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W.A.No.3699 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.04.2025

DATE OF DECISION : 09.04.2025

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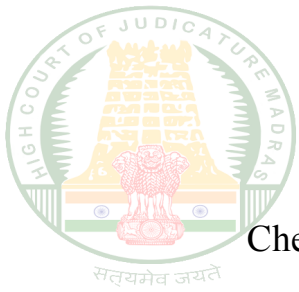
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE K.RAJASEKAR

W.A.No.3699 of 2024

The Tamil Nadu Generation and
Distribution Corporation Limited (TANGEDCO)
represented by the Chief Financial Controller
Regulatory Cell, 7th Floor
NPKRR Maaligai,
144, Anna Salai
Chennai 600 002 .. Appellant

v.

1. The Ministry of Power
rep. by its Secretary
Union of India
Shram Shakti Bhawan
Rafi Marg, New Delhi 110 001
2. N.L.C. India Limited
rep. by its Chairman and Managing Director
No.135, E.V.R.Periyar High Road
Kilpauk



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Chennai 600 010

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3. N.L.C. India Limited
rep. by its General Manager/Commercial
No.135, E.V.R.Periyar High Road
Kilpauk
Chennai 600 010

.. Respondents

Memorandum of Grounds of Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 11.09.2024 passed in W.P.No.7519 of 2023.

For Appellant :: Mr.P.Chidambaram
Senior Counsel assisted by
Mr.D.R.Arun Kumar
Standing Counsel for TANGEDCO

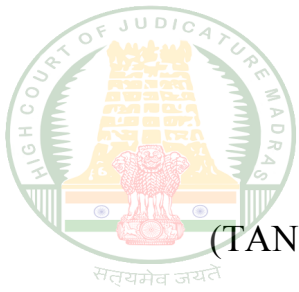
For Respondents :: Mr.Arvind P.Datar
Senior Counsel for
Mrs.Janane G
Ms.Krishna Laasya
and Mr.Abhinov Vaidhyanathan
for R2 & R3

JUDGMENT

S.M.SUBRAMANIAM,J.

Under assail is the writ order dated 11.09.2024 passed in W.P.No.7519 of 2023.

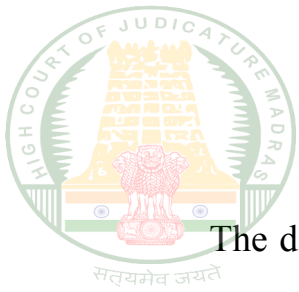
2. The Tamil Nadu Generation and Distribution Corporation Limited



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(TANGEDCO)/writ petitioner is the appellant before this Court. The writ petition came to be instituted challenging the demand uploaded in the PRAAPTI Portal asking the appellant to pay income tax to the tune of around Rs.184 Crores.

3. The learned Senior Counsel Mr.P.Chidambaram appearing on behalf of the appellant would mainly contend that the TANGEDCO is the major beneficiary with procurement of power from the second respondent to the tune of around 2,200 MW of thermal power, by virtue of various Power Purchase Agreements entered between the TANGEDCO and N.L.C. India Limited. It is mainly contended that the writ Court has relegated the appellant to approach the Central Electricity Regulatory Commission (for short, “the CERC”) for adjudication of issues. The CERC has no jurisdiction to adjudicate the income tax related issues and therefore the writ Court ought to have adjudicated the merits of the case. The appellant is paying the admitted arrears of several thousand crores of rupees and the DISCOMS like TANGEDCO have to face serious consequences towards regulation of power supply in case of non-payment of the disputed dues.



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The debit note raised by the second respondent through PRAAPTI Portal is unsustainable, on the ground that it is a time barred claim, no prior intimation or consultation or consent of the appellant has been made nor the details regarding the income tax arrears have been stated. The unilateral debit note raised in the PRAAPTI Portal is not only bereft of details, but the justification of the claim also is unknown to the appellant. In the absence of any such details, the liability cannot be fastened on the appellant and therefore the rules of natural justice also have been violated. The writ Court has not considered these aspects, but relegated the appellant to approach the CERC.

4. Mr.P.Chidambaram, learned Senior Counsel would submit that determination or re-determination of income tax now claimed after several years is unsustainable, in view of the fact that the appellant is paying the tariffs as per the debit note raised in lieu of the agreement. The sudden raising of debit note asking the appellant to pay income tax to the tune of around Rs.184 Crores is unsustainable and therefore the issues ought to have been adjudicated on merits by the writ Court.



