IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON: 12.03.2025

ORDERS PRONOUNCED ON: 18.03.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.469, 6487, 2307, 2341, 934, 938 and 991 of 2025 &
W.M.P.Nos.1127, 1125, 7137, 7139, 7141, 1230, 2623, 2624, 2668, 2670, 550, 551, 1128, 1130, 1138, 1140 and 1229 of 2025

W.P.No.469 of 2025:
OPG Power Generation Pvt.Ltd.
OPG Power Plant, OPG Nagar
Periya Obulapuram Village, NagarajaKandigai
Madharapakkam Road, Gummidipoondi
Thiruvallur – 601 201. .. **Petitioner**

Vs.

1.Tamil Nadu Power Distribution
Corporation Limited (TNPDCL)
Rep.by its Chairman
NPKRR Maaligai
144, Anna Salai, Chennai – 600 002.

2.Chief Financial Controller/Revenue (FAC)
7th Floor, Eastern Wing, TNPDCL
NPKRR Maligai, Chennai – 600 002.

3.Director (Finance)

TNPDCL
NPKRR Maligai, 144 Anna Salai
Chennai – 600 002.

4.The Superintending Engineer
Chennai EDC / North
TNPDCL, Anna Salai
Chennai – 600 002.

5.Tamil Nadu Electricity Regulatory Commission
TNERC
4th Floor, SIDCO Corporate Office Building
Thiru Vi Ka Industrial Estate
Guindy, Chennai – 600 032. .. **Respondents**

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, to quash the impugned instructions issued by the 2nd respondent vide letter dated 12.12.2024 bearing reference Lr.No.CFC/REV/FC/AO/AS-3/REV/D.NO.557-2/24 directing all Superintending Engineers of TNPDCL to bill all generators availing start-up power under High Tension Tariff-I(two-part tariff system) as specified in the Suo-Motu Tariff order No.6 dated 15.07.2024 (effective from 01.07.2024) and the consequential demand notice issued by the 4th respondent dated 31.12.2024 bearing reference Lr.No.SE/CEDC/N/DFC/AAO/HT/A.3/F.1881/D.743/24 insofar as it seeks to unilaterally fix the tariff for startup power in the absence of any prevailing valid and enforceable tariff order issued by the 5th respondent TNERC for start-up power as being arbitrary, illegal, without authority and contrary to the provisions of the Electricity Act 2003 and the regulations framed thereunder and to consequently direct the respondent TNPDCL to forbear from pursuing any recovery action contrary to the tariff orders issued by the TNERC and pending determination of tariff for startup power by the 5th respondent TNERC in compliance with the directives of the Honourable APTEL in its order dated 08.10.2024 in A.No.396 of 2024 and pass such further or other orders.

For the Petitioners	:	Mr.Rahul Balaji in W.P.Nos.469, 6487, 2307 934, 938 and 991 of 2025 for Mr.S.P.Parthasarathy in W.P.No.2341 of 2025
For the Respondents	:	Mr.P.S.Raman Advocate General Assisted by Mr.D.R.Arunkumar Standing Counsel

COMMON ORDER

All these Writ Petitions seek identical reliefs and are therefore taken up and disposed of by this common order.

2. The Writ Petitioners are power-generating companies. The subject matter of the dispute relates to the tariff for "startup power” that these companies

use intermittently to start their generators. The prayer in these Writ Petitions challenges the instructions issued by the Chief Financial Controller/Revenue (FAC), Tamil Nadu Power Distribution Corporation Limited - the second respondent herein, dated 12.12.2024. These instructions direct all the Superintending Engineers of the organisation to bill all generators utilising startup power under High Tension Tariff-I (a two-part tariff system), as specified in the s*uo motu* Tariff Order No. 6 dated 15.07.2024 (effective from 01.07.2024). The petitioners also challenge the consequential demand notices issued to the individual generating companies. The consequential prayer is to direct the second respondent - Tamil Nadu Power Distribution Corporation Limited (TNPDCL) to refrain from pursuing any recovery actions contrary to the tariff orders issued by the Tamil Nadu Electricity Regulation Commission (TNERC) and pending the determination of the tariff for startup power by the fifth respondent in compliance with the directives of Appellate Tribunal for Electricity(APTEL) in its order dated 08.10.2024 in A.No.396 of 2024.

