

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 302 of 2016

Dated : 14th May, 2025

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

Union of India; Through Southern Railway

Represented through Deputy Chief Electrical Engineer (TRD),
Office of the Chief Electrical Engineer,
Southern Railway, 7th Floor,
NGO Annex, Park Town,
Chennai – 600003
Email- cede@sr.railnet.gov.in

... Appellant

Versus

1. Tamil Nadu Electricity Regulatory Commission

19-A, Rukmini Lakshmipathy Salai,
Egmore, Chennai - 600008

2. The State of Tamil Nadu

Represented through the Secretary to Government,
Energy (A2) Department,
Fort St. George,
Chennai - 600009

3. Tamil Nadu Electricity Board

Represented through the Chairman,
Tamil Nadu Generation and Distribution Corporation
NPKRR Maligai, Old No. 800/ New No. 144,
Anna Salai, Chennai – 600002

4. The Director Finance

Tamil Nadu Generation and Distribution Corporation
NPKRR Maligai, Old No. 800/ New No. 144,
Anna Salai, Chennai - 600002

... Respondents

Counsel for the Appellant(s) : Sushil Raaja
Anand K. Ganesan
Swapna Seshadri
Kriti Soni
Aishwarya Subramani
for App. 1

Counsel for the Respondent(s) : Sethu Ramalingam
for Res. 1

Amit Anand Tiwari Ld. Sr. Adv.
Anusha Nagarajan
For Res. 3

Amit Anand Tiwari Ld. Sr. Adv.
Anusha Nagarajan
For Res. 4

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. Order dated 23rd February, 2016 passed by 1st Respondent – Tamil Nadu Electricity Regulatory Commission (herein after referred to “the Commission”) has been assailed in this appeal by the Appellant. Vide the said order, the Commission has declined to re-visit the tariff fixed by Government of Tamil Nadu for the period between 1st December, 2001 to 15th May, 2003 under the Tamil Nadu Revision of Tariff Rates on Supply

of Electrical Energy Act, 1978 (in short “1978 Tamil Nadu Act”) saying that it does not have the power to re-visit the tariff for the said period as the same is prior to 10th June, 2003 on which date Section 62 of the Electricity Act, 2003 dealing with determination of tariff and Section 64 dealing with the procedure for tariff order, came into force. According to the Commission, these legal provisions do not have retrospective effect so as to enable it to re-visit the tariff already fixed by the Government of Tamil Nadu for the Appellant vide the G.O.M No. 95 of 2001 dated 28th November, 2001.

2. It would be apposite, at first, to state the facts and circumstances in which the instant appeal has arisen.
3. The 1978 Tamil Nadu Act was enacted by the Government of Tamil Nadu on 23rd February, 1978, Section 4 of which empowered the Government of Tamil Nadu to amend the schedule or tariff rates applicable for supply of electricity by Tamil Nadu Electricity Board within the State.
4. The Appellant – Southern Railway is availing power supply from 4th Respondent – Tamil Nadu Generation and Distribution Corporation (TANGEDCO in short) for electric traction purposes to various electrical supply points over the State of Tamil Nadu. During the year 2001-02, the

Appellant availed power supply from erstwhile Tami Nadu Electricity Board for traction through 17 Traction Sub-stations located in Chennai and Salem divisions.

5. 25 KV AC Electric Traction is in existence in Tamil Nadu since 1964 and Government of Tamil Nadu had offered concessional tariff for Railway Traction during initial electrification phase from 1964 to 1982. The concessional tariff was withdrawn by the Government from the month of May, 1982 onwards and merged railway traction tariff with HT industrial tariff.

6. On 2nd July, 1998, the Electricity Regulatory Commission Act, 1998 was passed by the Parliament.

7. The Government of Tamil Nadu established the Tamil Nadu Electricity Regulatory Commission on 17th March, 1999 through G.O. No. 58 (Energy) but the Commission was not functional due to non-appointment of all the required number of members. It became fully functional only on 17th June, 2002.

