

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.NO.15427 OF 2016
AND WMP NO.13453 OF 2016

- 1.Union of India
Rep. By the General Manager
Southern Railway
Park Town, Chennai - 600 003.
- 2.The Chief Electrical Engineer
Southern Railway
Park Town
Chennai - 600 003. ... Petitioners

Versus

- 1.State of Tamil Nadu
Rep. By the Secretary to Government
Energy (A2) Department
Fort St. George, Chennai - 600 009.
- 2.Tamil Nadu Electricity Board
Rep. By its Chairman
NPKRR Maligai,
144, Anna Salai, Chennai - 600 002.
- 3.The Director (Finance)
Tamil Nadu Generation and Distribution Corporation
NPKRR Maligai,
144, Anna Salai,
Chennai - 600 002.
- 4.Tamil Nadu Electricity Regulatory Commission
Rep. By its Secretary
No.19A, Rukmini Lakshmipathy Salai,
Egmore, Chennai - 600 008. .. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records of the 4th respondent Commission relating to its order dated 23.02.2016 passed in M.P.No.19 of 2014 and quash the same as illegal,

arbitrary and without jurisdiction and quash the G.O.Ms.No.95, Energy (A2), 28th November 2001, in so far as it relates to fixation of tariff in respect of supply of electricity to the Southern Railways for electric traction and forbear the respondents 1 to 3 from collecting electricity charges from the petitioners under the revised tariff, for supply of electricity to Southern Railway for electric traction.

For Petitioners: Mr.V.Radhakrishnan
Senior Counsel for
Mr.Siddharth Bahety
Standing Counsel for Southern
Railway

For Respondents : Mr.P.H.Aravindh Pandian
Additional Advocate General
Assisted by Mr.S.K.Raameshuwar
Standing Counsel for TNEB

O R D E R

Heard Mr.V.Radhakrishnan, learned Senior Counsel, assisted by Mr.Siddharth Bahety, learned Standing Counsel, appearing for the petitioner - Southern Railway and Mr.P.H.Aravindh Pandian, learned Additional Advocate General, assisted by Mr.S.K.Raameshuwar, learned Standing Counsel for the respondent TNEB.

2.The order impugned in this writ petition is an order passed by the Tamil Nadu Electricity Regulatory Commission constituted under Section 82(1) of the Electricity Act, 2003. Before considering the submissions made by the learned Senior Counsel appearing for the petitioners, this Court pose a question as regards the maintainability of the writ petition in the light of the fact that as against the impugned order, the petitioners have an appellate remedy before the Appellate Tribunal for Electricity, in terms of Section 111 of the Electricity Act, 2003 (Shortly "the Act"). In fact, this is also a preliminary objection raised by the learned Additional Advocate General appearing for the respondents.

3.The learned Senior Counsel appearing for the petitioners contended that though this Court in a writ petition in W.P.Nos.23807 of 2001 etc., batch dated 14.06.2002 relegated the petitioner therein, to approach the Tamil Nadu Electricity Regulatory Commission (Shortly "T.N.E.R.C") and the T.N.E.R.C, by the impugned order, has held that it does not have jurisdiction to deal with the matter and has assigned certain reasons for coming to such conclusion.

4.The learned Senior Counsel appearing for the petitioners further submits that earlier the T.N.E.R.C has decided the matter on merits and rendered a finding and the same has been confirmed by the Honourable Division Bench of this Court in the case of J.K.PHARMACHEM LIMITED VS. TAMIL NADU ELECTRICITY REGULATORY COMMISSION in C.M.A.Nos.2298 of 2002 etc., batch, dated 28.11.2002.

5.In my view, the reasons assigned by the T.N.E.R.C, while passing the impugned order, cannot be a valid ground, to bypass the appeal remedy provided under the Act.

