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WP No. 36709 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 07.07.2025

Pronouncing orders on : 15.07.2025

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THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

**WP No. 36709 of 2024
and WMP Nos. 39614 & 39615 of 2024**

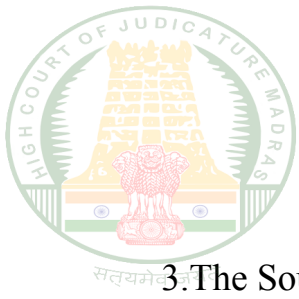
1. The Chief Engineer
Private Power Projects,
Tamil Nadu Power Distribution Corporation Limited,
2nd Floor, SLDC Building,
No.144, Anna Salai, Chennai 600 002

Petitioner(s)

Vs

1. The Ministry of Power
Represented by its Secretary,
Union of India, Shram Shakti Bhawan,
Rafi Marg,
New delhi- 110 001.

2.The Chief General Manager
P.F.C Consulting Limited,
9th Floor, A Wing Statesman House,
Barakhamba Lane, Connaught Place,
New Delhi 110 001, India



3. The Southern Regional Load Dispatch Centre

Represented by its Executive Director

No.29, Race Course Cross Road,
Bangalore 560 009

4. PTC India Limited

(through its Chairman)

2nd Floor, NBCC Tower,
15, Bhikaji Cama Place,
New Delhi 110 066

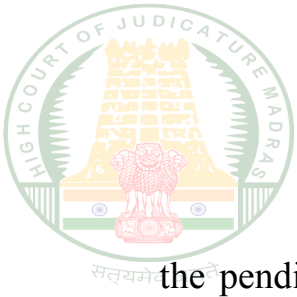
5. IL and FS Tamil Nadu Power Company Limited

(through its Chairman)

4th Floor, KPR Tower,
Old No.21, New No.2,
1st Street, Subba Rao Avenue,
College Road, Chennai 600 006

Respondent(s)

PRAYER Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the fourth respondent pertaining to the impugned invoices Nos.BT/SUR/TN-MT/033 dated 24.09.2024 for Rs.28,99,41,181/- and BT/SUR/TN-MT/034 dated 24.09.2024 for Rs.117,58,44,347/- of the fourth respondent, quash the same and consequently direct respondents 1 and 2 to remove the disputed invoices from the PRAAPTI PORTAL pertaining to the subject matter issue of



the pending Appeal in Appeal No.64 of 2024 dated 31.01.2024 on the file of
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APTEL.

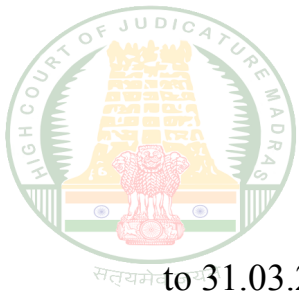
For Petitioner(s): Mr.P.Wilson
Senior Counsel
for Mr.D.R.Arunkumar

For Respondent(s): Mr.R.Rajesh Vivekananthan For R1
Mr.Ravikishore for
Mr.Prahalad K.Bhat for R4
Mr.Biju Mattan for
Mr.S.M.Vivekanandh for R5

ORDER

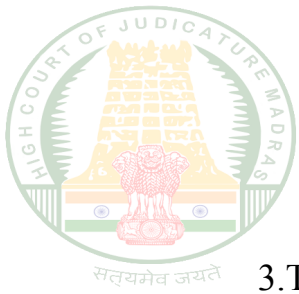
This writ petition has been filed challenging the impugned invoices each dated 24.09.2024 and for a consequential direction to the 1st and 2nd respondents to remove the disputed invoices from the PRAAPTI PORTAL.

2.The case of the petitioner is that the 4th respondent entered into a Pilot Power Supply Agreement with the petitioner on 27.10.2018 for supply of power for 550 MW from the generation station of the 5th respondent. As per the said agreement, the supply of power was for a period of three years from 01.04.2019



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to 31.03.2022 (excluding the months of June, July and August). As per the terms of the Agreement, the petitioner is liable to honour the invoices raised by the 4th respondent, within a period of 30 days of receipt of the monthly invoices. Due to some financial constraints, the petitioner was not able to honour the invoices for the supply of power between the months of February 2021 to May 2021 and September 2021. Clause 23.4 of the Agreement entitles the 4th respondent to receive the delayed payment from the petitioner with interest at the rate of 5% above the bank rate. It is stated that the 4th respondent abruptly stopped supplying power from 04.10.2021 and therefore, the petitioner passed an order of termination dated 29.03.2022 and the 4th respondent was called upon to pay Rs.428.1552 Crores towards termination payment. Aggrieved by the same, the 4th respondent filed a petition before the Central Electricity Regulatory Commission (CERC) seeking for payment of outstanding amount with Late Payment Surcharge (LPS) and also to quash the termination order dated 29.03.2022 passed by the petitioner and with a further direction for payment of interest on debt and O & M expenses as determined by the commission.