8. On 28th November, 2001, the Government of Tamil Nadu issued G.O.M. No. 95 of 2001 as the tariff revision order under Section 4 of 1978 Tamil Nadu Act, thereby revising the tariff schedule for various categories of consumers of electricity. The order revised the tariff w.e.f. 1st

December, 2001 and introduced a separate category for railway traction under HT tariff I-B as mentioned hereunder :-

High Tension Tariff-I-B-Traction

<i>Particulars</i>	<i>With Effect from 01.12.2001</i>	
<i>Area</i>	<i>Energy Charges (Rs./Unit)</i>	<i>Demand Charges (Rs. KVA/month)</i>
<i>Chennai Metropolitan</i>	<i>4.70</i>	<i>Nil</i>
<i>Non-Metropolitan</i>	<i>4.60</i>	<i>Nil</i>

9. Being aggrieved by the increase in tariff rates by the said G.O. M. No. 95 of 2001, the Appellant assailed the same before the Madras High Court by way of Writ Petition No. 6852 of 2002. The High Court stayed the operation of the said G.O.M. in so far as it related to fixation of tariff in respect of supply of electricity to Southern Railways i.e. the Appellant herein for electric traction till the disposal of the Writ Petition.

10. Meanwhile, some other categories of consumers also challenged the said G.O.M. No. 95 of 2001 before the Madras High Court by way of various writ petitions, which were dismissed vide order dated 14th June, 2002, thereby upholding the legality and validity of the said G.O.M. The judgement of the High Court covers both the aspects namely, the power

of Government of Tamil Nadu to issue the G.O.M. as well as the quantum of tariff and it was observed that there had been necessity to revise the tariff of electrical energy upwards to make the electricity supply financially viable. It was also made clear in the judgement that future revision of electricity tariff shall be done only by the Commission.

11. In the same year 2002, as many as 245 revision petitions had been filed before the Commission by various HT consumers seeking revision of HT tariff fixed vide the G.O. M. No. 95 of 2001 dated 28th November, 2001 on various grounds. These petitions were heard by the full bench of the Commission and were dismissed vide order dated 31st October, 2002 holding that the Commission had no power to review the said G.O.M. No. 95 of 2001 in relation to quantum of tariff and only had jurisdiction to revise future power tariff under the Electricity Regulatory Commission Act.

12. The said order dated 31st October, 2002 of the Commission was assailed before the Madras High Court in a batch of Civil Misc. appeals being CMA No. 2298 of 2002 and batch, which were dismissed vide order dated 28th November, 2002 while relying upon the previous order dated 14th June, 2002.

13. On 20th December, 2002, the Hon'ble Supreme Court dismissed the SLP(C) No. 16810 of 2002 filed against the order dated 14th June, 2002 of

Madras High Court observing that the Commission had already upheld the tariff fixed vide order dated 31st October, 2002 in the batch of 245 revision petitions.

14. SLP bearing No. 3079-3084 of 2003 filed against the order dated 28th November, 2002 of the Madras High Court were dismissed by the Hon'ble Supreme Court vide order dated 24th January, 2005.

15. Meanwhile, the Commission passed its 1st tariff order on 15th March, 2003.

16. On 24th January, 2005, the Hon'ble Supreme Court dismissed another SLP bearing No. 17940 of 2002 in which also the validity of G.O.M. No. 95 of 2001 dated 28th November, 2001 was challenged.

17. The Writ Petition No. 6852 of 2002 filed by the Appellant before the Madras High Court came to be disposed off on 28th March, 2013 relegating the parties to the Commission for suitable orders as the Commission had started functioning by then. We find it profitable to extract the relevant portion of the said order of the High Court hereunder:-

“6. From the perusal of the entire papers, it is seen that the impugned G.O. has been issued against the Petitioner Southern Railway by enhancing the tariff rate. It is also seen that dispute period is only from 01-12-2001 to 15-05-2003. It appears that similar consumer, namely, Coimbatore Stock Exchange Limited, has challenged the tariff rate before the Hon'ble Supreme Court and the Hon'ble Supreme Court observed as follows:-

"The tariff determined for the Railways is in conformity with the demand made by it and we do not find any error in the impugned judgment whereby the High Court, rejected their grievance in the matter of fixation of tariff."

7. Since the Tamil Nadu Electricity Regulatory Commission (the third Respondent) is now functioning which is the competent authority to decide the disputed tariff both the parties are directed to approach the third Respondent, namely, the Tamil Nadu Electricity Regulatory Commission, who, in turn, shall hear the objections from the party concerned and pass suitable orders.

