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W.P.Nos. 3966, 8126, 9699, 10581 and 13103 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.3966, 8126, 9699, 10581 and 13103 of 2021

and

W.M.P.Nos.4532, 8693, 10281, 11185 and 13913 of 2021

W.P.No.3966 of 2021:-

The Lakshmi Mills Company Limited,
Represented by its Authorised Signatory,
686, Avinashi Road,
Pappanaickenpalayam,
Coimbatore – 641 037.

...Petitioner

-Vs-

1. Tamil Nadu Generation and Distribution,
Corporation Limited,
Represented by its Chief Financial Controller,
144, Anna Salai,
Chennai – 600 002.
2. The Executive Engineer,
Open Access,
State Load Despatch Centre,
No. 144, Anna Salai,
Chennai – 600 002.
3. The Superintending Engineer,
Palladam Electricity Distribution Circle,
Tamil Nadu Generation and Distribution,
Corporation Limited, Palladam – 641 664.
4. The Superintending Engineer,



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Tuticorin Electricity Distribution Circle,
Tamil Nadu Generation and Distribution
Corporation Limited,
131, 132 Ettayapuram Road,
Tuticorin 628 502, Tamil Nadu.

5. Sai Regency Power Corporation Private Limited,
Represented by its Insolvency Resolution Professional,
Mr.G.Ramachandran,
Road No. 22, Jubilee Hills,
Hyderabad, Telangana – 500 003.

...Respondents

W.P.No.8126 of 2021:-

Sundaram Clayton Limited,
Represented by its Authorised Signatory,
“Chaitanya”, 12 Khader Nawaz Khan Road,
Nungambakkam, Chennai – 600 006.

...Petitioner

-Vs-

1. Tamil Nadu Generation and Distribution
Corporation Limited,
Represented by its Chief Financial Controller,
144, Anna Salai,
Chennai – 600 002.
2. The Executive Engineer,
Open Access,
State Load Despatch Centre,
No. 144, Anna Salai,
Chennai – 600 002.
3. The Superintending Engineer,
Chennai West Electricity Distribution Circle,
Tamil Nadu Generation and Distribution
Corporation Limited,
Thirumangalam SS Complex,
Anna Nagar, Chennai – 600 040.

4. The Superintending Engineer,



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Krishnagiri Electricity Distribution Circle,
Tamil Nadu Generation and Distribution,
Corporation Limited,
Krishnagiri – 635 002.

5. The Superintending Engineer,
Chengalpattu Electricity Distribution Circle,
Tamil Nadu Generation and Distribution
Corporation Limited,
Chengalpattu – 603 001.
6. Sai Regency Power Corporation Private Limited,
Represented by its Insolvency Resolution Professional,
Mr.G.Ramachandran,
Road No. 22, Jubilee Hills,
Hyderabad, Telangana – 500 003. ...Respondents

W.P.No.9699 of 2021:-

Orchid Pharma Limited,
(formerly Orchid Chemicals & Pharmaceuticals Limited)
Represented by its Authorised Signatory,
Orchid Towers, 313,
Valluvar Kottam High Road,
Nungambakkam,
Chennai – 600 034. ...Petitioner

-Vs-

1. Tamil Nadu Generation and Distribution
Corporation Limited,
Represented by its Chief Financial Controller,
144, Anna Salai,
Chennai – 600 002.
2. The Executive Engineer,
Open Access,
State Load Despatch Centre,
No.144, Anna Salai,
Chennai – 600 002.



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3. The Superintending Engineer,
Chengalpattu Electricity Distribution Circle,
Tamil Nadu Generation and Distribution Corporation Limited,
Chengalpattu – 603 001.

4. Sai Regency Power Corporation Private Limited,
Represented by its Insolvency Resolution Professional,
Mr.G.Ramachandran,
Road No. 22, Jubilee Hills,
Hyderabad, Telangana – 500 003.

...Respondents

W.P.No.10581 of 2021:-

Brakes India Private Limited,
Represented by its Authorised Signatory,
MTH Road,
Padi, Chennai – 600 050.