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3.The CERC by order dated 05.01.2024, terminated the order passed by the petitioner and also directed the petitioner to pay the invoices raised by the 4th respondent for the months of February 2021 to May 2021 and September 2021 along with Late Payment Surcharge (LPS) to be calculated as per the terms of the Agreement.

4.The petitioner aggrieved by the order passed by the CERC, filed an appeal before APTEL in Appeal No.64 of 2024 and also sought for an interim stay of the order passed by CERC. The APTEL by order dated 04.03.2024, refused to grant interim relief to the petitioner and also directed the petitioner to make the payment as directed by CERC. This order was taken on appeal before the Apex Court and the appeal was dismissed by an order dated 01.04.2024.

5.During the pendency of the appeal before the Apex Court, the 4th respondent uploaded invoices to the tune of Rs.710 Crores in the PRAAPTI PORTAL on 10.01.2024. The petitioner therefore filed W.P.No.7933 of 2024 and this writ petition was disposed of by an order dated 03.04.2024. While



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disposing of the writ petition, the petitioner was directed to settle the admitted liability of nearly Rs.601.15 Crores in four equal instalments commencing from April 2024 to July 2024. Liberty was also granted to the 4th respondent to raise the bill separately by providing the breakup details and the parties were permitted to raise all the grounds in the pending appeal.

6.Pursuant to the order passed by this Court, the admitted liability was paid in four equal monthly instalments.

7.The grievance of the petitioner is that the 4th respondent has raised the impugned invoices both dated 24.09.2024 and the same has been uploaded in the PRAAPTI PORTAL. Aggrieved by the same, the present writ petition has been filed before this Court.

8.The 4th respondent has filed a counter affidavit. The 4th respondent has raised a preliminary objection on the maintainability of the writ petition on the



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ground that the issue that has been raised by the petitioner can be adjudicated only before CERC and that in various judgements, the Apex Court has held that all matters concerning electricity has to be dealt with only by the authorities constituted under the Electricity Act.

9.The 4th respondent has further stated that the petitioner failed to make the payment in respect of the power supplied for the months of February 2021 to May 2021 and September 2021 and consequently, the 4th respondent was constrained to approach the CERC and the CERC directed the petitioner to make the payment along with the Late Payment Surcharge (LPS). During the pendency of the Civil Appeal before the Apex Court, the petitioner filed a writ petition before this Court in W.P.No7933 of 2024 and this Court was pleased to direct the petitioner to pay the admitted liability in four equal monthly instalments and it was also made clear that the waiver of LPS was not granted and it will be left open to the 4th respondent to make their demand by providing the breakup details.



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10. In view of the liberty granted by this Court, the 4th respondent had raised two invoices dated 24.09.2024, which pertain to LPS on payment made by the petitioner in terms of the order passed by this Court for the period February 2021 to May 2021 and September 2021 and also LPS on the bills already paid prior to February 2021, but paid with delay. Hence, those invoices that have been raised by the 4th respondent are in line with the liberty granted by this Court and also the liberty granted by APTEL. Therefore, there are absolutely no merits in the writ petition and the 4th respondent has sought for the dismissal of this writ petition.

11. The 5th respondent has also filed a counter affidavit and the 5th respondent has explained about the Agreement with the 4th respondent and the invoices that have been raised with the 4th respondent. The 5th respondent does not have any privity of contract with the petitioner and the 4th respondent was supplying power to the petitioner from the generation station belonging to the



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5th respondent. Thus, the 5th respondent has toed the line of the 4th respondent and sought for the dismissal of this writ petition.

12.This Court has carefully considered the submissions made on either side and also the materials available on record.

