



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 14.08.2024

DELIVERED ON : 12.09.2024

CORAM:

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

W.P.No.19372 of 2024

W.M.P.Nos.21225 & 21226 of 2024

TNEB Accounts and Executive Staff Union
Rep. by its General Secretary,
Mr.K.Chandrasekaran
Room No.7, 1st Floor,
No.144, MLDC Building,
TNEB Complex, Anna Salai,
Chennai – 600 002.

...Petitioner

vs.

1.The Principal Secretary to Government,
Energy Department,
Fort St.George,
Chennai – 600 009.

2.The Chairman Cum Managing Director,
Tamilnadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai,
Chennai – 600 002.

3.The Chief Engineer (Personnel)
Tamil Nadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai,
Chennai – 600 002.

... Respondents



W.P.No.19372 of 2024

Prayer : Writ Petition filed under Article 226 of Constitution of India, for issuance of Writ of Certiorari to call for the entire records pertaining to the orders passed by the Principal Secretary to Government, Energy Department, Fort St. George, Chennai – 600 009, 1st respondent vide G.O.Ms.No.32 Energy (B2) Department dated 06.03.2024 and the orders passed by the Chairman Cum Managing Director, Tamilnadu Generation and Distribution Corporation Ltd., No.144, Anna Salai, Chennai – 600 002, the 2nd respondent vide his proceedings in (Per.) FB TANGEDCO Proceedings No.11 (Secretariat Branch) dated 29.06.2024, another proceeding in (Per.) CMD TANGEDCO Proceedings No.109 (Secretariat Branch) dated 29.06.2024 and another proceedings vide (Per.) CMD TANGEDCO Proceedings No.112 (Secretariat Branch) dated 02.07.2024 and the orders passed by the Chief Engineer (Personnel) Tamilnadu Generation And Distribution Corporation Ltd., No.144, Anna Salai, Chennai – 600 002, the 3rd respondent vide his proceedings in (Per.) CMD TANGEDCO Proceedings No.40 (Administrative Branch) dated 27.06.2024 and quash the same as illegal, arbitrary, unreasonable being violative of rules and principles of natural justice.

For Petitioner : Mr.R.Singaravelan, Senior Counsel
for Mr.A.K.Suresh

For Respondents : Mr.P.S.Raman, Advocate General for R1

Mr.P.Wilson, Senior Advocate for R2
for Mr.K.Raj Kumar, Standing Counsel

Mr.J.Ravindran,
Additional Advocate General for R3
for Mr.K.Raj Kumar, Standing Counsel

ORDER



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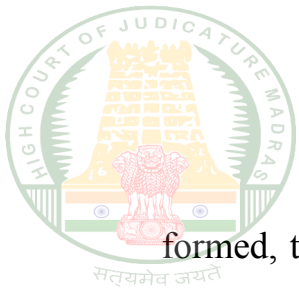
The petitioner has filed this writ petition challenging the orders dated 06.03.2024, 27.06.2024, 29.06.2024 and 02.07.2024 passed by the respondents and to quash the same as illegal, arbitrary, unreasonable being violative of rules and principles of natural justice.

2. The brief facts are as follows:

2a. The petitioner is the Tamil Nadu Electricity Board Accounts and Executive Staff Union, a Trade Union under the Trade Unions Act, 1926 duly registered before the Additional Registrar of Trade Unions- I, Madras with Registration No.B5/12242/79 dated 01.09.1979.

2b. The petitioner Union has been recognized by the TANGEDCO (Tamilnadu Generation and Distribution Corporation Limited) which was originally functioning under TNEB (Tamil Nadu Electricity Board). The major decision of the Board will be taken after holding consultations with the Trade Unions. Many settlements have taken place between the petitioner Union and TANGEDCO.

2c. In the year 1957, when the Madras State Electricity Board was



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formed, the erstwhile employees of the State Electricity Department were given

an option either to continue with the State Electricity Department or to continue in the newly constituted Tamil Nadu Electricity Board. The service regulations were regulated by the powers conferred under Section 79 (c) of the Electricity (Supply) Act, 1948.

2d. Tamil Nadu Electricity Board was reorganized in terms of Tamil Nadu Electricity Act, 2003 (Act 36 of 2003). By the said reorganization, two Companies viz., TANGEDCO and TANTRANSCO were established. The Tamil Nadu Electricity (Reorganization and Reforms) Transfer Scheme, 2010 dealt with transfer of officers and employees from TNEB to TANGEDCO and TANTRANSCO. The said scheme was duly approved by the Government of Tamil Nadu vide G.O.Ms.No.100 Energy (B2) Department dated 19.02.2010.

2e. The Government of Tamil Nadu had decided to divide the combined task of Generation and Distribution of Electricity which was undertaken by TANGEDCO Ltd. Pursuant to the decision, the Government of Tamil Nadu vide G.O.Ms.No.6 Energy (B2) Department dated 24.01.2024 formed a Thermal Generation Company in the name of Tamil Nadu Power Generation Corporation Ltd. (TNPGL) and vide G.O.Ms.No.7 Energy (B2) Department dated



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24.01.2024, Tamil Nadu Green Energy Corporation Limited (TNGECL) was

formed under the Companies Act, 2013 by integrating the renewable energy wing of TANGEDCO and by merger of Tamil Nadu Energy Development Agency (TEDA) with the new Green Energy Company.

2f. Tripartite Agreement dated 12.02.2024 was entered into between the (1) Government of Tamil Nadu which was duly represented by Principal Secretary to Government, Energy Department as a party of the first part, 2(a) TNEB Ltd. (b) TANTRANSCO (c) TANGEDCO (collectively called the successor entities) as parties of the second part and (3) Trade Unions and Associations representing Officers/employees and the pensioners of TNEB (collectively called as Union/Association) which has been duly represented by the respective General Secretary/President or any other authorized representative as parties of the third part.

2g.G.O.Ms.No.32 Energy (B2) Department dated 06.03.2024 was issued by the Government of Tamil Nadu in which a new scheme named as “ The Tamil Nadu Electricity Restructuring and Transfer Scheme, 2024” was duly published by the Government in the Government gazette. In the said scheme, transfer of officers and employees of TANGEDCO to TNPGL & TNGECL



and the terms & conditions of such transfer were dealt with.

