

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 19.09.2018	Delivered on 03.01.2019
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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.20954, 20955, 21303, 21304, 21340, 21344, 21345,
21366, 20836, 21942 and 21943 of 2018
and W.M.P.Nos.24599, 24600, 24602, 24603, 24974, 24975,
24977, 24978, 25015, 25019, 25020, 25022, 25023, 25044,
25045, 24455, 24456 and 25729 to 25732 of 2018

W.P.No.20954 of 2018:

M/s.Arun Smelters (P) Ltd.,
H.T.Sc.No.1616
No.404, Shivalaya Building,
'C' Block, Ethiraj Salai,
Egmore, Chennai-600 008.

... Petitioner

-vs-

1.The Tamil Nadu Electricity Regulatory
Commission, rep.by its Secretary
No.19A, Rukmani Lakshmi pathy Salai,
Egmore, Chennai-600 008.

2.The Chairman and Managing Director,
Tamil Nadu Generation and Distribution
Corporation Ltd.,
No.144, Anna Salai, Chennai-600 002.

3.The Chief Financial Controller / Revenue,
TANGEDCO, No.144, Anna Salai,
Chennai-600 002.

4.The Superintending Engineer,
Chennai Electricity Distribution Circle / North,
TANGEDCO, No.144, Anna Salai,
Chennai-600 002.

... Respondents

W.P.No.20955 of 2018:

M/s.Jeppiaar Furnace and Steels (P) Ltd.,
 H.T.Sc.No.738
 No.158, Kunnavakkam Village,
 Panrutti Post,
 Kancheepuram District-631 604
 rep.by its Manager
 P.Sekar Solomon

... Petitioner

-vs-

- 1.The Tamil Nadu Electricity Regulatory Commission, rep.by its Secretary
 No.19A, Rukmani Lakshmipathy Salai,
 Egmore, Chennai-600 008.
- 2.The Chairman and Managing Director,
 Tamil Nadu Generation and Distribution Corporation Ltd.,
 No.144, Anna Salai, Chennai-600 002.
- 3.The Chief Financial Controller / Revenue,
 TANGEDCO, No.144, Anna Salai,
 Chennai-600 002.
- 4.The Superintending Engineer,
 Chengalpattu Electricity Distribution Circle,
 TANGEDCO, Chengalpattu.

... Respondents

W.P.Nos.21303 and 21304 of 2018:

M/s.GBR Metals Pvt.Ltd.,
 H.T.Sc.No.1817
 No.4, Ramanan Road,
 Chennai-600 079
 rep.by its Director
 Venkatesh Rathi

... Petitioner in both W.Ps.

-vs-

- 1.The Tamil Nadu Electricity Regulatory Commission, rep.by its Secretary
 No.19A, Rukmani Lakshmipathy Salai,
 Egmore, Chennai-600 008.

2.The Chairman and Managing Director,
Tamil Nadu Generation and Distribution
Corporation Ltd.,
No.144, Anna Salai, Chennai-600 002.

3.The Chief Financial Controller / Revenue,
TANGEDCO, No.144, Anna Salai,
Chennai-600 002.

4.The Superintending Engineer,
Chennai Electricity Distribution Circle / North,
TANGEDCO, No.144, Anna Salai,
Chennai-600 002. ... Respondents in both W.Ps.

W.P.No.21340 of 2018:

Shree Karthik Papers Ltd.,
rep.by Whole Time Director, Vignesh Velu,
25, 50 Feet Road, Krishnasamy Nagar,
Ramanathapuram, Coimbatore-641 045. ... Petitioner

-vs-

1.The Superintending Engineer,
The Tamil Nadu Generation and Distribution
Corporation Ltd.,
Udumalpet Electricity Distribution Circle,
Udumalpet.

2.The Tamil Nadu Electricity Regulatory Commission,
144, Anna Salai, Chennai-600 002. ... Respondents

W.P.Nos.21344, 21345, 21366 and 20836 of 2018:

M/s.Tulsyan NEC Ltd.,
H.T.Sc.No.1823
No.61, Sembudoss Street,
Chennai-600 001. ... Petitioner in W.P.No.
rep.by its Manager V.Rajendran 21344 of 2018

M/s.Chitrakoot Steel & Power (P) Ltd.,
H.T.S.No.1801,
Apex Plaza, 1st Floor,
No.3, Nungambakkam High Road,
Chennai-600 034. ... Petitioner in W.P.No.
rep.by its Manager V.Rajendran 21345 of 2018

M/s.Kamachi Steels Limited,
rep.by its Director Vinod Kothari
No.664, T.H.Road, ... Petitioner in W.P.No.
Tondiarpet, 21366 of 2018
Chennai-600 081.

M/s.RBA Exports (P) Ltd.,
H.T.Sc.No.1824,
Vijay Delux App.Flat No.9,
D.No.4, First Main Road,
CIT Colony, Mylapore,
Chennai-600 004 ... Petitioner in W.P.No.
rep.by its General Manager S.Balasubramanian 20836 of 2018

-vs-

- 1.The Tamil Nadu Electricity Regulatory
Commission, rep.by its Secretary
No.19A, Rukmani Lakshmipathy Salai,
Egmore, Chennai-600 008.
- 2.The Chairman and Managing Director,
Tamil Nadu Generation and Distribution
Corporation Ltd.,
No.144, Anna Salai, Chennai-600 002.
- 3.The Chief Financial Controller / Revenue,
TANGEDCO, No.144, Anna Salai,
Chennai-600 002.
- 4.The Superintending Engineer,
Chennai Electricity Distribution Circle / North,
TANGEDCO, No.144, Anna Salai,
Chennai-600 002. ... Respondents in all W.Ps.