...Petitioner

-Vs-

1. Tamil Nadu Generation and Distribution Corporation Limited,
Represented by its Chief Financial Controller,
144, Anna Salai,
Chennai – 600 002.
2. The Executive Engineer,
Open Access,
State Load Despatch Centre,
No. 144, Anna Salai,
Chennai – 600 002.
3. The Superintending Engineer,
Chennai West Electricity Distribution Circle,
Tamil Nadu Generation and Distribution Corporation Limited, Thirumangalam SS Complex,
Anna Nagar, Chennai – 600 040.
4. The Superintending Engineer,



W.P.Nos. 3966, 8126, 9699, 10581 and 13103 of 2021

Vellore Electricity Distribution Circle,
Tamil Nadu Generation and Distribution,
Corporation Limited,
Vellore – 632 006.

5. Sai Regency Power Corporation Private Limited,
Represented by its Insolvency Resolution Professional,
Mr.G.Ramachandran,
Road No. 22, Jubilee Hills,
Hyderabad, Telangana – 500 003. ...Respondents

W.P.No.13103 of 2021

MRF Limited,
Represented by its Authorised Signatory, Mr.Anilkumar.K
124, Greams Road,
Chennai – 600 006. ...Petitioner

-Vs-

1. Tamil Nadu Generation and Distribution
Corporation Limited,
Represented by its Chief Financial Controller,
144, Anna Salai,
Chennai – 600 002.
2. The Executive Engineer,
Open Access,
State Load Despatch Centre,
No. 144, Anna Salai,
Chennai – 600 002.
3. The Superintending Engineer,
Chennai North Electricity Distribution Circle,
Tamil Nadu Generation and Distribution,
Corporation Limited,
No. 144, Anna Salai,



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Chennai – 600 002.

4. The Superintending Engineer,
Vellore Electricity Distribution Circle,
Tamil Nadu Generation and Distribution,
Corporation Limited,
Vellore – 632 006.

5. Sai Regency Power Corporation Private Limited,
Represented by its Insolvency Resolution Professional,
Mr.G.Ramachandran,
Road No. 22, Jubilee Hills,
Hyderabad, Telangana – 500 003.

...Respondents

Common Prayer in W.P.Nos.3966, 8126, 10581 and 13103 of 2021: Writ Petitions filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, directing the second respondent to issue Standing Clearance and NOC to the petitioner permitting the petitioner to purchase power from IEX power exchange and other open access procurement.

Prayer in W.P.No.9699 of 2021:Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, directing the second respondent to issue Standing Clearance and NOC to the petitioner permitting the petitioner to purchase power in addition to the power purchase already approved from IEX power exchange and other open access procurement.

In W.P.Nos.3966, 8126, 10581 and 13103 of 2021

For Petitioner : Mr.Rahul Balaji

For R1 to R4 : Mr.D.R.Arunkumar



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Standing Counsel

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In W.P.No.9699 of 2021

For Petitioner : Mr.Rahul Balaji
For R1 to R3 : Mr.D.R.Arunkumar
Standing Counsel

COMMON ORDER

W.P.Nos.3966, 8126, 10581 and 13103 of 2021 have been filed for the issuance of Writ of Mandamus, directing the second respondent to issue Standing Clearance and NOC to the petitioner permitting the petitioner to purchase power from IEX power exchange and other open access procurement.

2. W.P.No.9699 of 2021 has been filed for the issuance of a Writ of Mandamus, directing the second respondent to issue Standing Clearance and NOC to the petitioner permitting the petitioner to purchase power in addition to the power purchase already approved from IEX power exchange and other open access procurement.

3. Heard the learned counsel on either side and perused the materials available on record.



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4. It is seen that similar matter has been already dealt with by this Court in W.P.No.17577 of 2020 and this Court, by an order dated 25.07.2023 held as follows:-

“ 6. The learned counsel for the TANGEDCO took this Court extensively through its counter and submitted that:

- ▣ the prayer had two parts as the first one relates to issue of NOC for June and July 2020;*
- ▣ seeking NOC for procurement through IEX could be possible only if the agreement between the petitioner and the 4th respondent is terminated, and what was terminated by the petitioner is only Medium Term Open Access (MTOA) purchase and not the agreement itself.*

