



Rev. Appl. No. 96 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

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and

C.M.P.No.11887 of 2023

against

C.M.A.No. 2485 of 2003

Ashok Leyland Limited,
rep. by its DGM-Legal
Mr. P.R.Ranganathan

(cause title amended vide order
dated 08.11.2017 in C.M.P.
No. 19144 of 2017 in C.M.A.
No. 2485 of 2003)

.. Petitioner

Vs.

1. The Chairman,
Tamil Nadu Electricity Board,
600, Anna Salai,
Chennai-600 018.

2. The Secretary,
Tamil Nadu Electricity Regulatory
Commission, Third Main Road,
Seethammal Colony,
Chennai-600 018.

.. Respondents



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PRAYER : Review Application filed under Order XLVII Rules 1 of C.P.C., praying to review and reconsider the order dated 30.03.2021 in C.M.A.No.2485 of 2003 passed by this Court.

For Petitioner : Mr. P.S.Raman,
Senior Advocate for
M/s. R and P Partners

For Respondents : Mr.P.Wilson,
Senior Advocate for
Mrs.Hemalatha Gajapathy,
for R1 and R2

ORDER

The appellant in C.M.A.No. 2485 of 2003 preferred this Review Application on the principal ground of mistake of fact and law and an error apparent on the face of record caused thereby, since the judgment rendered, in as much as it has dismissed the appeal on the ground that an appeal ought to be preferred before the Appellate Tribunal for Electricity is contrary to the binding judgment of Hon'ble Supreme Court in ***H.P. State Electricity Regulatory Commission vs. H.P. SEB, (2014) 5 SCC 219***, which directly covers the issue.



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2. By relying the said ratio, learned senior counsel for petitioner argues that Civil Miscellaneous Appeal was dismissed by accepting the contention of the respondent that the Review Petitioner ought to file a statutory appeal under Sec. 111 of Electricity Act, 2003 against the impugned order of Tamil Nadu Electricity Regulatory Commission in T.P.No. 1 of 2002 dated 15.03.2003 before the Appellate Tribunal for Electricity established under Sec.110 of Electricity Act, 2003, but the error in such a conclusion has evidently been caused due to the fact that both the impugned orders in T.P.No.1 of 2002 and the Electricity Act, 2003 came into force in the year of 2003, however, the dates are crucial, but by mistake of fact, went unnoticed while rendering the judgment.

3. The learned senior counsel would further submit that the impugned order of tariff was passed on 15.03.2003, but the Electricity Act was notified and came into force only on 10.06.2003 vide Notification No.S.O. 699(E) dated 10.06.2003. Thus, the Review Petitioner/Appellant already had a vested right of appeal before the Hon'ble High Court, which remained unaffected by subsequent enactment, thereby content that there is an error on the face of record and by pointing out the ratio laid down in the H.P. State



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Electricity Regulatory Commission, the learned senior counsel would submit that the impugned order passed by the State Electricity Regulatory Commission under the Electricity Regulatory Commission Act, 1998 as in the case of present impugned order and appeal under Sec.27 of 1998 Act would only lie to the High Court. Furthermore, already this court in ***Coimbatore Stock Exchange Ltd. vs. TNERC (2014) 13 SCC 358***, in which the impugned tariff was challenged on different aspects, since the very same tariff order was the subject matter of C.M.A. Nos. 921 etc./2003, which was heard by this court and it was decided on merit. Therefore, the issue of the appeal to the High Court had been settled against the very same tariff order. So, this court is the right forum to decide the issue involved in the present Civil Miscellaneous Appeal No. 2485 of 2003. Hence, the Review Application may be allowed and prayed to recall the earlier dismissal order dated 30.03.2021 in C.M.A.No. 2485 of 2003.

4. By way of reply, the learned senior counsel appearing for respondent would submit that as per the Electricity Act, 2003 under Sec.110 and 111, which came into force from 10.06.2003, any person aggrieved by an order made by the appropriate commission under this Act, may prefer an



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appeal to the Appellate Tribunal for Electricity. Accordingly, this Court rightly dismissed the C.M.A. by giving liberty to the petitioner to approach the Appellate Tribunal for Electricity on 30.03.2021. But, instead of approaching the Appellate Tribunal, after issuance of penal notice by the respondents Board, they preferred a Review Application stating that the appeal, as such, is maintainable before this court by numbering the Review Application after two years from the date of dismissal order of this court in C.M.A.No.2485 of 2003, as such clearly shows that in order to evade the tariff charges with penal interest, this Review Application has been filed, as such, is not maintainable, since there is no error apparent on the face of record as alleged by the Review Petitioner and prayed to dismiss this Review Application as no merits.