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2h.The third respondent issued an order vide (Per.) CMD TANGEDCO Proceedings No.40 (Administrative Branch) dated 27.06.2024 by which 13 posts from TANGEDCO were redeployed to TANTRANSCO. The second respondent issued an order for redeploying 20 posts of TANGEDCO to TNGECL on formation of its Accounts Branch at Headquarters vide (Per.) FB TANGEDCO Proceedings No.11 (Secretariat Branch) dated 29.06.2024. The second respondent has also redeployed 20 posts and incumbents from TANGEDCO to TNGECL vide (Per.) CMD TANGEDCO Proceedings No.109 (Secretariat Branch) dated 29.06.2024 and redeployed 47 posts and incumbents to the newly formed Tamil Nadu Power Generation Corporation Ltd. (TNPGL) vide (Per.) CMD TANGEDCO Proceedings No.112 (Secretariat Branch) dated 02.07.2024.

3.Mr.R.Singaravelan, learned Senior Counsel appearing for the petitioner submitted that G.O.No.32 dated 06.03.2024 provides the guidelines for transfer of officers and employees. His primary contention is that there was no Tripartite Agreement between the petitioner, other Trade Unions, Government and the



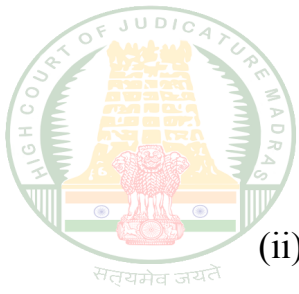
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newly formed Companies under G.O.No.32 dated 06.03.2024 with regard to the transfer of persons from TANGEDCO to the newly formed Companies with a similar request as stipulated in the Tamil Nadu Electricity (Reorganisation and Reforms) Transfer Scheme, 2010.

4. According to the petitioner, the Government Order did not contain anything about the recruitment and filling up of the post for the newly formed Companies and there is no cadre strength fixed for each post in the newly formed Companies. Another contention raised by the petitioner is that the number of posts in each category or the nomenclature of the post were not determined by the new Companies.

5. Mr. R. Singaravelan, learned Senior Counsel appearing for the petitioner had summarized his arguments as follows:

(i) Clause 2(u) of G.O.No.32 dated 06.03.2024 (Transfer Scheme) stipulates Tripartite Agreement for transfer of officers and employees. Transfer Orders passed without a Tripartite Agreement as per the transfer scheme amounts to non-compliance of Section 133 of the Act and it should be quashed in limine.



(ii) En masse transfer is prohibited. Impugned orders on transfer of

officers and employees on “as-is-where-is” basis without seeking their willingness & consent shows non application of mind by the respondents.

6.Learned Senior Counsel has also referred to Clause 5(1), 5(2), 5(5 to 11) in G.O.No.32 dated 06.03.2024.

5.Transfer of Personnel:-

(1) *The transfer of personnel shall be subject to the provisions contained in section 133 of the Act and the Tripartite Agreement.*

(2) *On the date of transfer of undertaking under clause 4 of this Scheme, the personnel of TANGEDCO working in the relevant offices, shall stand assigned to the services of the relevant transferees, on deputation basis, on “as-is-where-is” basis, namely, that they will continue to serve in the place where they are posted on the date of transfer, till further orders of the State Government.*

....

(5) *The assignment of personnel under and in accordance with sub-clauses (2), (3) and (4) above to the transferees shall continue till transfer to and permanent absorption in the services of a transferee, in accordance with the provisions of the Act, this Scheme and orders is issued by the State Government.*



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(6) The State Government will finalize the transfer and permanent absorption of the personnel in a transferee, taking into account the suitability, ability and experience of the personnel, options of the personnel, number and nature of the vacancies and other relevant factors and issue appropriate orders for such permanent absorption within the provisional period of transfer of the Undertakings specified in clause 8 of this Scheme.

(7) Upon the finalization and issue of orders in terms of the sub-clause (6), the personnel shall form part of the services of the transferee concerned, in the post, scale or pay or seniority in accordance with the orders that may be issued for this purpose, without any further act, deed or thing to be done by the State Government or TANGEDCO or the transferee or the Personnel or any other person.

(8) Subject to the provisions of the Act and this Scheme, the personnel shall be governed by the Rules and Regulations in force in TANGEDCO on the date of transfer. The transferee shall be entitled to modify or frame new regulations governing the conditions of service of personnel transferred to the transferee under this Scheme, but the rank, scale of pay, salary, allowances and other pecuniary benefits including terminal benefits after the date of transfer shall not in any way be less favourable than those which would have been applicable to them, if there



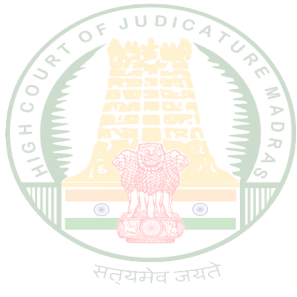
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had been no such transfer under the transfer scheme.

(9) In respect of all statutory and other Schemes and employment related matters including the provident fund, gratuity fund, pension (to whom it is applicable on the date of the transfer) and any other superannuation fund or any other fund created or existing for the benefit of the personnel, the relevant transferee shall stand substituted for the TANGEDCO for all intent and purposes and all the rights, powers and obligations of TANGEDCO in relation to any and all such matters shall be of that of the transferee concerned and the services of the personnel shall be treated as having been continuous for the above purpose.

(10) All relevant provisions of the Tripartite Agreement shall be applicable for the purposes of transfer of personnel from TANGEDCO to the transferee companies including, but not limited to provisions related to safeguarding the pension liabilities, terminal benefits and all other personnel related liabilities and benefits.

(11) The payments to existing pensioners and family pensioners shall be met from the cash flow of the operation of the transferees. The payment shall be made directly from TANGEDCO, TNPGL and TNGECL shall reimburse their proportional share to TANGEDCO until the final allocation of pensioners and family pensioners to the respective



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transferees and thereafter, the pension shall be paid directly by the transferees.

7.Learned Senior Counsel has drawn the attention of this Court to various proceedings. The impugned proceedings are extracted hereunder:

Establishment – Class II & III Service – Redeployment of various Accounts cadre posts from various offices/stations to the Office of the CFC/TANTRANSCO/Head Quarters-Orders issued.

