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W.P.No.5546 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2024

CORAM:

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

**W.P.No.5546 of 2021**  
**and W.M.P.No.6183 of 2021**

Jagannath Textile Company Limited,  
Represented by its Managing Director,  
Door No. 140-141, 2<sup>nd</sup> Floor,  
DB Road, Ramani Krishna Marvel,  
R.A.Puram, Coimbatore – 641 002.

...Petitioner

-Vs-

1. Tamil Nadu Generation and Distribution Corporation Limited,  
Represented by its Chairman,  
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,  
Coimbatore South Electricity Distribution Circle,  
Tamil Nadu Generation and Distribution Corporation Limited, Coimbatore – 641 012.



W.P.No.5546 of 2021

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

**Prayer :** 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 from IEX power Exchange  
and other open access procurement.

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

### **ORDER**

This Writ Petition has 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. Heard the learned counsel on either side and perused the  
materials available on record.



W.P.No.5546 of 2021

WEB COPY

3. 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 4<sup>th</sup> 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 4<sup>th</sup> respondent had entered into a PPA dated 28.03.2019, for sale and purchase of energy from 01.04.2020. As stated earlier, the 4<sup>th</sup> 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 4<sup>th</sup> 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 4<sup>th</sup> 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*



WEB COPY



W.P.No.5546 of 2021

*separately terminated, and not just MTOA.*

*8. MTOA enables open access for two years. When the 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 4<sup>th</sup> 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."*



W.P.No.5546 of 2021

WEB COPY

4. In view of the above order passed by this Court, the petitioner herein is also entitled to succeed in the writ petition on the same ground. Accordingly, this writ petition is allowed. Consequently, connected Miscellaneous petition is 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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WEB COPY



W.P.No.5546 of 2021

**G.K.ILANTHIRAIYAN. J.**

mn

To

1. The Chairman,  
Tamil Nadu Generation and Distribution  
Corporation Limited,  
144, Anna Salai,  
Chennai – 600 002.
2. The Executive Engineer,  
Open Access,  
State Load Despatch Centre,  
No. 144, Anna Salai,  
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Mr.G.Ramachandran,  
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W.P.No.5546 of 2021

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