

**TAMIL NADU GENERATION AND DISTRIBUTION CORPORATION LTD.**

Legal Cell  
144, Anna Salai  
Chennai – 2

**Circular Memo. No. 25164/C4/C42/2019-1, dated 21.05.2019**

Sub: TANGEDCO – Effective management of Court cases – Follow up of Court cases promptly and creation & updation of entries in Legal Cases Monitoring System (LCMS) – Instructions – Issued.

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In the matter of litigations filed against or by the TANGEDCO/TANTRANSCO before various legal fora, follow-up of it until its finality, ensuring the compliance of the orders passed by such fora in the respective litigation and/or taking up the matter in appeal/review/revision, wherever found necessary/legally feasible, all Superintending Engineers, Chief Engineers, Chief Financial Controllers, Chief Internal Audit Officer and Secretary and all other Officers are directed to strictly adhere to the following :-

**(I) FILING COUNTER AFFIDAVIT/AFFIDAVIT & MONITORING**

- (a) In all the cases filed against the TANGEDCO/TANTRANSCO, the counter affidavit should be filed within the time stipulated by the Court in that case or within 90 days from the date of filing of the case, whichever is earlier.
- (b) In the counter affidavit, history of the case in detail should be stated, as far as possible in a chronological manner, specifically stating the rule/regulation position and instructions in force in the first instance and then the averments/grounds of the petitioner should be met without any omission. Besides, every document/instruction/order relied in the counter affidavit should be filed in that case by way of Typed Set of Papers or Proof Affidavit, as the case may be.
- (c) In case the litigation is filed by the TANGEDCO/TANTRANSCO, the affidavit, petition(s) together with documents by way of Typed Set of Papers or Proof Affidavit should be filed without any delay so as to avoid rejection of litigation on the ground of delay or expiry of the period of limitation prescribed in the relevant Acts/Rules/Regulations even to institute such litigation.

- (d) Wherever interim order is issued against the TANGEDCO/ TANTRANSCO, the officers and Standing Counsel concerned shall ensure that there is an averment in the counter affidavit seeking to vacate such interim order.
- (e) The Standing Counsels shall ensure that the counter affidavit/appeal/ review/revision are filed promptly before the Court, wherever necessary to file an application/petition to vacate interim order or seeking interim order and that the officers concerned are informed of the appropriate SR/USR No. that may be assigned by the Registry of the Court for having filed so as to enable them to make an entry in Legal Cases Monitoring System (LCMS).
- (f) The Standing Counsels shall further ensure that such application/petition to vacate the interim order/writ petition/writ appeal/review, etc. shall cross the SR stage then and there and the vacate stay petition, writ petition, writ appeal, review, etc. got numbered, listed before the Court and necessary vacate or interim order obtained as may be required in such writ petition, writ appeal, review, etc.
- (g) Once a case is filed, the details of it should be entered immediately in the LCMS deployed in the TANGEDCO/ TANTRANSCO URLs., viz. –

**Through Internet**

**<http://tneb.tnebnet.org:8087/legal> (for TANGEDCO)**  
**<http://tneb.tnebnet.org:8087/legaltransco>**

**Through Intranet**

**<http://192.168.150.6:8087/legal> (for TANGEDCO)**  
**<http://192.168.150.6:8087/legaltransco>**

- (h) After such initial entry of a particular case, every subsequent development of the case, i.e., the stages it passed through like adjournments, interim or final orders, the action taken thereon on such orders, etc. should be entered in the LCMS, then and there, until its actual compliance of the final order passed or filing appeal/review/ revision before the appellate forum.
- (i) It reveals from a review of the entries in the LCMS that either new entries are not made or existing entries are not updated by various offices. In many cases, the final order and/or compliance in a particular case is not entered in LCMS, which resultantly reveals as if the cases are still pending.