6.On a perusal of Section 111 of the Act, it is clear that the Appellate Tribunal has been conferred with enormous powers to adjudicate the case and consider the correctness of the order passed by the T.N.E.R.C. Sub-section 2 of Section 111 of the Act provides for a period of limitation, within which such appeals to be presented and the manner in which, it has to be presented. In terms of the proviso under Sub-section 2 of Section 111 of the Act, the Appellate Tribunal has been conferred with power to entertain an appeal after the period of 45 days, being the period of limitation, if it is satisfied that there was sufficient cause for not filing the appeal within that period. Further, in terms of Sub-section 6 of Section 111 of the Act, the Appellate Tribunal may, for the purpose of examining the legality, propriety or correctness of any order made by the adjudicating officer or the appropriate Commission under the Act, as the case may be, in relation to any proceeding, on its own motion or otherwise, call for the records of such proceedings and make such order in the case as it thinks fit.

7.The Appellate Tribunal is headed by a Chairperson, who is, or has been, a Judge of the Honourable Supreme Court or the Chief Justice of a High Court and the qualification of the Member of the Appellate Tribunal has been stipulated under Section 113 of the Act. Therefore, the remedy provided under the Act is not only effective, but efficacious, and hence, the petitioners cannot bypass such remedy and file the present writ petition.

8.Furthermore, it has to be pointed out that as against the order passed by the Appellate Tribunal for Electricity, a further appeal lies to the Honourable Supreme Court. This is also one more reason for denying the petitioners the liberty, to approach this Court, by way of this writ petition.

9.Faced with this situation, the learned Senior Counsel appearing for the petitioners, on instructions, submitted that the petitioners would approach the Appellate Tribunal, but, in the meantime, a reprieve may be granted to the Railway administration, as the respondents may enforce the demand.

10.Heard the learned Additional Advocate General on the above submissions.

11.The learned Additional Advocate General submitted that the impugned order was passed on 23.02.2016, and despite an appeal remedy available under the Act, the Railway Administration did not move the Appellate Tribunal, but have filed this writ petition on 23.04.2016, i.e. after a lapse of 40 days. Therefore, it is submitted that when this Court holds that the writ petition is not maintainable, this Court may not be justified, in granting any interim protection, till the petitioners moves the Appellate Tribunal.

12.To certain extent, the submissions made by the learned Additional Advocate General is acceptable. But however, this Court is of the view that the petitioners, being Railway Administration, and if any coercive action is initiated forthwith, on account of the order passed by the respondents TNEB, it may affect the public interest. Therefore, this Court considering the peculiar facts and circumstances of the case, is inclined to grant a temporary relief, only for the purpose of enabling the petitioners to move the Appellate Tribunal.

13.Accordingly, while holding that the petitioners have to exhaust the appeal remedy, available under the Act, the writ petition is dismissed, with liberty to the petitioners to approach the Appellate Tribunal for Electricity constituted under Section 111 of the Act. The petitioners may move the Appellate Tribunal, within a period of two weeks from today. Until then, the respondents shall not initiate any coercive action, by way of issuing any demand, pursuant to the order passed by the T.N.E.R.C. No costs. Consequently, connected miscellaneous petition is closed.

14.The Registry is directed to return the original impugned order to the petitioners.

TK

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1.The Secretary to Government
Government of Tamil Nadu
Energy (A2) Department
Fort St. George, Chennai - 600 009.

2.The Chairman

Tamil Nadu Electricity Board
NPKRR Maligai,
144, Anna Salai, Chennai - 600 002.

3.The Director (Finance)

Tamil Nadu Generation and Distribution Corporation
NPKRR Maligai,
144, Anna Salai,
Chennai - 600 002.

4.The Secretary

Tamil Nadu Electricity Regulatory Commission
No.19A, Rukmini Lakshmipathy Salai,
Egmore, Chennai - 600 008.

+ 1 cc to Mr.Siddharth Bahety, Advocate, SR 26167

+ 1 cc to Mr.S.K.Raameshuwar, Advocate, SR 26359

mp(co)
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