3. The key facts essential for resolving the issues currently present in these

Writ Petitions, in light of certain subsequent developments, are as follows:

3.1. Originally, by a circular dated 07.09.2013, the TNPDCL imposed a two-part tariff system for startup power. Claiming that this was against the tariff order, a batch of Writ Petitions in W.P.Nos.26266 of 2013, etc., were filed, and interim orders were granted on conditions directing that 25 % to 50 % of the charges levied shall be paid by the companies pending the disposal of the Writ Petitions.

3.2. While the Writ Petitions were pending, on 13.03.2014, the open access regulations were notified, repealing the 2005 regulations. Regulation 25 prescribes the charges for startup power supplied by the distribution licensee and imposes restrictions based on usage, limiting it to 42 base units per year. During the pendency of the above Writ Petitions, tariff orders for the years 2014 – 2017 were also issued. Subsequently, this Court considered the aforementioned batch of Writ Petitions and, by an order dated 27.08.2021, laid down the best practices to be followed by the TNPDCL and transferred the Writ Petitions to the TNERC for adjudication.

3.3. On 09.09.2022, the tariff order was issued for the control period of the financial years 2022 – 2023 to 2026 – 2027. While the aforementioned transfer applications in T.A.Nos.13 of 2022 and Batch were pending before the TNERC, the restriction on usage for 42 days per year was relaxed in the tariff order. Furthermore, on 30.06.2023, an order No.6 of 2023 for a *suo-motu* tariff revision was issued for the financial year 2023 – 2024. Subsequently, on 29.12.2023, the TNERC issued an order categorizing pure generators, such as the petitioners using startup power, under the temporary supply category (HT – V) and fixed energy equated demand charges at 125% of the temporary supply energy charges. These directives were made prospectively applicable from the date of the order. On 15.07.2024, a *suo-motu* tariff revision order for the financial year 2024 – 2025 was issued by the TNERC. On 20.08.2024, the TNPDCL issued implementation instructions directing all Superintending Engineers to ensure compliance with the TNERC's order dated 29.12.2023 from the date of the order. The instructions also directed all Superintending Engineers to comply with the 2024 tariff order. The TNPDCL filed an appeal challenging the TNERC's order dated 29.12.2023, which categorized the pure generator using startup power under the temporary supply category. This appeal was filed as APL. No.290 of 2024 and APTEL granted an interim Order staying the application of the

TNERC's directions for the past period, i.e., from 01.08.2017 up to the issuance of the TNERC's order dated 29.12.2023, to the extent such directives were contrary to the tariff orders in force prior to their issuance. The TNPDCL also filed an appeal in A.P.L.No.353 of 2024 challenging the tariff order for the year 2024.

3.4. On 30 September 2024, in the interim order passed in A.P.L. No. 353 of 2024, APTEL allowed the TNPDCL to seek clarification from the TNERC regarding the application of its directions dated 29/12/2023 for the past period, granting liberty to the petitioner companies. Accordingly, the petitioners filed M.P. No. 51 of 2024 and I.A. No. 1 of 2024, seeking appropriate clarification and an interim injunction against coercive action pending the issuance of clarification. The appeal filed by TNPDCL against the tariff order for the year 2024 was allowed by APTEL on the grounds that TNPDCL was not heard and remanded the matter back to the TNERC for fresh consideration.

3.5. When the matters were pending, the impugned circular dated 12.12.2024 directed the Superintending Engineers to recover the startup charges for the period 01.07.2024 at a two-part tariff with belated payment surcharges. The concerned superintending engineers also issued consequential demand notices on the same day, referring to the startup charges for the period 01.08.2017 to 30.06.2024, which are the subject of different sets of Writ Petition in W.P.Nos.468 of 2025, etc..

3.6. The current batch of writ petitions challenges the impugned instructions regarding the recovery of startup charges from 01.07.2024 onwards. By an order dated 08.01.2025, this Court disposed of W.P.No.468 of 2025 and its batch, directing the TNERC to issue orders on I.A.No.1 of 2024 in M.P.No.51 of 2024 on or before 07.02.2025. Meanwhile, while these writ petitions are still pending, the TNERC issued an order on 27.02.2025 concerning I.A.No.1 of 2024 in M.P.No.51 of 2024. The operative portion of that order is extracted below:

