

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 27-08-2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.A.No.2826 of 2019

in

WP No.23082 of 2019

M/s.Aquasub Engineering
Rep.by its Vice President
Finance and Administration Mr.T.Narendran,
Thudiyalur Post, Coimbatore - 641 034.Appellant

-vs-

- 1.The Superintending Engineer,
Coimbatore Electricity Distribution Circle/North,
Tatabad,
Coimbatore - 641 012.
- 2.Tamil Nadu Electricity Regulatory Commission (TNERC),
represented by its Secretary,
19-A, Rukmini Lakshmipathy Salai (Marshall's Road),
Egmore,
Chennai-600 008.Respondents

Appeal under Clause 15 of the Letters Patent against
the Order, dated 06.08.2019, passed in W.P.No.23082 of 2019 on
the file of this Court.

Prayer in WP 23082/2019 : Petition under Article 226 of the
Constitution of India praying to issue a writ of mandamus Calling
for the impugned records of the 1st respondent bearing Lr. No. SE /
CEDC / N / DFC / AO / R / AAo / HT / A4 / F. Aqua Sub / D / 2014
dated 07.01.2015 culminating in Lr. No. SE / CEDC / N / DFC / AO
/ R / AAO / HT / A4 / F / F. AquaSub / D 709 / 2019 dated
17.07.2019 issued to the petitioner for their HT SC No. 444
quash the same and forbear the 1st Respondent its officers men
agents representatives assigns and/or anyone claiming under of
through him from in any manner demanding claiming taking any
action or initiating any coercive steps against the Petitioner
to recover the sum of Rs. 9 49 84 235/- or part thereof and / or
any such sums without awaiting the outcome of the petitioners
DRP filed before the tamil Nadu Electricity Regulatory

Commission (TNERC), 2nd Respondent herein challenging the unlawful demand made by the 1st Respondent.

For Appellant : Mr.N.L.Raja,
Senior Counsel,
for Mr.Arun Anbumani.

For Respondent 1 : Mr.R.Ramachandran
for Mr.S.K.Raameshwar

JUDGMENT
(By Dr.Vineet Kothari,J.)

This Intra Court Appeal has been filed against the order of the learned Single Judge, dated 06.08.2019, passed in W.P.No.23082 of 2019, filed by the appellant - M/s.Aquasub Engineering - under the Electricity Act,2003.

2. By the order impugned before us, the learned Single Judge has relegated the appellant before the Tamil Nadu Electricity Regulatory Commission (TNERC) to seek appropriate relief and file an appeal against the final order passed by the authority concerned, namely, First Respondent, dated 17.07.2019.

3. While directing so, the learned Single Judge has further directed the appellant to pay 50% of the money demanded in the impugned order, which is Rs.9,49,84,235/- (Rupees Nine Crore Forty Nine Lakhs Eighty Four Thousand and Two Thirty Five only).

4. Mr.N.L.Raja, learned Senior Counsel, appearing for the appellant, has submitted that though the appeal, as directed by the learned Single Judge, has been filed on 05.08.2019 itself, TNERC is yet to take up the said appeal even for consideration of the interim relief to the appellant. He also submitted that the direction to pay 50% of the impugned demand issued by the learned Single Judge will cause prejudice to the appellant and, therefore, the interim relief to that extent may be granted to the appellant, while relegating the appellant to the Commission.

5. On the other hand, Mr.R.Ramachandran, learned counsel for First Respondent, has submitted that the Commission is regularly functioning at Chennai with Three Members, namely, (1) Mr.N.Chandrasekaran, former Director of TANGEDCO, (2) Mr.Prabhakar Rao, I.A.S., and (3) Mr.Venkataswamy, a former District Judge.

6. Having heard the learned counsel for the parties, we are satisfied that since the appellant has been relegated before the Commission and the appellant has already filed an appeal on 05.08.2019, we need not adjudicate the issue raised in the Writ Petition or this Writ Appeal on merits. Therefore, we leave it free for the Commission to decide the appeal on merit and in accordance with law. We further direct the appellant to approach the Commission itself for interim relief also in the matter. We request the Commission to consider the said request of the appellant for interim relief within three weeks from today. For the period of three weeks, we direct the first respondent - authority not to take any coercive steps against the appellant for non-deposit of 50% of the disputed demand of Rs.9,49,84,235/-. After the period of three weeks, further decision will be governed by the orders passed by the Commission.

7. We direct the parties to appear before the Commission, at the first instance, on 05th September, 2019.

8. Writ Appeal is disposed of in the above terms. No costs. Consequently, the connected C.M.P.Nos.18111 and 18113 of 2019 are closed.

Sd/-

Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

dixit

To

- 1.The Superintending Engineer,
Coimbatore Electricity Distribution Circle/North,
Tatabad,
Coimbatore - 641 012.
- 2.Tamil Nadu Electricity Regulatory Commission (TNERC),
represented by its Secretary,
19-A, Rukmini Lakshmiipathy Salai (Marshall's Road),
Egmore,
Chennai-600 008.

+1cc to Mr.Arun Anbumani, Advocate SR.No.73221

+1cc to Mr.R.Ramachandran, Advocate SR.No.74437

W.A.No.2826 OF 2019

BP (CO)
GMY (27/09/2019)



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