

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Tuesday, the Twenty Fifth day of April Two Thousand Seventeen

PRESENT

THE HON'BLE MR JUSTICE M.M.SUNDRESH

WP.No.10497 of 2017 and WMP.Nos.11388 and 11389 of 2017

WP.No.10542 of 2017 and WMP.Nos.11452 and 11453 of 2017

WP.No.10546 of 2017 and WMP.No.11459 of 2017

WP.No.10550 of 2017 and WMP.Nos.11469 and 11470 of 2017

WP.No.10576 of 2017 and WMP.Nos.11515 and 11516 of 2017

WP.No.10634 of 2017 and WMP.Nos.11572 and 11573 of 2017

WP.No.10548 of 2017 and WMP.Nos.11464 and 11465 of 2017

TAMILNADU SPINNING MILLS ASSN. (REGN. NO.330/1997) NO.2 KARUR ROAD MODERN NAGAR DINDIGUL 624 001 REP. BY ITS CHIEF ADVISOR DR.K.VENKATACHALAM ... PETITIONER in WP No.10497 of 2017 & WMP.No.11388 and 11389 of 2017

INDIAN WIND POWER ASSN. REP. BY ITS SECRETARY GENERAL DOOR NO.E 6TH FLOOR SHAKTI TOWERS II 766, ANNA SALAI CHENNAI-2 ... PETITIONER in WP No.10542 of 2017 & WMP.No.11452 and 11453

MADRAS STEEL RE-ROLLERS ASSON. NO.804-C BLOCK SHIVALAYA BUILDINGS ETHIRAJ SALAI EGMORE CHENNAI REP BY PRESIDENT SANJAY AGARWALLA ... PETITIONER in WP No.10546 of 2017 & WMP.No.11459 of 2017

THE SOUTHERN INDIA MILLS ASSON. REP BY DEPUTY SECRETARY GENERAL MR.V.REGURAJAN 41 RACE COURSE ROAD COIMBATORE- 641 018 ... PETITIONER in WP No.10550 of 2017 & WMP.No.11469 and 11470 of 2017

THE TAMILNADU POWER PRODUCERS ASSN. NO.58 VELACHERY MAIN ROAD LITTLE MOUNT SAIDAPET CHENNAI-15 ... PETITIONER in WP No.10576 of 2017 & WMP.Nos.11515 and 11516, of 2017

BA0080051

M/S. IND-BARATH ENERGIES
(THOOTHUKUDI) LTDE PLOT
NO.30A ROAD NO.1 FILM NAGAR
JUBILEE HILLS HYDERABAD
TELENGANA-33 REP BY ITS AUTHORIZED
SIGNATORY MR.U.KARTHIKEYAN

... PETITIONER in WP No.10634 of 2017
& WMP.Nos.11572 and 11573 of 2017

TAMILNADU ELECTRICITY
CONSUMERS ASSN. REGN.
NO.181-8524/1998 1ST
FLOOR SIEMA BUILDING 8/4 RACE COURSE
COIMBATORE 641 018 REP. BY ITS VICE
PRESIDENT MR.S.V.DEVARAJAN

... PETITIONER in WP No.10548 of 2017
& WMP.Nos.11464 and 11465 of 2017

VS

1 TAMILNADU GENERATION AND
DISTRIBUTION CORPORATION LTD.
(TANGEDCO) 10TH FLOOR 144
ANNA SALAI CHENNAI-2 REP.
BY ITS CHAIRMAN AND MANAGING DIRECTOR

... RESPONDENT in WP No.10497 of 2017
& WMP.No.11388 and 11389 of 2017

2 THE DIRECTOR DISTRIBUTION
TANGEDCO 10TH FLOOR 144 ANNA SALAI
CHENNAI-2

3 THE CHIEF FINANCIAL
CONTROLLER REVENUE TANGEDCO. 7TH FLOOR 144
ANNA SALAI CHENNAI-2

4 TAMILNADU ELECTRICITY
REGULATORY COMMISSION 19-A RUKUMINI
LAKSHMIPATHY SALAI EGMORE CHENNAI-8 REP.
BY ITS SECRETARY

1 TAMILNADU GENERATION AND
DISTRIBUTION CORPORATION LTD.
(TANGEDCO) 10TH FLOOR 144
ANNA SALAI CHENNAI-2 REP.
BY ITS CHAIRMAN AND MANAGING DIRECTOR

... RESPONDENT in WP No.10542 of 2017
& WMP.No.11452 and 11453

2 THE DIRECTOR DISTRIBUTION
TANGEDCO 10TH FLOOR 144 ANNA SALAI
CHENNAI-2

3 THE CHIEF FINANCIAL
CONTROLLER REVENUE TANGEDCO 7TH FLOOR 144
ANNA SALAI CHENNAI-2

4 TAMILNADU ELECTRICITY
REGULATORY COMMISSION 19-A RUKUMINI
LAKSHMIPATHY SALAI EGMORE CHENNAI-8 REP.
BY ITS SECRETARY

BA0080052

1 THE GOVERNMENT OF ... RESPONDENT in WP No.10546 of 2017
TAMIL NADU REP BY SECRETARY & WMP.No.11459 of 2017
TO GOVERNMENT ENERGY DEPARTMENT
FORT ST GEORGE CHENNAI-09