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WEB COPY 5. To substantiate the said claim, the appellant relied on Section 79(1)(a) & (f) of the Electricity Act, 2003. Accordingly, the functions of Central Commission under clause (a) of sub-section (1) of Section 79 is to regulate the tariff of generating companies owned or controlled by the Central Government. Clause (f) of sub-section (1) of Section 79 stipulates that the Central Commission shall adjudicate upon issues involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) and to refer any dispute for arbitration. Income tax disputes are not falling under any of the subject under Section 79 of the Electricity Act and therefore the CERC lacks jurisdiction. Since the CERC has no jurisdiction, the writ petition under Article 226 of the Constitution is maintainable and thus the finding of the writ Court that the writ petition is not entertainable is perverse. In support of the said contention, the judgment of the Hon'ble Supreme Court in the case of *Andhra Pradesh Power Coordination Committee and others v. Lanco Kondapalli Power Limited and others*, (2016) 3 SCC 468 has been relied upon. In paragraph-30, the Apex Court observed that “In the absence of any



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provision in the Electricity Act creating a new right upon a claimant to claim even monies barred by law or limitation, or taking away a right of the other side to take a lawful defence of limitation, the Court was persuaded to hold that in the light of nature of judicial power conferred on the Commission, claims coming for adjudication before it cannot be entertained or allowed if it is found legally not recoverable in a regular suit or any other regular proceeding such as arbitration, on account of law of limitation.”

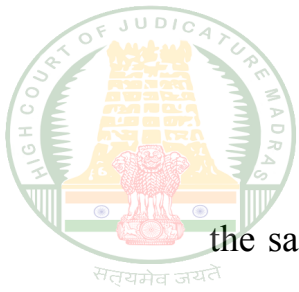
6. The learned Senior Counsel Mr.Arvind P.Datar appearing on behalf of the N.L.C. India Limited would oppose by stating that the powers of the Central Commission is traceable. Thus the writ Court is right in relegating the appellant to approach the CERC. The Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2001 was notified on 26.03.2001 and came into force with effect from 01.04.2001. As per clause 2.12 of the said Regulations, tax on income from core activity of the generating company, if any, is to be computed as an expense and shall be recoverable by the generating company from the beneficiaries. Thus the second respondent is well within its powers to claim income tax paid by it.



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In the present case, the N.L.C. India Limited availed the beneficial one time scheme announced by the Income Tax Department and settled the income tax demands to the Department and thereafter raised the said income tax claim by uploading the same in the PRAAPTI Portal. Thus there is no infirmity. As per the agreement between the appellant and the second respondent, the appellant is liable to pay income tax and on account of pendency of disputes, delay occurred and therefore the appellant cannot raise a ground relating to limitation. Several cases were pending before the Courts disputing the income tax claim made by the Department and the Board of Directors of the second respondent company has taken a decision to settle the income tax by availing the beneficial one time scheme and thereafter the income tax paid is claimed from the beneficiaries as per the agreement and thus the present writ appeal is to be rejected.

7. It is also contended that the CERC notified the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 on 26.03.2004. As per clause 10 of the 2004 Regulations also, the appellant is liable to pay income tax and the second respondent is entitled to recover



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the same. Therefore, the CERC is empowered to adjudicate the income tax dispute also, as tax is a component of tariff and thus it cannot be separated.

Thus the writ Court is right in relegating the appellant to approach the CERC for adjudication of issues.

8. Heard the rival submissions made between the parties to the lis on hand.

9. The only issue to be considered is whether the CERC has jurisdiction to adjudicate upon the income tax related issues under the head of 'tariff' under Section 79 of the Electricity Act, 2003 or not?

10. To trace out the jurisdiction, Section 79(1)(a) of the Electricity Act stipulates that the Central Commission shall regulate the tariff of generating companies owned or controlled by the Central Government. Section 178 of the Electricity Act confers power of Central Commission to make regulations. The CERC, in exercise of the powers conferred under Section 178 of the Electricity Act, notified the Central Electricity Regulatory



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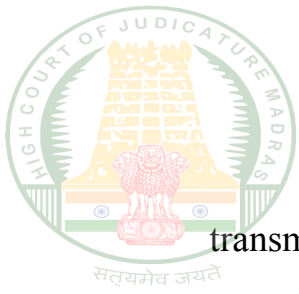
Commission (Terms and Conditions of Tariff) Regulations, 2004 on 26.03.2004 and the said Regulations came into force on 01.04.2004. Clause

10 of the said Regulations reads as under:-

“10.Recovery of Income-tax and Foreign Exchange Rate Variation: Recovery of Income-tax and Foreign Exchange Rate Variation shall be done directly by the generating company or the transmission licensee, as the case may be, from the beneficiaries without making any application before the Commission.

