



W.P.Nos.7185, 10384 & 17742 of 2009 & 10965 of 2010 &
M.P.Nos.1,1,2,2,2 & 3 of 2009 and 1 to 3 of 2010

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.12.2022

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.7185, 10384 & 17742 of 2009 & 10965 of 2010 &
M.P.Nos.1,1,2,2,2 & 3 of 2009 and 1 to 3 of 2010

C.P.Singh, Chairman,
Tamil Nadu Electricity Board,
144, Anna Salai, Chennai – 2.
2009

... Petitioner in W.P.No.7185 of

Tamil Nadu Electricity Board,
Rep. by its Secretary, 144,
Anna Salai, Chennai – 600 002.

... Petitioner in W.P.Nos.10384 &
17742 of 2009 & 10965 of

2010

Vs

1.The Central Electricity Regulatory Commission,
Represented by its Secretary, 3rd and 4th Floor,
Chandarlok Building, 36, Janpath,
New Delhi – 110 001.

... Respondent in W.P.Nos.7185, 10384
& 17742 of 2009 &
R1 in W.P.No.10965 of 2010

2.V.S.Verma,
Member and Adjudicating Officer,
Central Electricity Regulatory Commission,
4th Floor, Chanderlok Building, 36, Janpath,



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WEB C New Delhi – 110 001.

... R2 in W.P.No.10965 of 2010

3.The Southern Regional Load Despatch Centre,
Rep. by its General Manager,
29, Race Course Cross Road,
Banglore – 560 009.

... R3 in W.P.No.10965 of 2010

Prayer in W.P.No.7185 of 2009: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the entire records of the respondent in Petition No.81/2009 (Suo Motu) dated 13.04.2009, quash the entire proceedings insofar as they relate to the invoking of proceedings against the petitioner who is the Chairman of the Tamil Nadu Electricity Board in his personal capacity and forbear the respondent from in any manner holding the Chairman of the TNEB liable in his personal capacity for alleged violations of the Grid Code issued under the Electricity Act, 2003.

Prayer in W.P.No.10384 of 2009: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the entire records of the respondent relating to the order dated 08.05.2009 in Sua Motu Petition No.81/2009 and quash the same.

Prayer in W.P.No.17742 of 2009: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records of the respondent relating to the proceedings in the common order dated 21.08.2009 in Sua Motu Petition No.106/2009 & 130/2009 and quash the same.



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Prayer in W.P.No.10965 of 2010: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records of the second respondent relating to the order dated 27.04.2010 in Adjudicating Case No.6/2009 and quash the same and forbear the respondent Nos.1 and 2 from in any manner proceeding to penalise the petitioner on the basis of the above said proceedings.

(In all W.P.'s)

For Petitioners : Mr.J.Ravindran
Additional Advocate General assisted by
Mr.D.R.Arun Kumar, Standing Counsel

For Respondent : Mr.T.Mohan
in W.P.Nos.7185, 10384 & 17742 of 2009 &
for R1 in W.P.No.10965 of 2010

Not ready Notice
– R2 in W.P.No.10965 of 2010

Mr.Jayesh B.Dolia
for M/s.Aiyar & Dolia
- R3 in W.P.No.10965 of 2010

COMMON ORDER

This is a batch of four writ petitions, three of which have been filed by the Tamil Nadu Electricity Board (W.P.Nos.10384 & 17742 of 2009 & 10965 of 2010) and the fourth by Mr.C.P.Singh, Chairman, Tamil Nadu Electricity Board (TNEB/Board), (W.P.No.7185 of 2009).



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WEB COPY 2. The challenge by the Board is to orders passed by the Central Electricity Regulatory Commission (CERC) levying penalty for overdrawal from the Grid in contravention of the provisions of the Grid Code.

3. As far as the writ petition filed by the individual is concerned, interim Stay has been granted on 21.04.2009 that stood extended till 27.07.2009. There has been no extension of the interim order thereafter. The impugned orders that have been passed are with respect to the Tamil Nadu Electricity Board alone and para No.21 of the impugned order dated 27.04.2010 makes it clear that proceedings as against the chairman shall be kept in abeyance. This is apparently in reference to the interim protection that has been granted by this Court initially though not extended later.

