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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.11143 to 11145
and 11364 to 11366 of 2013
and M.P.Nos.2 to 2 of 2013
and 3 to 3 of 2013

M/s.Rajapalayam Mills Limited, HT.SC.No.1,
Represented by its General Manager -
Electrical Mr.B.Velvendan,
Post Box No.01, P.A.C.Ramasamy Raja Salai,
Rajapalayam - 626 117,
Virudhunagar District.

... Petitioner in W.P.No.11143 of 2013

M/S.RAJAPALAYAM MILLS LIMITED
D UNIT HT SC NO.264,
REP BY ITS GENERAL MANAGER,
ELECTRICAL MR.B.VELVENDAN, POST BOX NO.01,
P.A.C. RAMASAMY RAJA SALAI RAJAPALAYAM - 626117.
VIRUDHUNAGAR DT.

... Petitioner in W.P.No.11144 of 2013

M/S.RAJAPALAYAM MILLS LTD.
C UNIT HT SC NO.252
REP BY ITS GENERAL MANAGER, - ELECTRICAL MR.B. VELVENDAN
POST BOX NO.01 P.A.C. RAMASAMY RAJA SALAI
RAJAPALAYAM - 626117. VIRUDHUNAGAR DT

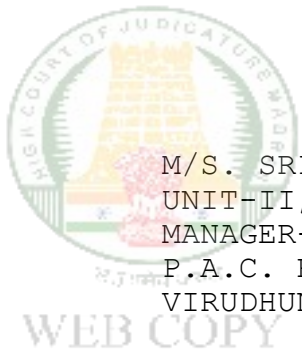
... Petitioner in W.P.No.11145 of 2013

M/S. SRI VISHNU SHANKAR MILL LIMITED,
HT SC NO.70 REP. BY GENERAL MANAGER-ELECTRICAL,
B.VELVENDAN, POST BOX NO.109,
P.A.C. RAMASAMY RAJA SALAI, RAJAPALAYAM
VIRUDHUNAGAR DT.

... Petitioner in W.P.No.11364 of 2013

M/S.RAMCO TEXTILE MILL,
HT SC NO.253, REP. BY GENERAL MANAGER-
ELECTRICAL B.VELVENDAN, POST BOX NO.127,
KRISHNAPURAM ROAD, RAJAPALAYAM-626117
VIRUDHUNAGAR DISTRICT.

... Petitioner in W.P.No.11365 of 2013



M/S. SRI VISHNU SHANKAR MILL LTD,
UNIT-II, HTSC NO.304, REP. BY GENERAL
MANAGER-ELECTRICAL B.VELVENDAN, POST BOX-109,
P.A.C. RAMASAMY RAJA SALAI, RAJAPALAYAM
VIRUDHUNAGAR DT.

... Petitioner in W.P.No.11365 of 2013

Vs.

1. Tamil Nadu Generation and Distribution Corporation Ltd. [TANGEDCO],
Rep. by its Chairman cum Managing Director,
144, Anna Salai, Chennai - 600 002.
2. The Chief Financial Controller,
144, Anna Salai, Chennai - 600 002,
Tamil Nadu Generation and Distribution Corporation Ltd. [TANGEDCO].
3. The Director [Finance],
144, Anna Salai, Chennai - 600 002,
Tamil Nadu Generation and Distribution Corporation Ltd. [TANGEDCO].
4. The Superintending Engineer,
Virudhunagar Electricity Distribution Circle,
Virudhunagar,
Tamil Nadu Generation and Distribution Corporation Ltd. [TANGEDCO].

... Respondents IN all WPs

Prayer : Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the 2nd respondent in his Lr.No.CFC/FC/DFC/AS.3/D.No.84/11 dated 23.11.201 culminating in the 3rd respondent's circular Memo No.Dir(Fin)/CFC/FC/DFC/AAO/H7/AS.3/D.No.86/13 dated 20.02.2013, quash the same in so far as it is in violation of the order dated 12.12.2012 passed by the Hon'ble APTEL and the order dated 29.01.2013 passed by the Hon'ble TNERC.

For Petitioner : Mr. N.L.Rajah, Senior Counsel
for Mr.Arun Anbumani
(in all W.Ps)

For Respondents : Mr.Richard Wilson
Additional Government Pleader
(in all W.Ps)



COMMON ORDER

The writ petitions are filed challenging the energy and demand quota in respect of wind energy captive consumers.

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2.The learned senior counsel appearing on behalf of the writ petitioners made a submission that the issues raised in these writ petitions are no more res integra as the Hon'ble Supreme court confirmed the judgments passed by the Tamil Nadu Electricity Regulatory Commission [TNERC] and the Appellate Tribunal for Electricity [APTEL] in Appeal No.177 of 2013. Based on the said judgment, the High Court passed number of orders setting aside the demand raised by the Tamil Nadu Electricity Board. Thus, a similar order is to be followed in all these writ petitions.

