

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2015

CORAM:

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.29163 of 2012

Prism Castings,
Coimbatore, rep. by its
Partner S.Suraj

...Petitioner

vs.

1. Tamil Nadu Electricity Regulatory Commission,
rep. by its Secretary,
Chennai.
2. The Chairman,
Tamil Nadu Electricity Board,
Chennai-2.
3. The Superintending Engineer,
Coimbatore Elec. Distribution Circle [N],
Tamil Nadu Electricity Board,
Coimbatore.

...Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus, calling for the records of the 3rd respondent in his Letter No.SE/ CEDC/N/ AEE GI/ AE-II/ F.HT R & C/D 1548/12 dated 29.9.2012 and quash the same as illegal arbitrary without authority of law and against the order of the 1st respondent in T.A.No.1-9 dated 28.12.2011 and consequently direct the 3rd respondent to permit the petitioner to adjust the wind energy available at the credit of the petitioner in current/ banking under Optimum Demand concept vide the Clause I(n) of the Circular Memo dated 1.11.2008 issued by the 2nd respondent.

For petitioner : Mr.R.S.Pandiyaraj

For respondents : Mr.S.K.Raameshuwar

O R D E R

Heard the learned counsels appearing on behalf of the parties concerned.

2. At this stage of the hearing of the Writ Petition, the learned counsel appearing on behalf of the petitioner had submitted that the issue involved in the present Writ Petition, had already been dealt with, by this Court, in its order, dated 29.6.2012, in W.P.No.14264 of 2012, by which the impugned order therein had been set aside. Paragraph Nos.16 to 18 of the said order, dated 29.6.2012, read as follows:-

"16. In such view of the matter, the finding of the Commission is very specific in that, it clearly holds that the restriction imposed in Memo dated 31.8.2009 is arbitrary and discriminatory and therefore, the Respondent Board's arguments that Optimum Demand Concept should be given only to industries who opted for power of the Board was found to be erroneous and wrong. The Commission clearly holds that the Optimum Demand Concept should be made available to Open Access consumers who have their own captive power or purchase power from third party. Since the Court had referred the writ petitions pending before it to the Commission, the Commission gave a finding that the 9 consumers covered by the transfer application will be entitled to the said benefit.

17. Since the Commission does not deal with the claims of individual persons but interprets the Circular/Memo issued by the Respondent Board under Section 86(1)(f) of the Act, the question of applicability to the Commission's order to 9 persons covered by the order dated 28.12.2011 is totally based on a misconception of the Commission's order and the Electricity Act. The Commission clearly holds that the Circular Memo dated 31.8.2009 is discriminatory as a consequence it applies to all similarly placed. In view of the above finding, utilising the wind energy from captive generation or purchased from third party source cannot be a ground to deny the benefit of Optimum Demand Concept as provided under Memo dated 1.11.2008. The order of the Commission is applicable to all similarly placed HT consumers without discrimination. The reason

given by the authority in the impugned proceedings stating that the order will be applicable only to those HT consumers who have approached the Commission is based on a misconception.

18. In view of the above stated reasons, the impugned order is set aside and the writ petition is allowed. Consequently, M.P.Nos.1 and 2 are closed."

3. The learned counsel appearing on behalf of the respondent had admitted that similar issues had arisen, in W.P.No.14264 of 2012, as in the present Writ Petition.

4. In view of the submissions made by the learned counsel appearing on behalf of the petitioner and in view of the averments made in the affidavit filed in support of the Writ Petition, and on a perusal of the records available before this Court and on considering this fact that similar issues had arisen, in W.P.No.14264 of 2012, as in the present Writ Petition, this Court finds it appropriate to allow the present Writ Petition.

5. Accordingly, the present Writ Petition stands allowed, following the order, dated 29.6.2012, made in W.P.No.14264 of 2012. No costs. M.P.Nos.1 and 2 of 2012 are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

gs.

To

1. The Secretary,
Tamil Nadu Electricity Regulatory Commission,
Chennai.
2. The Chairman,
Tamil Nadu Electricity Board,
Chennai-2.

3. The Superintending Engineer,
Coimbatore Elec. Distribution Circle [N],
Tamil Nadu Electricity Board,
Coimbatore.

1 CC to Mr.R.S.Pandiyaraj, Advocate SR.No. 58804

1 CC to Mr.S.K.Raameshuwar, Advocate SR.No. 58852

WP 29163 of 2012

SVI (CO)
PSI (18/11/2015)



WEB COPY