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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.25357 of 2010

And

M.P.No.1 of 2010

And

M.P.No. 1 of 2011

And

W.P.Nos. 25245 to 25248 of 2010

And

M.P.Nos. 1, 1, 1 & 1 of 2010

Sundaram Clayton Ltd.,
Rep. by its Senor Manager - Legal,
Mr.G.Viswanathan
Jayalakshmi Estates
No.29, Haddows Road
Chennai - 600 006.
25245,

...Petitioner in W.P.Nos. 25357,
25246/2010

Vs

1. The Chairman
Tamil Nadu Electricity Board
Chennai 600 002.
2. The Superintending Engineer
Chennai West Electricity Distribution Circle
Anna Nagar, Chennai - 600 040.
3. Arkay Energy (Rameswarm) Ltd.,
New No. 20, Old No. 29
Chamiers Road, Nandanam,
Chennai - 600 035.

... Respondents in W.P.Nos. 25357 &
25245/2010

1. The Chairman
Tamil Nadu Electricity Board
Chennai 600 002.
2. The Superintending Engineer
Dharmapuri Electricity Distribution Circle
Dharmapuri, Tamil Nadu



3. Arkay Energy (Rameswarm) Ltd.,
New No. 20, Old No. 29
Chamiers Road, Nandanam,
Chennai - 600 035.

... Respondent in W.P.No.25246/2010

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W.P.No. 25247 of 2010:

Lucas TVS Ltd.,
Represented by its
Chief Financial Officer
"Aalim Centre"
No.82, II Floor, Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004.

... Petitioner

Vs.

1. The Chairman
Tamil Nadu Electricity Board
Chennai - 600 002.
2. The Superintending Engineer
Chennai West Electricity Distribution Circle,
Anna Nagar, Chennai - 600 040.
3. M/s.Arkay Energy (Rameswarm) Ltd.,
New No. 20, Old No. 29
Chamiers Road, Nandanam,
Chennai - 600 035.

... Respondents

W.P.No. 25248 of 2010:

Sundaram Fasteners Ltd.,
Represented by its
Executive Director-Finance and Secretary
No.98-A, VII Floor, Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004.

... Petitioner

Vs.

1. The Chairman
Tamil Nadu Electricity Board
Chennai - 600 002.
2. The Superintending Engineer
Chennai West Electricity Distribution Circle,
Anna Nagar, Chennai - 600 040.



3. M/s.ArKay Energy (Rameswarm) Ltd.,
New No. 20, Old No. 29
Chamiers Road, Nandanam,
Chennai - 600 035.

... Respondents

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PRAYER in W.P.No. 25357 of 2010: Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in its Bill dated 03.11.2010 bearing No. 1109 and quash the same and direct the 1st and 2nd respondents to give credit to the supplies of power made by the third respondent to the account of the petitioner and consequently forbear them from levying charges imposed under clauses 13(e) and (f) and 15 of the impugned bill on alleged excess drawal of power.

PRAYER in W.P.No. 25245 of 2010: Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in its Bill dated 03.11.2010 bearing No. 1514 and quash the same and direct the 1st and 2nd respondents to give credit to the supplies of power made by the third respondent to the account of the petitioner and consequently forbear them from levying penalty on alleged excess drawal of power.

PRAYER in W.P.No. 25246 of 2010: Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in its Bill dated 02.11.2010 bearing No. 244 and quash the same and direct the 1st and 2nd respondents to give credit to the supplies of power made by the third respondent to the account of the petitioner and consequently forbear them from levying penalty on alleged excess drawal of power.

PRAYER in W.P.No. 25247 of 2010: Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in its Bill dated 01.11.2010 bearing No. 1102 and quash the same and direct the respondents to give credit to the supplies of power made by the third respondent to the account of the petitioner and consequently forbear them from levying penalty on alleged excess drawal of power.

PRAYER in W.P.No. 25248 of 2010: Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in its Bill dated 01.11.2010 bearing No. 1496 and quash the same and direct the respondents to give credit to the supplies of power made by the third respondent to the account of the petitioner and consequently forbear them from levying penalty on alleged excess drawal of power.



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For Petitioner in all
W.Ps.

: Mr. Mr. M.S.Krishnan
Senior Counsel
for M/s. Sarvabhauman Associates

For RR 1 & 2 in all
W.Ps.

: Mr. L.Jaivenkatesh
Standing Counsel
for TNEB / TANGEDCO

For 3rd Respondent in
all W.Ps.

: No appearance

COMMON O R D E R

The high tension bills issued by the respondent Board are under challenge in these Writ Petitions.

2. The learned Senior Counsel appearing on behalf of the petitioners contended that there are discrepancy in charging and issue raised by the petitioners involve between the captive generator, license and the captive consumer.