2 THE CHAIRMAN AND MANAGING
DIRECTOR TAMIL NADU GENERATION AND
DISTRIBUTION CORPORATION LTD 144 ANNA
SALAI CHENNAI-2

3 THE DIRECTOR FINANCE
TAMIL NADU GENERATION AND DISTRIBUTION
CORPORATION LTD 144 ANNA SALAI CHENNAI-2

4 THE CHIEF FINANCIAL CONTROLLER
REVENUE TAMIL NADU GENERATION AND
DISTRIBUTION CORPORATION LTD 144 ANNA
SALAI CHENNAI-2

1 TAMILNADU GENERATION AND ... RESPONDENT in WP No.10550 of 2017
DISTRIBUTION CORPORATION LTD. & WMP.No.11469 and 11470 of 2017
(TANGEDCO) REP BY CHAIRMAN AND
MANAGING DIRECTOR 144
ANNA SALAI CHENNAI-2

2 THE DIRECTOR - FINANCE
TANGEDCO 144 ANNA SALAI CHENNAI-2

3 THE CHIEF FINANCIAL
CONTROLLER REVENUE TANGEDCO 7TH FLOOR 144
ANNA SALAI CHENNAI-2

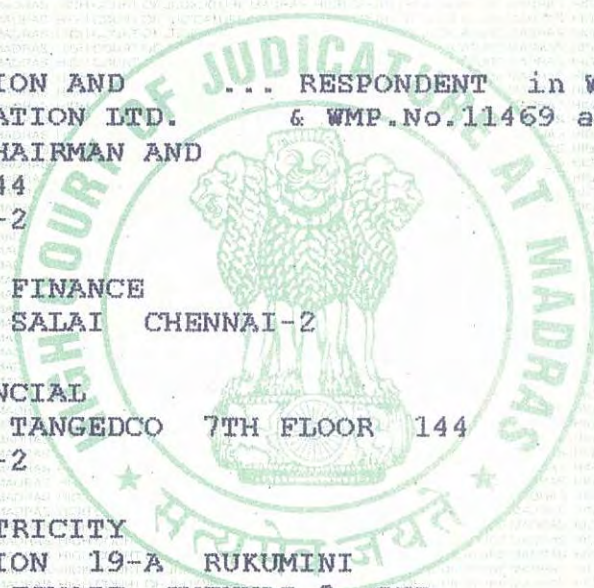
4 TAMILNADU ELECTRICITY
REGULATORY COMMISSION 19-A RUKUMINI
LAKSHMIPATHY SALAI EGMORE CHENNAI-8 REP.
BY ITS SECRETARY

1 M/S.TAMILNADU GENERATION AND ... RESPONDENT in WP No.10576 of 2017
DISTRIBUTION CORPORATION LTD. & WMP.Nos.11515 and 11516, of 2017
(TANGEDCO) REP. BY ITS CHAIRMAN
AND MANAGING DIRECTOR
144 ANNA SALAI CHENNAI-2

2 THE DIRECTOR FINANCE
TANGEDCO 144 ANNA SALAI CHENNAI-2

3 THE CHIEF FINANCIAL
CONTROLLER REVENUE TANGEDCO 7TH FLOOR 144
ANNA SALAI CHENNAI-2

4 TAMILNADU ELECTRICITY
REGULATORY COMMISSION 19-A RUKUMINI
LAKSHMIPATHY SALAI EGMORE CHENNAI-8 REP.
BY ITS SECRETARY



1 TAMIL NADU GENERATION AND ... RESPONDENT in WP No.10634 of 2017
DISTRIBUTION CORPN LTD (TANGEDCO) & WMP.Nos.11572 and 11573 of 2017
REP. BY ITS CHAIRMAN AND
MANAGING DIRECTOR

2 THE CHIEF FINANCIAL CONTROLLER
TAMIL NADU GENERATION AND DISTRIBUTION CORPN
LTD (TANGEDCO) 144 ANNA SALAI CHENNAI-2.

3 THE SUPERINTENDING ENGINEER
TAMIL NADU GENERATION AND DISTRIBUTION CORPN
LTD (TANGEDCO) TUTICORIN EDC 113-132
ETTAYAPURAM ROAD TUTICORIN

4 TAMIL NADU ELECTRICITY
REGULATORY COMMISSION (TNERC) REP. BY ITS
SECRETARY 19A RUKMANI LAKSHMIPATHY SALAI
(MARSHALLS ROAD) EGMORE CHENNAI-8

1 TAMILNADU GENERATION AND ... RESPONDENT in WP No.10548 of 2017
DISTRIBUTION CORPORATION LTD. & WMP.Nos.11464 and 11465 of 2017
(TANGEDCO) 10TH FLOOR 144
ANNA SALAI CHENNAI-2 REP.
BY ITS CHAIRMAN AND MANAGING DIRECTOR

2 THE DIRECTOR DISTRIBUTION
TANGEDCO 10TH FLOOR 144 ANNA SALAI
CHENNAI-2

3 THE CHIEF FINANCIAL
CONTROLLER REVENUE TANGEDCO 7TH FLOOR 144
ANNA SALAI CHENNAI-2

4 TAMILNADU ELECTRICITY
REGULATORY COMMISSION 19-A RUKUMINI
LAKSHMIPATHY SALAI EGMORE CHENNAI-8 REP.
BY ITS SECRETARY

Writ Petitions under Article 226 of the Constitution of India
praying that in these circumstances stated therein and in the
respective affidavits filed therewith the High Court will be pleased
to