W.P.Nos.21942 and 21943 of 2018:

M/s.Noble Tech Industries Ltd.,
H.T.Sc.No.208
No.6/9, Kasturi Estate,
Third Street, Poes Garden,
Chennai-600 086,
rep.by its Director
Mr.Madhu S.Nair

... Petitioner in W.P.No.
21942 of 2018

M/s.Noble Tech Industries Ltd.,
H.T.Sc.No.213
No.6/9, Kasturi Estate,
Third Street, Poes Garden,
Chennai-600 086,
rep.by its Director
Mr.Madhu S.Nair

... Petitioner in W.P.No.
21943 of 2018

-VS-

1.The Tamil Nadu Electricity Regulatory
Commission, rep.by its Secretary
No.19A, Rukmani Lakshmipathy Salai,
Egmore, Chennai-600 008.

2.The Chairman and Managing Director,
Tamil Nadu Generation and Distribution
Corporation Ltd.,
No.144, Anna Salai, Chennai-600 002.

3.The Chief Financial Controller / Revenue,
TANGEDCO, No.144, Anna Salai,
Chennai-600 002.

4.The Superintending Engineer,
Kancheepuram Electricity Distribution Circle,
TANGEDCO, Anna Maligai,
Vellore Road,
Olimuhamedpet, Kancheepuram. ...

Respondents in both W.Ps.

W.P.No.20954 of 2018 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the impugned memo No.CFC/REV/FC/REV/DFC/AAO/HT/ D207/18 dated 02.04.2018 issued by the third respondent and the consequential letter No.SE/CEDC/N/DFC/AO/Rev/AAO/HT/AS4/F.1616 / D37/2018 dated 11.05.2018 issued by the fourth respondent and that portion of the amount raised in Bill No.1616 dated 31.07.2018 in Item 14 Add/Less Adjustment charges for Rs.19,54,422/- and quash the same as illegal, arbitrary and against the provisions of Electricity Act 2003 and the Tariff Order No.T.P.No.1 of 2017 dated 11.08.2017 issued by the first respondent.

W.P.No.20955 of 2018 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the impugned memo No.CFC/REV/FC/REV/DFC/AAO/HT/ D207/18 dated 02.04.2018 issued by the third respondent and the consequential letter No.SE/CEDC/CGL/DFC/AAO/HT/AS/F.Loss Components / D1628/18 dated 16.07.2018 issued by the fourth respondent and that portion of the amount of Rs.15,97,438/- raised in Bill No.738 dated 06.08.2018 towards T & D loss and quash the same as illegal, arbitrary and against the provisions of Electricity Act 2003 and the Tariff Order No.T.P.No.1 of 2017 dated 11.08.2017 issued by the first respondent.

W.P.No.21303 of 2018 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the impugned memo No.CFC/REV/FC/REV/DFC/AAO/HT/ D207/18 dated 02.04.2018 issued by the third respondent and the consequential letter No.SE/CEDC/N/DFC/AO/Rev/AAO/HT/AS4/F.1817

/ D3559/2018 dated 25.04.2018 issued by the fourth respondent and that portion of the amount raised in Bill No.1817 dated 31.07.2018 in Item 14 Add/Less Adjustment charges for Rs.8,18,322/- and quash the same as illegal, arbitrary and against the provisions of Electricity Act 2003 and the Tariff Order No.T.P.No.1 of 2017 dated 11.08.2017 issued by the first respondent.

W.P.No.21304 of 2018 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the impugned memo No.CFC/REV/FC/REV/DFC/AAO/HT/ D207/18 dated 02.04.2018 issued by the third respondent and the consequential letter No.SE/CEDC/N/DFC/AO/Rev/AAO/HT/AS4/F.1812 / D3559/2018 dated 25.04.2018 issued by the fourth respondent and that portion of the amount raised in Bill No.1812 dated 31.07.2018 in Item 14 Add/Less Adjustment charges for Rs.27,60,550/- and quash the same as illegal, arbitrary and against the provisions of Electricity Act 2003 and the Tariff Order No.T.P.No.1 of 2017 dated 11.08.2017 issued by the first respondent.

W.P.No.21340 of 2018 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the first respondent in Lr.No.SE/UEDC/UDT/DFC/AO/R/ AAO/HT/AS/F.T&D ARREAR/18 dated 17.07.2018 - D.No.244 and quash the same in so far as the petitioner's HT Service Connection 175 is concerned.

W.P.No.21344 of 2018 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the impugned memo No.CFC/REV/FC/REV/DFC/AAO/HT/ D207/18 dated 02.04.2018 issued by the third respondent and the

consequential letter No.SE/CEDC/N/DFC/AO/Rev/AAO/HT/AS4/F.1823 / D3559/2018 dated 25.04.2018 issued by the fourth respondent and that portion of the amount raised in Bill No.1823 dated 31.07.2018 in Item 14 Add/Less Adjustment charges for Rs.12,79,656/- and quash the same as illegal, arbitrary and against the provisions of Electricity Act 2003 and the Tariff Order No.T.P.No.1 of 2017 dated 11.08.2017 issued by the first respondent.

