

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2019

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.19720 of 2010

M/s.Sutherland Global Services Pvt. Ltd.,
Rep. By its Director
D.Muthu Narayanan,
383, Velachery Tambaram Main Road,
Vijayanagaram, Chennai - 42.

.. Petitioner

Vs

- 1.Government of Tamil Nadu,
Rep. By the Secretary to Government,
Department of Energy,
Fort St. George, Chennai - 9.
- 2.Tamil nadu Electricity Board,
Rep. By its Chairman,
800, Anna Salai, Chennai - 2.
- 3.Superintending Engineer, CEDC/South,
Tamil Nadu Electricity Board,
110 KVSS Complex, K.K.Nagar,
Chennai - 78.
- 4.Tamil Nadu Electricity Regulatory Commission,
Rep. By its Secretary,
No.19-A, Rukumini Lakshmipathy Road,
(TIDCO Complex), Egmore,
Chennai - 8.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records of the 4th respondent Tariff Order in T.P.No.3 of 2010, dated 31.07.2010 and quash para 9.11.7.2 of the said order and direct the fourth respondent to include IT enabled services under 9.11.2.

For petitioner : Mr.Sathish Parasaran, SC
for Mr.K.Moorthy

For R1 : Mr.V.Shanmugha Sundaram, Spl.GP

For R2 & R3 : Mr.S.K.Raameshwar, standing counsel

For R4 : No Appearance

ORDER

The petitioner seeks to quash the Tariff Order dated 31.07.2010 of the fourth respondent/Tamil Nadu Electricity Regulatory Commission, Chennai, insofar as it relates to paragraph No.9.11.7.2, with a consequential direction to include I.T. Enabled Services under 9.11.2.

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.

rkm

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Department of Energy,
Fort St. George, Chennai - 9.
- 2.The Chairman,
Tamil nadu Electricity Board,
800, Anna Salai, Chennai - 2.
3. The Superintending Engineer, CEDC/South,
Tamil Nadu Electricity Board,
110 KVSS Complex, K.K.Nagar,
Chennai - 78.
- 4.The Secretary,
Tamil Nadu Electricity Regulatory Commission,
No.19-A, Rukumini Lakshmipathy Road,
(TIDCO Complex),
Egmore, Chennai - 8.

Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

+1cc to Mr.S.K.Rameshuwar, Advocate, SR.No.77029

+1cc to Mr.K.Moorthy, Advocate, SR.No.77149

W.P.No.19720 of 2010

Kak (30/09/2019)