4. As regards the Board, there is an effective and efficacious statutory remedy available under Section 111 of the Electricity Act, 2003 to the Appellate Tribunal for Electricity. Though there is a limitation provided of 45 days from date on which a copy of order is made ready by the adjudicating officer and received by the aggrieved person, and further period of 45 days that may be condoned, respondents have no objection to the Board approaching the Tribunal



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at this juncture, bearing in mind the pendency of these writ petitions from 2009/2010 onwards.

5.Thus, liberty is granted to the Board to challenge the impugned orders by way of statutory appeal under Section 111 of the Act. Appeals, if filed within a period of thirty (30) days from the date of receipt of copy of this order, shall be entertained by the Tribunal, without reference to limitation, but subject to all other statutory conditions as may be prescribed. Mr.Ravindran would submit that the Board would seek waiver of pre-deposit as provided for under 2nd proviso of Section 111(2) and the Board is at liberty to do so.

6.Coming to W.P.No.7185 of 2009, the challenge is to a show cause notice dated 15.04.2009, though referred to as 'order' in the facing page. The communication calls upon the noticee to show cause as to why the person in charge of, and responsible for the conduct of the business is not guilty of the offence of contravention and non-compliance with the provisions of the Grid Code and be punished accordingly along with R1/Board.

7.Learned counsel for the petitioner circulates, in this regard, a copy of the order of the Appellate Tribunal for Electricity in the case of *Bihar State Electricity Board & Shri Swapan Mukherjee Vs Central Electricity*



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WEB *Regulatory Commission* [Appeal No.53 of 2009 order dated 31.07.2009] to the effect that the Commission is not empowered to invoke the provisions of Section 149 of the Act as against the Chairman of the Board. Para No.61 of the aforesaid order reads as follows:

“61. So the above Sections would clearly provide that the offences could be dealt with only by the criminal court and the said criminal court can take cognizance of those offences only when a complaint in writing made by the Judgment in Appeal No. 53 of 2009 appropriate authority before it. They also indicate that the offences which were committed by the person with mens rea i.e. dishonestly or maliciously have to be inquired and tried only by the criminal court and not by the Commission which is empowered to deal with the non-compliance or contravention of the directions or regulations which does not require mens rea. In other words, wherever the offences are mentioned as provided in various Sections referred to above, the criminal court alone is competent to try those offences in order to find out whether the offence has been committed intentionally or with mens rea.”

8.Thus, the position that obtains is that the Chairman of the Board would have no criminal liability under the Electricity Act. He would also submit that the said order has been challenged by the Central Electricity Regulatory Commission before the Hon'ble Supreme Court by way of Special Leave



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WEB.COM Petition (SLP), admitted on 27.11.2009 and converted into Civil Appeal.

C.A.No.7552/2009 had last been listed for hearing on 12.05.2022, to be listed eight weeks thereafter.

9.Since the challenge in W.P.No.7185 of 2009 is only to a show cause notice, it will be appropriate that a response be furnished by the noticee wherein reference be made to the order of the Appellate Tribunal for Electricity in re Bihar State Electricity Board, as well. Let the petitioner be heard, the decision in Bihar State Electricity Board be taken note of, subject to the result of the pending Civil Appeal, and orders be passed.

10.These writ petitions are dismissed though with liberty as aforesaid. No costs. Consequently, connected miscellaneous petitions are closed.

kbs

14.12.2022

Index : Yes / No
Speaking Order

To

1.The Central Electricity Regulatory Commission,
Represented by its Secretary, 3rd and 4th Floor,
Chandarlok Building, 36, Janpath,
New Delhi – 110 001.



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Dr.ANITA SUMANTH, J.

kbs

2. V.S. Verma,
Member and Adjudicating Officer,
Central Electricity Regulatory Commission,
4th Floor, Chanderlok Building, 36, Janpath,
New Delhi – 110 001.
3. The Southern Regional Load Despatch Centre,
Rep. by its General Manager,
29, Race Course Cross Road,
Bangalore – 560 009.

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