3.The learned Additional Government Pleader appearing on behalf of the respondents/TANGEDCO opposed the contentions by stating that no doubt the TNERC passed an order in D.R.P.No.21 of 2011 on 17.04.2013 setting aside the demand raised by the TANGEDCO and the said order was confirmed by the APTEL on 29.05.2014 and the Special Leave Petition filed by the TANGEDCO was dismissed by the Hon'ble Supreme Court of India. Subsequently, on scrutinization of various policies and orders passed by the TNERC, the competent authorities found that there are certain discrepancies in dealing with the issues and conflicting decisions also exist, more so, in Appeal No.36 of 2012 dated 31.10.2012. In view of the conflicting decisions in the matter of policy issued by the TNERC, the TANGEDCO thought fit to file a review petition so as to get clarification for the purpose of adopting the right policy with reference to the decisions of the TNERC. In this regard, the TANGEDCO filed a miscellaneous petition before TNERC in M.P.No.2 of 2019 on 03.11.2019. The learned Additional Government Pleader reiterated that proceedings are going on and the review petition is yet to be decided by the TNERC. Under these circumstances, the benefit based on one decision of the TNERC need not be extended to the writ petitioners.

4.The learned senior counsel appearing for the petitioners replied by stating that the subsequent TNERC decision dated 17.04.2013 was confirmed by the Hon'ble Supreme Court of India and therefore, the said decision is to be followed.

5.However, when there is an allegation of conflicting decisions brought to the notice of this Court and the TANGEDCO also initiated steps to clarify the conflicting issues, then the Courts are bound to adopt a balancing approach so as to protect the interest of the consumers and also to protect the revenue of the TANGEDCO. A balancing approach is imminent as the issues



are to be decided in accordance with law and there shall not be any iota of doubt in the matter of implementation of a policy and in the event of any such conflict, the same will cause prejudice to either of the parties which is not desirable.

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6. Thus, this Court is of an opinion that the demand orders impugned in all these writ petitions cannot be given effect to as of now in view of the later decision of the TNERC dated 17.04.2013 in D.R.P.No.21 of 2011. But the review petition filed by the TANGEDCO before TNERC in M.P.No.2 of 2019 is also to be decided and the parties are bound to wait for the final orders to be passed in the said review petition filed by the TANGEDCO.

7. At this juncture, the learned Additional Government Pleader appearing for the TANGEDCO made a submission that the TANGEDCO undertake that they will not enforce the demand orders impugned in all these writ petitions till such time a decision is taken and an order is passed by the TNERC in M.P.No.2 of 2019.

8. In view of the undertaking given by the respondent TANGEDCO, the respondents are directed not to enforce the impugned demand orders in all the writ petitions till such time the final orders are passed by the TNERC in M.P.No.2 of 2019. After disposal of the review petition, the respondent TANGEDCO are at liberty to take all appropriate action in accordance with law. The petitioners are also at liberty to implead themselves in the review petition, if they have chosen to do so.

9. The alleged conflicting decision rendered by the TNERC, which was brought to the notice of this Court by the learned Additional Government Pleader, was also confirmed by the Hon'ble Supreme Court in order dated 25.10.2018. However, whether the decisions are conflicting or not is the issue to be considered by the TNERC in the review petition filed and an adjudication is to be done with reference to such conflicts or differences or otherwise.

10. With these observations, the writ petitions stand disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Deputy Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

cse



To

1. Tamil Nadu Generation and Distribution Corporation Ltd. [TANGEDCO],
Rep. by its Chairman cum Managing Director,
144, Anna Salai,
Chennai - 600 002.
2. The Chief Financial Controller,
144, Anna Salai,
Chennai - 600 002,
Tamil Nadu Generation and Distribution Corporation Ltd. [TANGEDCO].
3. The Director [Finance],
144, Anna Salai,
Chennai - 600 002,
Tamil Nadu Generation and Distribution Corporation Ltd. [TANGEDCO].
4. The Superintending Engineer,
Virudhunagar Electricity Distribution Circle,
Virudhunagar,
Tamil Nadu Generation and Distribution Corporation Ltd. [TANGEDCO].
5. Copy to :-
The Secretary
Tamil Nadu Electricity Regulatory Commission
144, Anna Salai, Chennai - 2.

+1cc to Mr.Arun Anbumani, Advocate, S.R.No.68748
+6ccs to Mr.Richard Wilson, Advocate, S.R.No.69682,69683,69684

W.P.Nos.11143 to 11145
and 11364 to 11366 of 2013

BP(CO)
CT 17/02/2022