8. It is represented that a sum of Rs. 112 crores is due from the Petitioner. From the perusal of the entire papers and after hearing the submissions made by either side, it is clear that the disputed amount is only Rs.37 crores. Therefore, the Petitioner is directed to pay a sum of Rs. 18 crores to the Respondent Board within a period of four weeks from the date of receipt of a copy of this order".

18. Accordingly, the Appellant approached the Commission by way of petition bearing MP No. 19 of 2014 for revision of tariff for Railway Traction for the disputed period from December, 2001 to March, 2003. The petition has been dismissed by the Commission vide Impugned Order dated 23rd February, 2016 holding as under :-

"7.6 The Electricity Act, 2003 (Central Act 36 of 2003) got the asset of President of India on 26-05-2003. As per the Notification S.O.669 (E) date 10th June 2003, published in the Gazette of India, extra, Pt. II. sec 3(ii) dated 10th June 2003 sections 1 to 120 and sections 122 to 185 of the said Act were brought into force on 10-06-2003. As such section 62 mandating the Commission to determine the tariff in accordance with the provisions of the

Central Act 36 of 2003 and section 64 providing for the procedure to be followed by the Commission in the matter of Tariff Order were brought into force only on the said date, namely, 10-06-2003. The Electricity Regulatory Commission's Act 1998 (Central Act 14 of 1998) has inter-lia been repealed vide section 185 (1) of the said Electricity Act, 2003.

7.7. Thus the legal position as existed when the aforesaid Revision Petitions were filed remains the same when the present Petitioner has filed the M.P except for the fact that 1998 Regulatory Commission's Act stands repealed and replaced by 2003 Electricity Act. As already stated the provisions for fixation of tariff and the procedure to be followed therefor in the 2003 Act were brought into force by the Government of India only on 10-06-2003. Further, the said provisions do not have retrospective effect so as to enable the Commission to revisit the tariff already fixed by the GOTN for the Southern Railway vide the above mentioned G.O. that too through a different State enactment.

7.8. Since the present M.P. is similar to the Revision Petitions already dealt with by the Full Commission wherein orders were passed on 31-10-2002, the findings rendered by the Commission in the said Revision Petitions shall apply Mutttatis-Muttandis to the case of the present Petitioner also.

7.9. In the above circumstances, the Commission finds that it does not have the power to revisit the tariff that has been fixed by the GOTN in respect of the Southern Railways since the dispute period of 01-12-2001 to 15-05-2003 is anterior to 10-06-2003 on which date sections 62 dealing with determination of tariff and section 64 dealing with procedure for tariff order of the Electricity Act, 2003 came into force.

In view of the above finding, the M.P. No. 19 of 2014 is dismissed without cost.”

19. In doing so, the Commission has heavily relied upon its previous order dated 31st October, 2002 passed by its full bench in above mentioned 245 Revision Petitions in which it was held as under :-

"As stated by the Learned Addl. AG, the Hon'ble High Court in judgement reported in 2002 (3) CTCP1 has duly taken into account the absence of functional role of this Commission during the relevant time when the impugned G.O Ms. No. 95 was issued by the Government of Tamil Nadu. The following portion of the judgement of Hon'ble High Court in paragraph 13 would be relevant. "While there had been inaction on the part of the successive Governments in not making TNERC functional by exercising the powers conferred under the Central Act, we cannot ignore the public interest involved as there had been necessity to revise the tariff of electrical energy by upward revision to make the electricity supply financially viable."

*"At paragraph 15 of the judgement in the opening sentence the Hon'ble High Court has made it clear that future revision of power tariff shall be done only by TNERC. The expression **"future power tariff revision"** occurring in the paragraph 15 of the judgement will indicate that this Commission can exercise only future power tariff revision under the ERC Act and that this Commission has nothing to interfere with the past power tariff revision already made in G.O. M. No. 95 by the State Government in terms of section 4 of the Tamil Nadu Act 1 of 1979.*

It may be stated that as rightly contended by the Leamed Addl. Advocate General during the course of his argument, the judgement of Hon'ble High Court referred to above will impliedly cover the quantum of tariff also in view of the fact that the challenge made before the Hon'ble High Court is not only in regard to the power of the State Government to fix power tariff but also in regard to the quantum of escalation as being arbitrary and unreasonable. In

this connection, it may be stated that the contention of the Learned Addl. AG, that the order of the Hon'ble High Court which has already reviewed the impugned G.O. Ms. No. 95, cannot be reviewed again by this Commission has got force and the Commission is in agreement with this view.