-

(Administrative Branch)

*(Per.)CMD TANGEDCO Proceedings No.40
27.06.2024*

Dated

Aani – 13, Kurothi

Varudam

Thiruvalluvar Aandu

2055

READ:

*Note approved by the Chairman/TANTRANSCO on
07.06.2024.*

*From the CFC/TANTRANSCO U.O.Note no.528/A33/A332/
2024, dated 10.06.2024.*

PROCEEDINGS:



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Approval is hereby accorded for redeployment of various Accounts cadre posts from the various Offices/Stations to the Office of the CFC/TANTRANSCO/Head Quarters mentioned in the Annexure – 'I' to execute centralised bill passing in operation circles and centralised payment in all circles of TANTRANSCO.

2) The incumbent of the said posts will be eligible to draw the usual Pay, Dearness Allowance, House Rent Allowance and other allowances if any at the rates as admissible under the orders in force wherever applicable.

Establishment – TANGEDCO – Restructuring and Transfer Scheme, 2024 – Formation of Tamil Nadu Green Energy Corporation Limited (TNGECL) – Allocation of Personnel – Formation of Accounts Branch at Headquarters for Tamil Nadu Green Energy Corporation Limited (TNGECL) – Approved in Circulation – Re-deploying certain posts along with incumbents – Orders – issued.

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SECRETARIAT BRANCH

*(Per.)CMD TANGEDCO Proceedings No.109
2024.*

Dated 29th June

Aani – 15.

Thiruvalluvar Aandu

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PROCEEDINGS:-

In the Government order thirteen read above, orders were issued forming a new Green Energy Company in the name of Tamil Nadu Green Energy Corporation Ltd. (TNGECL) to fast track the State's energy transition plans, to give access to green funds which shall help ease the liquidity concerns and reduce the overall borrowing cost of the State Power Sector. The Board of Directors consisting of a Chairman, a Managing Director, 2 Directors, viz. Director/Finance & Director/Technical as Full Time/Directors and other part time Directors has also been formed.

2.In the Government order fourteen read above, orders were issued forming the Tamil Nadu Electricity Restructuring and Transfer Scheme, 2024 which includes the terms and conditions for transfer of personnel of TANGEDCO to TNPGL and TNGECL. All the Hydro Generating Circles Stations, Wind Energy Generating Stations and the new power projects at Kundah and Kollimalai have brought under the said TNGECL.

3.The Chairman-cum-Managing Director/ TANGEDCO has accorded approval for formation of Accounts Branch for TNGECL by redeploying the incumbents from various offices of TANGEDCO to Tamil Nadu Green Energy Corporation Limited (TNGECL).



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4. Accordingly, it is hereby ordered that the following posts and incumbents from various offices last continued in the Memorandum first to twelfth read above be redeployed to the Office of the Tamil Nadu Green Energy Corporation Limited (TNGECL) as follows:-

Establishment – TANGEDCO – Re-structuring and Transfer Scheme, 2024 – Formation of Tamil Nadu Power Generation Corporation Limited (TNPGL) – Allocation of Personnel – Formation of Accounts Branch at Headquarters for Tamil Nadu Green Energy Corporation Limited (TNGECL) – Approved in the Circulation – Re-deploying certain posts along with incumbents – Orders – issued.

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SECRETARIAT BRANCH

(Per.)CMD TANGEDCO Proceedings No.112

Dated 2nd July 2024.

Aani – 18.

Thiruvalluvar Aandu

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PROCEEDINGS:-

In the Government order eighteen read above, orders were issued bifurcating the Tamil Nadu Generation and Distribution Corporation Limited into separate generation and distribution companies, viz., Tamil Nadu



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Power Generation Corporation Ltd. (TNPGL) and Tamil Nadu Power Distribution Corporation Ltd. (TNPDC).

2.In the Government order nineteen read above, orders were issued forming the Tamil Nadu Electricity Restructuring and Transfer Scheme, 2024 which includes the terms and conditions for transfer of personnel of TANGEDCO to TNPGL and TNGECL. All the Hydro Generating Circles Stations, Wind Energy Generating Stations and the new power projects at Kundah and Kollimalai have brought under the said TNGECL.

3.The Chairman-cum-Managing Director/ TANGEDCO has approved the proposal for formation of Accounts Branch for TNPGL by redeploying the incumbents from various offices of TANGEDCO to Tamil Nadu Power Generation Corporation Limited (TNPGL).

4.Accordingly, it is hereby ordered that the following posts and incumbents from various offices last continued in the Memorandum first to seventeenth read above be redeployed to the Office of the Tamil Nadu Power Generation Corporation Limited (TNPGL) as follows:-

Establishment – TANGEDCO – Re-structuring and Transfer Scheme, 2024 – Formation of Tamil Nadu Green Energy Corporation Limited (TNGECL) – Formation of Accounts



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Branch at Headquarters for Tamil Nadu Green Energy Corporation Limited (TNGECL) – Approved in the Circulation – Re-deploying certain posts – Orders – issued.

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SECRETARIAT BRANCH

(Per.)FB TANGEDCO Proceedings No.11

Dated 29th June 2024.

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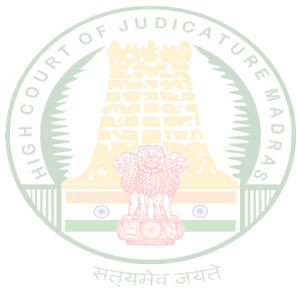
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2055.

PROCEEDINGS:-

In the Government order thirteen read above, orders were issued forming a new Green Energy Company in the name of Tamil Nadu Green Energy Corporation Ltd. (TNGECL) to fast track the State's energy transition plans, to give access to green funds which shall help ease the liquidity concerns and reduce the overall borrowing cost of the State Power Sector. The Board of Directors consisting of a Chairman, a Managing Director, 2 Directors, viz., Director/Finance & Director/Technical as Full Time/Directors and other part time Directors has also ben formed.

2.In the Government order fourteen read above, orders were issued forming the Tamil Nadu Electricity Restructuring and Transfer Scheme, 2024 which includes the terms and conditions for transfer of personnel of TANGEDCO to TNPGL and TNGECL. All the Hydro Generating Circles, Stations, Wind Energy Generating



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Stations and the new power projects at Kundah and Kollimalai have brought under the said TNGECL.