(A) (1) Issue a writ of certiorarified mandamus or any other writ,
order or direction in the nature of a writ or certiorarified mandamus
calling for the records of the 2nd and 3rd respondents relating to the
bearing Circular Memo NO.CFC/FC/ REV/ AS.3/ D.325/17, dated 15.3.2017
and the consequential and further proceedings in (i) Memo No.CFC/REV/
FC/REV/AS.3/F.CGP/D.203/17 Dated 18.3.2017, (ii) Circular Memo
No.CFC/REV/FC/REV/AS.3/F.CGP/D.329/17 Dated 30/31.3.2017, (iii)
Lr.No.CFC/REV/FC/REV/DFC/AO.4/F.CGP Status/D.259/2017 dated 31.3.2017
(iv) Memo No. CFC/REV/FC/FC/REV/F.CGP Status/D.334/2017 dated 7.4.2017

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(v) Memo No.CFC/REV/FC/REV/AS.3/F.CGP/D.338/17, dated 15.4.2017 and
(vi) Memo No.CFC/REV/FC/REV /AS.3/F.CGP/D.340/17 dated 15.4.2017 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 Tamilnadu Electricity
Regulatory Commission for directions and determination of the status
of the Captive Generating Plants as stipulated under the provisions of
Electricity Rules, 2005 and confirmed by the binding judgments of the
Hon'ble APTEL (in WP No.10497 of 2017);

(2) Issue a writ of certiorarified mandamus or any other writ,
order or direction in the nature of a writ or certiorarified mandamus
calling for the records of the 3rd respondent relating to the bearing
Circular Memo NO.CFC/FC/ REV/ AS.3/ D.325/17, dated 15.3.2017 passed
by 3rd respondent, and the consequential and further proceedings in
(i) Memo No.CFC/REV/ FC/ REV/ AS.3/ F.CGP/D.203/17 Dated 18.3.2017,
passed by 3rd respondent (ii) Circular Memo No.CFC/REV/ FC/ REV/ AS.3/
F.CGP/D.329/17 Dated 30/31.3.2017, passed by the 3rd respondent (iii)
Lr.No.CFC/REV/ FC/ REV/ DFC/ AO.4/F.CGP Status/D.259/2017 dated
31.3.2017 passed by the 3rd respondent (iv) Memo No.
CFC/REV/FC/FC/REV/F.CGP Status/D.334/2017 dated 7.4.2017 passed by the
2nd respondent (v) Memo No.CFC/ REV/ FC/REV/AS.3/ F.CGP/ D.338/17,
dated 15.4.2017 passed by the 3rd respondent (vi) Memo
NO.CFC/REV/FC/REV/AS.3/F.CGP/D.340/17 dated 15.04.2017 passed by the
3rd 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 Tamilnadu Electricity Regulatory Commission for directions and
determination of the status of the Captive Generating Plants as
stipulated under the provisions of Electricity Rules, 2005 and
confirmed by the binding judgment of the Hon'ble APTEL (in WP No.10542
of 2017);

(3) Issue a writ of certiorarified mandamus or any other
appropriate writ, order or direction in the nature of a writ or
certiorarified mandamus calling for the records relating to the
circular memo NO.CFC/FC/REV/AS.3/D.325/17, dated 15.3.2017 of the 4th
respondent, Memo No.CFC/REV/FC/REV/AS.3/F.CGP/D.203/17 Dated
18.3.2017, of the 3rd respondent and Memo No.CFC/REV/FC/REV/AS.3/
F.CGP/D.329/17 Dated 30/31.3.2017, of the 2nd respondent Memo No.
CFC/REV/FC/REV/F.CGP Status/D.334/2017 dated 7.4.2017 of the 3rd
respondent herein, and Memo No.CFC/REV/AS.3/F.CGP/D.338/17 dated
15.4.2017 of the 4th respondent herein and Memo No. CFC/REV/AS.3/
F.CGP/D.340/17 dated 15.4.2017 of the 4th respondent and quash the
same and forbear the respondents from in any manner cancelling the
captive user status of the consumers who are members of the petitioner
association herein and from imposing the demand for cross subsidy
surcharge against the consumers who are members of the petitioner
association (in WP No.10546 of 2017);

(4) Issue a writ of certiorarified mandamus or any other writ, order or direction in the nature of a writ or certiorarified mandamus calling for the records of the 2nd and 3rd respondents relating to the bearing Circular Memo NO.CFC/FC/ REV/ AS.3/ D.325/17, dated 15.3.2017 and the consequential and further proceedings in (i) Memo No.CFC/REV/FC/REV/AS.3/F.CGP/D.203/17 Dated 18.3.2017, (ii) Circular Memo No.CFC/REV/FC/REV/AS.3/F.CGP/D.329/17 Dated 30/31.3.2017, (iii) Lr.No.CFC/REV/FC/REV/DFC/AO.4/F.CGP Status/D.259/2017 dated 31.3.2017 (iv) Memo No. CFC/REV/FC/FC/REV/F.CGP Status/D.334/2017 dated 7.4.2017 (v) Memo No.CFC/REV/FC/REV/AS.3/F.CGP/ D.338/17, dated 15.4.2017 and (vi) Memo No.CFC/REV/FC/REV/AS.3/F.CGP/D.340/17 dated 15.4.2017 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 Tamilnadu Electricity Regulatory Commission for directions and determination of the status of the Captive Generating Plants as stipulated under the provisions of Electricity Rules, 2005 and confirmed by the binding judgments of the Hon'ble APTEL (in WP.No.10550 of 2017);

