

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/11/2015

C O R AM

THE HONOURABLE Mr.JUSTICE T.SIVAGNANAM

W.P.No.36804 of 2002

M/s. Balaji Oil Industries Private Limited
rep. By its Director
Mr.Senthilathiban
Ranipet
Vellore District. Petitioner

(name substituted as per order
dated 29/2/2012 by RSJ in
W.P.M.P.No.55/2012 in
W.P.No.36804 of 2002)

Vs

1. State of Tamil Nadu
rep. By The Secretary
Fort St. George
Chennai 9.
2. The Superintending Engineer
Electricity Distribution Circle
Vellore.
3. The Chairman
Tamil Nadu Electricity Board
No.800 Anna Salai
Chennai 600 002. Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the respondent with reference to the impugned order of the second respondent vide Lr.No.SEV/RCS/A2/F.HT/SC.No.1137 dated 1/3/2002 and quash the same and direct the respondents to extend the benefit of tariff concession to the petitioner industry having HTSC No.1137 as per G.O.Ms.No.102 (PWD) dated 24/1/1992 and G.O.Ms.35 (Energy) (A2) Department dated 1/3/1994.

For petitioner Mr.R.Kannan
For respondents Mr.P.Rajeswaran
Spl.G.P for R.1

Mr.N.Varun Kumar
for R.R.2 and 3.

O R D E R

With the consent of the learned counsel for the parties, the main writ petition is taken up for final disposal.

2. Heard Mr.Kannan, learned counsel for the petitioner, Mr.P.Rajeswaran, learned Special Government Pleader for the first respondent and Mr.N.Varun Kumar for the second respondent.

3. This writ petition has been filed praying to quash the order passed by the second respondent vide Lr.No.SEV/RCS/A2/F.HT/SC.No.1137 dated 1/3/2002 and direct the respondents to extend the benefit of tariff concession to the petitioner industry having HTSC No.1137, as per G.O.Ms.No.102 (PWD) dated 24/1/1992 and G.O.Ms.35 (Energy) (A2) Department dated 1/3/1994.

4. The petitioner is a small scale industry, located in notified backward area of SIPCOT Industrial Complex, Ranipet. The petitioner is before this Court for the second time for virtually an identical relief. Earlier, the petitioner filed W.P.No.15649 of 1995 to quash the order passed by the third respondent dated 2/9/1995 and to direct the respondents to extend the benefit of tariff concession to the petitioner's industry having HTSC No.1137 as per G.O.Ms.No.35 (Energy A-2 Department) dated 1/3/1994.

5. This Court, after considering the submissions on either side, disposed of the writ petition, by an order dated 7/8/2001, by directing the petitioner to give a comprehensive representation to the respondent, setting forth all the reasons and grounds and on receipt of the same, the respondents are directed to pass a detailed order either accepting or rejecting the petitioner's claim strictly in terms of the order of the Government in G.O.Ms.No.35 dated 1/3/1994. For better appreciation, the operative portion of the order dated 7/8/2001 is quoted herein below.

"I feel that in the interest of justice, there should be a proper consideration of the claims of the petitioner in the light of G.O.Ms.No.35 (Energy (A-2) Department) dated 1/3/1994. Therefore, the petitioner is give a comprehensive representation to the respondent setting forth all the reasons and grounds for his claim. On receipt of the same, the respondents are directed to pass a detailed order either accepting the claims of the petitioner or rejecting

the claims in accordance with law and strictly in terms of the order of the Government in G.O.Ms.No.35 (Energy (A-2) Department dated 1/3/1994 as on the date when the said order was issued."

6. In terms of the direction issued by this Court, the petitioner had submitted a detailed representation on 5/9/2001 pointing out as to how the said G.O is applicable to their nature. However, the respondents herein once again has passed an identical order as it was suggested by this Court in the earlier writ petition and the same two reasons have been assigned in the present impugned order dated 1/3/2002. Therefore, it is evidently clear that the second respondent has willfully disobeyed the directions issued by this Court in the earlier writ petition vide order dated 7/8/2001.