W.P.No.21345 of 2018 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the impugned memo No.CFC/REV/FC/REV/DFC/AAO/HT/ D207/18 dated 02.04.2018 issued by the third respondent and the consequential letter No.SE/CEDC/N/DFC/AO/Rev/AAO/HT/AS4/F.1801 / D3559/2018 dated 25.04.2018 issued by the fourth respondent and that portion of the amount raised in Bill No.1801 dated 31.07.2018 in Item 14 Add/Less Adjustment charges for Rs.1,26,619/- and quash the same as illegal, arbitrary and against the provisions of Electricity Act 2003 and the Tariff Order No.T.P.No.1 of 2017 dated 11.08.2017 issued by the first respondent.

W.P.No.21366 of 2018 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the impugned memo No.CFC/REV/FC/REV/DFC/AAO/HT/ D207/18 dated 02.04.2018 issued by the third respondent and the consequential letter No.SE/CEDC/N/DFC/AO/Rev/AAO/HT/AS4/F.1612 / D3559/2018 dated 25.04.2018 issued by the fourth respondent and that portion of the amount raised in Bill No.1612 dated 31.07.2018 in Item 14 Add/Less Adjustment charges for Rs.5,97,856/- and quash the same as illegal, arbitrary and against the provisions of Electricity Act 2003 and the Tariff Order No.T.P.No.1 of 2017 dated 11.08.2017 issued by the first respondent.

W.P.No.20836 of 2018 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the impugned memo No.CFC/REV/FC/REV/DFC/AAO/HT/ D207/18 dated 02.04.2018 issued by the third respondent and the consequential letter No.SE/CEDC/N/DFC/AO/Rev/AAO/HT/AS4/F.1824 / D37/2018 dated 11.05.2018 issued by the fourth respondent and that portion of the amount raised in Bill No.1824 dated 31.07.2018 in Item 14 Add/Less Adjustment charges for Rs.6,49,019/- and quash the same as illegal, arbitrary and against the provisions of Electricity Act 2003 and the Tariff Order No.T.P.No.1 of 2017 dated 11.08.2017 issued by the first respondent.

W.P.No.21942 of 2018 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the impugned show cause notice in Lr.No.1321/RCS/A1/ F.Short levy/2017 dated 01.08.2018 issued by the fourth respondent for the payment of Rs.4,81,470/- towards short levy of T&D Loss components for the year 2017-18, with effect from 11.08.2017 and quash the same as illegal, arbitrary and against the provisions of Electricity Act 2003 and the Tariff Order No.T.P.No.1 of 2017 dated 11.08.2017 issued by the first respondent.

W.P.No.21943 of 2018 filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the impugned show cause notice in Lr.No.1297/RCS/A1/ F.Short levy/2017 dated 27.07.2018 issued by the fourth respondent for the payment of Rs.37,19,760/- towards short levy of T&D Loss components for the year 2017-18, with effect from 11.08.2017 and quash the same as illegal, arbitrary and against the provisions of

Electricity Act 2003 and the Tariff Order No.T.P.No.1 of 2017 dated 11.08.2017 issued by the first respondent.

W.P.Nos.20954, 20955, 21303, 21304, 21344, 21345 and 20836 of 2018:

For Petitioner :: Mr.AR.L.Sundaresan, Sr.Counsel for
in all W.Ps. Mr.K.Seshadri

For Respondents :: Mr.P.H.Aravind Pandian,
in all W.Ps. Additional Advocate General
assisted by Mr.P.R.Dilipkumar

W.P.No.21366 of 2018:

For Petitioner :: Mr.K.Jayachandran

For Respondents :: Mr.P.H.Aravind Pandian,
Additional Advocate General
assisted by Mr.P.R.Dilipkumar

W.P.No.21340 of 2018:

For Petitioner :: Mr.Krishnappan, Sr.Counsel for
Ms.R.Swarnalatha

For Respondents :: Mr.P.H.Aravind Pandian,
Additional Advocate General
assisted by Mr.S.K.Rameshwar

W.P.Nos.21942 and 21943 of 2018:

For Petitioner :: Mr.AR.L.Sundaresan, Sr.Counsel for
in all W.Ps. Mr.K.Seshadri

For Respondents :: Mr.P.H.Aravind Pandian,
in all W.Ps. Additional Advocate General
assisted by Mr.S.K.Rameshwar

COMMON ORDER

These writ petitions have been filed challenging the impugned orders passed by TANGEDCO raising demands to pay the electricity charges towards loss component, on the ground that the demands are against the provisions of Electricity Act, 2003 and the Tariff Order in T.P.No.1 of 2017 dated 11.08.2017 issued by the Tamil Nadu Electricity Regulatory Commission.