- (j) User Manual is provided by the Information Technology Wing of the TANGEDCO at Headquarters in the aforesaid portals itself, which may be made use of. In case of any doubt/ difficulties, the IT wing of the TANGEDCO will provide support for effective entering and updation of entries so as to reflect a clear & correct view of the nature & status of the cases, not only by the top management but also for view by the respective officers handling the case from wherever they may be situated, by using their login either through intranet or internet. For effective updation, the Computer Wing personnel like the Regional Co-ordinator/Senior Manager/Management in the Region/Circle shall extend their co-operation to other officers.
- (k) Even for trivial issues which are dealt by lower management level of the organisation, a litigant may array the top official(s) of the TANGEDCO/ TANTRANSCO and/or the Government's top officers. Special care shall be taken, so that non-filing of counter, omission to comply the order of the Court or non-filing of appeal/ review/revision/vacate petition and obtaining interim stay thereon in time are not put against such top officials and put them in an awkward position of personal appearance before the Court or suffering orders of execution of the belongings attached to such top officials.
- (l) All officers of the TANGEDCO/TANTRANSCO should review the pending/arising litigations of all the offices under their control periodically, atleast once in 15 (fifteen) days, to issue instructions then and there and to monitor closely the same until its compliance or filing of appeal/review/revision together with interim stay thereon in the first instance and to monitor such appeal/review/revision until its final disposal by the fora concerned.
- (m) More particularly, in the Writ Petitions/Writ Appeals, where either Chief Secretary to Govt./GoTN or Secretary to Govt., Energy/GoTN or any other Secretary to the Govt./GoTN is a party should be identified in the first instance, reviewed thoroughly by the respective SE/CE/CFC/CIAO/Secretary, as the case may be, on the need to file a detailed counter, compliance in case the claim is found to be true in accordance with the rules in force, following it up closely, filing of petition to delete such top officials/Government's top officers from cause title wherever they were arrayed without there being any necessity or requirement, are to be undertaken promptly.

- (n) While undertaking review, the CE/SE/CFC/CIAO/Secretary and all other officers shall analyze each case filed as to whether the litigation arise due to (1) non-adoption or improper adoption of rules/regulations/instructions in force governing the claim/issue (2) non-providing of reasonable opportunity of hearing before making any revision/demand under the rules/regulations/Codes, (3) non-adoption of other procedures prescribed under the rules/regulations (4) handling of issues by an officer who is not competent or unconnected with the subject and (5) dereliction of duty by the officer whose is duty bound to handle the case but directing the incompetent subordinate to handle the issue. For example, (1) in employee/labour related court cases handled by Administrative Officers **or** HT Service connection matters handled by the Circle Office, the Distribution AE/AEE, who may not be conversant with the same, is directed to file counter & to follow up. (2) Invariably, on any Court working day, a few cases are filed claiming that electricity service connection is not provided or principles of nature justice was not followed before revision of bills or raising a fresh demand or that the statutory provisions or the procedures prescribed thereunder including in theft of energy/violation cases are not followed. If a detailed review of each such case is undertaken by the CE/SEs, such of those cases could be avoided or atleast minimized in future, so that the Offices and the Standing Counsels could concentrate on important cases where the policy/stake of the TANGEDCO/TANTRANSCO is involved and the manhours/expenditure in conducting cases could be saved.
- (o) Besides, a Court Case Register shall be maintained at every office and updated then and there.
- (p) If not already nominated, the SE/CE/CFC/CIAO/Secretary concerned shall nominate a Nodal Officer in Class I Service, from among their subordinate officers for proper co-ordination and effective follow-up of Court cases. Insofar as the Distribution Circles and Distribution Regions are concerned, the Executive Engineer/General and the Executive Engineer/Electrical, as the case may be, shall be the Nodal Officer.
- (q) It shall be ensured that the required entries/particulars relating to such nominated Nodal Officer of the respective Circle/Region/Office shall be entered/ updated in the appropriate place provided for in the LCMS, so that the Nodal Officer could be contacted easily for obtaining information/follow up during periods the CE/SE/ CFC/CIAO/Secretary is engaged in some other important assignments.

