALPET REP. BY ITS CHIEF EXECUTIVE
SRI. R.VENKATAPATHY

... PETITIONER in WP No.629 of 2019

1 SRI PRIYALAKSHMI SPINNERS PV
T. LTD. HTSC NO. 231 MYVADI POST UDUMALPET
TALUK UDUMALPET REP. BY ITS CHAIRMAN SRI. R.
VENKATAPATHY

... PETITIONER in WP No.639 of 2019

1 VENKATALAKSHMI PAPER AND BOA
RDS PRIVATE LIMITED HTSC NO. 210 ANDIPATTY
ROAD KOLUMAM MADATHUKULAM TALUK - 642204
REP. BY ITS MANAGING DIRECTOR SRI. R.
VENKATAPATHY

... PETITIONER in WP No.657 of 2019

- 1 MUTHUR MURUGAN MILLS LTD.
HTSC NO. 153(CEDC-NORTH) NO. 2 7TH STREET
TATABAD COIMBATORE - 641012 REP. BY ITS
MANAGING DIRECTOR S.S.RAJKUMAR
... PETITIONER in WP No.659 of 2019
- 1 SANDHYA SPINNING MILL LTD
HT SC NO.141 REGD. OFFICE.NO.47 P.S.K.
NAGAR RAJAPALAYAM 626108 REP. BY ITS SR.
MANAGER ACCOUNTS N.VAIRABALAJI
... PETITIONER in WP No.34071 of 2018
- 1 M/S.HARSHINI TEXTILES LTD
HTSC.199 TEXTILES DIVISION SUNDARAPUAI
THATHUR (P.O) ANAMALAI VIA POLLACHI REP BY
ITS DEPUTY GENERAL MANAGER P.GOKUL KRISHANAN
... PETITIONER in WP No.121 of 2019
- 1 NAVEEN COTTON MILL (PVT) LTD
HTSC 134 D.NO.8/1456 R.S.PURAM 1ST STREET
NEAR PANDIYAN NAGAR BUS STOP P.N.ROAD
TIRUPUR-641 602 REP BY ITS GENERAL MANAGER
R.KANAGARAJ ... PETITIONER in WP No.129 of 2019
- 1 EVERWIN TEXTILE MILLS PRIVATE LIMITED
HT SC NO.589(CEDC-SOUTH)
NANJEGOUNDANPUDUR ACHIPATTI POST POLLACHI-
2 REPD.BY ITS MANAGING DIRECTOR MR.K.
PERIASAMY ... PETITIONER in WP No.232 of 2019
- 1 SUDARSANAM SPINNING MILLS HTSC NO. 310
(A DIVN. OF THE RAMARAJU
SURGICAL COTTON MILLS LTD.) REG. OFFICE NO.
119 P.A.C.R. SALAI RAJAPALAYAM - 626117
REP. BY ITS COMPANY SEC
... PETITIONER in WP No.1095 of 2019
- 1 THE RAMARAJU SURGICAL COTTON
MILLS HTSC NO. 72 PERUMALPATTI VILLAGE
TIRUNELVELI DISTRICT REP. BY ITS COMPANY
SECRETARY B.VELVENDAN
... PETITIONER in WP No.1101 of 2019

- 1 SAKTHI SPINTEX (P) LTD. HTSC
342 NO.18 THOTTIYAPPATTY ROAD RAJAPALAYAM
REPD. BY ITS AUTHORIZED SIGNATORY MARIAPPAN

... PETITIONER in WP No.1201 of 2019

- 1 SHRI KANDA SPINNERS (P) LTD.
. HTSC 225 NO.184 MELAPATTAM KARISALKULAM
SRIVILLIPUTHUR ROAD RAJAPALAYAM- 626 110
REPD. BY ITS AUTHORISED SIGNATORY MARIAPPAN.

... PETITIONER in WP No.1203 of 2019

Vs

1. The Chairman,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
144, Anna Salai,
Chennai - 600 002.
2. The Chief Financial Controller/Revenue
TANGEDCO,
144, Annasalai,
Chennai - 600 002.
3. The Accounts Officer/Revenue
TANGEDCO,
Chengalpatu Electricity Distribution Circle,
Chengalpattu.

... 3rd Respondent in WP.No. 33864/2018

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

... Respondents 1 & 2 & 4 in all WP's

- 1 THE SUPERINTENDING ENGINEER,
TANGEDCO, VIRUDHUNAGAR ELECTRICITY DISTRIBUTION CIRCLE,
VIRUDHUNAGAR.

