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W.P.Nos.11552 to 11558



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.11552 to 11558 2017

and

W.M.P.Nos.12543 to 12563 of 2017

W.P.No.11552 of 2017:

M/s. Sri Vinayaga Alloys P Ltd.,
HTSC.119,
28/2, A1, Salem Main Road,
Akkamapet, Sankari Post,
Salem – 637 301
repd, its Manager V.Cheliyan

... 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. Tamil Nadu Electricity Regulatory Commission,
19-A, Rukumini Lakshmipathy Salai,
Egmore, Chennai – 600 008.
Represented by its Secretary

5. The Superintending Engineer,
Mettur Electricity Distribution Circle,
Mettur Dam – 1.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondents relating to the 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.CGP Status/D.334/2017 dated 07.04.2017 issued by the 2nd respondent (v) Memo No.CFC/ REV/ FC/REV/AS.3/ F.CGP/ D.338/17 dated 15.04.2017; (vi) Memo No.CEF/REV/FC/REV /AS.3/F. CGP/ D.340/17 dated 15.04.2017 issued by the 3rd respondent and L.R.No.SE/MEDC/ DFC/AOR/AAO/AS/HT/F.CGP Status/D.No.104/2017 dated 16.04.2017 issued by the 5th respondent and quash the same as being contrary to law 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 Tamil Nadu Electricity Regulatory Commission for directions and



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

For Petitioners	: Mr.M.Saravana Kumar (in all WPs)
For R1 to R3 & R5	: Mr.I.Syed Sibghatulla [For TANGEDCO] (in WP.Nos.11552 & 11554 of 2017)
For R1 to R3 & R5	: Mr.Venkata Seshaya [For TANGEDCO] (in WP.Nos.11553, 11555, 11557 of 2017)
For R1 to R3 & R5	: No Appearance (in WP.Nos.11556 & 11558 of 2017)
For R4	: Mr.Abhinav Parthasarathy (in All WPs)

COMMON ORDER

These writ petitions have been filed, challenging the various circulars/memos mentioned above, issued by the 3rd respondent/The Chief Financial Controller-Revenue of the TANGEDCO.



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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 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



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W.P.Nos.11552 to 11558



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



WEB COPY

W.P.Nos.11552 to 11558



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.

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



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well as the issue pending before the Hon'ble 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 these Writ Petitions as well. Therefore, the learned counsel would pray that these Writ Petitions 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 these present Writ Petitions as well.

4. In view of the above submission made by the petitioner that the issue in these present writ petitions 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 these present Writ Petitions as well.

5. With the above observation, these Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

10.03.2023

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes



To

WEB COPY

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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
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- 4.The Secretary
Tamil Nadu Electricity Regulatory Commission,
19-A, Rukumini Lakshmipathy Salai,
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S.M.SUBRAMANIAM, J.

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