- (r) In all pending cases, the SE/CE/ CFC/CIAO/Secretary concerned shall ensure that necessary counter affidavit or compliance or filing of appeal/review/ revision is filed immediately without any further delay.
- (s) In all new cases, where the Government or CMD is a party, it may be ensured that the counter affidavit is filed within thirty days or within the next date of hearing, whichever is earlier.
- (t) In all other new cases, counter affidavit should be filed within ninety days or within the next date of hearing, whichever is earlier.
- (u) In case, an interim order of stay/injection/direction is granted pending main petition, the feasibility or otherwise of the compliance should be ascertained immediately. In all cases, where the compliance of the interim order would put the administration in to any disadvantageous position, without wasting even a day, a detailed counter affidavit together with vacate interim stay/injection/ direction should be filed, get the vacate petition numbered and listed for hearing, so that the difficulty in compliance of the order would be brought to the knowledge of the Court at the earliest point of time, which will avoid the threat or initiation of contempt alleging non-compliance of the order.
- (v) The officers concerned shall make use of the ensuing Summer Vacation of various Courts/fora in the month of May 2019 and subsequent periodical Court vacations to take all necessary action in this regard. The Standing Counsel shall co-operate in such exercise without fail.
- (w) In addition to filing counter affidavit/appeal/review/revision, the further development after such filing of counter, etc. should be informed to the Standing Counsel to bring on record such development as well before the Court in an appropriate manner like additional counter affidavit, so that the Court will be in a position to adjudicate the case on totality of the facts of the case.
- (x) The Standing Counsels shall extent their full co-operation in every respect so as to file the counter affidavit, vacate interim order or filing appeal/review/revision in time.

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- (y) The Standing Counsels shall also ensure that required endorsement for having appeared in the case on the dates of hearing is marked legibly in the respective case bundles so that, in case of review, the officers concerned of the TANGEDCO would be in a position to ascertain the true status of the case and the action that may be required to be taken by the officials of the Legal Cell and that the CE/SE/CFC/CIAO/Secretary/Legal Adviser are informed of all important information relating to the case(s).
- (z) The Standing Counsels shall communicate all other information relating to Court cases to respective officers of the TANGEDCO/ TANTRANSCO and/or the Nodal Officer in the first instance and, when in all cases of importance or desired results not forthcoming from the respective officers/Nodal Officers, to inform the the same to CE/SE/CFC/CIAO/Secretary/Legal Adviser.
- (aa) Once in every quarter of an year and, on a Court holiday, the CE/CFC/ CIAO/Secretary shall conduct review meeting of the respective Standing Counsels by due co-ordination and mutual agreement of more than one office on a day, so that the Standing Counsels are not asked to attend review meeting often for each and every Region/office separately. Such a date of review shall be communicated in advance to the Legal Advisor so that the Legal Advisor or his nominee shall consider to attend and carry out review along with the CE/CFC/ CIAO/Secretary, as the case may be.
- (bb) Whenever an affidavit/counter affidavit is proposed to be filed, all the supervisory officials/officers should thoroughly read the entire averments and contribute to it by virtue of their position/experience, so that not only the case is projected before the Court in an appropriate/befitting manner but also to avoid the wreath/condemnation of the Court in the event of filing the affidavit/counter in an inappropriate/perfunctory manner against such officer who sworns the affidavit.
- (cc) It shall be appropriate for the AE/AEEs of the Distribution Circle to get the approval of atleast the Executive Engineer/O&M concerned before filing any affidavit/ counter before the Court and that such of those cases are followed-up atleast by the AEE/Distribution. The admistration related cases are followed up by the Assistant Administrative Officer of the Division or Administrative Officer of the Circle or the Senior Administrative Officer of the Thermal Stations, as the case may be, and that all such cases are monitored by the Senior

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Administrative Officer of the Region. The accounts related cases are followed by the Assistant Accounts Officer or Accounts Officer or Deputy Financial Controller or Financial Controller, as the case may be of the Circle/ Region/Office. All officers shall co-operate with the Nodal Officer.