... 3RD RESPONDENT IN WP.NO.34071/18
WP.NO.1095/2019, 1207/2019, AND
1203/2019

1 THE SUPERINTENDING ENGINEER,
UDUMALPET ELECTRICITY DISTRIBUTION CIRCLE
TANGDECO, UDUMALPET

... 3RD RESPONDENT IN WP.121/2019,
WP.629/2019, 639/2019, 657/2019

1 THE SUPERINTENDING ENGINEER,
TANGDECO,
GOBI ELECTRICITY DISTRIBUTION CIRCLE,
GOBI

... 3RD RESPONDENT IN WP.129/2019

1 THE SUPERINTENDING ENGINEER,
COIMBATORE SOUTH ELECTRICITY DISTRIBUTION CIRCLE,
TANGDECO, COIMBATORE.

... 3RD RESPONDENT IN WP.232/2019

1 THE SUPERINTENDING ENGINEER,
TANGDECO,
MADURAI METRO ELECTRICITY DISTRIBUTION CIRCLE,
MADURAI.

... 3RD RESPONDENT IN WP.NO. 246/2019

1 THE SUPERINTENDING ENGINEER,
COIMBATORE NORTH ELECTRICITY DISTRIBUTION CIRCLE,
TANGDECO, COIMBATORE.

... 3RD RESPONDENT IN WP.NO. 659/2019

1 THE SUPERINTENDING ENGINEER,
TANGDECO, TIRUNELVELI ELECTRICITY DISTRIBUTION CIRCLE,
TIRUNELVELI

... 3RD RESPONDENT IN WP. 1101/2019

Common Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the 2nd respondent contained in impugned letter CFC/FC/DFC/ AAO.HT/AS.3/REV/D.N.115/13 dated 29.07.2013 and quash the same as arbitrary, illegal and violative of the provisions of the Electricity Act, 2003 and the orders of the TNERC.

For Petitioner : Mr.R.S.Pandiyaraj

For Respondents: Mr.S.K.Raameshuwar,
Standing Counsel for R1 to R3

: No appearance for R4

O R D E R

All these 14 Writ Petitions were taken up together as they are arising out of one and the same issue against the Tamil Nadu Generation and Distribution Corporation Limited.

2. All these Writ Petitions have been filed challenging the impugned letter of the 2nd respondent in CFC/FC/DFC/AAO.HT/AS.3/REV/D.N.115/13 dated 29.07.2013, quash the same as arbitrary, illegal and violative of the provisions of the Electricity Act, 2003 and the orders of the Tamil Nadu Electricity Regulatory Committee.

3. Learned Counsel appearing for the petitioners submitted that the issue raised in the present writ petitions has already been agitated by both sides and on considering the rival claims, in a batch of writ petitions in W.P.Nos.5916 to 5918/2014 etc. batch, a Common Order dated 14.09.2018 has been passed, directing the parties to approach the Tamil Nadu Electricity Regulatory Commission by setting aside the impugned Circular dated 29.07.2013. Therefore, the similar order may be passed by allowing these Writ Petitions also, it is pleaded.

4. Mr.S.K.Raameshwar, learned Standing Counsel appearing for the TANGEDCO submitted that as against the order dated 14.09.2018 passed in a batch of Writ Petitions in W.P.Nos.5916 to 5918/2014 etc. batch, W.A.Nos.2539 & 2540 of 2018 have been filed and the Division Bench has also passed an interim order directing the petitioners continue to pay 50% of the amount demand within a period of two weeks from the date of each demand. Now the matters are posted in the 3rd week of March for further hearing. Therefore, while allowing these Writ Petitions, the order passed by the Division Bench may also be followed.

5. The issue raised in the present batch of writ petitions is no longer res integra since the same has already been decided by this Court in W.P.Nos.5916 to 5918/2014 etc. batch dated 14.09.2018. The relevant portion is extracted here under:

'17. The learned counsel appearing for the writ petitioners has stated that such an adjudicative process in compliance with the principles of natural justice has been contemplated in the Tamil Nadu Electricity Regulatory Commission conduct of business regulations 2004 clause 16 1 & 2 reads as under :-

16 (1) The Commission may initiate any proceedings suo motu or on a petition filed by any affected or interested person.

(2) When the Commission initiates the proceedings, it shall be by a due notice issued by the Commission.

The Commission may give such orders and directions as may be deemed necessary, for serving of notices to the affected parties; for the filing of replies and rejoinders against or in support of the petition in such form as the Commission may direct. The Commission may, if it considers appropriate, issue orders for publication of the petition inviting comments from the public or any class of persons on the issue involved in the proceedings in such form as the Commission may direct.