3.The following Chief Engineers and their subordinate officers are hitherto functioning under Managing Director/TNGECL:-

- i.CE/Hydro/Headquarters/Chennai.*
- ii.CE/NCES.*
- iii.CE/Civil/DRIP.*
- iv.CE/Civil/Projects/Kundah/Emerald.*

4.The Board of Directors has accorded approval through circulation for formation of Accounts Branch at Headquarters for Tamil Nadu Green Energy Corporation (TNGECL) by re-deployment of various posts from TANGEDCO to the Tamil Nadu Green Energy Corporation Limited (TNGECL).

5.Accordingly, it is hereby ordered that a separate Accounts Branch at Headquarters be formed for Tamil Nadu Green Energy Corporation Limited (TNGECL) by re-deploying the following posts last continued in the Memorandum first to twelfth read above:-

8.Mr.R.Singaravelan, learned Senior Counsel appearing for the petitioner referred to Additional Typeset filed by the petitioner. According to the



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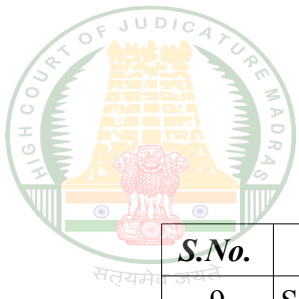
petitioner, the names of 13 officers and employees are mentioned in Transfer

Memo.No.034884/373/ G.59/G.592/2024, dated 29.06.2024. In the said list of officers and employees, one Mr.V.Saravanan working as AAO who hails from Kanyakumari is now transferred to TANTRANSO. Similarly, one Ms.P.Gomathy working as Assistant who hails from Kanchipuram is now transferred to TANTRANSO. Learned Senior Counsel contended that the respondents are bound to hold a discussion before effecting transfer of officers and employees. Therefore, the impugned orders are passed in violation of principles of natural justice.

The officers and employees transferred to the newly formed companies by virtue of the impugned orders are as follows:

I. Details of Staff Under Orders of transfer Memo.No.034884/373/ G.59/G.592/2024, dated 29.06.2024

<i>S.No.</i>	<i>Name</i>	<i>Designation</i>	<i>From</i>	<i>To</i>
1	V.Saravanan	A.A.O.	Kanyakumari	TRANTRANSO
2	S.Sivagami	”	Guindy	”
3	M.Ramesh	A.S	”	”
4	S.Vijayakumar	”	”	”
5	A.Damodaran	”	K.K.Nagar	”
6	D.Etti Elago	”	Avadi	”
7	R.Mary Jesey	”	Tondiyarpeth	”
8	T.Ganesh	Asst.	Mylapore	”



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S.No.	Name	Designation	From	To
9	S.Dalbina Shoba	”	Ambathur	”
10	P.Gomathi	”	Kanchipuram	”
11	S.Santhosh	J.A	Perambur	”
12	N.Sreenivasan	”	Tondiyarpet	”
13	E.Udayakumar	”	Mylapore	”

II. Staff Under Orders of transfer vide

(Per) Tangedco Proceedings No.11/29-06-2024

(Per) CMD Tangedco Proceedings No.109/29-06-2024

S.No.	Name	Designation	From	To
1	V.Sreenivasan	F.C	MTPS II Mettur Dam	TNGECL
2	P.Selvam	D.F.C	Head Quarters	”
3	D.Pachiammal	A.O	Thirupathur	”
4	S.Lakshmi	”	Thiruvannamalai	”
5	S.Udaya Kumar	”	Dharmapuri	”
6	C.Suganthi	”	Cuddalore	”
7	S.Shankar	A.A.O	Villupuram	”
8	M.Ravichandran	”	Pudukottai	”
9	K.Gobal	”	Head Quarters	”
10	A.Harishkumar	A.S	Perambur	”
11	B.Sreenivasan	”	CO/North	”
12	T.Devi	”	Tondiyarpet	”
13	S.Poonguzhali	”	Kanchipuram	”
14	R.Vaishnaveni	”	Chengalpet	”
15	S.Sangeetha	Asst.	Annangar/West	”
16	K.Amuthavalli	”	Kanchipuram	”

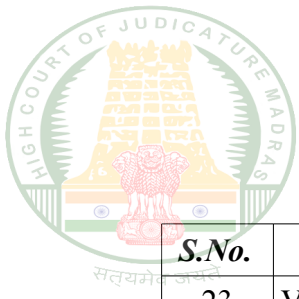


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<i>S.No.</i>	<i>Name</i>	<i>Designation</i>	<i>From</i>	<i>To</i>
17	G.Nithya	”	”	”
18	P.Meenakshi	J.A	”	”
19	K.Dilipkumar	”	”	”
20	P.Shalini	”	CO/North	”

**III. Staff Under Orders of transfer vide
(Per) CMD Tangedco Proceedings No.112/02-07-2024**

<i>S.No.</i>	<i>Name</i>	<i>Designation</i>	<i>From</i>	<i>To</i>
1	M.Kumar	F.C	Project	TNGECL
2	V.Geethalakshmi	F.C	Coal	”
3	G.Arputham	D.F.C	”	”
4	S.Shakila	A.O	”	”
5	V.Dillivijaya	”	”	”
6	K.Muthupandi	A.O	Madurai	”
7	R.Dhavamani	”	Perambalur	”
8	S.P.Meenakshi	”	Karur	”
9	K.Kalaivanan	”	Thanjavur	”
9(a)	Vacant	”		”
10	M.Hariram	A.A.O	Coal	”
11	K.Sundarrajan	”	Mettur	”
12	S.Radhakrishnan	”	Namakkal	”
13	B.Gobal	”	Salem	”
14	M.Padmavathi	”	Madurai Metro	”
15	R.Ramilabanu	”	Gobi	”
16	T.Rajathi	A.S	Coal	”
17	S.Kareem Unnisha	”	”	”
18	M.Poongothai	”	”	”
19	P.Venkatesan	”	”	”
20	K.C.Rajesh	”	”	”
21	M.Shakila	”	”	”
22	T.Sundravel	”	”	”