13.The following two issues arises for consideration in the present writ petition and they are:

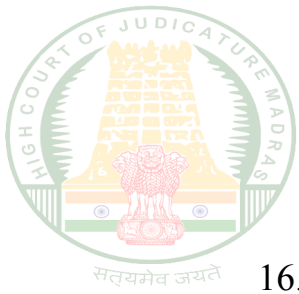
- a) Whether the present writ petition is maintainable before this Court and this Court can exercise its jurisdiction under Article 226 of the Constitution of India and
- b) Whether the impugned invoices raised by the 4th respondent, which has been uploaded in the PRAAPTI PORTAL, are illegal and warrants the interference of this Court.



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14. At the outset, this Court will first deal with the maintainability of the present writ petition. The answer that is given to this issue will decide as to whether the next issue should be taken up and dealt with by this Court on merits.

15. It is not in dispute that the 4th respondent had entered into a Pilot Power Supply Agreement with the petitioner on 27.10.2018. The Agreement provides for the raising of invoices, the mode of payment and also the entitlement to interest for delayed payment. It also covers LPS. The 4th respondent had signed a back to back power purchase agreement with the 5th respondent. Therefore, for the power that is supplied to the petitioner by the 4th respondent from the generation station of the 5th respondent, the 4th respondent is also liable to make payments to the 5th respondent as and when invoices are raised.

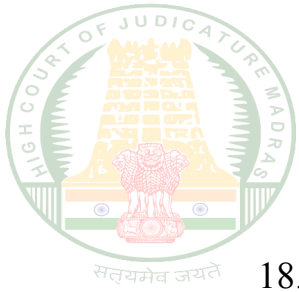


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16.The petitioner failed to make payment in respect of power supply for the months of February 2021 to May 2021 and September 2021. The 4th respondent approached the CERC, and the CERC passed an order dated 05.01.2024, directing the petitioner to make the payment along with LPS. It will be relevant to extract Paragraph 29 from the order passed by CERC.

29. In view of the aforesaid findings and observations, we hold that the Respondent No. 1 is liable to make payment of monthly invoices raised by the Petitioner for the months of February, 2021 to May, 2021 and September, 2021 along with the LPS to be calculated in terms of the provisions of the PPSA within two months.

17.The petitioner filed an appeal before APTEL and in the said appeal, the petitioner also filed a stay petition. This petition was heard, and an order was passed on 04.03.2024, rejecting the stay application and a direction was given to the petitioner to clear the payment to the 4th respondent in compliance with the order passed by CERC.



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18. An appeal was filed before the Apex Court and in the meantime, the petitioner moved a writ petition by filing W.P.No.7933 of 2024, challenging the invoices that were raised by the 4th respondent and for a consequential direction to the 1st and 2nd respondents not to entertain any disputed invoices pertaining to the subject matter of appeal pending before APTEL and the Civil appeal pending before the Apex Court.

19. The petitioner was virtually attempting to achieve indirectly what they were not able to achieve directly before APTEL. In fact, the Apex Court did not find any ground to interfere with the order passed by APTEL, and the Civil Appeal itself came to be dismissed by an order dated 01.04.2024.

20. This Court taking into consideration the financial constraints faced by the petitioner, gave an opportunity to the petitioner to pay the admitted liability to the tune of nearly Rs.601.15 Crores in four equal monthly instalments. This Court also granted liberty to the 4th respondent to raise the demand by providing the breakup details and it was also made clear that the Court has not

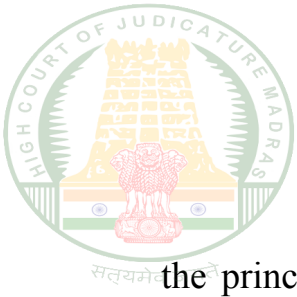


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granted any waiver of LPS. The petitioner paid the admitted amount as was directed by this Court.

21.The 4th respondent has raised impugned invoices, each dated 24.09.2024. Insofar as the first invoice is concerned, it pertains to LPS on payment made by the petitioner in terms of the order passed by this Court. The second invoice pertains to the LPS on the bills already paid and which were raised prior to February 2021, but paid with considerable delay.

22.The main ground that was raised by the learned Senior Counsel appearing on behalf of the petitioner is that the 4th respondent has raised invoices claiming amounts that are all barred by limitation. It was further submitted that most of the amounts mentioned in the impugned invoice were not even a part of the subject matter before the CERC. Therefore, when the 4th respondent failed to raise the claim when the earlier petition was filed before the CERC, the 4th respondent is barred from making such a claim subsequently on



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the principle of constructive *res judicata*. The learned Senior Counsel further submitted that just because the petitioner has an alternative remedy however, that will not bar this Court from exercising its jurisdiction under Article 226 of the Constitution of India, particularly, where the claim made by the 4th respondent is *ex facie* barred by law. The learned Senior Counsel further questioned the very applicability of the LPSC Rules, 2022 in respect of payments that are pending even before the coming into force of the said Rules on 22.06.2022. The learned Senior Counsel submitted that the main grievance of the petitioner is that the 4th respondent instead of approaching the CERC and making the claims, has uploaded the invoices in the PRAAPTI PORTAL by invoking the LPSC Rules, 2022 and it has a very serious impact on the petitioner who is involved in the supply of power in the State of Tamil Nadu.