(5) Issue a writ of certiorarified mandamus or any other writ, order or direction in the nature of a writ or certiorarified mandamus calling for the records of the 2nd and 3rd respondents relating to the bearing Circular Memo NO.CFC/FC/ REV/ AS.3/ D.325/17, dated 15.3.2017 and the consequential and further proceedings in (i) Memo No.CFC/REV/FC/ REV/ AS.3/ F.CGP/D.203/17 Dated 18.3.2017, (ii) Circular Memo No.CFC/REV/ FC/ REV/ AS.3/ F.CGP/D.329/17 Dated 30/31.3.2017, (iii) Lr.No.CFC/REV/ FC/ REV/ DFC/ AO.4/F.CGP Status/D.259/2017 dated 31.3.2017 (iv) Memo No. CFC/REV/FC/FC/REV/F.CGP Status/D.334/2017 dated 7.4.2017 (v) Memo No.CFC/ REV/ FC/REV/AS.3/ F.CGP/ D.338/17, dated 15.4.2017 and (vi) Memo No.CEF/REV/FC/REV /AS.3/F.CGP/ D.340/17 dated 15.4.2017 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 Tamilnadu Electricity Regulatory Commission for directions and determination of the status of the Captive Generating Plants as stipulated under the provisions of Electricity Rules, 2005 and confirmed by the binding judgments of the Hon'ble APTEL(in WP No.10576 of 2017);

(6) Issue a writ, more particularly a writ of certiorarified mandamus or any other writ Striking down the impugned Memos Circular Memo No.CFC/FC/REV/AS.3/D.325/17 dated 15.3.2017 culminating in Circular Memo No.CFC/Rev/FC/REV/F.CGP/D.203/17 dated 18.3.2017 and other Memos/ Letter issued in pursuance of the same by the 1st, 2nd and 3rd respondents, quash the same, direct the 4th respondent to expediently verify and determine the Captive Status of the petitioner company(in WP No.10634 of 2017);

(7) Issue a writ of certiorarified mandamus or any other writ, order or direction in the nature of a writ or certiorarified mandamus calling for the records of the 3rd respondents respectively relating to the bearing Circular Memo NO.CFC/FC/REV/AS.3/D.325/17, dated 15.3.2017 and the consequential and further proceedings in (i) Memo No.CFC/REV/FC/REV/AS.3/F.CGP/D.203/17 Dated 18.3.2017, (ii) Circular Memo No.CFC/REV/FC/REV/AS.3/F.CGP/D.329/17 Dated 30/31.3.2017, (iii) Lr.No.CFC/REV/FC/REV/DFC/ AO.4/F.CGP Status/D.259/2017 dated 31.3.2017 (iv) Memo No. CFC/REV/FC/FC/REV/F.CGP Status/D.334/2017 dated 7.4.2017 issued by the 2nd respondent (v) Memo No.CFC/REV/FC/REV/AS.3/F.CGP/D.338/17, dated 15.4.2017 and (vi) Memo No.CFC/REV/FC/REV/AS.3/F.CGP/D.340/17 dated 15.4.2017 issued by the 3rd respondent respectively 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 Tamilnadu Electricity Regulatory Commission for directions and determination of the status of the Captive Generating Plants as stipulated under the provisions of Electricity Rules, 2005 and confirmed by the binding judgments of the Hon'ble APTEL.(in WP No.10548 of 2017);

(B) (1) Issue an order of interim injunction restraining the respondents, their subordinates, men and agents from in any manner seeking to act pursuant to the impugned circulars bearing Circular Memo NO.CFC/FC/REV/AS.3/D.325/17, dated 15.3.2017 and the consequential and further proceedings in (i) Memo No.CFC/REV/ FC/ REV/ AS.3/F.CGP/D.203/17 Dated 18.3.2017, (ii) Circular Memo No.CFC/REV/ FC/REV/AS.3/F.CGP/D.329/17 Dated 30/31.3.2017, (iii) Lr.No.CFC/REV/ FC/ REV/DFC/AO.4/F.CGP Status/D.259/2017 dated 31.3.2017 (iv) Memo No. CFC/REV/FC/FC/REV/F.CGP Status/D.334/2017 dated 7.4.2017 (v) Memo No.CFC/REV/FC/REV/AS.3/F.CGP/D.338/17, dated 15.4.2017 and (vi) Memo No.CFC/REV/FC/REV/AS.3/F.CGP/D.340/17, dated 15.04.2017(in WMP No.11388 of 2017 in WP.No.10497/2017);

