



WEB COPY

W.P(MD)No.26050 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P (MD)No.26050 of 2019

and

WMP (MD)No.22536 of 2019

Syed Tajudddeen Madani

.. Petitioner

Vs.

1.The Tamil Nadu Electricity Regulatory Commission,
19-A, Rukmani Lakshmipathy Road,
Anna Salai, Egmore,
Chennai - 8.

2.The Tamil Nadu Electricity Board,
rep.through its Chairman,
Anna Salai, Chennai - 2.

3.The Superintending Engineer,
Trichy Electricity Distribution Circle/Metro,
The Tamil Nadu Electricity Board,
Trichy - 20.

4.The Executive Engineer,
O AND M/Urban,
Tamil Nadu Electricity Board,
Trichy - 17.

5.The Assistant Executive Engineer,
O AND M/Urban,
Tamil Nadu Electricity Board,
Trichy - 17.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus to call for the records in SMP 2 / 2012 dated 01/10/2019 on the file of the 1st respondent and quash it as illegal and further direct the respondents to fix a tariff for electricity usage for professional activities.

For Petitioner

: Mr.S.Ramesh

for Mr.V.Raghavachari

For Respondents

: Mr.S.M.S.Johny Basha



ORDER

This writ petition is filed challenging the order of the first respondent dated 01.10.2019 in SMP 2 / 2012 and to direct the respondents to fix tariff for electricity usage for professional activities.

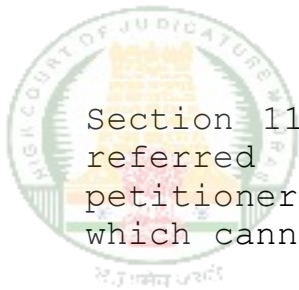
2.The petitioner is a practising Advocate at Trichirapalli for the past 50 years. He is having his office in a rented premises with electricity connection bearing No.212/046/450 for non commercial activities. While so, on 13.09.2010, when the petitioner attempted to pay consumption charges, the respondents refused to accept the same and issued a communication dated 27.09.2010, calling upon the petitioner to make payment of Rs.90,490/-, which was challenged before this Court in W.P.(MD) No.12587 of 2010. This Court disposed of the said writ petition, directing the TNEB, to approach Tamil Nadu Electricity Regulatory Commission under section 86(1) of the Electricity Act, 2003, seeking clarification as to the classification of the Advocates having consultation rooms in their own residences (under Tariff 1A) and advocates having consultation rooms in other places (under Tariff -V) should be a reasonable classification.

3.Based on the said order, the Chairman - cum - Managing Director, TANGEDCO sought a clarification from TNERC. Therefore, the TNERC suo moto impleaded TANGEDCO, rep. by the Chairman & Managing Director as petitioners and the writ petitioner herein as one of the respondents and passed an order, which is impugned in the present writ petition.

4.The learned counsel appearing for the petitioner contended that the first respondent has passed the impugned order without considering the direction issued by the learned Single Judge in W.P.(MD)No.12587 of 2010, confirmed by the Division Bench in W.A(MD)No.240 of 2012. Further he pointed out that the impugned order does not justify the classification already made, contra, it has been stated that classification would be considered in future tariffs.

5.The learned counsel placed reliance upon a decision in **Barium Chemicals Ltd., and another vs. Company Law board and others**, reported in **AIR 1967 Supreme Court 295**, which cannot be applied to the facts of the present case.

6.The learned Standing Counsel appearing for the respondents submitted that against the impugned order of the first respondent, the petitioner is having an efficacious alternative remedy to file an appeal before the Appellate Tribunal under



Section 111 of the Tamil Nadu Electricity Act, 2003 [hereinafter referred to 'the Act']. Without invoking such remedy, the petitioner is before this Court with the aforementioned relief, which cannot be granted.

7. In so far as fixation of tariff for electricity usage is concerned, though tariff fixation under the Act is a legislative function in character, it is appealable under Section 111 of the Act. Therefore, when there is appeal remedy available against the impugned order, the petitioner can very well approach the Appellate Tribunal under Section 111 of the Act. Accordingly, the petitioner is directed to file an appeal before the Appellate Tribunal within a period of two weeks from the date of receipt of a copy of this order. On such appeal being filed within the aforesaid period, the appellate authority shall entertain the same, without insisting the issue of limitation and pass orders on merits within a period of four weeks thereafter, after affording an opportunity of personal hearing to the petitioner.

8. The writ petition is disposed of. No costs. Consequently, WMP(MD)No.22536 of 2019 is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Mj

TO

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+2 CC to MR.V.RAGAVACHARI, Advocate (SR-3508[F] dated
28/01/2020)

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