23. This Court must keep in mind the fact that the dispute between the petitioner and the 4th respondent pertains to a Pilot Power Supply Agreement entered into between the parties. This Agreement was entered into in the year



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2018 and the supply of power has taken place from April 2019 onwards.

24. When the earlier writ petition was disposed of by this Court, liberty was granted to the 4th respondent to raise the demand by providing the break up details and this Court had also made it clear that the Court has not granted waiver of LPS in respect of dues, including the dues to be paid as per the orders of CERC. Even as per the order passed by the CERC, the 4th respondent was entitled to claim LPS for the monthly invoices raised for the months February 2021 to May 2021 and September 2021.

25. The first invoice to the tune of Rs.117.59 Crores pertains to LPS for the bills already paid for the period from April 2019 to January 2021. The second invoice pertains to LPS for delaying payment of the admitted amount by the petitioner in four monthly instalments. In the first invoice, the 4th respondent has also claimed for payment of compensation to the tune of Rs.4 Crores towards non off take of power. It is clear from the above that all these

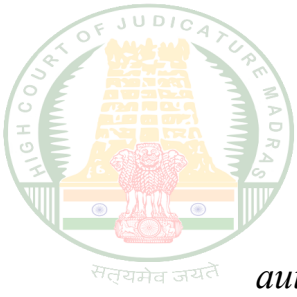


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claims have been made by the 4th respondent by relying upon the relevant clauses in the Agreement. In other words, all these claims are the fallout of the agreement between the parties. Under such circumstances, the important question that arises for consideration is as to whether the petitioner can question those invoices raised by the 4th respondent and which was uploaded in the PRAAPTI PORTAL before this Court or whether the petitioner must only approach the CERC, which has the jurisdiction to deal with this issue.

26.It will be relevant to take note of the judgement of the Apex Court in ***Jaipur Vidyut Vitran Nigam Limited and Others vs. MB Power (Madhya Pradesh) Limited and Others*** reported in ***2024 8 SCC 513***. The relevant portions are extracted hereunder:

128. We find that the High Court was not justified in entertaining the petition. The Constitution Bench of this Court in PTC13 has held that the Electricity Act is an exhaustive code on all matters concerning electricity. Under the Electricity Act, all issues dealing with electricity have to be considered by the



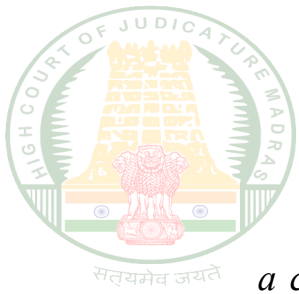
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authorities constituted under the said Act. As held by the Constitution Bench of this Court, the State Electricity Commission and the learned APTEL have ample powers to adjudicate in the matters with regard to electricity. Not only that, these Tribunals are tribunals consisting of experts having vast experience in the field of electricity. As such, we find that the High Court erred in directly entertaining the writ petition when Respondent 1 ie. the writ petitioner before the High Court had an adequate alternate remedy of approaching the State Electricity Commission.

129. This Court in Reliance Infrastructure Lid. v. State of Maharashtra 36 has held that while exercising its power of judicial review, the Court can step in where a case of manifest unreasonableness or arbitrariness is made out.

130. In the present case, there is not even an allegation with regard to that effect. In such circumstances, recourse to a petition under Article 226 of the Constitution of India in the availability of efficacious alternate remedy under a statute, which is a complete code in itself, in our view, was not justified.

