



WEB COPY



W.P.Nos.13170, 13172, 13173 and 13174 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.13170, 13172, 13173 and 13174 of 2019

And

**W.M.P.Nos.13296, 13297, 13299 to 13304,
14296 to 14299 of 2019**

1.Terra Energy Limited

2.Terra Energy

Represented by

Mr.Ramakrishnan Sadasivan

(Resolution Professional)

(P2 *suo motu* impleaded vide order

dt.04.04.2022 made in

WPs.13170 and 13174/2019 by ASMJ)

... Petitioners in W.Ps.13170 & 13174/2019

1.Shree Ambika Sugars Limited

2.Shree Ambika Sugars

Represented by the IRP

Anurag Goel

(Resolution Professional)

(P2 *suo motu* impleaded vide order

dt.04.04.2022 made in

Wps.13172 and 13173/2019 by ASMJ)

... Petitioners in W.P.13172 & 13173/2019

Vs.



W.P.Nos.13170, 13172, 13173 and 13174 of 2019

1.Tamil Nadu Electricity Regulatory Commission,
No.19-A, Rukmini Lakshmipathy Salai,
Egmore,
Chennai.

2.Tamil Nadu Generation and Distribution
Corporation Ltd.,
Represented by the Chairman,
144, Anna Salai,
Chennai – 600 002. ... Respondents in all the W.Ps.

Common Prayer:

Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent Commission comprised in its order dated 22.02.2019 in D.R.P.Nos.24, 27, 26 and 25 of 2011 respectively and quash the same as illegal and contrary to the provisions of the Electricity Act, 2003 as also the judgment of the Hon'ble Supreme Court and consequently direct the first respondent Commission to take up the matter in D.R.P.Nos.24, 27, 26 and 25 of 2011 respectively and hear the same after appointment of a Judicial Member and dispose of the same on merits.

For Petitioners : Mr.Rahul Balaji
For Respondents : Mr.L.Jaivenkatesh



W.P.Nos.13170, 13172, 13173 and 13174 of 2019

COMMON ORDER

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The petitioners have filed these writ petitions seeking issuance of Writ of Certiorarified Mandamus calling for the records of the first respondent comprised in its order dated 22.02.2019 in D.R.P.Nos.24, 27, 26 and 25 of 2011 respectively and to quash the same as illegal and contrary to the provisions of the Electricity Act, 2003 as also the judgment of the Hon'ble Supreme Court and to consequently direct the first respondent to take up D.R.P.Nos.24, 27, 26 and 25 of 2011 respectively and to hear the same after appointment of a Judicial Member and to dispose of the same on merits.

2.Since the issue involved in all these writ petitions are one and the same, they are heard together and disposed of by way of a common order.

3.The case of the petitioners is that the petitioners are Sugar Cogenerators and since the payment made by the second respondent for the actual supply of surplus power to the second respondent are not in accordance with the terms of the Power Purchase Agreement, the petitioners preferred claim petitions before the first respondent in

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W.P.Nos.13170, 13172, 13173 and 13174 of 2019

D.R.P.Nos.24, 27, 26 and 25 of 2011 respectively and the same were disposed of in the absence of a Judicial Member. Hence, these writ petitions.

4.The learned counsel appearing for the petitioners submitted that the petitioners filed Dispute Resolution Petitions under Regulation 16(1) of the Tamil Nadu Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 before the first respondent seeking direct the respondents therein to make payment in terms of Clause 7 of the Power Purchase Agreement dated 18.08.2004 together with interest for the delayed payments. The said petitions were disposed of by the Technical Member in the absence Judicial Member which is contrary to the decision of the Hon'ble Supreme Court reported in **(2018) 6 SCC 21 [State of Gujarat and others Vs. Utility Users' Welfare Association]**. Hence, on this sole ground this Court may set aside the impugned order and remand the matter back to the first respondent since now they have legal member.

5.The learned counsel appearing for the second respondent did not dispute the facts submitted by the learned counsel appearing for the petitioners.



W.P.Nos.13170, 13172, 13173 and 13174 of 2019

WEB COPY

6.The short issue that arise for consideration is whether the Technical Member have power to adjudicate the dispute inbetween the parties in the Dispute Resolution Petition. The issue is no longer *res integra*. It has already been settled by the the Hon'ble Supreme Court in its decision reported in **(2018) 6 SCC 21 [State of Gujarat and others Vs. Utility Users' Welfare Association]**, the relevant portion of which reads as follows:

"125.3.That in any adjudicatory function of the State Commission, it is mandatory for a member having the aforesaid legal expertise to be a member of the Bench."

7.In view of the above, the impugned order dated 22.02.2019 passed in D.R.P.Nos.24, 27, 26 and 25 of 2011 respectively, is set aside and the matter is remanded back to the first respondent for fresh adjudication. The first respondent is directed to adjudicate the issue inbetween the parties in D.R.P.Nos.24, 27, 26 and 25 of 2011 respectively, and pass appropriate orders, within a period of five months from the date of receipt of a copy of this order.



W.P.Nos.13170, 13172, 13173 and 13174 of 2019

WEB COPY

M.DHANDAPANI,J.

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8.These writ petitions are accordingly disposed of. No costs.

Consequently, the connected miscellaneous petitions are closed.

17.03.2023

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

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