5. Further, the learned senior counsel for Review Petitioner also argues that in the earlier batch of C.M.A.s, in which some of the consumers challenged the same tariff order in T.P.No.1 of 2002, with regard to “cross subsidy”, extra levy of 20% on energy charges for the energy recorded during peak hours and with regard to fixation of tariff, which were challenged in those appeals was heard by Division Bench of this court in



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(2003) 4 CTC 385, since because at the time of new Act, those appeals were pending before this court and the new Act does not expressly or impliedly take away right of appeals with retrospective effect and also the new Act does not dealt with pending appeals. So, the pending appeals were heard by the Division Bench of this court and finally held that tariff order in T.P.No.1 of 2002 was confirmed and dismissed the appeal. Against which one of the consumer Coimbatore Stock Exchange Ltd. and others preferred an appeal before the Apex Court in **(2014) 13 SCC 358**, wherein the Apex Court also confirmed the findings of Division Bench and uphold the tariff in T.P.No.1 of 2002 as valid one. By relying those authorities, the learned senior counsel for respondent would submit that the impugned tariff order was already confirmed by the Apex Court in the pending appeal and the Review Petitioner even otherwise has no locus standi praying to set aside the impugned tariff order.

6. Per contra, the learned senior counsel for Review Petitioner would submit that in those Civil Miscellaneous Appeals, different consumers challenged the different categories of the tariff order, but the case in hand, the Review Petitioner challenged the impugned order mainly based on the



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contention that the claim for surcharge of 15% by the respondent is highly arbitrary and improper. So, he preferred an appeal to stay the operation of Clause 7.13 of the impugned tariff order dated 15.03.2003 on the file of Tami Nadu Electricity Regulatory Commission, Chennai in T.P.No.1 of 2002 and prayed to set aside the clause 7.13 of the impugned order in T.P.No.1 of 2002 and the said issue was not the subject matter of other appeals, which was decided by this court. However, the issue pertaining to the said tariff order was already decided by this Court. So, the Review Petitioner is also entitled to putforth his case before this court as he is having a right of appeal before this forum, but at the earlier occasion, the ratio laid down in ***H.P. State Electricity Regulatory Commission vs. H.P. SEB, (2014) 5 SCC 219*** was not brought to the knowledge of this court. So, the dismissal of Civil Miscellaneous Appeal as such is an error on the face of record. Hence, he prayed to review the order by recalling the dismissal order.

7. Considering both side submissions as well as on perusal of authority relied on by the Review Petitioner reported in ***(2019) 5 SCC 219***, the Apex Court held that as the Electricity Act i.e. New Electricity, 2003 has



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not provided any provision for transfer of pending appeals, so, the High Court had a jurisdiction to hear the said appeal. But, coming to the facts of the case in hand, the Act of 2003 was came into force on 10.06.2003, but the impugned order of tariff in T.P. No.1 of 2002 was passed on 15.03.2003 before the new Act came into force. However, the Review Petitioner filed the appeal in C.M.A.No.2485 of 2003 on 05.08.2003 after the new Act came into force. Furthermore, challenging the said tariff order in T.P.No.1 of 2002, the other consumers filed appeals in C.M.A.Nos. 921 etc./2003 on 28.04.2003 before the new Act came into force. Therefore, the other appeals in C.M.A.Nos.921 etc./2003 were treated as pending appeals by this court, which were heard and dismissed the appeals holding that the tariff in T.P.No.1 of 2002 is valid one. So, those pending appeals were heard by this court mainly on the reason that there was no specific provision with regard to transfer of pending cases to the Appellate Tribunal in the new Act of 2003. So also, the facts pertaining to the referred authority relied by the Review Petitioner in ***H.P. State Electricity Regulatory Commission vs. H.P. SEB, (2014) 5 SCC 219*** also relating to challenging the impugned order passed on 15.01.2002 imposing penalty. So, on the date of enforcement of New Act,



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2003, the said appeal was pending. Therefore, it was held that High Court is having jurisdiction to decide the issue, but the case in hand, Civil Miscellaneous Appeal was filed only after the New Act came into force during September 2003 (08.09.2003). Hence, the authorities relied on by the Review Petitioner are not applicable to the facts of the present case for the reason that it is not a pending appeal at the time of new enactment. Furthermore, on seeing the entire records clearly reveals that successfully, the Review Petitioner dragged the proceedings from the year of 2003. However, in the counter objections filed by the 2nd respondent, they categorically stated about the disposal of pending appeals in the month of October 2004, even then the petitioner has not taken any steps to approach the right forum to submit its objections all these years and somehow made to keep the case pending to evade the claim. Moreover, the review petitioner is a legal entity, ought to have taken steps to approach the right forum. In the event of disposal of Civil Miscellaneous Appeal in the year of 2021, even then they have not taken steps to approach the appellate tribunal though the liberty was granted to them, but after two years, having received penal notice, immediately numbered the Review Application stating that this court



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is having jurisdiction to decide the said issue as such is a clear case of abusing process of law, which shall not be encouraged. As rightly pointed out by the learned senior counsel for respondent about the conduct of the parties, this Court already expressed displeasure while disposing the Writ Petitions filed by the petitioner in W.P.Nos. 4471 and 4472 of 2017 that the petitioner has adopted litigative tactics in order to evade the payment for several years. Hence, there is no error on the face of record nor this court is having jurisdiction to decide the issue. Accordingly, this Review Application is dismissed as no merits. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

3.07.2023

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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N.B. :- Issue the order copy on 04.07.2023



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T.V.THAMILSELVI, J.

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