It may be further pointed out that under section 12 of ERC Act read with section 23 this Commission has been conferred with the powers of a Civil Court while discharging its functions under sections 22 and 29 of the ERC Act. According to section 12 (f) of the ERC Act, this Commission has been conferred with the powers of a Civil Court only to review its decisions, directions and orders and the said power does not extend to review the orders issued in impugned G.O. Ms. No.95 passed by the State Government. The contention put forth by Learned Senior Counsel Thiru R. Thiagarajan that by virtue of General Clauses Act, this Commission has got the power to review G.O. Ms. No. 95 is not acceptable in view of the fact that the notification fixing the tariff rates was issued only by the State Government and not by this Commission and only the State Government by virtue of the General Clauses Act, can review its orders. In this connection, the contention of the Learned Addl. AG that the validity of G.O. Ms. No.95 can be tested only with reference to the provisions of Tamil Nadu Act 1 of 1979 under which it was issued and that it cannot be tested with reference to the provisions of ERC Act has got force and it is accepted by this Commission. It may be stated that this Commission while determining tariff under the provisions of sections 22 and 29 of ERC Act, cannot review or revise the tariff rates fixed by State Government under Tamil Nadu Act 1 of 1979 as the power to determine the tariff as conferred upon this Commission under sections 22 and 29 of ERC Act does not extend to reviewing or revising the orders passed by the State Government under a different statute. Further it may be stated that if this Commission seeks to review the G.O. Ms. No.95 which has been held to be valid by the Hon'ble High Court in its judgement referred to above, then, it would amount to re-writing the

judgement of Hon'ble High Court itself as rightly pointed out by the Leamed Addl. AG. Moreover, such a course of action could even amount to contempt of the Hon'ble High Court.

As rightly pointed out by the Leamed Addl. AG that the Hon'ble Division Bench of Hon'ble High Court, Madras in the case of Shanmugaraja Spinning Mills (P) Ltd. vs. The Superintending Engineer (i/c) Periyar Electricity System, Erode schedule of Tamil Nadu Act 1 of 1979 which relates to the fixation of tariff and that the said power to amend the schedule to the Act is a conditional legislation. In view of the said decision of the Hon'ble High Court as well as the Judgement of the High Court, Madras reported in 2002 (3) CTC P1, this Commission has no power to review the G.O. Ms. No. 95 in so far as it relates to quantum of tariff.

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conditional legislation. In view of the said decision of the Hon'ble High Court as well as the Judgement of the High Court, Madras reported in 2002 (3) CTC P1, this Commission has no power to review the G.O. Ms. No. 95 in so far as it relates to quantum of tariff under the provisions of sections 22 and 29 of ERC Act, cannot review or revise the tariff rates fixed by State Government under Tamil Nadu Act 1 of 1979 as the power to determine the tariff as conferred upon this Commission under sections 22 and 29 of ERC Act does not extend to reviewing or revising the orders passed by the State Government under a different statute. Further it may be stated that if this Commission seeks to review the G.O. Ms. No.95 which has been held to be valid by the Hon'ble High Court in its judgement referred to above, then, it would amount to re-writing the judgement of Hon'ble High Court itself as rightly pointed out by the Learned Addl. AG. Moreover, such a course of action could even amount to contempt of the Hon'ble High Court.

As rightly pointed out by the Learned Addl. AG that the Hon'ble Division Bench of Hon'ble High Court, Madras in the case of **Shanmugaraja Spinning Mills (P) Ltd. vs. The Superintending Engineer (i/c) Periyar Electricity System, Erode (2002 I M.L.J.285)** has held that the State Government has the power to amend the schedule of Tamil Nadu Act 1 of 1979 which relates to the fixation of tariff and that the said power to amend the schedule to the Act is a conditional legislation. In view of the said decision of the Hon'ble High Court as well as the Judgement of the High Court, Madras reported in 2002 (3) CTC P1, this Commission has no power to review the G.O. Ms. No. 95 in so far as it relates to quantum of tariff.

