



W.P.(MD) No.20581 of 2017

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

**W.P.(MD) No.20581 of 2017
and
W.M.P.(MD) No.16871 of 2017**

Zirconium Complex,
(Formerly Known as M/S.New Zirconium Oxide
and Sponge Project),
represented by its Administrative Officer-III,
Department of Atomic Energy,
Government of India,
Pazhayakayal 628 152,
Tuticorin District.

... Petitioner

/vs./

1.The Consumer Grievance Redressal Forum at
Virudhunagar represented by its Chairman
cum Superintending Engineer, Tamil Nadu
Electricity Distribution Circle, Virudhunagar.

2.The Superintending Engineer,
Tamil Nadu Electricity Distribution Circle,
Tuticorin.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for records of the proceedings of the 1st Respondent made in Petition No.04/2017-18 dated 25.09.2017 confirming the Order No.SE/TEDC/TTN/AAO/Rev./RCS/JA2/ D. 69/2009 of the 2nd Respondent date 22.10.2009 and quash the same as illegal and consequently directing the 2nd Respondent to shift the metering unit within the premises of the Petitioner.

For Petitioner : Mr.N.Shanmuga Selvam

For Respondents : Mr.S.Deenadhayalan
Standing Counsel

ORDER

The challenge in the writ petition is to an order passed by the first respondent confirming the order passed by the second respondent.

2. The learned counsel for the petitioner would contend that the petitioner was imposed with low power factor penalty charges. He would submit that earlier to the order passed by the second respondent, a recommendation had been made by the Chief Engineer for waiver of the said penalty and the same has been reiterated by the second respondent in its communication dated 23.12.2008. In the said communication, the second respondent had specifically indicated that for no



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fault of the petitioner, it was not fair on the part of the TNEB to impose a hefty penalty. Without reference to the same, the order was passed by the second respondent demanding penalty towards low power factor, which was challenged by the petitioner before the first respondent.

3. In the claim before the first respondent, the petitioner had raised the said issue, namely the waiver recommended by the Chief Engineer and the communication of the then Superintending Engineer. The same has also been answered to by the TNEB in its reply to the petitioner's claim. However, the first respondent had not framed any issue as to whether the petitioner would be entitled for waiver and therefore, he would submit that the impugned order has to be set aside with a direction to the first respondent to frame an issue as to whether the petitioner would be entitled for waiver based on the recommendation, which has been marked as Ex.11 before the first respondent.

4. Countering his arguments, Mr.S.Deenadhayalan, learned Standing Counsel for the respondents would submit that the issue of waiver had been pre-concluded under Ex.12, wherein the Chairman had held that the petitioner would



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not be entitled for waiver, as the same was not feasible. Therefore, he would submit that the said issue need not be framed and on merits, he would submit that against this order passed by the first respondent, an appeal remedy is available before the Ombudsman appointed under the Act. Therefore, the petitioner could exhaust his remedy by filing the appeal before the Ombudsman.

5. I have considered the rival submissions made by the learned counsel on either side and I have perused the order passed by the first respondent also.

6. The first respondent had recorded the claim made by the petitioner with regard to waiver and also the reply given by the Department in that aspect both in the pleadings and the arguments recorded by the first respondent. However, without framing any issues with regard to the claim of waiver, the first respondent had decided the issue on merits. When an issue had been raised and responded to, it is the duty of the Quasi Judicial Authority to answer the said issue.

7. In such view of the matter, I am inclined to refer the matter back to the first respondent to frame an issue with regard to waiver based on the pleadings



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and the exhibits submitted by the respective parties and answer the same. Since the first respondent had in detail dealt with the issues framed by it and held against the petitioner, I do not propose to interfere with the same issues. Since the matter is remitted back to the first respondent, for the reasons indicated supra, till such time, the order impugned in this writ petition shall be kept in abeyance. If the issue that is directed to be framed and decided in favour of the petitioner, ie., the petitioner is entitled for waiver, the petitioner can be granted the waiver and absolved from payment of penalty, but on the other hand if the issue goes against the petitioner, then it is for the petitioner to challenge the same before the Ombudsman, who was appointed under the Act.

8. With the aforesaid observations, the Writ Petition stands disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No
Internet : Yes / No
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K.KUMARESH BABU, J.

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