- (dd) All the officers of the TANGEDCO/TANTRANSCO shall bear in mind that the Court cases cannot be effectively followed up only during the official working hours, which incidentally corresponds to Court working hours, or by letter correspondences through post, etc., as the Standing Counsels will have to attend hearing during Court hours. Therefore, unless the officer concerned and the Standing Counsel put up extra efforts after office/Court hours or in a Court holiday like Saturdays or during vacation of Courts, effective monitoring the cases may not be feasible.
- (ee) All the officers of the TANGEDCO/TANTRANSCO shall ensure that the signature are affixed in blue/black ink with official seal in each side of the Green Bond sheets of the affidavit/counter affidavit to be filed before the Hon'ble High Court/Madras or any subordinate Courts in Tamil Nadu and are typed/print-out taken neatly.

**(II) ACTION TO BE TAKEN ON RECEIPT OF AN ORDER OF THE COURT**

- (a) On passing of an order by the Court, interim or final, the Standing Counsels shall ensure that copy of it is applied on that day or at least on the next working day, so as to get the certified copy of the order early.
- (b) Such an order received shall be communicated by the Standing Counsel to the officer concerned immediately along with his opinion/remarks on the further course of action, i.e., filing counter affidavit, whether an appeal/review may be filed or the order may be complied with, together with his remarks on the exact date within which such order/judgment of the Court requires to be complied and/or requires to be appealed/reviewed. This will make the officials concerned know the deadline within which action will have to be taken by them. The same will certainly avoid delays in filing counter affidavit together with vacate stay petition, compliance, preferring appeal/review, etc. and consequently avoid the initiation and defending of contempt proceedings. It may be borne in mind that for filing writ appeal/review/CRP/appeal suit, etc., the limitation period is 30 days and the exact date of expiry of limitation could be ascertained only from the official seal of

the Court affixed in the certified copy of the order (i.e., original order). In other words, it should not be presumed or assumed that the limitation period of 30 days starts from the date of receipt by the respective office/seat.

- (c) The SE/CE/CFC/CIAO/Secretary concerned shall ensure that the copy of judgment/order is received then and there and further course of action is taken to file counter affidavit, compliance of the order or to file appeal/review within the statutory time allowed. Such an action will avoid the filing of condonation petition to condone the delay in filing by giving reasonable justification for delay.
- (d) In the matter of taking immediate action based on the webcopy of the order of the Court until the certified copy of the order is received from the Court, it is relevant to note the following observation of the Hon'ble High Court, Madras in WP.No. 5 of 2019 dated 08.01.2019 (in P.Gunasekara Senthil –vs- The Assistant Electricity Engineer, (Operation and Maintenance) Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) Palayakottai, Kangeyam Taluk, Kangeyam, Tiruppur Dist.) for strict & scrupulous adherence :-

*“11. In this regard, the judgments / orders signed by the Hon'ble Judges, shall be uploaded in the official website of the Hon'ble High Court of Madras without causing any undue delay and at the earliest possible. The respective learned counsels appearing for the parties to the lis can download the orders / judgment copies from the official website of the Hon'ble High Court of Madras and the copy of the order shall be attested with the Name and Seal of the learned counsel on record along with the enrollment number and communicate the same to all the parties concerned for implementation of the orders / judgments of this Court. In the event of communicating any such orders / judgments downloaded and printed from the official website of the Hon'ble High Court of Madras, the authorities concerned / competent are bound to receive the same and verify the authenticity of the copy of the order with the official website of the Hon'ble High Court of Madras and thereafter, initiate action for effective implementation without any further delay.*

*12. It is clarified that the authorities concerned cannot reject or refuse the printed copy of the downloaded orders / judgments communicated by the respective learned counsels. All concerned officials are directed to acknowledge all such orders / judgments and act accordingly. In the event of any violation in this regard, the persons aggrieved are at liberty to approach the Court by filing an appropriate application for violation of the Court orders / judgments.”*