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<i>S.No.</i>	<i>Name</i>	<i>Designation</i>	<i>From</i>	<i>To</i>
23	Vacant	”	----	”
24	A.Juliet	”	Tondaiyarpet	”
25	R.Manjula	”	CO/	”
26	A.Devi	”	Ponneri	”
27	R.Arthi	”	Pallavaram/South II	”
28	N.Sangeetha	”	Annanagar/West	”
29	M.P.Murugan	”	Kanchipuram	”
30	S.Saravanan	”	”	”
31	J.Jayashree lavanya	”	Chengalpet	”
32	J.Kamal Selvam	Asst.	CE/Coal	”
33	A.Arul Selvi	”		”
34	Vacant	”		”
35	Nithyanantham	”		”
36	J.Janani	”		”
37	V.Bhuvaneswari	”		”
38	M.Prasanth	”		”
39	R.Gnanaguru	”	Kanchipuram	”
40	K.Thirupuzhaselvi	”	Chengalpat	”
41	Vacant	J.A	”	”
42	Vacant	”	”	”
43	S.Sivaramakrishnan	”	Kanchipuram	”
44	T.Kavitha	”	”	”
45	Vacant	A.A.O	Budget	”
46	G.Anitha	”	CE Projects	”

9.Mr.P.S.Raman, learned Advocate General appearing for the Government viz., the first respondent had refuted the allegations made by the learned Senior Counsel for the petitioner that there was no Tripartite Agreement between the petitioner Union and other Trade Unions with the Government and



the other respondents.

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10.Mr.P.S.Raman, learned Advocate General appearing for the first respondent has referred to Clauses 5(1), (2), (3), (4) , (5), (15), (18), (20) & (26) in the Tripartite Agreement dated 12.02.2024. The relevant clauses are extracted hereunder:

5.Now, therefore, in consideration of the premises, mutual agreements, Covenants and conditions set forth herein, it is agreed by and between the parties as follows:-

(1) In so far as this Tripartite Agreement is concerned;

(a) 'State Government' means Government of Tamil Nadu;

(b) 'Board' means the Tamil Nadu Electricity Board;

(c) 'Existing Officers/Employees' means Officers/Employees of the Board as on the date of signing of this agreement;

(d) 'Holding Company' means the TNEB Limited;

(e) 'Successor entities' or 'Corporate entities' means 'TNEB Limited', TANTRANSCO and 'TANGEDCO';

(f) 'Subsidiary Companies' means



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TANGEDCO and TANTRANSCO;

(2) All other words and expressions used herein and not defined shall have the meanings respectively assigned to them as stated in the G.O(Ms)No:100, Energy department, dt.19.10.2010.

(3) In view of re-organization of the Board into TNEB Limited (as holding company) and two or as many subsidiary companies like Tamil Nadu Transmission Corporation Limited (TANTRANSCO) and Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) as a separate Corporate entities, the State Government and the Successor entities hereby undertake that there shall be no retrenchment of existing Officers/Employees on account of such restructuring and their status/service conditions shall not in any way be less favourable than those which would have been applicable to them if there had been no such re-organization and the transfer scheme. Any employee rendered surplus through a mutually agreed process of appropriate rationalization shall be redeployed.

(4) The terms and conditions of service of the existing Officers/Employees of the Board upon transfer to the Successor/Corporate entities shall not



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be inferior to the present terms and conditions of service in the Board. The Successor entities will endeavour to rationalize the terms and conditions to provide for career growth and other welfare measures more beneficial to the Officers/Employees recognizing that the Officers/Employees are an essential part of the growth of power sector and its operation in an economic and efficient manner.

(5) The principles and / or terms and conditions of service of the existing Officers/Employees in matters like promotions, appointments, internal selections, transfers, leave, all allowances, etc., regulated by existing regulations/ratios/service rules are guaranteed to continue to be the same during transition and shall not be less favourable as stated upon permanent transfer to the respective successor entities of the Board.

(15) Even on formation of TNEB LIMITED, TANTRANSCO and TANGEDCO, until further orders, all the existing Officers/Employees of the Board will be retained in TANGEDCO for the present. The Officers/Employees shall continue to serve “as-is where-is” basis and shall be treated as Officers/ Employees of TANGEDCO and they would



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be treated as being on deputation to the other successor entities. The period of transition will be as approved by Government of Tamil Nadu in Transfer Scheme in the Government of Tamil Nadu gazette. During the transition period, i.e., till the period of finalization of options of the Officers/Employees and their absorption in the successor entities, the cadre management shall vest with TANGEDCO. During such transition period the existing seniority pattern for each category will be maintained by TANGEDCO. The other entities shall accept the employee posted by TANGEDCO wherever necessary in consultation with the TANTRANSCO and TNEB Ltd., based on seniority which shall be basis for absorption of Officers/Employees in the successor entities. The service conditions of the employee in the successor entities shall not be less favourable to them than that has been provided by the Board. Retirement/Terminal benefits including GPF/CPS and pension payments to the retiring Officers/employees during the period of transition shall be dealt with by TANGEDCO and thereafter by the successor entities.

(18) All the existing workload norms shall continue and changes from time to time shall be finalized through mutually negotiated settlements



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between the Unions and the respective successor entity.

(20)If the newly constituted Corporate entity/entities fail to implement this agreement in any respect, the State Government shall take full responsibility for enforcing such implementation by the entity concerned.

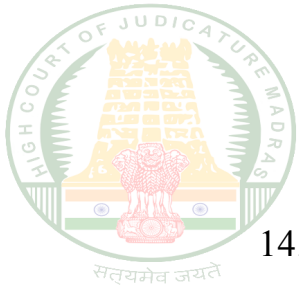
(26)This tripartite agreement shall be deemed to have come into force with effect on and from the first day of November 2010.

11.Mr.P.S.Raman, learned Advocate General appearing for the first respondent pointed out that as per the Tripartite Agreement dated 12.02.2024, the State Government and the Successor entities are duty bound to retain the Officers and Employees without affecting their service conditions while transferring them to the newly formed companies. Therefore the impugned G.O.Ms.No.32 dated 06.03.2024 (Transfer Scheme) and the impugned orders does not in anyway affect the service conditions of the officers and employees as alleged by the petitioner.



12. In Tripartite Agreement dated 12.02.2024, the petitioner is arrayed as Sl.No.2 out of 28 Associations. When the petitioner Union is a party to the Tripartite Agreement dated 12.02.2024, the petitioner cannot now make a hue and cry that there was no Tripartite Agreement as contemplated under Section 133 of the Electricity Act, 2003. The Tripartite Agreement between the Government, TNEB, TANGEDCO, TANTRANSCO and Trade Unions clarifies the transfer and service conditions and it is in accordance with Section 133 of the Electricity Act, 2003.