> "13. In view of the aforesaid findings and observation, Commission is of the view that the communication dated 12.12.2024 of TNPDCL does not fall foul of Tariff Order of 2017 and 2022. The Hon'ble APTEL has given liberty to the respondent TNPDCL to recover the amounts from the OPG Power Generation Private Limited, the petitioner in M.P.No.51 of 2024 and M/s.A.R.S Metals Limited, the petitioner in M.P.No.55 of 2024.
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> 14. In view of the above said order passed by the Hon'ble

APTEL in favour of the respondents and as a consequence of the findings of the Commission that the communication dated 12.12.2024 does not fall foul of the Tariff Orders passed in the year 2017 and 2022, this Commission decides that there is no merit in the interlocutory applications filed by the applicants in I.A.No.1 of 2024 and I.A. No.1 of 2025 in M.P.No.51 of 2024 and M.P.No.55 of 2024 respectively seeking interim injunction restraining the respondents from initiating any recovery proceedings contrary to the orders dated 29.12.2023 passed by the Commission or restraining the respondents from claiming any amount in excess of 50% of the demand charges.

15. In fine this Commission decides that there is no merit in both the interim injunction petitions.

In the result the petitions I.A.No.1 of 2024 in M.P.No.51 of 2024 and I.A.No.1 of 2025 in M.P.No.55 of 2024 are dismissed. Parties shall bear their respective costs.

Ordered accordingly."

3.7. The petitioners also filed review applications before the TNERC regarding the said order. At this stage, these Writ Petitions were taken up for arguments.

4. After hearing *Mr. Rahul Balaji,* the learned counsel for the petitioners in several Writ Petitions; *Mr. Parthasarathy,* the learned counsel for the petitioner in W.P. No. 2341 of 2025; and *Mr. P. S. Raman,* the learned Advocate General appearing on behalf of the respondents in detail, both sides' learned counsel agree that, in light of the order passed by the TNERC, the petitioners have to

seek recourse against the order.

5. The learned Advocate General would submit that the petitioners can file an appeal before the APTEL. Both sides also agree that the petitioners have approached the same authority by way of Review. Therefore, it is open for the petitioners to pursue the legal remedies available to them concerning the order dated 27.02.2025 passed by the TNERC. However, the only grievance expressed by the power generating companies is that previously, the TNERC passed an order on 29.12.2023, categorizing these generators using the startup power under the temporary supply category (HT – V) and fixed the energy equated demand charges at 125% of the temporary supply energy charges. The APTEL has remanded the matter back to TNERC solely on the ground that TNPDCL was not put on notice. As the matter is pending in R.A.No.5 of 2024 and the APTEL has directed the TNERC to decide it, merely because the connected appeal is still pending regarding other parts of the order, it need not be kept pending. The finding of the TNERC in this regard is contained in paragraph No.10, which is extracted hereunder for ready reference:

> "The only question which requires further consideration is whether two part tariff similar to the one fixed in Tariff Order of

> 2017, 2022 and 2023 can be extended to Tariff Order of 2024 as well. In this connection, it is to be observed that consequent to the order dated 08.10.2024 of the Hon'ble APTEL in Appeal No. 396 of 2024, wherein the order of the Commission has been set aside to the limited extent the Commission decided the issue of start-up power without giving the TNPDCL of opportunity of being heard, the matter was taken on the file of the Commission as R.A.No.5 of 2024 and it is pending for disposal. In view of the same, we have to observe that even if an opportunity is given in R.A.No.5 of 2024 to TNPDCL to express its views on the tariff determined by the Commission in its order dated 29.12.2023 and validity of its subsequent extension to Tariff Order of 2024, the same would not make any difference as the Commission cannot rely on its decision rendered in its order dated 29.12.2023 and extend it to R.A.No.5 of 2024 due to pendency of appeal against the order dated 29.12.2023 of the Commission before the Hon'ble APTEL. It is because of the clear cut view expressed by Hon'ble APTEL in its order dated 12.09.2024 that the Commission could not have extended the decision rendered in the order dated 29.12.2023 to Tariff Order of 2017-2022 when the remand made by Hon'ble High Court of Madras pertained only to the period 2013-2017."

6. In this regard, the order of the APTEL dated 08.10.2024 categorically directs the Commission to issue a new order regarding startup power in accordance with the law. The operative portion of the order is provided below for reference:

> "Suffice it, in such circumstances, to set aside the impugned order to the limited extent the Respondent-Commission had decided the issue of start-up power without putting the Appellant on notice, and without giving them an opportunity of being heard. We make it clear that we have not interfered the remaining part of the impugned tariff order. The Commission shall put the Appellant on notice, give them an opportunity of being heard, and thereafter, pass an order afresh, on the issue of startup power, in accordance with law. The impugned order is set aside to the limited extent indicated

hereinabove. The Appeal and the l.As' therein stand disposed of."

