

IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	01.10.2019
Pronounced On	22.10.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2130 of 2003

and

C.M.P.No.12961 of 2003

Indian Medical Association
(Regn.No.325/34)
Tamil Nadu State Branch,
rep.by the Secretary.

... Appellant /Objector

vs

1.The State of Tamil Nadu,
rep.by the Secretary to Government,
Energy Department,
Fort St.George,
Chennai.

... 1st Respondent/Respondent

2.Tamil Nadu Electricity Board,
rep.by the Chairman,
800, Anna Salai,
Chennai-2.

... 2nd Respondent/Applicant

Prayer: Civil Miscellaneous Appeal filed under Section 27(1) of the Electricity Regulatory Commission, Chennai against the order dated 15.03.2003 made in P.No.TP 01/2002 which was received by the Appellant on 09.06.2003.

For appellant : M/s.Aishwaya S.Nathan for
M/.Srinath Sridevan

For R1 : Mr.N.Manikandan

For R2 : Mr.V.Viswanathan

J U D G M E N T

The appellant Indian Medical Association is a society registered the association under the provision of the Tamil Nadu Societies Act, 1975

2. The appellant is aggrieved by the impugned order dated 15.03.2003 in T.P.No.01 of 2002 passed by the 2nd respondent - Tamil Nadu Regulatory Commission, Chennai constituted under the provision of the Electricity Regulatory Commission Act,

3. The present appeal was filed on 26.08.2003 under Section 25(1) of the Electricity Regulatory Commission Act, 1998 even though on the said date the said Act had been repealed.

4. It was the contention of the appellant before the 2nd respondent Tamil Nadu Electricity Regulatory Commission that there should be concessional rate of electricity tariff for clinics, nursing homes, hospital etc.

5. Batch of appeals came up for consideration and were disposed by a common order dated 30.09.2003, reported in Coimbatore Stock Exchange Ltd., Vs. The Tamil Nadu Electricity Regulatory Commission, Chennai-18 and others, 2003 (4) CTC 385.

6. On merits, arguments similar to the arguments advanced there were raised by the learned counsel for the appellant here. The Court had rejected the arguments of the appellants there and dismissed batch of appeals.

7. It appears that though the present Civil Miscellaneous Appeals was filed on 26.08.2003 it was not linked with the batch of above appeals for consideration and therefore, has remained on file of this Court.

8. Heard learned counsel for the appellant and the respondent.

9. The Electricity Regulatory Commission Act, 1998 has been repealed and now has been substituted by Electricity Act, 2003.

10. Section 185 of the said act deals with repeal and saving of action taken under the provision of the Electricity Regulatory Commission Act, 1998.

11. As per section 185 of the repealed Electricity Regulatory Commissions Act, 1998, notwithstanding such repeal, anything done or any action taken or purported to have done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorization or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

12. Therefore, the order passed by the 2nd respondent Electricity Regulatory Commission under the provisions of the repealed Electricity Regulatory Commissions Act, 1998 is deemed to be an order passed under the Electricity Act, 2003.

13. Section 110 of the Electricity Act, 2003 contemplates establishment of an appellate Tribunal to hear appeals against the orders of the adjudicating officer or the Appropriate Commission [under this Act or any other law for the time being in force).

14. Section 111 contemplates appeal against the order made by adjudicating officer under the said Act or by the Commission. Section 111 of the Act reads as under:-

Section 111. (Appeal to Appellate Tribunal):

(1) Any person aggrieved by an order made by an adjudicating officer under this Act (except under section 127) or an order made by the Appropriate Commission under this Act may prefer an appeal to the Appellate Tribunal for Electricity:

Provided that any person appealing against the order of the adjudicating officer levying any penalty shall, while filing the appeal, deposit the amount of such penalty:

Provided further that wherein any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, it may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

(2) Every appeal under sub-section (1) shall be filed within a period of forty five days from the date on which a copy of the order made by the adjudicating officer or the Appropriate Commission is received by the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed: Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer or the Appropriate Commission, as the case may be.

(5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within one hundred and

eighty days from the date of receipt of the appeal: Provided that where any appeal could not be disposed of within the said period of one hundred and eighty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within the said period.

6) 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 this 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. Section 112. (Composition of Appellate Tribunal): --- (1) The A

15. In fact, this Court in *Coimbatore Stock Exchange Ltd., Vs. The Tamil Nadu Electricity Regulatory Commission, Chennai-18 and others, 2003 (4) CTC 385* had examined this issue as to whether in the light of the repeal of the Electricity Regulatory Commission Act, 1998, in view of the Enactment of the Electricity Act, 2003 whether an appeal under Section 27(1) of the aforesaid Act was maintainable or not.

