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Writ Petition No.16855 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 3/11/2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Writ Petition No.16855 of 2017

a n d

W.M.P.Nos.18323 to 18325 of 2017

Tractors and Farm Equipment Limited
rep. By its Company Secretary
B3/3 MMDA Industrial Estate
Maraimalai Naga 603 209.

...

Petitioner

Vs

1. Tamil Nadu Generation and Distribution
Corporation Ltd
rep. By its Chairman and Managing Director
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
10th Floor, 144 Anna Salai
Chennai 600 002.



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4. Tamil Nadu Electricity Regulatory Commission
rep. By its Secretary

19 A Rukumini Lakshmipathy Salai

Egmore

Chennai 600 008.

...

Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the second and third respondents relating to Circulars bearing Circular Memo No.CFC/FC/REV/AS.3/D.325/17 dated 15/3/2017 and consequential further proceedings in (i). Memo No.CFC/REV/FC/REV/AS.3F.CGP/D.203/17 dated 18/3/2017 (ii). Circular Memo No.CFC/REV/FC/REV/AS.3/F.CGP/D.329/17 dated 30/31.3.2017 (iii). Lr.No.CFC/REV/FC/R EV/DFC/AO.4/F.CGP Status/D.259/2017 dated 31/3/2017 (iv). Memo No.CFC/REV/FC/REV/F.CGP Status/D.334/17 dated 7/4/2017 (v). Memo No.CFC/REV/FC/REV/AS.3/F.CGP/D.338/17 dated 15/4/2017 and (vi) Memo No.CFC/REV/FC/REV/AS.3/F.CGP/D.340/17 dated 15/4/2017 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 binding judgments of the Hon'ble APTEL in the matter of determination and verification of status of the Captive Generating Plants by approaching the Tamil Nadu



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Electricity Regulatory Commission for directions and determination of the status of the Captive Generating Plants as stipulated under the provisions of Electricity Rules, 2005 and confirmed by the binding judgments of the Hon'ble APTEL.

For Petitioner	...	Mr.Krishna Srinivasan for M/s.Ramasubramaniam & Asso.
For respondents	...	Mr.L.Jai Venkatesh

ORDER

Instant writ petition has been filed to challenge the Circulars/Memos, issued by the 3rd respondent/The Chief Financial Controller (Revenue) of TANGEDCO.

2. Today, when the matter is taken up for hearing, learned counsel appearing for the petitioner submitted that on an earlier occasion, this Court has dealt with the similar issue in W.P.No.18252 of 2017 and vide order, dated 9/12/2021, the learned Single Judge of this Court, has disposed of the said writ petition. To substantiate his case, learned counsel has produced the copy of the order to this Court.



3. A perusal of the case referred by the learned counsel appearing for the petitioner, would indicate that a similar issue was put under challenge before the Appellate Tribunal for Electricity, New Delhi, wherein the Appellate 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 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.

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/TANGEDCO 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.

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.”

4. Against the above said order, an appeal was preferred before the



Hon'ble Supreme Court and the same is 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 Civil Appeal No.001142/2022 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.

5. In view of the above submission made by the learned counsel appearing for 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 Civil Appeal No.001142 of 2022 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.

N. SATHISH KUMAR, J



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6. With the above direction, this Writ Petition is disposed of. No costs.

Consequently, connected miscellaneous petitions are closed.

3/11/2022

Index : Yes / No

Internet: Yes

Speaking/non speaking order

mvs.

To

1. The Chairman and Managing Director
Tamil Nadu Generation and Distribution Corporation Ltd
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, 10th Floor, 144 Anna Salai, Chennai 600 002.
4. The Secretary
Tamil Nadu Electricity Regulatory Commission
19 A Rukumini Lakshmipathy Salai, Egmore
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