(2) Grant an order of interim stay, staying the operation of impugned circulars bearing Circular Memo NO.CFC/FC/REV/AS.3/ D.325/17, dated 15.3.2017 and the consequential and further proceedings in (i) Memo No.CFC/REV/FC/REV/AS.3/F.CGP/D.203/17 Dated 18.3.2017, (ii) Circular Memo No.CFC/REV/FC/REV/AS.3/F.CGP/D.329/17 Dated 30/31.3.2017, (iii) Lr.No.CFC/REV/FC/REV/DFC/AO.4/F.CGP Status/D.259/2017 dated 31.3.2017 (iv) Memo No. CFC/REV/FC/FC/REV/F.CGP Status/D.334/2017 dated 7.4.2017 (v) Memo No.CFC/ REV/ FC/REV/AS.3/F.CGP/D.338/17, dated 15.4.2017 and (vi) Memo No.CFC/REV/FC/REV/AS.3/F.CGP/D.340/17 dated 15.4.2017 on the file of the 2nd and 3rd respondent and all proceedings pursuant or consequent thereto, (in WMP No.11389 of 2017 in WP.No.10497/2017);

(3) Issue an order of interim injunction restraining the respondents their subordinates, men and agents from in any manner seeking to act pursuant to the impugned circulars bearing Circular Memo NO.CFC/FC/ REV/ AS.3/ D.325/17, dated 15.3.2017 passed by 3rd respondent, and the consequential and further proceedings in (i) Memo No.CFC/REV/ FC/ REV/ AS.3/ F.CGP/D.203/17 Dated 18.3.2017, passed by 3rd respondent (ii) Circular Memo No.CFC/REV/ FC/ REV/ AS.3/ F.CGP/D.329/17 Dated 30/31.3.2017, passed by the 3rd respondent (iii) Lr.No.CFC/REV/ FC/ REV/ DFC/ AO.4/F.CGP Status/D.259/2017 dated 31.3.2017 passed by the 3rd respondent (iv) Memo No. CFC/REV/FC/FC/REV/F.CGP Status/D.334/2017 dated 7.4.2017 passed by the 2nd respondent (v) Memo.No.CFC/REV/FC/REV/AS.3/F.CGP/D.338/17, dated 15.04.2017 passed by 3rd respondent (in WMP No.11452 of 2017 in WP.No.10542/2017);

(4) to grant an order of interim stay, staying the operation of impugned circulars bearing Circular Memo NO.CFC/FC/ REV/ AS.3/ D.325/17, dated 15.3.2017 passed by 3rd respondent, and the consequential and further proceedings in (i) Memo No.CFC/REV/ FC/ REV/ AS.3/ F.CGP/D.203/17 Dated 18.3.2017, passed by 3rd respondent (ii) Circular Memo No.CFC/REV/ FC/ REV/ AS.3/ F.CGP/D.329/17 Dated 30/31.3.2017, passed by the 3rd respondent (iii) Lr.No.CFC/REV/ FC/ REV/ DFC/ AO.4/F.CGP Status/D.259/2017 dated 31.3.2017 passed by the 3rd respondent (iv) Memo No.CFC/REV/FC/FC/REV/F.CGP Status/D.334/2017 dated 7.4.2017 passed by the 2nd respondent (v) Memo No.CFC/REV/FC/REV/AS.3/F.CGP/ D.338/17, dated 15.4.2017 passed by 3rd respondent and (vi) Memo.No.CFC/REV/FC/REV/AS.3/F.CGP/D.340/17, dated 15.04.2017 passed by 3rd respondent on the file of the 2nd and 3rd respondents and all proceedings pursuant or consequent thereto, (in WMP No.11453 of 2017 in WP.No.10542/2017);

(5) to grant interim stay of all further proceedings pursuant to circular memo NO.CFC/FC/ REV/ AS.3/ D.325/17, dated 15.3.2017 of the 4th respondent, Memo No.CFC/REV/ FC/ REV/ AS.3/ F.CGP/D.203/17 Dated 18.3.2017, of the 3rd respondent and Memo No.CFC/REV/ FC/ REV/ AS.3/ F.CGP/D.329/17 Dated 30/31.3.2017, of the 2nd respondent Memo No. CFC/REV/FC/REV/F.CGP Status/D.334/2017 dated 7.4.2017 of the 3rd respondent herein, and Memo No.CFC/REV/AS.3/F.CGP/D.338/17 dated 15.4.2017 of the 4th respondent herein and Memo No. CFC/ REV/AS.3/ F.CGP/ D.340/17 dated 15.4.2017 of the 4th respondent (in WMP.No.11459 of 2017 in WP.No.10546/2017);

(6) Issue an order of interim injunction restraining the respondents their subordinates, men and agents from in any manner seeking to act pursuant to the impugned Circulars bearing Circular Memo NO.CFC/FC/ REV/ AS.3/ D.325/17, dated 15.3.2017 and the consequential and further proceedings in (i) Memo No.CFC/REV/ FC/ REV/ AS.3/ F.CGP/D.203/17 Dated 18.3.2017, (ii) Circular Memo No.CFC/REV/ FC/ REV/ AS.3/ F.CGP/D.329/17 Dated 30/31.3.2017, (iii) Lr.No.CFC/REV/ FC/ REV/ DFC/ AO.4/F.CGP Status/D.259/2017 dated 31.3.2017 (iv) Memo No. CFC/REV/FC/FC/REV/F.CGP Status/D.334/2017 dated 7.4.2017 (v) Memo No.CFC/REV/FC/REV/AS.3/F.CGP/D.338/17, dated 15.4.2017 and (vi) Memo No.CFC/REV/FC/REV/AS.3/F.CGP/D.340/17 dated 15.04.2017 (in WMP No.11469 of 2017 in WP.No.10550/2017);