7. All the parties however, agree that today NOC is being regularly issued by TANGEDCO to the petitioner for its energy procurement through IEX. This Court considers that TANGEDCO has gone into a casuistic expedition and try to see something where there is nothing. Admittedly, the petitioner and the 4th respondent had entered into a PPA dated 28.03.2019, for sale and purchase of energy from 01.04.2020. As stated earlier, the 4th respondent could not supply energy to the petitioner as per the agreement, and it resulted in the termination of the aforesaid contract by the petitioner. In its communication dated 15.07.2020 to the 4th respondent, the petitioner had made it clear that it had terminated the MTOA by 31.03.2020, and the shares which the petitioner had in the 4th respondent had also been since transferred to the petitioner. Now the interpretation TANGEDCO wants to put on this agreement is that agreement and MTOA are two different aspects of the same agreement, and tries to project a case that agreement needs to be separately terminated, and not just MTOA.

8. MTOA enables open access for two years. When the



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purchaser says that it had terminated its contract for purchasing electricity for the two year terms, rather for the medium term, then what else remains in the agreement to be performed? To state it differently, the petitioner has merely informed the 4th respondent, and tells it that its agreement to buy the latter's energy for the Medium Term Open Access i.e. two years, will stand terminated. This is the soul of the very agreement, and when this stands terminated, only the shell remains, and nothing more requires to be performed. Here TANGEDCO has unnecessarily created a dispute where neither the generator nor the purchaser have any conflict.

9.1 This Court therefore, does not agree with the interpretation put on clause 12(2) of TNERCs Grid Connectivity and Intra State Open Access Regulation, 2014, by the TANGEDCO. So far as the second part of the prayer is concerned, today inasmuch as the NOC is being issued to the petitioner from June 2020 till date, nothing really survives. Even if the objection to interpretation of clause 12 (2) of TNERCs Grid Connectivity and Intra State Open Access Regulation, 2014 made by the TANGEDCO is presumed to be valid, even then the two year period has now expired.

9.2 From whichever angle it is seen, today, TANGEDCO cannot refuse issuing NOC to the petitioner to procure energy. To stretch it further, TANGEDCO is under an obligation to issue NOC to the petitioner as and when the same is applied for.”

5. A perusal of the counter filed in all the writ petitions revealed that the similar benefit can be extended to all the petitioners herein, on the ground that the agreement was valid up to 26.01.2022.

6. Therefore, as held by this Court, the petitioners herein are also entitled



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to succeed in the writ petitions on the same ground. Accordingly, these writ petitions are allowed. Consequently, connected Miscellaneous petitions are closed. There shall be no order as to costs.

01.04.2024

Internet: Yes

Index : Yes/No

Neutral Citation: Yes/No

Speaking/Non Speaking order
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To

1. The Chief Financial Controller,
Tamil Nadu Generation and Distribution Corporation Limited,
144, Anna Salai,



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- Chennai – 600 002.
2. The Executive Engineer,
Open Access,
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Chennai – 600 002.
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Tamil Nadu Generation and Distribution,
Corporation Limited, Palladam – 641 664.
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Tuticorin Electricity Distribution Circle,
Tamil Nadu Generation and Distribution
Corporation Limited,
131, 132 Ettayapuram Road,
Tuticorin 628 502, Tamil Nadu.
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Krishnagiri Electricity Distribution Circle,
Tamil Nadu Generation and Distribution,
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Krishnagiri – 635 002.
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Tamil Nadu Generation and Distribution Corporation Limited,
Chengalpattu – 603 001.
 7. The Superintending Engineer,
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Tamil Nadu Generation and Distribution,
Corporation Limited, Thirumangalam SS Complex,
Anna Nagar, Chennai – 600 040.

G.K.ILANTHIRAIYAN. J.

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Vellore – 632 006.
9. The Superintending Engineer,
Chennai North Electricity Distribution Circle,
Tamil Nadu Generation and Distribution,
Corporation Limited,
No. 144, Anna Salai,
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10. The Insolvency Resolution Professional,
Mr.G.Ramachandran,
Sai Regency Power Corporation Private Limited,
Road No. 22, Jubilee Hills,
Hyderabad, Telangana – 500 003.

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