18. In view of the discussions made in the afore mentioned paragraphs, this Court is of the opinion that the Regulatory Commission has to under take the process of revision either suo-motu or through an application if any filed before the commission and conduct the adjudicative process by issuing notice to all the stakeholders and after hearing the parties aggrieved, decision shall be taken on merits and in accordance with law. The compliance of principles of natural justice has been contemplated in the business regulations, as stated supra. Thus Electricity Regulatory Commission is bound by that and they have to follow the procedures and thereafter take a decision and pass orders on merits and in accordance with law in respect of the withdrawal of the concession of the Deemed Demand Charges in respect of the writ petitioners. However, it is made clear that the observations made in this judgment will not affect the independent adjudication if any undertaken by the Electricity Regulatory Commission in accordance with the procedures contemplated. The Electricity Regulatory Commission is at liberty to decide the merits and de-merits independently and pass orders without causing undue delay in view of the fact that the concession has been already cancelled in respect of other categories. Accordingly the impugned order passed by the second respondent in letter No.CFC /FC /DFC /AAO.HT /AS.3 /REV/D.N.115/13 dated 29.07.2013 is quashed and these writ petitions are allowed. No costs. Consequently connected miscellaneous petitions are also closed."

However, as against this order, W.A.Nos.2539 and 2540/2018 have been filed by two of the writ petitioners and the Division Bench of this Court has granted an order of interim stay dated 19.11.2018 subject to the condition that the writ petitioners shall continue to pay 50% of the demand amount by the TANGEDCO, within a period of two weeks from the date of each demand, subject to the result of the Writ Appeals. Following the same, the present Writ Petitions are also liable to be allowed.

6. Accordingly, these Writ Petitions are allowed. The petitioners are directed to pay 50% amount demanded by the TANGEDCO within a period of two weeks from the date of receipt of copy of this order, subject to the result of the Writ Appeals in W.A.Nos.2539 and 2540/2018 pending before the Division Bench of this Court.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

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To

1. THE CHAIRMAN,
TAMIL NADU GENERATION AND DISTRIBUTION
CORPORATION LIMITED,
(TANGEDCO),
144, ANNA SALAI,
CHENNAI - 600 002.
2. THE CHIEF FINANCIAL CONTROLLER/REVENUE
TANGEDCO,
144, ANNASALAI,
CHENNAI - 600 002.
3. THE ACCOUNTS OFFICER/REVENUE
TANGEDCO,
CHENGALPATU ELECTRICITY DISTRIBUTION CIRCLE,
CHENGALPATTU.
4. SECRETARY,
TAMIL NADU ELECTRICITY REGULATORY COMMISSION,
NO.19A, RUKMINI LAKSHMIPATHY SALAI,
EGMORE, CHENNAI - 600 008.
- 5 THE SUPERINTENDING ENGINEER,
TANGEDCO, VIRUDHUNAGAR ELECTRICITY DISTRIBUTION CIRCLE,
VIRUDHUNAGAR.
- 6 THE SUPERINTENDING ENGINEER,
UDUMALPET ELECTRICITY DISTRIBUTION CIRCLE
TANGDECO, UDUMALPET

- 7 THE SUPERINTENDING ENGINEER,
TANGEDCO,
GOBI ELECTRICITY DISTRIBUTIION CIRCLE,
GOBI
- 8 THE SUPERINTENDING ENGINEER,
COIMBATORE SOUTH ELECTRICITY DISTRIBUTIION CIRCLE,
TANGDECO, COIMBATORE.
- 9 THE SUPERINTENDING ENGINEER,
TANGDECO,
MADURAI METRO ELECTRICITY DISTRIBUTIION CIRCLE,
MADURAI.
- 10 THE SUPERINTENDING ENGINEER,
COIMBATORE NORTH ELECTRICITY DISTRIBUTION CIRCLE,
TANGEDCO, COIMBATORE.
- 11 THE SUPERINTENDING ENGINEER,
TANGEDCO, TIRUNELVELI ELECTRICITY DISTRIBUTIION CIRCLE,
TIRUNELVELI

+1cc to Mr.R.S.Pandiyaraj, Advocate, S.R.No. 24453
+1cc to Mr.S.K.Raameshuwar, Advocate, S.R.No. 24312

W.P.No.33864/2018 etc. batch

MP (CO)
GN (20/03/2019)

सत्यमेव जयते

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