- (e) The Government of Tamil Nadu, in Circular No. 5196/CCMS/2019-1, Public (CCMS) Department, dated 12.02.2019, have directed all the departments/ Corporations/Boards to follow the aforesaid order of the Court scrupulously and in its letter and spirit.
- (f) It may be noted that, in many cases, the Hon'ble Court is issuing directions to the officers of the TANGEDCO/TANTRANSOCO to consider the representation of the writ petitioner and pass orders by fixing a time frame. "**Consider**" generally means to think over or think about or paying attention on a subject/ issue/claim to arrive at a decision.
- (g) In this regard, the Hon'ble Supreme Court in the order, dated 24.03.2006 in Civil Appeal No. 313 of 2005 in Employees' State Insurance Corporation –vs- All India ITDC Employees Union and others considered the scope of the word "**consider**" and observed & held as follows :-

*We may, in this context, examine the significance and meaning of a direction given by the Court to "consider" a case. When a court directs an authority to 'consider', it requires the authority to apply its mind to the facts and circumstances of the case and then take a decision thereon in accordance with law. There is a reason for a large number of writ petitions filed in High Courts being disposed of with a direction to "consider" the claim/case/representation of the petitioner(s) in the writ petitions.*

*Where an order or action of the State or an authority is found to be illegal, or in contravention of prescribed procedure, or in breach of the rules of natural justice, or arbitrary/unreasonable/ irrational, or prompted by mala fides or extraneous consideration, or the result of abuse of power, such action is open to judicial review. When the High Court finds that the order or action requires interference and exercises the power of judicial review, thereby resulting in the action/order of the State or authority being quashed, the High Court will not proceed to substitute its own decision in the matter, as that will amount to exercising appellate power, but require the authority to 'consider' and decide the matter again. The power of judicial review under Article 226 concentrates and lays emphasis on the decision making process, rather than the decision itself.*

*The High Courts also direct authorities to 'consider', in a different category of cases. Where an authority vested with the power to decide a matter, fails to do so in spite of a request, the person aggrieved approaches the High Court, which in exercise of*

*power of judicial review, directs the authority to 'consider' and decide the matter. In such cases, while exercising the power of judicial review, the High Court directs 'consideration' without examining the facts or the legal question(s) involved and without recording any findings on the issues. The High Court may also direct the authority to 'consider' afresh, where the authority had decided a matter without considering the relevant facts and circumstances, or by taking extraneous or irrelevant matters into consideration. In such cases also, High Court may not examine the validity or tenability of the claim on merits, but require the authority to do so.*

*Where the High Court finds the decision-making process erroneous and records its findings as to the manner in which the decision should be made, and then directs the authority to 'consider' the matter, the authority will have to consider and decide the matter in the light of findings or observations of the Court. But where the High Court without recording any findings, or without expressing any view, merely directs the authority to 'consider' the matter, the authority will have to consider the matter in accordance with law, with reference to the facts and circumstances of the case, its power not being circumscribed by any observations or findings of the Court.*

*We may also note that sometimes the High Courts dispose of matter merely with a direction to the authority to 'consider' the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the Court, to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to 'consider' the matter afresh.*

*There are also several instances where unscrupulous petitioners with the connivance of 'pliable' authorities have misused the direction 'to consider' issued by court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time the person making the representation approaches the High Court with an innocuous prayer to direct the authority to 'consider' and dispose of the representation. When the Court disposes of the petition with a direction to 'consider', the authority grants the relief, taking shelter under the order of the Court directing it to 'consider'. Instances are also not wanting where authorities, unfamiliar with the process and*

*practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order 'to consider' as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to 'consider', may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of Court's direction to 'consider' the claim or on account of collusion/connivance between the person making the representation and the authority deciding it.*

*Therefore, while disposing of writ petitions with a direction to 'consider', there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits.*