(7) to grant an order of interim stay, staying the operation of impugned circulars bearing Circular Memo NO.CFC/FC/ REV/ AS.3/ D.325/17, dated 15.3.2017 and the consequential and further proceedings in (i) Memo No.CFC/REV/ FC/ REV/ AS.3/ F.CGP/D.203/17 Dated 18.3.2017, (ii) Circular Memo No.CFC/REV/ FC/ REV/ AS.3/ F.CGP/D.329/17 Dated 30/31.3.2017, (iii) Lr.No.CFC/REV/ FC/ REV/ DFC/ AO.4/F.CGP Status/D.259/2017 dated 31.3.2017 (iv) Memo No. CFC/REV/FC/REV/F.CGP Status/D.334/2017 dated 7.4.2017 (v) Memo No.CFC/ REV/ FC/REV/AS.3/ F.CGP/ D.338/17, dated 15.4.2017 and (vi) Memo No.CFC/REV/FC/REV /AS.3/F.CGP/ D.340/17 dated 15.4.2017 on the file of the 2nd and 3rd respondent and all proceedings pursuant or consequent thereto (in WMP No.11470 of 2017 in WP.No.10550/2017);

(8) to issue an order of interim injunction restraining the respondents, their subordinates, men and agents from in any manner seeking to act pursuant to the impugned circulars bearing Circular Memo NO.CFC/FC/REV/AS.3/D.325/17, dated 15.3.2017 and the consequential and further proceedings in (i) Memo No.CFC/REV/FC/REV/ AS.3/F.CGP/D.203/17 Dated 18.3.2017, (ii) Circular Memo No.CFC/REV/FC/REV/AS.3/F.CGP/D.329/17 Dated 30/31.3.2017, (iii) Lr.No.CFC/REV/FC/REV/DFC/AO.4/F.CGP Status/D.259/2017 dated 31.3.2017 (iv) Memo No. CFC/REV/FC/REV/F.CGP Status/D.334/2017 dated 7.4.2017 (v) Memo No.CFC/REV/FC/REV/AS.3/F.CGP/D.338/17, dated 15.04.2017 (in WMP No.11515 of 2017 in WP.No.10576/2017);

(9) to grant an order of interim stay, staying the operation of impugned circulars bearing Circular Memo NO.CFC/FC/ REV/ AS.3/ D.325/17, dated 15.3.2017 and the consequential and further proceedings in (i) Memo No.CFC/REV/ FC/ REV/ AS.3/ F.CGP/D.203/17 Dated 18.3.2017, (ii) Circular Memo No.CFC/REV/ FC/ REV/ AS.3/ F.CGP/D.329/17 Dated 30/31.3.2017, (iii) Lr.No.CFC/REV/ FC/ REV/ DFC/ AO.4/F.CGP Status/D.259/2017 dated 31.3.2017 (iv) Memo No. CFC/REV/FC/REV/F.CGP Status/D.334/2017 dated 7.4.2017 (v) Memo No.CFC/ REV/ FC/REV/AS.3/ F.CGP/ D.338/17, dated 15.4.2017 and (vi) Memo No.CEF/REV/FC/REV /AS.3/F.CGP/ D.340/17 dated 15.4.2017 on the file of the 2nd and 3rd respondent and all proceedings pursuant or consequent thereto (in WMP No.11516 of 2017 in WP.No.10576/2017);

(10) To pass an order of interim injunction, restraining the 1st, 2nd and 3rd respondents and any of their officers, their men, agents, representatives, assigns, servants and / or anyone acting through or under them from in any manner taking any action against the petitioner company in respect of their generating station, furtherance of Circular Memo No.CFC/FC/REV/AS.3/ D.325/17 dated 15.3.2017 culminating in Circular Memo No.CFC/Rev/FC/REV/F.CGP/D.203/17 dated 18.3.2017 and other Memos/ Letter issued by the 1st, 2nd and 3rd respondents, (in WMP No.11572 of 2017 in WP.No.10634/2017);

(11) To pass an order of interim stay of the operation of the Circular Memo No.CFC/FC/REV/AS.3/D.325/17 dated 15.3.2017 culminating in Circular Memo No.CFC/ Rev/FC/REV/FC/REV/AS.3/F.CGP/D.203/17 dated 18.3.2017 and other Memos/ Letter issued in pursuance of the same by the 1st, 2nd and 3rd respondents, (in WMP No.11573 of 2017 in WP.No.10634/2017);

(12) to issue an order of interim injunction restraining the respondents, their subordinates men and agents from in any manner seeking to act pursuant to the impugned circulars bearing Circular issued by the 3rd respondent respectively Memo NO.CFC/FC/REV/AS.3/D.325/17, dated 15.3.2017 and the consequential and further proceedings in (i) Memo No.CFC/REV/ FC/ REV/ AS.3/F.CGP/D.203/17 Dated 18.3.2017, (ii) Circular Memo No.CFC/REV/FC/REV/ AS.3/F.CGP/D.329/17 Dated 30/31.3.2017, (iii) Lr.No.CFC/REV/FC/REV/DFC/AO.4/F.CGP Status/D.259/2017 dated 31.3.2017 (iv) Memo No. CFC/REV/FC/FC/REV/F.CGP Status/D.334/2017 dated 7.4.2017 issued by the 2nd respondent (v) Memo No.CFC/ REV/FC/REV/AS.3/F.CGP/D.338/17 dated 15.4.2017 and (vi) Memo No.CFC/REV/FC/REV/AS.3/F.CGP/D.340/17 dated 15.04.2017 issued by the 3rd respondent (in WMP No.11464 of 2017 in WP.No.10548/2017);