7. It is further stated that the appeal pending before the APTEL will not be decided immediately and may take some time. In light of these circumstances, as there is no interim order restraining the TNERC from deciding R.A.No.5 of 2024 and in the face of the express direction issued, the TNERC can be directed to consider R.A.No.5 of 2024 on its merits and in accordance with the law, by providing due opportunity to the parties as expeditiously as possible. Further coercive steps for collecting higher tariffs as HT – IV (two-part) can await the TNERC's decision, and until then, the petitioners shall continue to pay at the rate established by the order dated 29.12.2023. This course of action is accepted by the parties. Both sides shall cooperate with the TNERC for an early resolution of R.A.No.5 of 2024.

8. In light of this, these Writ Petitions are disposed of on the following terms:

(i) Pending the Writ Petitions, an order was issued on 27.02.2025 by the TNERC in I.A.No.1 of 2024 in M.P.No.51 of 2024, and the parties shall seek further legal recourse against the said order;

(ii) The TNERC is requested to take up R.A. No. 5 of 2024 for disposal on its own merits and in accordance with the law, passing orders in the matter after duly hearing all parties as expeditiously as possible, and in any case, not later than four weeks from the date of receipt of the website-uploaded copy of the order, without waiting for the certified copy of this order;

(iii) It is made clear that wherever the petitioners have paid the startup charges at the rate of two-part tariff, HT – 4, these shall remain paid. In respect of other petitioners and for the period until the disposal of R.A. No. 5 of 2024, if the petitioners pay the startup charges at the rate fixed by the order dated 29.12.2023, i.e., as temporary supply category HT – V at 125% of the temporary supply energy charges, then no further coercive action shall be taken against the petitioners. Further action will depend on the Orders issued by the TNERC.

(iv) No costs. Consequently, the connected miscellaneous petitions are closed.

18.03.2025

Neutral Citation : Yes

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To
1.The Chairman
Tamil Nadu Power Distribution
Corporation Limited (TNPDCL)
NPKRR Maaligai
144, Anna Salai, Chennai – 600 002.

2.The Chief Financial Controller/Revenue (FAC)
7th Floor, Eastern Wing, TNPDCL
NPKRR Maligai, Chennai – 600 002.

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D.BHARATHA CHAKRAVARTHY, J.

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W.M.P.Nos.1127, 1125, 7137, 7139, 7141, 1230, 2623, 2624, 2668, 2670, 550, 551, 1128, 1130, 1138, 1140 and 1229 of 2025

18.03.2025

W.P.Nos. 469, 6487, 2307, 2341, 934, 938 and 991 of 2025

D.BHARATHA CHAKRAVARTHY.J.,

The matter is listed under the caption "for being mentioned".

2. Firstly, two W.M.P.Nos. 1127 and 1125 of 2025 are incorrectly mentioned in the cause title. These can be removed and the registry can re-

upload the corrected order.

3. The second reason for mentioning is the sentence in paragraph No. 7, which states that this course of action is accepted by the parties. The learned Advocate General appearing for the respondents, seeks clarification with reference to that.

4. The learned Advocate General appearing for the respondents, has accepted the course of action for the disposal of R.A. No. 5 of 2024. As far as the interim order granted pending the disposal is concerned, that is by order of the Court. Therefore, the original sentence found in paragraph No. 7 is corrected as follows:-

> "The course of action that R.A. No. 5 of 2024 can be disposed of at an earlier date is agreed upon by both sides. The only issue is the kind of interim order to be passed pending the disposal of the R.A, I am of the view that suitable interim orders can also be passed by this Court so as to expedite the proceedings so that R.A. No. 5 of 2024 is disposed of at an earlier date, as hereinafter contained. All other contentions, including the date discrepancy, etc., can also be raised only before the Commission."

5. The registry isdirected to include the above content instead of the sentence “This course of action is accepted by the parties” in paragraph 7 and re-upload the corrected order.

25.03.2025

nsl

<u>D.BHARATHA CHAKRAVARTHY.J.,</u>

nsl

W.P.Nos. 469, 6487, 2307, 2341, 934, 938 and 991 of 2025

25.03.2025