13. Mr. P.S. Raman, learned Advocate General appearing for the first respondent had pointed out that the petitioner Union is agitating the impugned orders on transfer by stating that the consent of employees must be obtained before effecting transfer. Learned Advocate General made a serious objection for making such a statement and submitted that the consent of the employee is not necessary for transfer. It is a settled proposition that transfer is an integral part of service conditions. Most of the officers who are transferred are Senior Officials holding the post of Accounts and Assistant Accounts Officers. Except one or two all other persons are working in Chennai District and most of them will be transferred from one building to another building.



14.Learned Advocate General submitted that the Government as well as TANGEDCO and TANTRANSCO has taken 28 Trade Unions into confidence and after entering into the Tripartite Agreement dated 12.02.2024, the Government passed an order in G.O.No.32 dated 06.03.2024 which was published in the Government Gazette. As per Section 131 of the Electricity Act, 2003 when there is a transfer order under the transfer scheme, the officers and employees are duty bound to hold office on terms and conditions determined in accordance with the transfer scheme. He further submitted that consent and convenience are anti-thesis of transfer.

15.Learned Advocate General appearing for the first respondent had pointed out that the Secretaries were appointed in all the newly formed Companies and in view of the status quo order passed in the month of June 2024, no staff could be transferred and the new Companies were unable to commence their functions for which purpose they were formed. He further contended that the writ petition is not maintainable in view of the Tripartite Agreement dated 12.02.2024 between the Government, TANGEDCO, TANTRANSCO and Trade Unions including the petitioner Union.

16.The second respondent has filed a counter affidavit and contended that the impugned orders are passed only for immediate commencement of



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business at Headquarters TNGECL and TNPGL during the transition period.

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Therefore, calling for option (willingness) from the employees does not arise at this stage. Pursuant to the impugned orders, the officers and employees will continue in the same role occupied by them in TANGEDCO, they will serve on deputation on “as-is-where-is” basis during the provisional period and the redeployment is subject to final transfer and absorption.

17.Mr.P.Wilson, learned Senior Counsel appearing for the second respondent while adopting the argument of the learned Advocate General emphasized that the Tripartite Agreement dated 12.02.2024 has been entered into between the parties and this was refuted by the learned Senior Counsel appearing for the petitioner who primarily contended that there was no Tripartite Agreement between the Government, Trade Unions and newly formed Companies.

18.Mr.P.Wilson, learned Senior Counsel appearing for the second respondent contended that the total number of persons likely to be transferred as per the impugned orders are only 79 persons. The transfer orders will not change the current position occupied by them as on date. He further contended

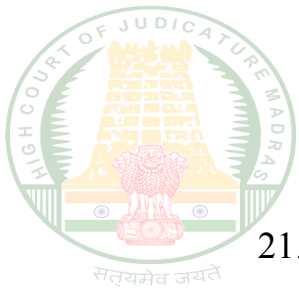


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that the apprehension expressed by the learned Senior Counsel appearing for the petitioner is far fetched and beyond imagination. The Tripartite Agreement dated 12.02.2024 is binding on the Trade Union including the petitioner Union who are all parties to the same.

19.Learned Senior Counsel appearing for the second respondent submitted that the petitioner Union cannot be permitted to challenge the impugned orders transferring the officers and employees from TANGEDCO to TNGECL and TNPGL as they have failed to challenge G.O.Ms.Nos.6 & 7 Energy (B2) Department dated 24.01.2024 by which the said TNGECL and TNPGL were formed. Therefore, the writ petition is not maintainable.

20.Learned Senior Counsel appearing for the second respondent has relied upon a judgment of the Hon'ble Supreme Court in *State of U.P. and Another Vs. Siya Ram And Another*, reported in (2004) 7 SCC 405 and submitted that the Courts cannot interfere with the transfer orders passed by the employer unless the transfer orders are proved to be an outcome of *malafide* exercise or to be in violation of statutory provisions prohibiting such transfers.



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21.Learned Senior Counsel appearing for the second respondent questioned the locus standi of the petitioner Union in filing the present writ petition by relying upon a judgment of this Court in ***Tancem Marketing Employees Welfare Union Vs. Secretary to Government and Others***, reported in ***2019 SCC Online Mad 26944***.

22.Learned Senior Counsel appearing for the second respondent has relied upon a Full Bench judgment of the Hon'ble Supreme Court in ***Centre for Public Interest Litigation vs. Union of India and Others*** reported in ***(2016) 6 SCC 408*** and contended that Courts should refrain from interfering in administrative decisions of the Government. In the aforesaid judgment, the Hon'ble Supreme Court has referred to the following judgments:

Jal Mahal Resorts (P) Ltd. v. K.P. Sharma [Jal Mahal Resorts (P) Ltd. v. K.P. Sharma, (2014) 8 SCC 804]

“137. From this, it is clear that although the courts are expected very often to enter into the technical and administrative aspects of the matter, it has its own limitations and in consonance with the theory and principle of



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separation of powers, reliance at least to some extent to the decisions of the State authorities, specially if it is based on the opinion of the experts reflected from the project report prepared by the technocrats, accepted by the entire hierarchy of the State administration, acknowledged, accepted and approved by one Government after the other, will have to be given due credence and weightage. In spite of this if the court chooses to overrule the correctness of such administrative decision and merits of the view of the entire body including the administrative, technical and financial experts by taking note of hair splitting submissions at the instance of a PIL petitioner without any evidence in support thereof, the PIL petitioners shall have to be put to strict proof and cannot be allowed to function as an extraordinary and extra-judicial ombudsman questioning the entire exercise undertaken by an extensive body which includes administrators, technocrats and financial experts. In our considered view, this might lead to a friction if not collision among the three organs of the State and would affect the principle of governance ingrained in the theory of separation of powers.



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In fact, this Court in M.P. Oil Extraction v. State of M.P. [M.P. Oil Extraction v. State of M.P., (1997) 7 SCC 592] , at p. 611 has unequivocally observed that: (SCC para 41)

'41. ... The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields.'