We are inclined to agree with the contention of the Learned Addl. AG that the Supreme Court's decision in West Bengal Commission's case is not applicable to the instant case for the following reasons namely (1) firstly in the State of West Bengal there is no Act similar to Tamil Nadu Act 1 of 1979 under which the State Government has fixed the tariff by the impugned G.O. Ms.No.95; (2) secondly in the case decided by the Hon'ble Supreme Court,

the West Bengal Electricity Regulatory Commission (WBERC) was fully functional and the tariff was fixed by the WBERC under the ERC Act itself and that the Hon'ble High Court, Calcutta has denied this power of the WBERC to fix the tariff under the ERC Act whereas in the instant case, the Hon'ble High Court has held that this Commission was not made functional during the relevant time when the G.O. Ms. No.95 was issued and that the Hon'ble High Court has made it clear that "future power revision" should be made only by this Commission under the ERC Act and that the Hon'ble High Court Madras has not denied the power of this Commission to fix the tariff under the ERC Act in future and (3) thirdly in the instant case the main point at issue is whether this Commission has got the power to review an order fixing the tariff passed by the State Government under another statute whereas the point at issue in the case decided by the Hon'ble Supreme Court is different."

20. It appears that the Appellant had initially challenged the impugned order in the Madras High Court by way of Writ Petition No. 15427 of 2016 but the same was dismissed vide order dated 27th April, 2016 granting liberty to the Appellant to approach this Tribunal. Accordingly, the Appellant has approached this Tribunal by way of the instant appeal.

21. We have heard Learned Counsel for the Appellant as well as Learned Counsel for Respondent No. 1 and Learned Senior Counsel appearing for Respondent Nos. 3 & 4. We also perused the written submissions filed by the Learned Counsels.

22. The issue which arises for our consideration and adjudication is whether the Commission was correct in holding that it does not have

power to re-visit the tariff fixed by the Government of Tamil Nadu vide G.O.M. No. 95 of 2001 in respect of the Appellant for the period for 1st December, 2001 to 15th May, 2003.

23. We may note that prior to the enactment of Electricity Act, 2003, supply of electricity in India was being governed by Indian Electricity Act, 1910, Electricity (Supply) Act, 1948 and the Electricity Regulatory Commission Act, 1998. It was in order to consolidate the laws relating to the generation, transmission, distribution, trading and use of electricity that the Parliament thought it necessary to enact the Electricity, Act, 2003. Whereas the Electricity Regulatory Commission's Act, 1998 created Central Electricity Commission and also enable the State Governments to create State Electricity Regulatory Commissions, the Electricity Act, 2003 envisaged constitution of Central Electricity Authority, Regulatory Commissions as well as establishment of Appellate Tribunal. The Government intended the tariff determination to be carried on in an independent and professional manner by an expert and independent body i.e. the Regulatory Commissions. It is pertinent to note here that except Section 121 which deals with the powers of Appellate Tribunal, all the provisions of the Electricity Act, 2003 came into force on 10th June, 2003.

24. Section 61 of the Electricity Act, 2003 specifies the terms and conditions for the determination of tariff by the Central Electricity Commission or State Electricity Commissions, as the case may be. Section 62 empowers the Commissions to determine tariff for supply, transmission, wheeling and retail sale of Electricity. Section 64 of the Act states the procedure to be followed by the Electricity Commissions for determination of tariff under Section 62 of the Act.

25. Therefore, w.e.f. 10th June, 2003, the power and jurisdiction to determine as well as regulate the tariff is with the Central/State Electricity Commissions.

26. In the instant case, as we have noted herein above even though the constitution of Tamil Nadu Electricity Regulatory Commission was notified by the Government of Tamil Nadu on 17th March, 1999 vide G.O. No. 50 (Energy) but the Commission was not functional due to non-appointment of requisite number of members. The Commission became fully functional only on 17th June, 2002. It is in these circumstances that the Government of Tamil Nadu, upon considering the need for revising tariff for various consumer categories, issued G.O.M. No. 95 of 2001 on 28th November, 2001 as a tariff revision order under Section 4 of the 1978 Tamil Nadu Act thereby revising the tariff schedule for various categories of consumers of

electricity including the Southern Railways i.e. the Appellant herein. Manifestly, in case the Commission had been fully functional in the year 2001, it would have been within the power and competence of the Commission to pass a tariff revision order. It is on account of the fact that the Commission was not fully functioning in the year 2001 due to non-appointment of requisite number of members, the Government of Tamil Nadu stepped in, in view of the power bestowed upon it under Section 4 of 1978 Tamil Nadu Act and issued G.O.M. No. 95 of 2001 thereby revising the tariffs.