131. No doubt that availability of an alternate remedy is not



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a complete bar in the exercise of the power of judicial review by the High Courts. But, recourse to such a remedy would be permissible only if extraordinary and exceptional circumstances are made out. A reference in this respect could be made to the judgments of this Court in Radha Krishan Industries v. State of H.P.³⁷ and South Indian Bank Ltd. v. Naveen Mathew Philip³⁸

132. We may gainfully refer to the observation of this Court in Radha Krishan Industries³⁷, wherein this Court has laid down certain principles after referring to the earlier judgments: (SCC pp. 793-95, paras 24-28)

"24. The High Court has dealt with the maintainability of the petition under Article 226 of the Constitution. Relying on the decision of this Court in CCT v. Glaxo Smith Kline Consumer Health Care Ltd. ³⁹, the High Court noted ⁴⁰ that although it can entertain a petition under Article 226 of the Constitution, it must not do so when the aggrieved person has an effective alternate remedy available in law. However, certain exceptions to this "rule of alternate remedy" include where, the statutory authority has not acted in accordance with the provisions of the law or



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acted in defiance of the fundamental principles of judicial procedure; or has resorted to invoke provisions, which are repealed, or where an order has been passed in violation of the principles of natural justice. Applying this formulation, the High Court noted that the appellant has an alternate remedy available under the GST Act and thus, the petition was not maintainable.

25. In this background, it becomes necessary for this Court, to dwell on the "rule of alternate remedy" and its judicial exposition. In Whirlpool Corpn. v. Registrar, Trade Marks⁴¹, a two-Judge Bench of this Court after reviewing the case law on this point, noted: (SCC pp. 9-10, paras 14-15)

'14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the



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Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.'



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26. *Following the dictum of this Court in Whirlpool⁴¹, in Harbanslal Sahnia v. Indian Oil Corpn. Ltd. 42, this Court noted that: (Harbanslal Sahnia case⁴², SCC p. 110, para 7)*

'7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v.



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*Registrar, Trade Marks*41.) *The present case attracts applicability of the first two contingencies. Moreover, as noted, the appellants' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.'*

27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise



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where: (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of



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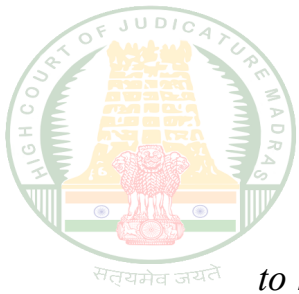
fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

28. These principles have been consistently upheld by this Court in Chand Ratan v. Durga Prasad 43, Babubhai Muljibhai Patel v. Nandlal Khodidas Barot⁴⁴ and Rajasthan SEB v. Union of India 45 among other decisions." (emphasis in original)

133. This Court has clearly held that when a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution of India.

134. Recently, this Court in South Indian Bank³⁸ has also taken a similar view.

135. There is another ground on which the High Court ought



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to have refused to entertain the petition. The bid of L-7 bidder was returned and the bid bond bank guarantee was also directed not to be extended vide communication dated 6-1-2015. The judgment and order passed by this Court, on which reliance is placed by Respondent 1, is also delivered on 25-4-2018. However, Respondent 1 did not take any steps from 6-1-2015 and in any case, from 25-4-2018 till 14-12-2020, on which date the petition came to be filed before the High Court. No doubt that the petition need not be dismissed solely on the ground of delay and laches. However, if the petitioner approaches the Court with delay, he has to satisfy the Court about the justification for delay in approaching the Court belatedly. In our considered view, the High Court ought not to have entertained the petition also on the ground of delay and laches.

136. In any case, we find that the High Court was not justified in issuing the mandamus in the nature which it has issued. This Court in Air India Ltd. v. Cochin International Airport Ltd. 46 has observed thus: (SCC pp. 623-24, para 7)

"7. The law relating to award of a contract by the State, its corporations and bodies acting as



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instrumentalities and agencies of the Government has been settled by the decision of this Court in Ramana Dayaram Shetty v. International Airport Authority of India, Fertilizer Corpn. Kamgar Union v. Union of India 48, CCE v. Dunlop India Ltd. 49, Tata Cellular v. Union of India¹⁹, Ramniklal N. Bhutta v. State of Maharashtra 50 and Raunaq International Ltd. v. I.V.R. Construction Ltd. 51 The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State,



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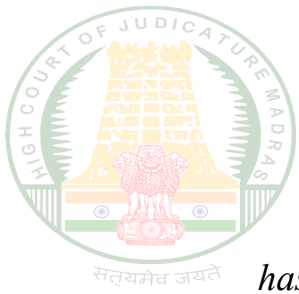


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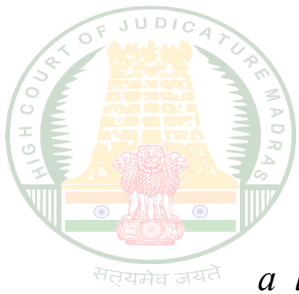
its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should intervene."