7. Apart from that the impugned order is an outcome of non-application of mind. This Court, while disposing of the earlier writ petition, directed the petitioner to give a comprehensive representation to the second respondent and on receipt of the same, the second respondent was directed to consider the petitioner's claim in accordance with law and strictly in terms of the Government Order in G.O.Ms.No.35 dated 1/3/1994. On a bare perusal of the impugned proceedings, it is evident that the representation has not been considered in terms of the directions issued by this Court in the earlier writ petition and therefore, the impugned order is liable to be quashed on the said ground of total non-application of mind.

8. Accordingly, this writ petition is allowed and the impugned order passed by the second respondent vide Lr.No.SEV/RCS/A2/F.HT/SC.No.1137 dated 1/3/2002 is quashed and there will be a direction to the second respondent to properly construe the petitioner's representation dated 5/9/2001, apply G.O.Ms.No.35 dated 1/3/1994, afford an opportunity of personal hearing to the petitioner and pass fresh orders, on merits and in accordance with law, within a period of three weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

mvs .

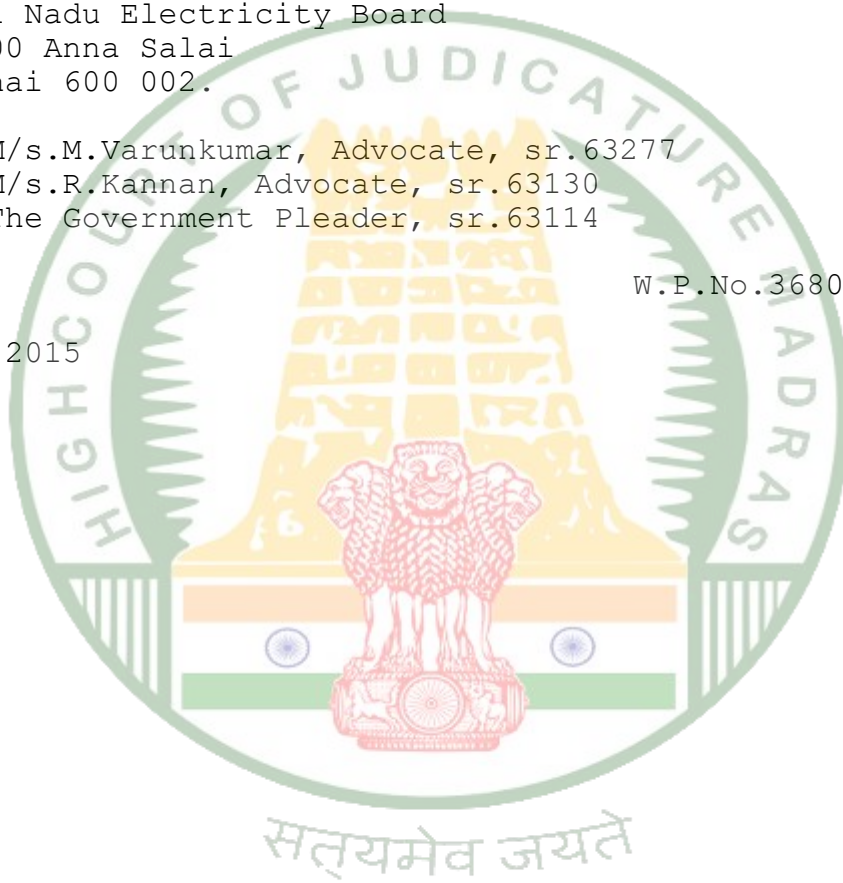
To

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+1 cc to M/s.M.Varunkumar, Advocate, sr.63277
+1 cc to M/s.R.Kannan, Advocate, sr.63130
+1 cc to The Government Pleader, sr.63114

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