

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2019

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.13425 of 2008 and
M.P.Nos.1 and 2 of 2008

M/s.K.G.Information Systems Private Limited
rep. by its Managing Director B.Ashok,
KG Campus, Thudiyalur Road,
Saravanampatti, Coimbatore. .. Petitioner

Vs

1. The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai, Chennai - 2.
2. The State of Tamil Nadu,
Rep. by its Secretary,
Energy Department,
Chennai - 9.
3. Tamil Nadu Electricity Regulatory Commission,
rep. by its Secretary,
No.17, 3rd Main Road,
Seethammal Colony,
Alwarpet, Chennai-600 018.
4. The Superintending Engineer,
Coimbatore Electricity Distribution Circle (North),
Tamil Nadu Electricity Board,
Coimbatore-641 012.
5. The State of Tamil Nadu
rep. by its Secretary,
Information Technology Department,
Chennai-9. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus, calling for the records of the 4th respondent in relation to his Communication in Lr.No.SE/CEDC/N/CBE/AO/REV/HT/A4/SC No.280/08 dated 24.5.2008 demanding a sum of Rs.60,16,297/- towards alleged shortfall in the difference in charges levied from April 2006 to April 2008 and quash the same as illegal and

consequently, direct the respondents to restore HT Tariff-I-A to their service connection in HT SC No.280.

For petitioner : Mr.K.Jayachandran
 For R1 & R4 : Mr.S.K.Raameshwar, standing counsel
 For R2 & R5 : Mrs.P.Rajalakshmi, Addl.G.P.
 For R3 : No Appearance

ORDER

The petitioner seeks to quash the Tariff Order dated 24.05.2008 of the fourth respondent, namely, the Superintending Engineer, Coimbatore Electricity Distribution Circle (North), Tamil Nadu Electricity Board, Coimbatore, demanding a sum of Rs.60,16,297/- towards alleged shortfall in the difference in charges levied from April 2006 to April 2008 and to quash the same as illegal and for consequential direction, directing the respondents to restore HT Tariff-I-A to their service connection in HT SC No.280.

2. Learned Counsel appearing for the petitioner submitted that in a similar circumstance, this Court has passed an order in W.P.No.19720/2010 dated 05.09.2019, remanding the matter back to the 4th respondent therein for fresh disposal after providing an opportunity of hearing to the petitioner.

3. In this regard, it is pertinent to extract the relevant portion in W.P.No.19720/2010 dated 05.09.2019 hereunder :

'2. Learned Senior counsel for the petitioner submitted that the petitioner is a Company registered under the Companies Act and it has set up Unit-1, Information Technology Enabled Services at Velachery, Chennai. It is further submitted that when the Information Technology Policy of the years 2002, 2005 and 2008 have consistently taken note of the fact that the I.T. Companies will include IT services, IT Enabled Services and Private Communication Providers, the Government have issued the order in G.O.Ms.No.15, incorporating the IT Policy of the year 2002, whereby IT companies are to include IT Services and IT enabled services and the same has also been reiterated in the IT policy of the years 2005 and 2008. Without deciding anything on the issue whether IT Services and IT Enabled Services are falling under the Industrial Tariff, the impugned order has been passed differentiating the Information Technology Enabled Service Industries, like the petitioner herein, from the Information Technology Industries. In the

impugned proceedings before the fourth respondent Commission, the petitioner was not made as a party.

3. Adding further it is submitted that now, the IT Services and IT Enabled Services are brought under the Industrial Tariff from 2012 onwards. When the Government have issued order in G.O.Ms.No.15, incorporating the IT Policy of the year 2002, the TNEB, being an undertaking of the State Government, is bound by the IT policy of the Government. Whiles, contrary to the said policy announced by the Government bringing IT Services and IT Enabled Services under the Industrial Tariff, the petitioner, being an IT Enabled Service, cannot be directed to pay Commercial Tariff from 2005 to 2012.

4. Learned standing counsel appearing for the respondents 2 and 3 submitted that the petitioner has got an appeal remedy before the APTEL and therefore, they can very well file an appeal to redress their grievances.

5. However, it is seen from the records that the fourth respondent Commission has passed the impugned order without impleading the petitioner herein as a necessary party to the proceeding, who has been prejudiced by the impugned order, therefore, in my considered view, the matter has to be remitted back to the fourth respondent for fresh disposal. Accordingly, this matter is remitted back to the fourth respondent to pass orders afresh in accordance with law, after affording an opportunity of personal hearing to the petitioner, within a period of three months from the date of receipt of a copy of this order, since the issue is pending from 2010 onwards. With this direction, the writ petition stands disposed of. No Costs. M.P.No.2 of 2010 is closed.'

4. Following the same, this matter is remitted back to the fourth respondent to pass orders afresh in accordance with law, after affording an opportunity of personal hearing to the petitioner, within a period of three months from the date of receipt of a copy of this order, since the issue is pending from 2008 onwards. With this direction, the writ petition stands disposed of. No Costs. M.P.Nos.1 and 2 of 2008 are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Chairman,
Tamil nadu Electricity Board,
800, Anna Salai, Chennai - 2.
 2. The Secretary,
State of Tamil Nadu,
Energy Department,
Chennai - 9.
 3. The Secretary,
Tamil Nadu Electricity Regulatory Commission,
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Coimbatore Electricity Distribution Circle (North),
Tamil Nadu Electricity Board,
Coimbatore-641 012.
 5. The Secretary,
State of Tamil Nadu,
Information Technology Department,
Chennai-9.
- +1 cc to M/s.K.Jayachandran, Advocate Sr.No. 77545

AKM/24.10.19/4P-7C /

सत्यमेव जयते

W.P.No.13425 of 2008

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