3. This Court is of the considered opinion that such disputes require an elaborate adjudication with reference to the documents and evidences available between the parties. Such an adjudication cannot be undertaken by a Writ Court under Article 226 of the Constitution of India as certain intricacy are to be dealt with after scrutinising the documents are in original. Thus, all such issues disputed are to be adjudicated before the competent forum constituted for the purpose of adjudication of issues on merits.

4. The power of judicial review of the High Court is to be scrutinised, the process through which a decision is taken by the competent authority in consonance with the provisions of the Act and Rules, but not the decision itself. This being the scope of the power of judicial review under Article 226 of the Constitution of India except in exceptional circumstances, the parties are bound to exhaust the statute remedies provided under the various statutes. The alternate remedy is contemplated under the statute need not be under bound by the High Court and its importance must be attached.

5. The findings of such statutory forums aforestated are the Appellate Authority is of greater assistance to the High Court for the purpose of exercise of power of judicial review.



In such findings, the High Court may not be in a position to appreciate certain facts intricacy technologies involved in such issues.

6. Though the learned Senior Counsel raised a point that it is a straight case where the High Court may adjudicate even in such circumstances and the legal ground raised in this regard shall be adjudicated by the competent Tribunal.

7. The Tribunal and Forums creates under the statute are empower to adjudicate the facts, circumstances as well as the legal grounds raised by the respective parties even the appellate authority while exercising the quashi judicial power are empower the legal grounds raised by the parties ascertained the scope of the alternate mechanism provided under the statutes, exhaust the remedy is of greater importance, the legislative intention to provide such alternate remedy is to be availed by the authorities concerned and dispensing with the appellate remedy is to be considered only an extra ordinary circumstances where gross in justice are mitigating the facts.

8. Large number of Writ Petitions are filed merely on the ground that the principles of natural justice has been violated. Therefore, the Writ Petitions are maintainable or of certain other legal grounds, the Writ Petitions are filed. No doubt, maintainability of the Writ Petitions under Article 226 of the Constitution of India is not a question before this Court.

9. This Court is of the considered opinion that all the Writ Petitions are maintainable, however, the entertain ability is to be considered. It is imminent to consider those grounds, then alone the High Court may entertain the Writ Petitions if it involves adjudication on merits, circumstances and facts. Then the parties must be allow to exhaust about the remedy provided under the statute. Therefore, there is no high formula regarding the maintainability of the Writ Petitions under Article 226 of the Constitution of India but based on facts of each cases, an opinion is to be formed.

10. As far as the facts on merits are concerned, parties must always prefer an appeal on the forums constituted under the statute for effective adjudication because the parties are also deprived of. Such a statutory opportunity of adjudication before the statutes, the parties are deprived to the extent that they are losing one opportunity of establishing their case before the statutory forum, the High Court is bound to consider that aspect also, in the event of petitioner entertaining the Writ Petition and deciding the issues one way or other either of the parties or before all their opportunity provided under the statute and therefore, the High Court is expected to the



conscious and exercise restraint in entertaining such Writ Petitions where the adjudication on merits involved. This being the facts and circumstances, this Court is of the opinion that the petitioners are to exhaust the remedy.

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11. The learned Senior Counsel brought to the notice of this Court in similar circumstances, the Writ Petitions were transferred to the Tamil Nadu Electricity Regulatory Commission for the purpose of adjudication of issues.

12. The learned Senior Counsel further made a submission that the writ petitioners had already deposited the demanded amount by complying the conditions.

13. This being the factum, this Court is inclined to transfer the Writ Petitions to the Tamil Nadu Electricity Regulatory Commission for the purpose of adjudicating the issues on merits and dispose of the same as expeditiously as possible.

14. Registry, High Court, is directed to send the entire case papers to the Tamil Nadu Electricity Regulatory Commission, Chennai, within a period of two weeks from the date of receipt of a copy of this order.

15. With the above said direction, these Writ Petitions are stands disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

vsg

To

1. The Chairman
Tamil Nadu Electricity Board
Chennai 600 002.
2. The Superintending Engineer
Chennai West Electricity Distribution Circle
Anna Nagar, Chennai - 600 040.



3. The Superintending Engineer
Dharmapuri Electricity Distribution Circle
Dharmapuri, Tamil Nadu

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Copy to:

1. The Tamil Nadu Electricity Regulatory Commission,
Chennai.
2. The Section Officer,
English Record Section,
High Court, Madras - 104.
3. The Section Officer,
V.R. Section,
High Court, Madras - 104. (22/12/2021)

+2ccs to M/s.Sarvabhauman, Advocate, S.R.Nos.63888 & 63889

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SSV(CO)
SU(15/12/2021)