- (h) Pursuant to the direction to a public authority to consider a claim and when a contempt is initiated claiming that the authority, on consideration, should not have negated the claim, the Hon'ble Supreme Court of India, in the order, dated 10.04.2019 in Civil Appeal No. 3740 of 2019 in Shri.N.K.Janu, Deputy Director, Social Forestry Division, Agra and others –v- Lakshmi Chandra has held as follows :-

*15. Once an order has been passed by the Department, it was open to the respondent to challenge the said order by way of a Writ Petition, but the Contempt Jurisdiction could not be invoked. The Contempt Court is to ensure that the order of the Court is complied with. The order of the Court on 23.10.2008 was to consider the case of the respondent for regularization of his services and for payment of minimum regular pay scale.*

*16. Since the appellants have considered the claim of regularization and/or payment of minimum of pay scale, the only remedy of the respondent was by way of the Writ Petition. The High Court has exceeded the Contempt Jurisdiction to compel the officers of the State to appear in court and in fact, the High Court travelled much beyond the orders passed by the Single Bench on 23.10.2008.*

- (i) The Hon'ble High Court, Madras in W.P.Nos.11101 and 11102 of 2012 dated 02.08.2012, in Best Cotton Mills & Balu Spinning Mills Private Limited -vs- CE/D/Coimbatore & SE/Udumalpet has held as follows :-

17. It is rather unfortunate to note that the very same authority, who is a party respondent in the earlier writ petition which is pending before this court, has failed to take note of the interim order before making such a demand. If a demand of this nature is made suppressing the pendency of writ petition and the interim order and the authority wants to secure the payment despite the order of the court, it will amount to flouting the orders of the court. Till the interim order of this Court is vacated, the respondent authority will have no jurisdiction to demand the payment. The action of the respondent in suppressing the order of this court and directing the payment of dues which is stayed by court proceeding as a precondition for extending the benefit of dedicated feeder line is contemptuous. It is an affront to the judicial system in our democracy. The right of the citizen to seek legal remedy cannot be whittled down by such administrative action. The impugned order has been passed without any statutory backing and it does not specify any rule or regulations. Hence, this Court has no hesitation to hold that it is bad and the impugned orders are liable to be set aside.

2. The officers of the TANGEDCO/TANTRANSCO shall follow the instructions scrupulously and ensure that the public interest is protected in every respect.

**(BY ORDER OF CHAIRMAN-CUM-MANAGING DIRECTOR)**

**G.Chinna Nagur  
Legal Adviser**

To  
The Chief Engineers/TANGEDCO & TANTRANSCO.  
The Superintending Engineers/TANGEDCO & TANTRANSCO  
The Chief Financial Controllers/TANGEDCO & TANTRANSCO  
The Chief Internal Audit Officer/TANGEDCO.  
The Secretary/TANGEDCO

**Copy to**

The Managing Director/TANTRANSCO

**Contd...13.**

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The Directors/TANGEDCO (Distribution, Generation, Projects, Finance)  
The Directors/TANTRANSCO (Transmission Projects, Operation and Finance)  
The Legal Adviser, TANGEDCO, Chennai-2.  
The Company Secretary/TANGEDCO & TANTRANSCO.  
The EA to CMD/TANGEDCO.  
The Deputy Chief Engineer/Administrative Branch/TANGEDCO  
The Deputy Secretaries/Secretariat Branch.  
The Senior Personnel Officers/Administrative Branch.  
The Financial Controllers/TANGEDCO at Headquarters.  
The Private Secretaries to CMD, Directors, DGP, Secretary & Legal Adviser.  
All Standing Counsels/TANGEDCO.  
The Under Secretary/Codes and Retirement Benefits/Chennai-2.  
The Assistant Legal Advisers/Legal Cell  
The Senior Administrative Officer/Legal Section/Madurai  
The Section Officers/Legal Section/Chennai & Legal Cell  
The Assistant Personnel Officer/Tamil Development  
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**ASSISTANT LEGAL ADVISER**