Provided that in case of any objections by the beneficiaries to the amounts claimed on account of income-tax or Foreign Exchange Rate Variation, the generating company or the transmission licensee, as the case may be, may make an appropriate application before the Commission for its decision.”

11. As per the above provision, the second respondent is entitled to recover income tax and foreign exchange rate variation from the beneficiaries, without making any application before the Commission. However, in case of any objection by the beneficiaries to the amounts claimed on account of income tax, the generating company or the



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transmission licensee, as the case may be, may make an appropriate application before the Commission for its decision.

12. In the present case, the second respondent-N.L.C. India Limited filed Petition No.135/MP/2023 under Section 79(1)(a) and (f) of the Electricity Act, 2003 and the CERC disposed of the petition on 10.07.2023 observing as follows:-

“8. The interim orders of the Hon’ble High Courts, as aforesaid, are still continuing. Further, the main prayer of the Writ Petitioners, for a declaration that the debit notes generated by the Petitioner (pertaining to income tax paid under the Scheme) are illegal and contrary to the 2014 Tariff Regulations, and to set aside the same, are pending consideration by the Hon’ble High Courts, as stated above. In this background, the prayer of the Petitioner, in the present Petition, seeking directions on the Respondent Discoms, to pay the respective income tax liability (raised as per debit notes), is, in our view, presently not maintainable, since the prayers in the petition cannot be adjudicated at this stage. Accordingly, we are inclined to dispose of the present petition. We, however, grant liberty to the Petitioner to approach this Commission for appropriate reliefs(s), on this



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count, after disposal of or any decision by the Hon'ble High Courts, in the writ petitions, as aforesaid, and the same will be considered in accordance with law. We also direct that the filing fees paid in respect of this Petition shall be adjusted against the Petition, if any, to be filed by the Petitioner, in terms of the liberty granted above.”

The CERC has neither adjudicated the issues on merits nor decided the same. The petition was disposed of at the admission stage granting liberty to the second respondent-N.L.C. India Limited to approach the CERC after disposal of or any decision in the writ petitions which are all pending before various High Courts. Therefore, the CERC has held that the petition though maintainable, granted liberty to the second respondent to file the petition after disposal of the writ petitions pending before various High Courts.

13. Pertinently, Appeal No.49 of 2010 filed between the Tamil Nadu Electricity Board and N.L.C. Limited has been decided by the Appellate Tribunal for Electricity on 10.09.2010. Since it is between the same parties, it is useful to extract the relevant findings of the Appellate Tribunal, as follows:-



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“26. The first issue is relating to the jurisdiction to go into the money claims. The question is whether the Central Commission has the inherent jurisdiction to adjudicate upon the money claim. According to the Appellant, the Central Commission being a creation of a statute is bound by the provisions of the Electricity Act, 2003 and its jurisdiction is limited to the extent spelt out in section 79 of the Electricity Act, 2003 and the present dispute which falls outside the purview of the section 79 of the Electricity Act could be adjudicated upon only by the civil court and not by the Central Commission.

29. As per these decisions, where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution. In fact, clause 1.7 of the Regulations 2001 empowers the generating company for recovery of Income Tax from the beneficiaries even without filing a petition before the Central Commission. If any objection is raised by the beneficiary with regard to quantum of the amount by way of reimbursement of income tax, the generating utility may file an appropriate petition before the



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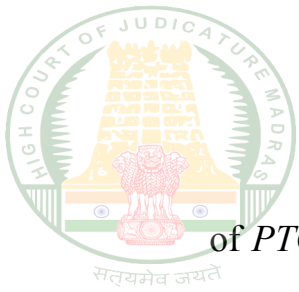


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Central Commission for recovery. Thus, the right of the Corporation to file a petition for reimbursement of income tax before the Central Commission where the beneficiary omitted to make a reimbursement of income tax as due, is a statutory right available to the Corporation under Regulations. It, therefore, follows that the Central Commission possesses the right not only to entertain such an application but also dispose the same in accordance with law by doing such acts which are necessary for its execution.”

In paragraph-31, the Appellate Tribunal reiterated that the reimbursement of income tax by the beneficiary is a part of the power tariff. Clause 1.7 of the 2001 Regulations and clause 10 of the 2004 Regulations are also relied upon for the purpose of arriving at a conclusion that the generating company may file an appropriate application before the CERC if the generating company is unable to recover the income tax from the beneficiary.