2.The facts involved in W.P.No.20954 of 2018 are that the petitioner is a continuous process industry involved in the manufacture of steel ingots, steel rods etc. having High Tension Electricity Supply in H.T.Sc.No.1616. The second and fourth respondents have sanctioned the said High Tension Electricity Supply with a maximum demand of 6795 K.V.A.to run the said industry. The petitioner Industry has been providing employment to about 250 persons. Since the second and fourth respondents were not able to supply power to the sanctioned demand of the petitioner from 01.11.2008 onwards, after getting approval from the first respondent, the second respondent is enforcing restriction and control measures in the State of Tamil Nadu upto May 2017 and due to the same, all the High Tension Industries have been greatly affected. In order to meet out the power demand, the respondents have to source power from various third parties having

generating stations within the State and the generators outside the State have also been permitted to wheel power under Intra State Open Access Regulations and Inter State Open Access Regulations. The first respondent Regulatory Commission has issued a tariff order in T.P.No.1 of 2017 dated 11.08.2017 (effective from 11.08.2017). Section 61 of the Electricity Act, 2003 stipulates the guiding principles for determination of tariff by the Regulatory Commission and mandates that the tariff should progressively reflect cost of supply of electricity, reduce cross-subsidy, safeguard consumer interest and recover the cost of electricity in a reasonable manner. While fixing the tariff, the first respondent is guided by Regulation 7(1) of the Tariff Regulations. The first respondent, considering the views expressed by the State Advisory Committee and stakeholders has arrived at certain percentage of loss to be recovered from the open access customers.

3.The petitioner further states that one of the Consumers Association, viz. Tamil Nadu Spinning Mills Association, has filed an appeal in Appeal No.356 of 2017 before the Appellate Tribunal for Electricity, New Delhi on 22.09.2017, questioning the various concessions extended to certain classes of consumers and the consequential increase of burden to the Open Access Consumers and to reduce the burden of the licensees caused due to such concessions. The said appeal is pending before the Appellate Tribunal. The

petitioner also states that the second respondent has filed a review petition in I.A.No.1 of 2017 in R.P.No.4 of 2017 before the first respondent to revise and approve Transmission and Distribution losses and the first respondent has passed an order on 13.03.2018 rendering the revision subject to the outcome of the appeal filed by the Tamil Nadu Spinning Mills Association in Appeal No.356 of 2017 before the Appellate Tribunal for Electricity, New Delhi.

4. While so, the third respondent, by issuing the impugned instructions to all the Superintending Engineers of the Distribution Circles, instructed to adopt the line loss components with effect from 11.08.2017 retrospectively in Memo No.CFC/REV/FC/Rev/DFC/AAO/HT/D207/18 dated 02.04.2018, and on 11.05.2018, the fourth respondent has issued the show cause notice, relying upon the third respondent's memo. Further, even though the petitioner-company has submitted its reply not to demand the amount retrospectively from 11.08.2017 and requested to wait till the disposal of the appeal in Appeal No.356 of 2017 filed by the Tamil Nadu Spinning Mills Association, the fourth respondent, without considering the reply to the show cause notice and without affording any opportunity of hearing to the petitioner, caused the impugned demand of Rs.19,54,422/-.

5. With this background, W.P.No.20954 of 2018 has been filed to quash the impugned orders passed by the third and fourth respondents. The facts in all the other writ petitions are similar in nature, except the difference in the quantum of demand and hence, this Court has to decide the common issue involved in these writ petitions, as to whether the demands made by TANGEDCO are tenable or not.

6. Mr. AR.L. Sundaresan, learned senior counsel appearing for the petitioners in W.P.Nos.20954, 20955, 21303, 21304, 21344, 21345 and 20836 of 2018 has submitted that the respondents 3 and 4 in these writ petitions have failed to note that the loss component cannot be raised retrospectively from the date when the tariff order in T.P.No.1 of 2017 dated 11.08.2017 was issued, when it is the fact that I.A.No.1 of 2017 in R.P.No.4 of 2017 and R.P.No.4 of 2017 are pronounced subsequently by the first respondent, on 13.03.2018. It is his further submission that as per Para 5.8.4.86(4) of the order in T.P.No.1 of 2017 issued by the first respondent for Determination of Tariff for Generation and Distribution, which para relates to Wheeling Charges for Open Access Customers, the normative distribution system loss at the voltage on which open access transmission is undertaken, shall be borne by the consumers in kind, but here the

present loss component is claimed by cash. Further, the respondents 3 and 4 have failed to note that any loss caused by the Open Access Consumers due to transmission and distribution of power, has to be borne only by the respondents 2 to 4, as they are collecting the wheeling charges, transmission charges, scheduling and system operating charges from the Open Access Consumers. Hence, demanding once again in the name of loss component is untenable in law. It is the duty of the Transmission and Distribution licensees to supply power to the open access customers at viable price and hence the loss component has to be borne by the utilities under the control of the second respondent.

7. The learned senior counsel particularly emphasised on the point that the respondents 2 to 4 ought to have waited till the disposal of the appeal in Appeal No.356 of 2017 filed by Tamil Nadu Spinning Mills Association, pending before the Appellate Tribunal for Electricity, New Delhi, since the order dated 13.03.2018 in I.A.No.1 of 2017 in R.P.No.4 of 2017 filed by TANGEDCO states that the proposal to amend the percentage of loss is rendered, subject to the outcome of the said appeal pending before the Appellate Tribunal for Electricity, New Delhi. Therefore, according to the learned senior counsel, the Department cannot collect the loss component from the open access customers from 11.08.2017. It is further submitted by the learned senior counsel that during the earlier periods, when the HT Consumers

have drawn less power than the one demanded, the same have been adjusted by the respondents on unit to unit basis and not by cash, and further, the absence of personal hearing by the Department will amount to violation of the principles of natural justice and hence the impugned demands are liable to be set aside. The learned senior counsel for the petitioner in W.P.No.21340 of 2018 and the learned counsel for the petitioners in the other writ petitions have adopted the above arguments advanced by the learned senior counsel, Mr.AR.L. Sundaresan.