16. In Paragraph No.31, this Court in the above cited case was of the view that appeals were maintainable in absence an mechanism provided under newly enacted Electricity Act, 2003. In No.31, it observed as under:-

" 31. It is not in dispute that Act 36 of 2003 is substantially different from Act 14 of 1998. It is also not in dispute that no notification for the constitution of the appellate forum has so far been issued. If a right of appeal is not made available and if we were to hold that there is a change of forum for the appeal, the appellants would be deprived of the very right of a substantive relief in the appeal. Therefore, as on date, it is no longer a procedural right, but a substantial right. No provision has so far been made for the transfer of the pending appeals to a different forum. In the above circumstances, the proceedings that had already been taken have to be continued and the proceedings shall include those which were initiated at the time when the present appeal was available and there is no other forum available as on date and therefore, the appeals are maintainable. The new Act does not expressly or impliedly take away the right of appeal with retrospective effect and the Act

has not dealt with the pending appeals. The Parliament is fully aware of the appeals pending in the various High Courts as appellate authorities. Therefore, in the absence of any specific provision, the appeals that have been filed and are pending even after the coming into force of the new Act have to be continued until a different forum is constituted for that purpose."

17. In the present case, the appeal has been filed before this Court in time presumably as the Appellate Tribunal had not been constituted by then under the then newly enacted Electricity Act, 2003.

18. Now since the passing of the 2003 enactment, rules have been framed under the Act. In 2007, the Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rule, 2007 has been framed under Section 176 sub section (1) and clause (q), (t) and (z) of the sub section (2) of Section 176 of the Electricity Act, 2003.

19. Since a special Tribunal has been constituted to deal with these issues raised in the present appeal, it would proper to relegate the appellant to the said Tribunal. Since the format of the appeal may vary, I am of the view that the appellant may file a fresh appeal in the prescribed format under the aforesaid Rules before the Appellate Tribunal.

20. Therefore, liberty is given to the appellant to file an appeal before the Appellate Tribunal under the Electricity Act, 2003 within 30 days of receipt of this Order.

21. In case such an appeal is filed by the appellant within the stipulated time, the Appellate Tribunal shall dispose the same on merits as expeditiously as possible as the issue is pending since 2003.

22. Needless to state, liberty is given to the appellant to distinguish the decision rendered in Coimbatore Stock Exchange Ltd., vs The Tamil Nadu Electricity Regulatory Commission, Chennai -18 and Ors., 2003 (4) CTC 385 before the Appellate Tribunal.

23. The present Civil Miscellaneous Appeal is disposed with the above observation. No cost. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

jen/kkd

<https://hcservices.ecourts.gov.in/hcservices/>

To

1. The Electricity Regulatory Commission,
Chennai.

2.The Secretary to Government,
Energy Department,
Fort.St. George,
Chennai.

3.The Chairman,
Tamilnadu Electricity Board,
800, Anna Salai,
Chennai.

4.The Section Officer,
V.R.Section. High Court,
Madras.

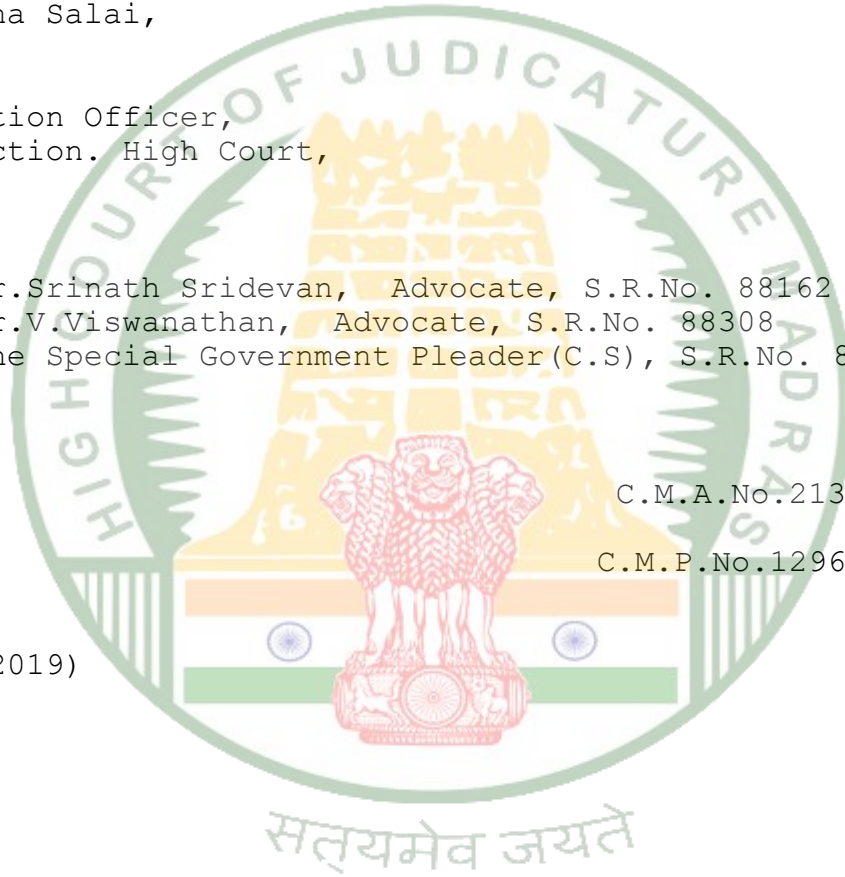
+1cc to Mr.Srinath Sridevan, Advocate, S.R.No. 88162

+1cc to Mr.V.Viswanathan, Advocate, S.R.No. 88308

+1cc to the Special Government Pleader(C.S), S.R.No. 88410

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RJI (CO)
GN(05/12/2019)



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