

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 25.05.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

W.P. (MD) No.9320 of 2017

and

W.M.P. (MD) Nos. 7096 to 7099 of 2017

**NuPower Wind Farms Limited,
Kandamanur Village,
Theni District.
Represented by Mr.V.Muthuswamy,
its Authorized Signatory.**

...Petitioner

-Vs-

**1.Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
10th Floor, 144, Anna Salai,
Chennai 600 002
Represented by its
Chairman and Managing Director.**

**2.The Chief Engineer-NCES,
TANGEDCO,
2nd Floor, 144, Anna Salai,
Chennai - 600 002.**

**3.The Superintending Engineer,
TANGEDCO,
Theni Electricity Distribution Circle,
Theni.**

**4.The Superintending Engineer,
TANGEDCO,
Tirunelveli Electricity Distribution Circle,
Tirunelveli**

**5.The Superintending Engineer,
TANGEDCO,
Udumalpet Electricity Distribution Circle,
Udumalpet.**

**6.Tamilnadu Electricity Regulatory Commission,
19-A, Rukmini Lakshmipathy Salai,
Egmore, Chennai - 600 008.
Represented by its Secretary.**

Respondents

"C" 0385374

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the files of the 2nd respondent relating to the issuance of the impugned Circular. Memo.No.CE/NCES/SE/EE/WPP/AEE2/ F. Banking instruction/D.903/17, dated 30/31.03.2017 and quash the same as not maintainable by law as well as on facts and direct the Respondents to strictly comply with the statutory provisions of Electricity Rules, 2005 and the binding judgment of the Hon'ble APTEL, in the matter of energy accounting of the WEGs identified for captive use and consequently direct the Respondents to approach the Tamilnadu Electricity Regulatory Commission for seeking directions as to how the energy accounting needs to be done in respect of CGPs identified for the captive users for their captive consumption as found enumerated in the Electricity Rules 2005 and in the binding judgment of Hon'ble APTEL.

For Petitioner : Mr.G.R.Swaminathan
for M/s.Farhathullah

For Respondents : Mr.C.Manishankhar (for R1 to R3, R5 and R6)
Additional Advocate General
for M/s.S.M.S.Johny Basha

Mr.G.Kasinatha Durai (for R4)

ORDER

The petitioner seeks for a Writ of Certiorarified Mandamus to call for the records on the files of the 2nd respondent relating to the issuance of the impugned Circular.Memo.No.CE/NCES/SE/EE/WPP/AEE2/ F. Banking instruction/D.903/17, dated 30/31.03.2017 and quash the same as not maintainable by law as well as on facts and direct the Respondents to strictly comply with the statutory provisions of Electricity Rules, 2005 and the binding judgment of the Hon'ble APTEL, in the matter of energy accounting of the WEGs identified for captive use and consequently direct the Respondents to approach the Tamilnadu Electricity Regulatory Commission for seeking directions as to how the energy accounting needs to be done in respect of CGPs identified for the captive users for their captive consumption as found enumerated in the Electricity Rules 2005.

2.The learned counsel appearing for the petitioner has brought to the notice of this Court the relevant provisions of the Electricity Rules 2005, which regulate the system of accounting of energy generated from the captive generating plants. According to the proviso quoted, the Rules are making it obligatory to take

only the "Aggregate Electricity Generated" from the captive generating plants identified for the purpose of captive use.

3. The learned counsel appearing for the petitioner has also brought to the notice of this Court that the Appellate Tribunal for Electricity has passed a relevant order confirming the above position of the provisions of the Electricity Rules 2005 in the matter of Salasar Steel and Power Ltd. v. Chatisgarh State Electricity Regulatory Commission, Appeal No.252 of 2015, decided on 08.11.2016 as extracted below:

"h) Hence considering the provision of Rule 3(1)(b) of Electricity Rules, 2005 which prescribes that a generating station can identify a unit or units of such generating stations for captive use, it is clear that Appellate had identified both the Units i.e. TG-1 (15 MW) and TG-2 (65 MW) for captive use during FY 2013-14. In view of above for deciding the captive status of the Appellate plant, the aggregated Generation and consumption from both the units i.e. TG-1 (15 MW) and TG-2 (65 MW) has to be considered as per the provision of Rule 3(1)(b) of Electricity Rules 2005."

4. The learned Additional Advocate General appearing for the respondents informed this Court that the respondents are willing to take up the matter before the 6th respondent, State Electricity Regulatory Commission to get the approval over the new wind energy accounting procedure proposed in the impugned Circular Memo as per the process of law already declared by the binding judgment of the APTEL.

5. In view of the consent submitted by the learned Additional Advocate General appearing for the respondents, the impugned Circular Memo issued by the 2nd respondent, in the matter of specifying new procedures for energy accounting for WECS is kept in abeyance.

6. The respondents 1 and 2 are directed to process the matter before the 6th respondent, State Electricity Regulatory Commission to get the new accounting procedure approved, by following the due process of law as declared by the binding judgment of the APTEL and accordingly, on filing of the petition by the respondents, the State Electricity Regulatory Commission is directed to dispose of the matter within a period of twelve weeks, by providing suitable opportunities to the stakeholders.

7. With the above observations, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Vacation Officer

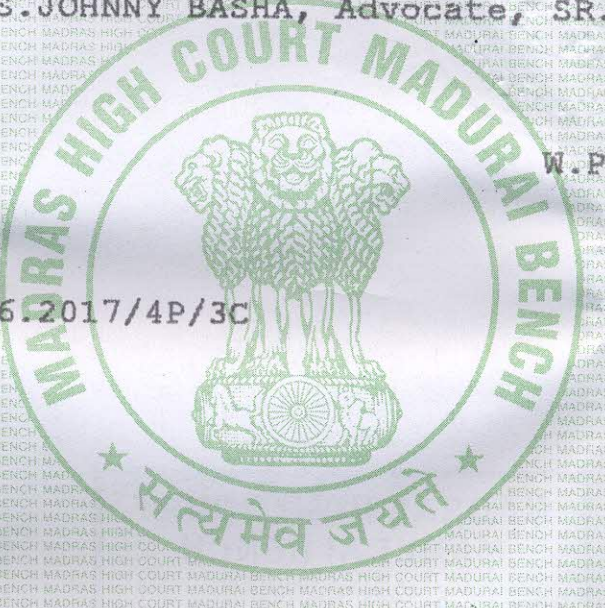
Sub Assistant Registrar

/True Copy/

To
+1cc to M/S. G.KASINATHA DURAI, Advocate, SR.No.57828.
+1cc to M/S. S.M.S. JOHNNY BASHA, Advocate, SR.No.57507.

W.P. (MD). No.9320 of 2017
25.05.2017

SDS/SV/SAR 2/08/06.2017/4P/3C



0385377

**MADRAS HIGH COURT
MADURAI BENCH**

S.R.No.....6927.....

Carbon Copy Application

made ...09/06/...2007

Copy made Ready...09/06/...2007

Copy Delivered...09/06/...2007

Section Officer
Section.