138. However, we hasten to add and do not wish to be misunderstood so as to infer that howsoever gross or abusive may be an administrative action or a decision which is writ large on a particular activity at the instance of the State or any other authority connected with it, the Court should remain a passive, inactive and a silent spectator. What is sought to be emphasised is that there has to be a boundary line or the proverbial "Laxman



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rekha” while examining the correctness of an administrative decision taken by the State or a Central authority after due deliberation and diligence which do not reflect arbitrariness or illegality in its decision and execution. If such equilibrium in the matter of governance gets disturbed, development is bound to be slowed down and disturbed specially in an age of economic liberalisation wherein global players are also involved as per policy decision.”

23.Limits of the judicial review were again reiterated, pointing out the same position by the courts in England, in G. Sundarrajan v.Union of India [G. Sundarrajan v.Union of India, (2013) 6 SCC 620] in the following manner: (SCC p. 646, para 15)

“15.1. Lord MacNaughten in Vacher & Sons Ltd. v. London Society of Compositors [Vacher & Sons Ltd. v.London Society of Compositors, 1913 AC 107 : (1911-13) All ER Rep 241 (HL)] has stated: (AC p. 118)

‘... Some people may think the policy of the Act unwise and even dangerous to the community. ... But a judicial tribunal has nothing to do with the



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policy of any Act which it may be called upon to interpret. That may be a matter for private judgment. The duty of the court, and its only duty, is to expound the language of the Act in accordance with the settled rules of construction.'

15.2. In Council of Civil Service Unions v. Minister for the Civil Service [Council of Civil Service Unions v. Minister for the Civil Service, 1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] (AC p. 414 : All ER p. 954), it was held that it is not for the courts to determine whether a particular policy or particular decision taken in fulfilment of that policy is fair. They are concerned only with the manner in which those decisions have been taken, if that manner is unfair, the decision will be tainted with what Lord Diplock labels as "procedural impropriety".

15.3. This Court in M.P. Oil Extraction v. State of M.P. [M.P. Oil Extraction v.State of M.P., (1997) 7 SCC 592] held that unless the policy framed is absolutely capricious, unreasonable and arbitrary and based on mere ipse dixit of the executive authority or is invalid in constitutional or statutory mandate, court's interference is not called for.



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15.4. *Reference may also be made of the judgments of this Court in Ugar Sugar Works Ltd. v. Delhi Admn. [Ugar Sugar Works Ltd. v. Delhi Admn., (2001) 3 SCC 635], Dhampur Sugar (Kashipur) Ltd. v. State of Uttaranchal [Dhampur Sugar (Kashipur) Ltd. v. State of Uttaranchal, (2007) 8 SCC 418] and Delhi Bar Assn. v. Union of India [Delhi Bar Assn. v. Union of India, (2008) 13 SCC 628] .*

15.5. *We are, therefore, firmly of the opinion that we cannot sit in judgment over the decision taken by the Government of India, NPCIL, etc. for setting up of KKNPP at Kudankulam in view of the Indo-Russian Agreement.”*

Relying upon the aforesaid judgments, the Hon'ble Supreme Court made the following observations:

21.....a policy decision, when not found to be arbitrary or based on irrelevant considerations or mala fide or against any statutory provisions, does not call for any interference by the courts in exercise of power of judicial review. This principle of law is ingrained in stone which is stated and restated time and again by this Court on numerous occasions.



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27.The raison d'être of discretionary power is that it promotes the decision-maker to respond appropriately to the demands of a particular situation. When the decision-making is policy-based, judicial approach to interfere with such decision-making becomes narrower. In such cases, in the first instance, it is to be examined as to whether the policy in question is contrary to any statutory provisions or is discriminatory/arbitrary or based on irrelevant considerations. If the particular policy satisfies these parameters and is held to be valid, then the only question to be examined is as to whether the decision in question is in conformity with the said policy.

23.Learned Senior Counsel appearing for the second respondent has relied upon a judgment of the Hon'ble Supreme Court in ***Balco Employees Union (Regd.) vs. Union of India and Others*** reported in ***(2002) 2 SCC 333*** to point out the role of principles of natural justice in policy decisions of the Government. The relevant paragraphs are extracted hereunder:

46.It is evident from the above that it is neither within the domain of the courts nor the scope of the judicial review to embark upon an



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enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

47... The courts have consistently refrained from interfering with economic decisions as it has been recognised that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, that the courts would decline to interfere... In taking of a policy decision in economic matters at length, the principles of natural justice have no role to play. While it is expected of a responsible employer to take all aspects into consideration including welfare of the labour before taking any policy decision that, by itself, will not entitle the employees to demand a right of hearing or consultation prior to the taking of the decision.



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48. Merely because the workmen may have protection of Articles 14 and 16 of the Constitution, by regarding BALCO as a State, it does not mean that the erstwhile sole shareholder viz. Government had to give the workers prior notice of hearing before deciding to disinvest. There is no principle of natural justice which requires prior notice and hearing to persons who are generally affected as a class by an economic policy decision of the Government. If the abolition of a post pursuant to a policy decision does not attract the provisions of Article 311 of the Constitution as held in State of Haryana v. Des Raj Sangar[(1976) 2 SCC 844 : 1976 SCC (L&S) 336] on the same parity of reasoning, the policy of disinvestment cannot be faulted if as a result thereof the employees lose their rights or protection under Articles 14 and 16 of the Constitution. In other words, the existence of rights of protection under Articles 14 and 16 of the Constitution cannot possibly have the effect of vetoing the Government's right to disinvest. Nor can the employees claim a right of continuous consultation at different stages of the



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disinvestment process. If the disinvestment process is gone through without contravening any law, then the normal consequences as a result of disinvestment must follow.

24.Mr.R.Singaravelan, learned Senior Counsel appearing for the petitioner relied upon a judgment of this Court in ***W.A.Nos.1498, 1499, 1500, 1501, 1502 and 1503 of 2021 dated 30.06.2022*** and drawn the attention of this Court to Paragraph 14 of the aforesaid judgment. The relevant paragraph is extracted hereunder:

14.This court is of the opinion that the twin requirements imposed in the said G.O.Ms.No.249 dated 21.05.2020 have not been followed while passing the orders of transfer. Firstly, it was merely cited as transfer on administrative exigency, which is akin to a general or routine order of transfer. Secondly, the orders of transfer have not been passed by a higher authority, as enunciated in the G.O. Though it was contended on the side of the appellants that before passing the orders of transfer, they obtained approval from the Government vide letter dated 19.06.2020, the same cannot be accepted in view of the fact that such a communication is



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admittedly a clarificatory in nature and the same will not empower the appellants to issue such transfer orders by overlooking the specific requirements as contained in the said G.O. As such, the learned Judge has rightly observed that when G.O. has been issued and is in force providing prohibition of general transfers, such prohibition is meant to be followed during the pandemic times and there cannot be a deviation from the instructions on the basis of a letter of clarification issued by the Government, overriding the executive order of the Government issued in the name of His Excellency the Governor of the State; and therefore, it cannot be accepted that the letter dated 19.06.2020 issued by the Principal Secretary to Government would have equal force as that of G.O.Ms.No.249 dated 21.05.2020. Accordingly, the learned Judge has held that the orders of transfer have been passed by violating the guidelines given in the said G.O. and hence, they are not legally tenable.