8.A common counter affidavit has been filed by the fourth respondent in W.P.Nos.20836, 20954, 21303, 21304, 21344, 21345 and 21366 of 2018, in which the averments made by the petitioners therein have been denied as false and baseless. It is stated that these writ petitions are neither maintainable in law nor on facts as the issue involved herein is already covered by the order passed by the first respondent in R.P.No.4 of 2017 dated 13.03.2018, whereunder the first respondent, in paragraph-6 has provided for appeal provision, which is an expert body under the Electricity Act, 2003. Therefore, if the petitioners are aggrieved, they should file an appeal before the Appellate Tribunal for Electricity in terms of Section 111 of the Electricity Act, 2003. The first respondent Regulatory Commission has issued the order in T.P.No.1 of 2017 dated 11.08.2017 in which, in Table-5.29, the Regulatory Commission has fixed the Distribution

Losses applicable for Open Access Transactions for 2017-18. Therefore, those Open Access HT consumers whose HT service connections have adjusted energy from Captive / Private Generators by virtue of Open Access in accordance with the Electricity Act, 2003, have to pay the Transmission and Distribution Losses as fixed in the Table stated supra. It is also stated that in the appeal filed by the Tamil Nadu Spinning Mills Association in Appeal No.356 of 2017 before the Appellate Tribunal for Electricity, New Delhi, no stay order has been passed by the Tribunal.

9.It is also stated in the counter affidavit filed on behalf of the fourth respondent that the Transmission and Distribution Losses approved by the Regulatory Commission in its order dated 11.08.2017 has not been implemented since the losses specified by the Regulatory Commission were found to have some errors and hence the existing Transmission and Distribution Losses already approved by the Regulatory Commission in its tariff order dated 11.12.2014 was provisionally continued for the open access transactions from 11.08.2017. Further, in the Review Petition filed before the Tribunal in R.P.No.4 of 2017, the Tribunal has passed the order on 13.03.2018 rectifying the error by stipulating the applicable losses for open access transactions. Further, Table 5.29 of the Regulatory Commission's order in T.P.No.1 of 2017 dated 11.08.2017 has been replaced by a new

table. It is also stated that the licensee will have the right to demand an additional amount in case of undercharging and the consumer will have the right to get refund of the excess amount in the case of overcharging. It is further stated that consequent to the revision of Transmission and Distribution losses with effect from 11.08.2017 based on the revised Transmission and Distribution loss in accordance with the order made in R.P.No.4 of 2017, some excess units were adjusted. As per the order dated 13.03.2018, the revised Transmission and Distribution losses have to be adjusted in kind, but since the energy wheeled by the HT consumers herein from his captive sources, both thermal power and wind power are under open access, the entire units allotted by the Captive Generators were fully taken into account and after deducting the losses in kind as approved by the Regulatory Commission in its order dated 13.03.2018, the consumers were found to have drawn TANGEDCO's energy and hence the amounts have been worked out and included in the HT Bills.

10.A separate counter affidavit has been filed on behalf of the Tamil Nadu Electricity Board in W.P.No.21340 of 2018, which reiterates the contentions put forth in the counter affidavit filed on behalf of the fourth respondent in the other writ petitions, as stated supra.

11.Reiterating the contentions made in the above counter affidavits filed on behalf of TANGEDCO, the learned Additional Advocate General appearing for the respondents has submitted that in the appeal filed by the Tamil Nadu Spinning Mills Association in Appeal No.356 of 2017 before the Appellate Tribunal for Electricity, New Delhi, no stay order has been passed by the Tribunal and hence it cannot be stated that only based on the outcome of the said appeal, the matter has to be proceeded with. It is his submission that the issue involved herein is already covered by the order passed by the first respondent in R.P.No.4 of 2017 dated 13.03.2018, whereunder an appeal provision has been provided and hence, if at all the petitioners are aggrieved, they can very well file an appeal before the Appellate Tribunal for Electricity in terms of Section 111 of the Electricity Act, 2003. He further submitted that the licensee will have the right to demand an additional amount in case of undercharging and the consumer will have the right to get refund of the excess amount in case of overcharging. In all, he submitted that since the energy wheeled by the HT consumers herein from the captive sources, ie., thermal and wind power, were under open access, the entire units allotted by the Captive Generators have been fully taken into account and after deducting the losses in kind as approved by the Regulatory Commission in its order dated 13.03.2018, it was found that the consumers have drawn TANGEDCO's energy and hence the amounts

have been worked out and included in the HT bills. Thus, according to the learned Additional Advocate General, the impugned orders passed by TANGEDCO raising demands to pay the electricity charges towards loss component, are in accordance with law and hence the same does not require any interference in the hands of this Court.

