C.M.P.Nos.20714, 20713. 20747, 20751, 20725, 20740, 20572, 20682, 20748, 20669, 20743, 20721, 20691, 20673, 20671, 20668, 20738, 20718, 20722, 20723, 20719, 20689, 20560, 20749, 20715, 20685, 20660, 20688, 20720, 20753, 20755, 20716, 20562, 20744, 20717 and 20566 of 2023

and

W.A.Nos.2325, 1641, 2338, 2332, 2336, 2343, 2355, 2331, 2348, 2342, 2335, 2359, 2357, 2360, 2354, 2361, 2351, 2358, 2328, 2326, 2347, 2337, 2334, 2333, 2362, 2352, 2329, 2344, 2340, 2341, 2345, 2356, 2339, 2346, 2327, 2350 & 2330 of 2022

THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESAVALU,J.

(Order of the court was made by the Hon'ble Chief Justice)

The first respondents in these appeals filed writ petitions before the learned Single Judge seeking directions against the Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO), i.e., applicants/appellants herein, to strictly adhere to the terms of the subsisting energy wheeling agreements by continuing to adopt the arrangement of captive adjustment of the wind energy generated in the units of the first respondents/original petitioners and to consequently account for all the generated units with appropriate banking facility and adjustments of all such units for the period from April, 2021.

2. The learned Single Judge, under order dated 27.1.2022, allowed the writ petitions and issued the following directions:

> *"64. On a careful consideration of all the facts and materials aforesaid, this Court is of the considered view that the prayer of the petitioners deserve to be sustained. Accordingly, respondents 1 to 4 to strictly adhere to the terms of the subsisting Energy Wheeling Agreement entered into between the respective petitioners and TANGEDCO by continuing to adopt the arrangement of captive adjustment of wind energy generated and to consequently account for all the generated units and to provide banking facility and adjustment of all such units till date as per the orders passed by APTEL in Appeal No.191/2018, etc., Batch, dated 28.1.2021 and pass orders in consonance with the orders passed by APTEL. The said exercise of adjustment of the generated units shall be recomputed and adjusted and providing of further banking facility shall be taken up and completed within a period of four weeks from the date of receipt of a copy of this order. It is further made clear that as and when CERC/MNRE notifies the approved Indian Wind*

> *Turbine Certification Scheme and any other safety aspects notified by MNRE/CERC, the petitioners shall strictly abide and comply with all the guidelines and safety standards prescribed in the said Scheme and there shall be no infraction of any of the guidelines laid down by MNRE/CERC. The writ petitions are disposed of with the aforesaid directions. Consequently, connected miscellaneous petitions are closed. However, in the circumstances of the case, there shall be no order as to costs."*

3. Aggrieved by the aforesaid order passed by the learned Single Judge, the TANGEDCO has filed the appeals. In the said appeals, this court has passed an interim order on 24.4.2023, which reads thus:

> *"Mr.R.S.Pandiaraj, learned counsel appearing for the respondents/wind mills, submitted that the wind energy generated by the respondents are being consumed by the TANGEDCO without allowing the respondents/wind mills to use it for captive consumption on the premise that the wind mills have crossed the lifetime of 20 years. But, the TANGEDCO has extended the benefit of captive consumption in a*

similar circumstance to other wind mills and therefore, the same cannot be denied to them.

2. Denying the aforesaid submission, Mr.P.S.Raman, learned senior counsel appearing for the appellants/TANGEDCO submitted that the wind energy generated by the respondents/wind mills are consumed by the TANGEDCO and simultaneously, the respondents/wind mills are also entitled to enjoy the captive consumption.

3. It is made clear that when the wind energy generated by the respondents/wind mills are consumed by the TANGEDCO, the respondents/wind mills are also allowed to have the benefit of captive consumption and also to banking till the next date of hearing.

Post the matter on 13.06.2023."

4. The present applications are filed to vacate the aforesaid interim order.

5. It appears that against the interim order passed by this

court, the present applicants have filed SLPs bearing Nos.16302-16338 of 2023. The Apex Court, under its order dated 25.8.2023, considering the fact that the writ appeals are fixed for hearing before the High Court on 27.9.2023, gave liberty to the TANGEDCO to file applications for vacating the interim order and further observed that the applications be heard on 27.9.2023.

6. We have heard Mr.P.S.Raman, learned Senior Counsel for Mr.L.Jaivenkatesh, learned counsel for the applicants in all the applications; Mr.M.G.Ramachandran, learned Senior Counsel, Mr.Rahil Balaji, and Mr.R.S.Pandiyaraj, learned counsel for the first respondents/original writ petitioners in various applications; and Mr.M.Karthikeyan, learned Senior Panel Counsel for the Ministry of New and Renewable Energy, Union of India.

7. It is not disputed that in all these matters the machines are commissioned prior to 2018. It is beyond any cavil that the Tamil Nadu Electricity Regulatory Commission (TNERC) has retained the practice of one year (from April to March) banking period of TNEB

for the NCES based wind electric generators, whereas the new machines commissioned from the date of applicability of the said order shall have facility of banking of energy for a period of one month.

8. Mr.P.S.Raman, learned Senior Counsel for the applicants, submits that the order of the TNERC is assailed before the Apex Court and the same is pending. The Apex Court has stayed the recovery.

9. According to learned Senior Counsel and learned counsel for the first respondent/original writ petitioners, the stay granted by the Apex Court pertains to the excess recovery that the present applicants had made on account of the increased charges and the order of the TNERC permitting banking for one year is not stayed.

10. The order of the TNERC is in force. The order of the learned Single Judge insofar as old machines is concerned does not appear to be in conflict with the orders of the TNERC qua the

banking facility for one year. In the light of that, the ad interim order directing the applicants to permit the banking facility for one year (in respect of old machines commissioned prior to 2018) does not appear to be unreasonable. Hence, the interim order already granted need not be vacated.

11. C.M.P.Nos.20714, 20713. 20747, 20751, 20725, 20740, 20572, 20682, 20748, 20669, 20743, 20721, 20691, 20673, 20671, 20668, 20738, 20718, 20722, 20723, 20719, 20689, 20560, 20749, 20715, 20685, 20660, 20688, 20720, 20753, 20716, 20562, 20744, 20717 and 20566 of 2023 are disposed of accordingly.

12. The present applicants on the last date had filed applications to implead the TNERC and the Ministry of New and Renewable Energy, Union of India, as party respondents. We had allowed the applications.

13. Mr.P.S.Raman, learned Senior Counsel for the applicants,

submits that if the Ministry of New and Renewable Energy, Union of India, comes out with some policy with regard to the old machines, then that would put an end to the dispute with regard to certification and/or otherwise.

14. Learned Senior Panel Counsel appearing on behalf of the Ministry of New and Renewable Energy, Union of India, seeks four weeks' time to take necessary instructions.

15. At the request of learned Senior Panel Counsel appearing on behalf of the Ministry of New and Renewable Energy, Union of India, the writ appeals are adjourned to 7.11.2023.

(S.V.G., C.J.) (P.D.A., J.)
27.09.2023

sasi

THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESAVALU,J.

(sasi)

C.M.P.Nos.20714 of 2023 etc. batch

27.09.2023