(13) to grant an order of interim stay, staying the operation of impugned circulars bearing Circular issued by the 3rd respondent respectively Memo NO.CFC/FC/ REV/ AS.3/ D.325/17, dated 15.3.2017 and the consequential and further proceedings in (i) Memo No.CFC/REV/ FC/ REV/ AS.3/ F.CGP/D.203/17 Dated 18.3.2017, (ii) Circular Memo No.CFC/REV/ FC/ REV/ AS.3/ F.CGP/D.329/17 Dated 30/31.3.2017, (iii) Lr.No.CFC/REV/ FC/ REV/ DFC/ AO.4/F.CGP Status/D.259/2017 dated 31.3.2017 (iv) Memo No. CFC/REV/FC/FC/REV/F.CGP Status/D.334/2017 dated 7.4.2017 issued by the 2nd respondent (v) Memo No.CFC/ REV/ FC/REV/AS.3/ F.CGP/ D.338/17, dated 15.4.2017 and (vi) Memo No.CFC/REV/FC/REV /AS.3/F.CGP/ D.340/17 dated 15.4.2017 on the file of the 3rd respondent respectively and all proceedings pursuant or consequent thereto (in WMP No.11465 of 2017 in WP.No.10548/2017);

Order : These petitions coming on for orders upon perusing the petitions and the respective affidavits filed in support thereof and upon hearing the arguments of M/S.P.H.ARAVIND PANDIAN, Senior Counsel for M/S.R.S.PANDIYARAJ, Advocate for the petitioner WP.No.10497, 10548/17 & WMP.No.11388 & 11389, 11464 & 11465/17 and of M/S.RAHUL BALAJI, Advocate for the petitioner WP.No.10542, 10576/17 & WMP.No.11452 & 11453, 11515 & 11516/17 and of M/S.AR.L.SUNDARESAN, Senior Counsel for M/S.AL.GANTHIMATHI, Advocate for the petitioner WP.No.10546/17 & WMP.No.11459/17 and of M/S.N.L.RAJAH, Senior Counsel for M/S.PARTHASARATHY, Advocate for the petitioner WP.No.10550/17 & WMP.No.11469 & 11470/17 and of M/S.G.KALYAN JHABAKH Advocate for the petitioner WP.No.10634/17 & WMP.No.11572 & 11573/17 and of M/S.MANISHANKAR, AAG Assisted by M/S.S.K.RAMESHWAR, Advocate for the (TNEB) respondents in WP.No.10497, 10550, 10634/17 & WMP.No.11388 & 11389, 11469 & 11470, 11572, 11573/17 and of M/S.MANISHANKAR, AAG Assisted by M/S.P.R.DHILIPKUMAR, Advocate for the (TNEB) respondents in WP.No.10542 & 10576/17 & WMP.No.11452, 11453 & 11515, 11516/17 and of M/S.S.DIWAKAR, Special Government Pleader on behalf of the 1st

respondent in WP.No.10546/17 & WP.NO.11459/17 and of M/S.VARUNKUMAR, Advocate for the (TNEB) respondents in WP.No.10546 & 10548/17 & WMP.NO.11459 & 11464, 11465/17 the court made the following order:-

As the issues involved in all these writ petitions are one and the same, they are taken up together and a common interim order is passed.

2. In all these cases, the petitioners and their members, as the case may be, are categorised as Captive Generating Plants. The requirements of Captive Generating Plant are provided as under:

3. Requirements of Captive Generating Plant:

(1) No power plant shall qualify as a 'captive generating plant' under Section 9 read with clause (8) of Section 2 of the Act unless -

(a) in case of a power plant -

(i) not less than twenty six percent of the ownership is held by the captive user(s), and

(ii) not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use.

Provided that in case of power plant set up by registered cooperative society, the conditions mentioned under paragraphs (i) and (ii) above shall be satisfied collectively by the members of the cooperative society.

Provided that in case of association of persons, the captive user(s) shall hold not less than twenty six percent of the ownership of the plant in aggregate and such captive user(s) shall consume not less than fifty one percent of the electricity generated, determined on an annual basis, in proportion to their shares in ownership of the power plant within a variation not exceeding ten percent;

(b) In case of a generating station owned by a company formed as special purpose vehicle for such generating station, a unit or units of such generating station identified for captive use and not the entire generating station satisfy the conditions contained in paragraphs (i) and (ii) of sub-clause (a) above including -

Explanation:-

(1) The electricity required to be consumed by captive users shall be determined with reference to such generating unit or units in aggregate identified for captive use and not with reference to such generating unit or units in aggregate identified for captive use and not with reference to generating station as a whole; and

(2) The equity shares to be held by the captive user(s) in the generating station shall not be less than twenty six per cent of the proportionate of the equity of the company related to the generating unit or units identified as the captive generating plant.

Illustration: In a generating station with two units of 50 MW each namely Units A and B, one unit of 50 MW namely Unit A may be identified as the Captive Generating Plant. The captive users shall hold not less than thirteen percent of the equity shares in the company (being the twenty six percent proportionate to Unit A of 50 MW) and not less than fifty one percent of the electricity generated in Unit A determined on an annual basis is to be consumed by the captive users.