12.A common reply affidavit has been filed by the petitioner in W.P.No.20836 of 2018 reiterating the point in respect of Para 5.8.4.86(4) of the order in T.P.No.1 of 2017 issued by the first respondent for Determination of Tariff for Generation and Distribution, which para relates to Wheeling Charges for Open Access Customers, as per which the normative distribution system loss at the voltage on which open access transmission is undertaken, shall be borne by the consumer in kind. Further the first respondent has not permitted the third and fourth respondents to encash the Transmission and Distribution Loss component as if the loss is recorded in the Open Access Consumer Meter. It is also stated that in the review application in R.A.No.4 of 2017, the Regulatory Commission has accepted the loss component alone but not revised or amended the said para, to enable the respondents 3 and 4 to convert kind into cash. Therefore, it is evident that the respondents 3 and 4 can demand compensation for the loss component from the Open Access Customers only in kind and not by way of cash.

13. It is also stated in the reply affidavit that the third and fourth respondents cannot treat the rectification of loss components by the first respondent in R.P.No.4 of 2017 dated 13.03.2018 on the voltage drawn and injection voltage, as an authorisation to encash loss components, instead of subtracting the loss from the injected power at Generation end. Duty is also cast on the Transmission and Distribution Licensees to take appropriate steps to reduce the loss in transmission and distribution by improving the network in grids and transmission lines. The respondents are not permitted to raise bills from 11.08.2017 to compensate the loss instead of unit to unit adjustment from 13.03.2018, on which date the revision is permitted by the first respondent. The acts of the respondents in raising demands from 11.08.2017 is not only wrong and illegal but also against the orders of the first respondent Regulatory Commission and therefore, the same cannot be rectified and demanded under Regulation 12(1) of the Supply Code, 2004. Finally, it is stated that the respondents have not properly interpreted the order passed in T.P.No.1 of 2017 dated 11.08.2017, rather the orders impugned herein, have been passed on a wrong interpretation of the said order.

14. Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

15.The petitioners herein are continuous process heavy industries involved in the manufacture of steel ingots, steel rods and other similar heavy items, having High Tension Electricity Supply. The sanctioned demand of electricity to run the industries, seemed to be inadequate. Hence, the TANGEDCO, after getting approval from the Tamil Nadu Electricity Regulatory Commission, has enforced restrictions and control measures in the State of Tamil Nadu upto May 2017 for all the High Tension Industries. In view of the same, the respondents have to source power from various third parties having generating stations within the State and outside.

16.It is seen that the Regulatory Commission has issued a tariff order in T.P.No.1 of 2017 dated 11.08.2017 (effective from 11.08.2017). According to the petitioners, while fixing the tariff, the Regulatory Commission is guided by Regulation 7(1) of the Tariff Regulations. The Regulatory Commission, considering the views expressed by the State Advisory Committee and stakeholders has arrived at certain percentage of loss to be recovered from the open access customers. It is also seen that Tamil Nadu Spinning Mills Association, has filed an appeal in Appeal No.356 of 2017 before the Appellate Tribunal for Electricity, New Delhi on 22.09.2017, questioning the various concessions extended to certain classes of

consumers and the consequential increase of burden to the Open Access Consumers and to reduce the burden of the licensee caused due to such concessions. The said appeal is pending before the Appellate Tribunal.

17. Further, the Chairman and Managing Director, TANGEDCO, Chennai, has filed a review petition in I.A.No.1 of 2017 in R.P.No.4 of 2017 before the Regulatory Commission to revise and approve Transmission and Distribution losses, in which the Regulatory Commission has passed an order on 13.03.2018 rendering the revision subject to the outcome of the appeal filed by the Tamil Nadu Spinning Mills Association in Appeal No.356 of 2017 before the Appellate Tribunal for Electricity, New Delhi.

18. It is the contention of the petitioners that the loss component cannot be raised retrospectively from the date when the tariff order in T.P.No.1 of 2017 dated 11.08.2017 was issued, when it is the fact that I.A.No.1 of 2017 in R.P.No.4 of 2017 and R.P.No.4 of 2017 are pronounced subsequently by the Regulatory Commission, on 13.03.2018. Further, as per Para 5.8.4.86(4) of the order in T.P.No.1 of 2017 issued by the Regulatory Commission for Determination of Tariff for Generation and Distribution, which para relates to Wheeling Charges for Open Access Customers, the normative distribution

system loss at the voltage on which open access transmission is undertaken, shall be borne by the consumer in kind, but here the present loss component is claimed by cash. Furthermore, any loss caused by the Open Access Consumer due to transmission and distribution of power, has to be borne only by TANGEDCO, as they are collecting the wheeling charges, transmission charges, scheduling and system operating charges from the Open Access Consumers. Hence, demanding once again in the name of loss component is untenable in law.

19. The important submission of the learned senior counsel for the petitioners is that TANGEDCO ought to have waited till the disposal of the appeal in Appeal No.356 of 2017 filed by Tamil Nadu Spinning Mills Association, pending before the Appellate Tribunal for Electricity, New Delhi, since the order dated 13.03.2018 in I.A.No.1 of 2017 in R.P.No.4 of 2017 filed by TANGEDCO states that the proposal to amend the percentage of loss is rendered, subject to the outcome of the said appeal pending before the Appellate Tribunal for Electricity, New Delhi. Therefore, according to the learned senior counsel, TANGEDCO cannot collect the loss component from the open access customers from 11.08.2017. The further submission of the learned senior counsel is that no opportunity has been granted to the petitioners herein to put forth their contentions.

