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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.09.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.18453 of 2020

and

WMP(MD)Nos.15457, 15458 & 16083 of 2020

S.R.Babu

... Petitioner

Vs.

1. The Superintendent Engineer,
TANGEDCO,
Mannarpuram,
Trichy.
2. The Assistant Executive Engineer,
TANGEDCO,
Srirangam, Trichy.
3. The Assistant Audit Officer,
TANGEDCO,
Trichy Region, Trichy.
4. The Assistant Engineer,
Operation and Maintenance,
TANGEDCO, Thiruvanaikovil,
Trichy.



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5. The Tamil Nadu Electricity Regulatory Commission (TNERC),
Represented by its Secretary,
4th Floor, SIDCO Corporate Office Building,
Thiru.Vi.Ka Industrial Estate,
Guindy, Chennai – 600 032.

... Respondents

[R-5 is impleaded as per Order of this Court, dated 05.09.2023]

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records of the 4th Respondent in Ka.No.U.Mi.Po/E.Ka/Thi.Kovil/Va.Me/Ko.Thanikai/A.No.135, dated 07.11.2019 and quash the same.

For Petitioner : Mr.S.Vinod Sathya Lazar
For Respondents : Mr.S.Deenadhayalan,
Standing Counsel

ORDER

This writ petition is filed to quash the impugned order, dated 07.11.2019.

2. Heard Mr.S.Vinod Sathya Lazar, the Learned counsel appearing for the Petitioner, Mr.S.Deenadhayalan, the Learned Standing counsel appearing for the respondents and perused the material documents available on record.



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3. The petitioner is running business under the name and style of M/s.RBS Ready Mix Concrete, Thiruvanaikovil, Trichy, wherein the petitioner is carrying on the job of mixing the concrete. Initially the respondents had inspected the premises, after satisfying themselves the nature of work had granted Service Connection No.06-262-011-724 under Tariff III B from the year January 2011 onwards. Subsequently, the 4th respondent all of sudden has issued the impugned order, dated 07.11.2019 stating that the establishment was classified under Tariff III B and the same is incorrect, but has to be classified under Tariff V. The respondents further stated that the petitioner is liable to pay arrears amount of Rs.7,03,783/-. Challenging the same the petitioner is before this Court

4. The contention of the respondents is that the Audit Division had objected to classify under Low Tension Tariff III B. The Audit Division had stated that the activity of mixing the Jalli and Tar, there is no manufacturing activity and hence the same is classified under Tariff V. In the present case the petitioner is carrying on the mixing of Jalli with Cement and Water tariff V and there is no manufacturing activity. Moreover, the mixing of Jalli and Tar is similar to mixing



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of Jalli with Cement and Water. Hence the activity of mixing of Jalli with Cement and Water ought to be classified under Tariff V and not under Tariff III B. The respondents had relied on a memo, dated 20.08.2005 issued by the Accounts Branch, Member Distribution, wherein it is stated that, ***"the Tariff applicable to the mixing plant of Jelly and Tar is LT Tariff V (Commercial)"***. Therefore, the respondents claim that the arrears ought to be collected for a period from January 2011 to April 2019 within a period of 30 days. Aggrieved over the same, the present writ petition is filed.

5. After hearing the arguments this Court is of the considered opinion that before issuing the impugned order to collect arrears, the respondents have not issued any Show Cause notice to the petitioner calling for explanation. Hence there is violation of Principles of Natural Justice. Moreover, the fixing of tariff is duty of the respondents and the petitioner has no say in the classification of Tariff. The Tariff is not fixed at the whims and fancies of the petitioner, but as per the Tariff Act. That too after carrying the tests and based on the Test Report. When the respondents had fixed the Tariff under III B at the time of granting the



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service connection, the respondents cannot blame the petitioner and saddle with arrears. The respondents may be entitled to fix the correct Tariff, but can fix it prospectively and not retrospectively. Hence the respondents cannot claim arrears.

6. Moreover, the TNERC is the appropriate authority to clarify the correct clarification. In the present case the Audit Division, Member Distribution has issued circular. Therefore, the respondents are directed to file an appropriate petition before TNERC and obtaining clarification and the cut of date to reclassify the same.

7. In view of the foregoing reasons, the impugned order, dated 07.11.2019 is hereby quashed. The respondents shall issue a Show Cause notice calling for objection from the petitioner. After considering the same, the respondents shall pass an order, within a period of six months, from the date of receipt of a copy of the order.



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8. With these observations and directions, this writ petition is disposed of. No Costs. Consequently, WMP(MD)No.16083 of 2020 is allowed and WMP(MD)Nos.15457, 15458 of 2020 are closed.

05.09.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To

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