(2) It shall be the obligation of the captive users to ensure that the consumption by the captive users at the percentages mentioned in sub-clauses (a) and (b) of sub-rule (1) above is maintained and in case the minimum percentage of captive use is not complied with in any year, the entire electricity generated shall be treated as if it is a supply of electricity by a generating company.

Explanation: (1) For the purpose of this rule:-

a. Annual Basis shall be determined based on a financial year;

b. Captive User shall mean the end user of the electricity generated in a Captive Generating Plant and the term "Captive Use" shall be construed accordingly;

c. "Ownership" in relation to a generating station or power plant set up by a company or any other body corporate shall mean the equity share capital with voting rights. In other cases ownership shall mean proprietary interest and control over the generating station or power plant;

d. "Special Purpose Vehicle" shall mean a legal entity owning, operating and maintaining a generating station and with no other business or activity to be engaged in by the legal entity."

3. Now, the respondent/TANGEDCO seeks to verify the said compliance qua the petitioners and their members pursuant to the circular issued by them. Consequent on the materials to be collected in some cases, actions are contemplated and in other cases, actions have already been taken by passing orders of demand.

4. Learned senior counsels appearing for the petitioners would primarily raise two contentions. One is with respect to the jurisdiction of the respondent/TANGEDCO to raise a demand. The second is with respect to the power to do the exercise of verification. In other words, according to the learned senior counsels, it is the Commission, which gives the status to the petitioners and their members as the Captive Generating Plant, has got the power to take appropriate action in case of any failure, non-compliance or default.

5. Learned Additional Advocate General would submit that what is being done substantially at this stage is the verification process. Merely because the Commission has been given certain powers, the power that is available to the respondent/TANGEDCO cannot be taken away. It is alternatively submitted that even otherwise, without conceding to the aforesaid power of the said Commission, the respondent/TANGEDCO has got ample power to take action for wrong doing since it is severely affected.

6. Considering the submissions made, this Court is of the view that the matter requires a deeper consideration. It is submitted that only in few cases, demands have been raised after conclusion of the process of verification. Therefore, this Court is of the view that while permitting the process of verification to go on, no new demand can be raised by way of passing appropriate orders. In cases, where demands have already been raised, they shall not be given effect to. It is made clear that this order will not stand in the way of the petitioners contending that the process of verification is contrary to law. It is further made clear that the benefits which the petitioners are enjoying till now shall not be disturbed until further orders, so is the case of the entitlement for the future, on merits, if any.

Post the writ petitions on 15.06.2017.

-sd/-
25/04/2017

/ TRUE COPY /

f. A. Law 27/4/17
Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

BA0080063

TO

1 THE CHAIRMAN AND MANAGING
DIRECTOR TAMILNADU GENERATION AND
DISTRIBUTION CORPORATION LTD., (TANGEDCO)
10TH FLOOR, 144, ANNA SALAI, CHENNAI-2,

2 THE DIRECTOR DISTRIBUTION
TANGEDCO, 10TH FLOOR, 144, ANNA SALAI,
CHENNAI-2

3 THE CHIEF FINANCIAL
CONTROLLER /REVENUE, TANGEDCO,
7TH FLOOR, 144, ANNA SALAI, CHENNAI-2

4 THE SECRETARY
TAMILNADU ELECTRICITY REGULATORY
COMMISSION, 19-A, RUKUMINI LAKSHMIPATHY
SALAI, EGMORE, CHENNAI-8,

5 THE GOVERNMENT OF
TAMIL NADU REP BY SECRETARY TO GOVERNMENT
ENERGY DEPARTMENT FORT ST GEORGE CHENNAI-09

6 THE DIRECTOR FINANCE
TANGEDCO 144 ANNA SALAI CHENNAI-2.

7 THE SUPERINTENDING ENGINEER
TAMIL NADU GENERATION AND DISTRIBUTION CORPN
LTD (TANGEDCO). TUTICORIN EDC 113-132
ETTAYAPURAM ROAD TUTICORIN.

+2 C.C. to M/S.R.S.PANDIYARAJ Advocate, Sr.Nos.5664 & 5767.

+3 C.C. to M/S.RAHUL BALAJI, Advocate, Sr.No.5820, 5652, 5651.

C.C. to M/S.AL.GANTHIMATHI, Advocate, Sr.No.5752

C.C. to M/S.PARTHASARATHY, Advocate on payment of necessary charges

C.C. to M/S.G.KALYAN JHABAKH Advocate on payment of necessary charges

C.C. to M/S.S.K.RAMESHWAR, Advocate on payment of necessary charges

C.C. to M/S.P.R.DHILIPKUMAR, Advocate, Sr.No.5655.

C.C. to M/S.VARUNKUMAR, Advocate on payment of necessary charges

+2 C.C. to M/S.SURANA & SURANA, Advocate, Sr.No.5702

Order

BA0080064

HIGH COURT OF JUDICATURE
MADRAS

S. R. No. 5767

Carbon Copy application
made 26/4.....200 17

Application Returned.....200

Application Represented.....200

Copy made ready 27/4.....200 17

Copy delivered 27/4.....200 17

EV

U. S. S. S. S.

Section Officer
C.C.C. Section