20. According to TANGEDCO, the issue involved herein is already covered by the orders of the Regulatory Commission in R.P.No.4 of 2017 dated 13.03.2018, whereunder the Regulatory Commission, in paragraph-6 has provided for appeal provision, which is an expert body under the Electricity Act, 2003. Therefore, if the petitioners are aggrieved, they should file an appeal before the Appellate Tribunal for Electricity in terms of Section 111 of the Electricity Act, 2003. The Regulatory Commission has issued order in T.P.No.1 of 2017 dated 11.08.2017 in which, in Table-5.29, the Regulatory Commission has fixed the Distribution Losses applicable for Open Access Transactions for 2017-18. Therefore, those Open Access HT consumers whose HT service connections have adjusted energy from Captive / Private Generators by virtue of Open Access in accordance with the Electricity Act, 2003, have to pay the Transmission and Distribution Losses as fixed in the Table stated supra. Further, in the appeal filed by the Tamil Nadu Spinning Mills Association in Appeal No.356 of 2017 before the Appellate Tribunal for Electricity, New Delhi, no stay order has been passed by the Tribunal. It is the further case of TANGEDCO that consequent to the revision of Transmission and Distribution losses with effect from 11.08.2017 based on the revised Transmission and Distribution loss in accordance with the order made in R.P.No.4 of 2017, some excess units were adjusted. As per the order dated

13.03.2018, the revised Transmission and Distribution losses have to be adjusted in kind, but since the energy wheeled by the HT consumers herein from his captive sources, both thermal power and wind power are under open access, the entire units allotted by the Captive Generators were fully taken into account and after deducting the losses in kind as approved by the Regulatory Commission in its order dated 13.03.2018, the consumers were found to have drawn TANGEDCO's energy and hence the amounts have been worked out and included in the HT Bills. Thus, according to TANGEDCO, the amount claimed have been made on the proper interpretation of the above orders passed by the authorities.

21.Para 5.8.4.86(4) of the order in T.P.No.1 of 2017 issued by the Regulatory Commission for Determination of Tariff for Generation and Distribution relating to Wheeling Charges for Open Access Customers, states that the normative distribution system loss at the voltage on which open access transmission is undertaken, shall be borne by the consumer in kind. It is also seen that the Regulatory Commission in the review application in R.A.No.4 of 2017, has only accepted the loss component but not revised or amended the said para to enable TANGEDCO to convert kind into cash. Such rectification of loss components by the Regulatory Commission in R.P.No.4 of 2017 dated 13.03.2018 on the voltage drawn and injection voltage, cannot

be treated as an authorisation to encash loss components. The fact remains that the appeal filed by the Tamil Nadu Spinning Mills Association before the Appellate Tribunal for Electricity, New Delhi in Appeal No.356 of 2017 is pending. Further, even in the review petition filed by TANGEDCO, the Regulatory Commission has passed the order on 13.03.2018 rendering the revision subject to the outcome of the appeal filed by the Tamil Nadu Spinning Mills Association in Appeal No.356 of 2017 before the Appellate Tribunal for Electricity, New Delhi. Therefore, the matter has not been concluded and only upon the outcome of the appeal in Appeal No.356 of 2017, the things would be settled and only thereafter, a proper decision could be taken by the Electricity Board. This Court finds force in the submission made by the learned senior counsel for the petitioners that before passing the impugned orders, TANGEDCO ought to have waited till the disposal of the appeal in Appeal No.356 of 2017. In these circumstances, the respondents are not permitted to raise bills from 11.08.2017 to compensate the loss instead of unit to unit adjustment from 13.03.2018, on which date the revision is permitted by the Regulatory Commission. The claim of excess payment shall be considered for adjustment towards future liabilities. However, it is made clear that the respondents shall proceed with the matter on the basis of the outcome of the decision of the Appellate Tribunal for Electricity, New Delhi in Appeal No.356 of 2017, in accordance with law.

22. With the above observations, the orders impugned in these writ petitions are set aside and the writ petitions are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : Yes/No
Internet : Yes/No

