



W.P(MD)No.3893 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.09.2022**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.3893 of 2013

N.Subramanian
Son of Nachiappa Chettiar
through his power agent
SP.Chockalingam

... Petitioner

Vs.

The Assistant Engineer,
Tamilnadu Electricity Board (TNEB),
Karaikudi Town (North),
Karaikudi,
Sivaganga District.

... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings of the respondent in Lr.No.AE/T/N/KKDI/F.Ddocket/D.No.34/2013, dated 01.03.2013 and quash the same and consequently forbearing the respondent herein from changing the classification of Electricity Service Connection bearing Service Connection No.401-003-517 in the name of M/s.Hotel Sugam International, Karaikudi Town, Sivaganga District from Industrial Service connection to any other mode without due



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process of law and pass such further or other orders.

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For Petitioner : Mr.R.Sundar Srinivasan

For Respondent : Mr.S.Deenadhayalan
Standing Counsel

ORDER

The present Writ Petition has been filed challenging an order passed by the respondent herein, under which, a sum of Rs.6,20,142/- has been demanded on the ground of short levy due to change in tariff rates.

2. According to the petitioner, he is started a Hotel in the year 1991 and treating the said Hotel as an Industry. The respondent authorities have given service connection as an industry falling under tariff IV (Now tariff III-B). However, after a period of four years, the respondent authorities issued a communication to the petitioner on 21.06.1995, contending that there has been an audit objection and the proper tariff would be only under tariff IX (Now tariff V). The said communication was challenged by the writ petitioner in O.S.No.85 of 1995 before the Sub Court, Devakottai. The learned Subordinate Judge



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was pleased to declare that the communication is null and void and also granted an order of interim injunction, not to change the tariff from tariff IV to IX. The respondent Board had filed A.S.No.61 of 1997 before the Principal District Court, Sivagangai. The learned District Judge was pleased to allow the appeal on the ground that the civil suit is not maintainable. The writ petitioner had filed second appeal in S.A.No.1395 of 1998 before this Court. This Court by its judgment and decree, dated 07.11.2012, had confirmed the judgment and decree of the First Appellate Court and held that a civil suit is not maintainable as against the change of tariff from tariff IV to IX.

3. The learned Counsel for the petitioner points out that the second appeal was dismissed on the ground of maintainability of the suit and the legality of the action initiated by the respondent Board from changing the tariff from tariff IV to IX was not considered.

4. The learned Counsel for the petitioner points out that in paragraph No.19 of the judgment, this Court has granted liberty to the writ petitioner to submit his representation in writing to the authorities of



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the Board and they were directed to consider the same as early as possible. Only after passing orders thereon, the respondent / defendant is directed to recover the amount, if any due from the writ petitioner.

5. The learned Counsel for the petitioner further submits that pursuant to the order of this Court in S.A.No.1395 of 1998, the petitioner has sent a representation on 13.02.2013. In the said representation, the petitioner has contended that the Hotel is an industry and hence, the old tariff, namely, tariff No.IV is granted and the tariff cannot be changed to tariff No.IX as a commercial establishment.

6. A perusal of the order impugned in the writ petition indicates that the objections raised by the writ petitioner in his representation, dated 13.02.2013, have not been considered. The respondent has proceeded to pass the impugned order simply on the ground that under the misunderstanding of the civil Court has confirmed the legality of the change in tariff.



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7. Per contra, the learned Standing Counsel for the respondent Board has contended that the petitioner had attempted to invoke the jurisdiction of the civil Court challenged the change in tariff. This Court in S.A.No.1395 of 1998 has already confirmed the orders passed by the first appeal in A.S.No.61 of 1997. The petitioner is running an International Hotel and hence, he cannot contend that it is an Industry and it only falls within the definition of a commercial establishment.

8. I have carefully considered the submissions made on either side.

9. A perusal of the impugned order indicates that the said order has been passed mainly on the ground of dismissal of the civil suit. However, this Court in paragraph No.19 of the judgment in S.A.No.1395 of 1998 has granted liberty to the petitioner to place his explanation before the authorities and the authorities have been directed to consider the same. Without following orders passed by this Court in S.A.No.1395 of 1998, the respondent has simply passed the order without even considering the explanations submitted by the writ petitioner. In view of the above said facts, the order impugned in the writ petition is set aside. The matter is



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remitted back to the file of the respondent herein. The respondent shall pass fresh orders after giving due opportunity or personal hearing to the writ petitioner. The said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.

10. The writ petition stands allowed. There shall be no order as to costs.

09.09.2022

Index : Yes / No
Internet : Yes / No
btr

To

The Assistant Engineer,
Tamilnadu Electricity Board (TNEB),
Karaikudi Town (North),
Karaikudi,
Sivaganga District.



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R.VIJAYAKUMAR, J.

btr

Order made in
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