14. In the present case, the appellant has not challenged the Regulations as ultra vires. Therefore, the agreement entered into between the appellant and the second respondent based on the above Regulations are binding. The Constitution Bench of the Hon'ble Supreme Court in the case



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of *PTC India Limited v. CERC, JT 2010 (3) SC 1* held that the Commission

has the competence and jurisdiction to enforce the regulation duly promulgated by the Central Commission and also to adjudicate upon the dispute involving a generating company and the transmission licensee.

15. On behalf of the appellant, it is contended that after the 2004 Regulations, there are some changes in the subsequent Regulations notified on expiry of five years period. Since changes have been made in the subsequent Regulations, these changes are also to be taken into consideration. However, it is not in dispute that the claim for recovery of income tax to be done directly by the generating company from the beneficiaries, is not taken away by the subsequent Regulations. Therefore, the second respondent is empowered to raise the demand through PRAAPTI Portal and in the event of any objection by the TANGEDCO, then the generating company has to approach the CERC for adjudication of issues. Therefore, the rules of natural justice have no role to play at this juncture, since the appellant would get an opportunity to adjudicate all the issues including limitation, re-determination of tax etc., before the CERC in the



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petition, if any, filed by the generating company.

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16. In the present case, the generating company raised the claim of income tax to the tune of around Rs.184 Crores in the PRAAPTI Portal and the learned Senior Counsel Mr.Arvind P.Datar would submit that liberty has already been granted by the CERC to the generating company to file a fresh petition after disposal of the writ petitions pending before various High Courts. In the event of filing any such petition by the generating company before the CERC, the appellant would get ample opportunity to adjudicate all the issues including the issues relating to re-determination of tax, limitation, etc. Therefore, the appellant will be getting an opportunity to defend their case before the CERC and thus the writ Court has rightly relegated the parties to approach the CERC.

17. Further it is stated that on account of raising of debit note/invoice to the tune of Rs.184 Crores towards income tax, the Power Grid connectivity of TANGEDCO would not be disturbed and rather the generating company would approach the CERC for adjudication of issues in



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order to determine the liability. In view of the said submission, the apprehension of the appellant that there is a possibility of electricity crisis on account of disconnection throughout the State need not be considered. Since the income tax demand is relating to several assessment years, the issues are to be determined and merely on the ground of non-payment of income tax arrears to the tune of Rs.184 Crores, the respondents cannot effect disconnection of electricity, which would cause great prejudice to the appellant.

18. Moreover, the power of CERC is traceable, in view of Sections 79 and 178 of the Electricity Act and under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations. Income tax claim is a component of tariff and therefore the CERC is empowered to adjudicate the tax related issues, which is falling under Section 79(1)(a) of the Electricity Act. Thus the power of CERC is traceable and the petition already filed by the N.L.C. India Limited was disposed of merely on the ground that the writ petitions are pending before various High Courts. Pertinently, liberty was granted to the second respondent to file a fresh



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petition. That being so, the apprehension of the appellant is unnecessary and the TANGEDCO is at liberty to participate in the process of adjudication, if any petition has been instituted by the generating company and resolve the issues in the manner known to law.

19. Beyond the grounds, disputed facts of this nature require elaborate adjudication by the CERC. The High Court may not be in a position to conduct roving enquiry, since it requires adjudication of facts with reference to the documents and evidences. Even under the scheme of the Electricity Act and the Regulations framed by the CERC, tax related claims are the components of tariffs and thus the writ Court is right in relegating the parties to approach the CERC for effective adjudication and to resolve the issues in the manner known to law. In the event of filing any petition by the generating company, the CERC is requested to dispose of the same by affording opportunity to the parties, as expeditiously as possible, considering the fact that the income tax claim is relating to several assessment years and the claim is pending for long period.



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20. With the aforesaid observations, the writ appeal stands disposed

of. Consequently, C.M.P.Nos.29242, 29247 of 2024, 214 and 4088 of 2025 are closed. No costs.

Index : yes

Neutral citation : yes

(S.M.S.,J.) (K.R.S.,J.)

09.04.2025

SS

To

1. The Secretary to Union of India
Ministry of Power
Shram Shakti Bhawan
Rafi Marg, New Delhi 110 001
2. The Chief Financial Controller
Tamil Nadu Generation and
Distribution Corporation Limited (TANGEDCO)
Regulatory Cell, 7th Floor
NPKRR Maaligai,
144, Anna Salai
Chennai 600 002
3. The Chairman and Managing Director
N.L.C. India Limited
No.135, E.V.R.Periyar High Road
Kilpauk
Chennai 600 010
4. The General Manager/Commercial
N.L.C. India Limited



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S.M.SUBRAMANIAM,J.
AND
K.RAJASEKAR,J.

SS

Judgment in

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09.04.2025