25.Heard Mr.R.Singaravelan, learned Senior Counsel appearing for the



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petitioner, Mr.P.S.Raman, learned Advocate General appearing for the first respondent, Mr.P.Wilson, learned Senior Counsel appearing for the second respondent and Mr.J.Ravindran, learned Additional Advocate General appearing for the third respondent and perused the materials available on record.

26.The petitioner in their own typed set of papers have filed the Tripartite Agreement entered into between the parties as early as on 12.02.2024 where the petitioner Union is a signatory in Sl.No.2. When there is a Tripartite Agreement between the Government, TANGEDCO, and the Trade Unions, the apprehension raised by the petitioner cannot be taken into consideration.

27.As rightly contended by Mr.P.S.Raman, learned Advocate General, when the TANGEDCO is in principle separated as TNGECL and TNPGCL, the only point for consideration is whether the Government has the power to carry out such an exercise. The exercise of power is well within and under Section 131 & 133 of the Electricity Act, 2003. TANGEDCO by itself was formed under Section 131 and the petitioner now cannot question the powers of the Government. Section 131 makes it clear that the power is vested with the Government to form any number of successor entities.



WEB COPY 28.Hue and cry made by the petitioner Union that there was no Tripartite Agreement between the parties is utter false when the petitioner themselves have filed the Tripartite Agreement dated 12.02.2024. The contention that there was no Tripartite Agreement is contrary to clause 2(u) of G.O.Ms.No.32 dated 06.03.2024 (Transfer Scheme) which specifically states as follows:

2(u). "Tripartite Agreement" means the Agreement entered between TANGEDCO, TANTRANSCO and TNEB Limited as well as the State Government and the approved Union or Association of the Personnel concerned and approved by State Government vide Letter (Ms)No.96/2023, Dated 31.10.2023.

The Tripartite Agreement dated 12.02.2024 is in consonance with Clause 2(u) of G.O.Ms.No.32 dated 06.03.2024 (Transfer Scheme) and it is applicable for transfer of officers and employees to TNPGL and TNGECL which are formed in the process of restructuring TANGEDCO and the same is binding on all the parties.

29.The transfer is an incidental happening in an employment. The petitioners are officers in rank and many of them are being transferred from one desk to another desk. Even assuming for a moment that there are some difficulties for the persons employed who are likely to be transferred by virtue of the impugned orders, that cannot be a ground to challenge the powers of the



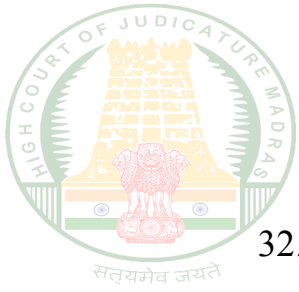
Government when the power is contemplated under the Electricity Act, 2003.

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It is clearly a misconception of the petitioner Union and the impugned orders itself would show that the number of persons who are likely to be transferred in total is only 79 when TANGEDCO comprises more than 50,000 employees under it. The petitioner Union has filed the present writ petition spearheading the cause of the persons who are likely to be transferred and the same is without reason or rhyme.

30.The contention that there was no Tripartite Agreement is not only misleading the Court but it also reflects the mind of the petitioner Union that they are interested only in protecting the employees who are at the officers level. The attitude of the petitioner Union should be in consonance with the welfare of the employees at large and not in the interest of very few persons who according to the petitioner Union are likely to be affected.

31.There is no office without staff. In view of the status quo order of this Court, the newly formed companies are not in a position to commence their function. There cannot be any functioning of a body only with the head and without the trunk.



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32.Mr.R.Singaravelan, learned Senior Counsel appearing for the petitioner has relied upon a judgment of this Court in *W.A.Nos.1498, 1499, 1500, 1501, 1502 and 1503 of 2021 dated 30.06.2022*, in which the reason for transfer is administrative exigencies. The judgment relied upon by the learned counsel for the petitioner is not applicable to the case in hand, as this transfer is made pursuant to the Tripartite Agreement dated 12.02.2024 in which the petitioner Union is a signatory. Therefore, the transfer is not made on administrative exigences but it is based on the Tripartite Agreement dated 12.02.2024. In the aforesaid judgment, this Court clarified that there shall not be any deviation from the instructions in the Executive Order made by the Government. It is clear from the submissions of the learned Advocate General appearing for the first respondent, learned Senior Counsel appearing for the second respondent and learned Additional Advocate General appearing for the third respondent that there is a Tripartite Agreement dated 12.02.2024 entered into between the Government of Tamil Nadu, TNEB Limited, TANGEDCO, TANTRANSCO, Trade Unions and Associations including the petitioner Union and the same is binding on all the persons. The petitioner has not established any deviation from Section 133 of the Electricity Act, 2003, G.O.No.32 dated 06.03.2024 (Transfer Scheme) and the Tripartite Agreement dated 12.02.2024. Therefore, the above judgment relied upon by the petitioner is not applicable to



the present case.

33. In view of the same, the writ petition is dismissed as devoid of merits.

No costs. Consequently, connected miscellaneous petitions are closed.

12.09.2024

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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To

1. The Principal Secretary to Government,
Energy Department,
Fort St. George,
Chennai – 600 009.

2. The Chairman Cum Managing Director,
Tamilnadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai,
Chennai – 600 002.

3. The Chief Engineer (Personnel)
Tamil Nadu Generation and Distribution Corporation Ltd.,
No.144, Anna Salai,
Chennai – 600 002.



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VERDICTUM.IN



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N.SENTHILKUMAR, J,

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12.09.2024