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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2021

C O R A M

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.18252 of 2017

and

W.M.P.Nos.19833 to 19835 of 2017

Thejo Engineering Ltd.,
HTSC: 1678
No.41, Whites Road,
Royapettah,
Chennai 600 014.
Represented by its Vice President HR Admin

...Petitioner

Vs

1. Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)
10th Floor, 144, Anna Salai,
Chennai 600 002.
Represented by its
Chairman and Managing Director
2. The Director-Distribution,
TANGEDCO,
10th Floor, 144, Anna Salai, Chennai 600 002.
3. The Chief Financial Controller-Revenue
TANGEDCO,
7th Floor, 144, Anna Salai, Chennai 600 002.
4. Tamilnadu Electricity Regulatory Commission,
19-A, Rukumini Lakshmipathy Salai,
Egmore, Chennai 600 008.
Represented by its Secretary.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, prayed for the issuance of Writ of Certiorarified Mandamus calling for the records of the 2nd and 3rd respondents relating to the circular bearing Circular Memo.No.CFC/FC/REV/AS.3/D.325/17, dated 15.03.2017 and the consequential and further proceedings in



(i) Memo.No.CFC/REV/FC/REV/AS.3/F.CGP/D.203/17, dated 18.03.2017;
(ii) Circular Memo No.CFC/REV/FC/REV/AS.3/F.CGP/D.329/17 dated 30/31.03.2017;
(iii) Lr.No.CFC/REV/FC/REV/DFC/AO.4/F.CGP Status/ D.259/2017 dated 31.03.2017;
(iv) Memo.No.CFC/REV/FC/FC/REV/F.CGPStatus/D.334/17 dated 07.04.2017
(v) Memo.No.CFC/REV/FC/REV/AS.3/F.CGP/D.338/17, dated 15.04.2017
(vi) Memo.No.CFC/REV/FC/REV/AS.3/F.CGP/D.340/17, dated 15.04.2017 and quash the same as illegal and direct the respondents to strictly comply with the statutory provisions of Electricity Act 2003, Electricity Rules, 2005 and the binding judgments of the Hon'ble APTEL in the matter of determination and verification of status of the Captive Generating Plants by approaching the Tamilnadu Electricity Regulatory Commission for directions and determination of the status of the Captive Generating Plants as stipulated under under the provisions of Electricity Rules, 2005 and confirmed by the binding judgments of the Hon'ble APTEL.

For Petitioner : T.Saranya for
M/S.S.Ramasubramaniam & Asso.

For R1, 2, 3 : Mr.L.Jai Venkatesh
Standing Counsel

ORDER

This writ petition was filed, challenging the various circulars/memos mentioned above, issued by the 3rd respondent/The Chief Financial Controller-Revenue of the TANGEDCO.

2. When the matter is taken up for hearing, the learned counsel for the petitioner submits that initially, a similar issue was under challenge before the Appellate Tribunal for Electricity, New Delhi. The said Tribunal has passed the following order :

"17. Summary of Findings:-

Based on issue-wise discussion & analysis, stated supra, we sum up our findings as under:-

17.1 Issue No.1:- We hold that the second Respondent/TANGEDCO can be entrusted with the exercise of collecting & verifying data for the purpose of verification of captive plant status only. However, any coercive action to be initiated against the CGP /captive users regarding its captive status or for recovery of CSS, as



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per law, it shall be decided by the first Respondent / State Commission.

17.2 Issue No.2:- We hold that for the purpose of granting open access for captive purpose, the document as recorded at Para 11.3 shall be adequate/sufficient. Needless to mention that these documents, as specified therein, are within the framework of TNERC Grid Connectivity & Intra State Open Access Regulations, 2014 and also do not violate the provisions of Rule 3 of the Electricity Rules, 2005.

17.3 Issue No.3:- We hold that as per provisions stipulated under the Rule 3 of the Electricity Rules, 2005, the SPV & AOP are two distinct entities and cannot be equated at par for computation of annual power consumption for determining the captive status.

17.4 Issue No.4:- We hold that the verification for determining ownership & consumption for CGP /captive users under Rule 3, being an independent exercise, has to be done on annual basis, at the end of financial year.

Judgment of Appeal No.131 of 2020 17.5 Issue No.5:- We hold that the directions contained in Paras 6.6.3 and 7.8.2 of the impugned order passed by the State Commission are in disregard to Rule 3 of the Electricity Rules and hence, cannot be sustained.

17.6 Issue No.6:- We hold that as per settled principles of law, there cannot be retrospective application of the procedure formulated under the impugned order for verification of status of CGP/captive users. However, it is clarified that for the past years, the second Respondent/TANGEDO can verify data for the purpose of determination of captive plant status on the basis of data already furnished by CGP/Captive users while availing the open access.



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17.7 Issue No.7:- We set aside the directions contained in Para 7.6.9 of the impugned order wherein the State Commission has held that, in the event, the weightage average of shareholding of captive users changes within a financial year, then the same has to be intimated within ten days to the second respondent/TANGEDCO, otherwise the said licensee would proceed to verify captive status without considering weightage average shareholding."

3. Against the above said order, an appeal was preferred before the Hon'ble Supreme Court and the same has been pending. Therefore, the learned counsel for the petitioner submits that the issue in the present case as well as the issue pending before the Supreme Court in Diary No.21493 of 2021 is one and the same. In the event any order is passed in the appeal by the Hon'ble Supreme Court, the same would squarely apply to the present Writ Petition as well. Therefore, the learned counsel would pray that this Writ Petition may be closed by recording that whatever the order is to be passed by the Hon'ble Supreme Court in the above appeal would also apply to the present Writ Petition as well.

4. In view of the above submission made by the petitioner that the issue in the present writ petition as well as the issue in the appeal pending before the Hon'ble Supreme Court in Diary No.21493 of 2021 is one and the same and any order, which is going to be passed by the Hon'ble Supreme Court in the appeal, will hold good in respect of the present Writ Petition as well.

5. With the above observation, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman and Managing Director,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
10th Floor, 144, Anna Salai,
Chennai 600 002.
2. The Director-Distribution,
TANGEDCO,
10th Floor, 144, Anna Salai,
Chennai 600 002.
3. The Chief Financial Controller-Revenue
TANGEDCO
7th Floor, 144, Anna Salai
Chennai 600 002.
4. The Secretary,
Tamilnadu Electricity Regulatory Commission,
19-A, Rukumini Lakshmipathy Salai,
Egmore, Chennai 600 008.

+1cc to M/S.S.Ramasubramaniam & Associates SR. No.65661

W.P.No.18252 of 2017
and
W.M.P.Nos.19833 to 19835 of 2017

GSM (CO)
PR (30/12/2021)