03.01.2019

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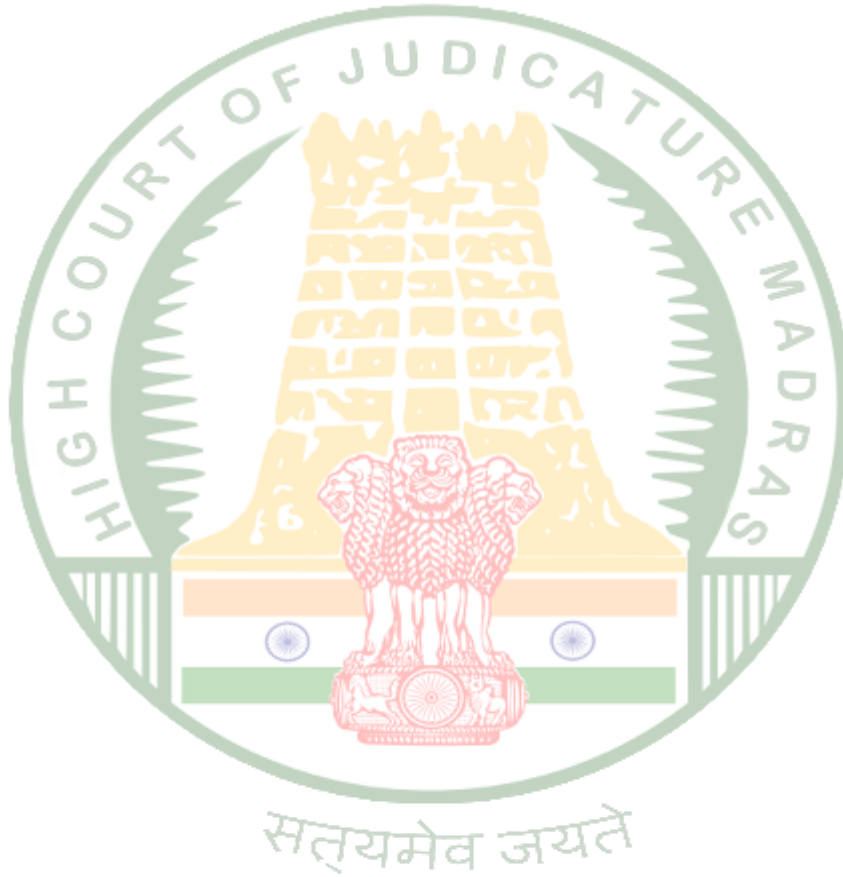
Note to the Registry: Issue order copy today (03.01.2019).

To

1. The Secretary,
Tamil Nadu Electricity Regulatory Commission,
No.19A, Rukmani Lakshmipathy Salai,
Egmore, Chennai-600 008.
2. The Chairman and Managing Director,
Tamil Nadu Generation and Distribution
Corporation Ltd.,
No.144, Anna Salai, Chennai-600 002.
3. The Chief Financial Controller / Revenue,
TANGEDCO, No.144, Anna Salai,
Chennai-600 002.
4. The Superintending Engineer,
Chennai Electricity Distribution Circle / North,
TANGEDCO, No.144, Anna Salai,
Chennai-600 002.
5. The Superintending Engineer,
Chengalpattu Electricity Distribution Circle,
TANGEDCO, Chengalpattu.
6. The Superintending Engineer,
The Tamil Nadu Generation and Distribution
Corporation Ltd.,
Udumalpet Electricity Distribution Circle,
Udumalpet.

7.The Tamil Nadu Electricity Regulatory Commission,
144, Anna Salai, Chennai-600 002.

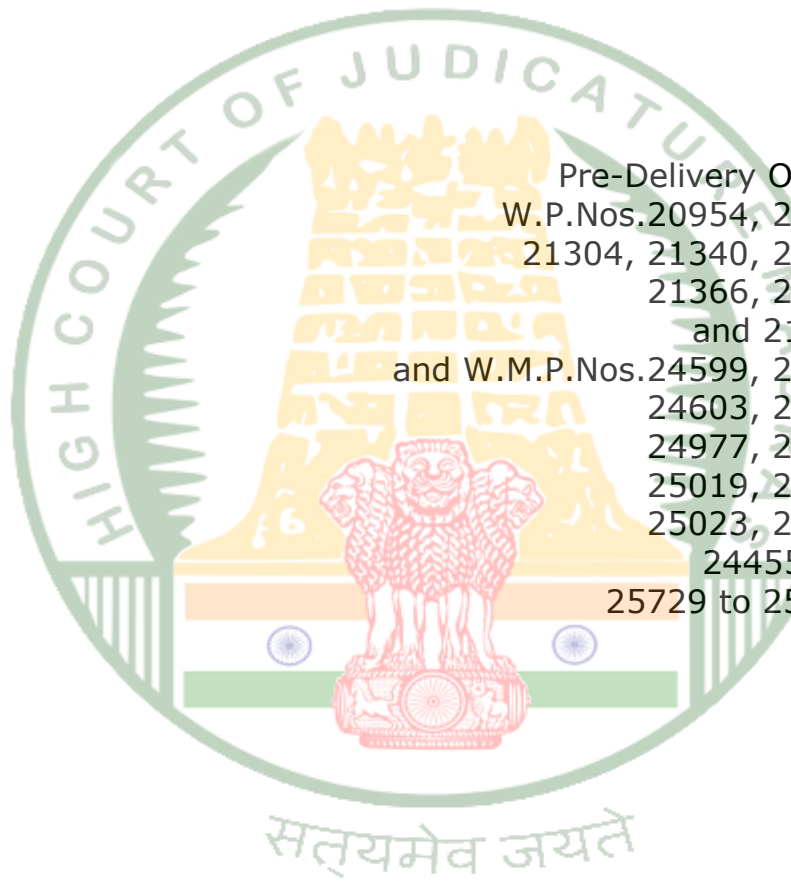
8.The Superintending Engineer,
Kancheepuram Electricity Distribution Circle,
TANGEDCO, Anna Maligai,
Vellore Road,
Olimuhamedpet, Kancheepuram.



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R.MAHADEVAN, J.

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Pre-Delivery Order made in
W.P.Nos.20954, 20955, 21303,
21304, 21340, 21344, 21345,
21366, 20836, 21942
and 21943 of 2018
and W.M.P.Nos.24599, 24600, 24602,
24603, 24974, 24975,
24977, 24978, 25015,
25019, 25020, 25022,
25023, 25044, 25045,
24455, 24456 and
25729 to 25732 of 2018

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03.01.2019