137. It could thus be seen that this Court in Air India case⁴⁶



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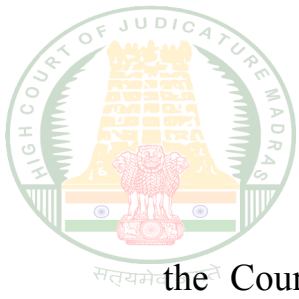
has held that the award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision, considerations which are paramount are commercial considerations. It has been held that the State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It has further been held that the State can enter into negotiations before finally deciding to accept one of the offers made to it. It has further been held that, price need not always be the sole criterion for awarding a contract. It has been held that the State may not accept the offer even though it happens to be the highest or the lowest. However, the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the Court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. It has further been held that even when some defect has been found in the decision-making process, the Court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of



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a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene.

27. The above judgement of the Apex Court arose out of a dispute pertaining to the purchase of power from the successful bidders, which was governed by the agreement between the parties and it arose under the Electricity Act. The Apex Court made it abundantly clear that the Electricity Act is an exhaustive code on all matters concerning electricity and under the Electricity Act, all issues dealing with electricity are to be considered by the authorities constituted under the Act. That apart, the CERC and APTEL have ample powers to adjudicate matters with regard to electricity and these Tribunal consist of experts having vast experience in the field of electricity. In the light of such an efficacious alternative remedy being available, the Apex Court found fault with the High Court in entertaining a writ petition filed under Article 226 of the Constitution of India instead of approaching the CERC. The Apex Court further made it clear that even if there is some defect in the decision making process,



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the Court must exercise its discretionary power under Article 226 of the Constitution of India with great caution and should exercise it only in furtherance of public interest and not merely on making out of a legal point.

28. In the case in hand, the point that has been raised by the learned Senior Counsel appearing on behalf of the petitioner is that the amount that is sought to be claimed by the 4th respondent is barred by limitation and that since it was not claimed in the earlier petition filed before the CERC, it is barred by constructive *res judicata*. These are all purely legal issues which have to be raised by the petitioner only before CERC. It is not as if the CERC lacks power and jurisdiction to deal with this issue. This is an issue which can always be dealt with by CERC in accordance with law. It is not necessary for this Court to perform the function of the CERC by dealing with these legal issues raised by the petitioner. In fact, it has been brought to the notice of this Court that the petitioner had approached the CERC on various occasions with issues of this nature and the same was entertained and even stay was granted.



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29.The petitioner is questioning the invoices raised by the 4th respondent, who is a private party. A writ petition is not maintainable as against a private person/entity unless it involves performance of a public function. The law on this issue is now too well settled. Therefore, the raising of invoices by the 4th respondent can never become a subject matter of dispute before the Writ Court only on the ground that it has been uploaded in the PRAAPTI PORTAL. This is a facility available to the 4th respondent to post it in the PRAAPTI PORTAL and if the petitioner is aggrieved by the same, they can only approach the CERC and redress their grievance.

30.In the light of the above discussion, this Court holds that the present writ petition is not maintainable, since the petitioner has an efficacious alternative remedy before CERC, which is a body specifically constituted under the Electricity Act to deal with issues of this nature. The first issue is answered accordingly.



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31. In the light of the above finding rendered for the first issue, it is not necessary for this Court to go into the merits of the case and the second issue becomes academic.

32. In the result, this writ petition is dismissed and liberty is granted to the petitioner to approach the CERC and workout their remedy in the manner known to law. No Costs. Consequently, connected miscellaneous petitions are closed.

15-07-2025

Index: Yes

Speaking order

Internet: Yes

Neutral Citation: Yes/No

ssr



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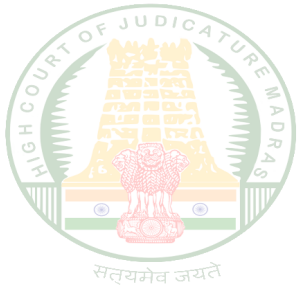
1.The Secretary,
Ministry of Power
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Rafi Marg, New delhi- 110 001.

2.The Chief General Manager
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3.The Southern Regional Load Dispatch Centre
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Bangalore 560 009

4.PTC India Limited
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New Delhi 110 066

5.IL and FS Tamil Nadu Power Company Limited
(through its Chairman)
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