27. We find it incongruous as well as discordant on the part of the Commission to say that it does not have power to re-visit the tariff fixed by the Government of Tamil Nadu vide G.O.M. No. 95 of 2001. Since the Commission had started functioning fully w.e.f. 17th June, 2002, it is only the Commission which can revise or re-visit or determine the electricity tariffs thereafter, even if, the tariffs had been fixed or revised by the Government prior to the date when the Commission became fully functional. Even though Sections 62 and 64 of the Electricity Act, 2003 came into force on 10th June, 2003, there is nothing in these two legal provisions to suggest that the Electricity Regulatory Commission cannot revise or re-visit the tariff determined or fixed prior to the said date. The

term “determination of tariff” used in Section 62 and Section 64 would necessarily take into its ambit any revision of tariff, either upwards or downwards, fixed prior to the coming into force these two sections.

28. The Commission appears to have totally mis-read and mis-construed the observation of the Madras High Court in its judgement imported as 2002(3) CTC 1 to the effect that “the future revision of power tariff shall be done only by Tamil Nadu Electricity Regulatory Commission”. The Commission’s view that “future power tariff revision” indicate that the Commission is competent to revise the tariff determined only under Electricity Regulatory Commission Act, 1998 and cannot interfere with the tariff determined in the past vide G.O.M. No. 95 of 2001 by the Government of Tamil Nadu under Section 4 of 1978 Tamil Nadu Act is neither consistent with the provisions of Electricity Act, 2003 nor tenable, legally or logically. The expression “future power tariff revision” clearly indicates the revision of tariff to be done in future, irrespective of the fact whether the tariff was previously determined under the provisions of Electricity Regulatory Commission Act, 1998 or under any other applicable law.

29. If, the view canvassed by the Commission in the impugned order is to be accepted, in that case, the Commission would not be competent to

issue any tariff order for the reason that every tariff order issued by the Commission even after 10th June, 2003 would impact or have bearing, in one way or the other, upon the tariff determined or fixed prior to 10th June, 2003 under any law applicable at the relevant time. That would never have been the intention of the Parliament while enacting the Electricity, Act, 2003.

30. It was argued on behalf of the Respondents that the issue regarding absence of power with the Commission to review the tariff fixed under 1978 Tamil Nadu Act was considered and affirmed in various judgements of the Madras High Court as well as Supreme Court which has attained finality and, therefore, the same cannot be re-opened now. The judgements cited in support of these submissions are :-

- (a) *Voice Consumer Care Council v. State of Tamil Nadu* (2002 (3) CTC 1)
- (b) *Citizen, Consumer & Civic Action Group v. State of Tamil Nadu & Ors.* (SLP (C) No. 16810/2002)
- (c) *J K Pharmachem Limited & Ors. v. Tamil Nadu Electricity Regulatory Commission & Ors.* (MANU/TN/2254/2002)
- (d) *Tamil Nadu Electricity Consumers Asson. V. State of Tamil Nadu & Ors.* (SLP No. 3079-3084 of 2003)
- (e) *Coimbatore Stock Exchange Ltd. v. The Tamil Nadu Electricity Regulatory Commission* (2003 (4) CTC 385)

(f) Coimbatore Stock Exchange Limited & Ors. V. Tamil Nadu Electricity Regulatory Commission & Ors. ((2014) 13 SCC 358)

31. We have carefully perused all these judgements. In all these cases, the Court was concerned with the power of Government of Tamil Nadu in issuing the G.O. No. 95 of 2001 thereby revising the tariff as well as the legality/validity of the said G.O. In none of these judgements, it has been held that the Commission did not possess power and jurisdiction to review or re-visit the tariff fixed by the Government of Tamil Nadu under 1978 Tamil Nadu Act. Learned Counsels appearing for Respondents have failed to point out any specific paragraph or sentence in any of these judgements where the power of the Commission to re-visit or revise the tariff fixed by the Government of Tamil Nadu 1978 Tamil Nadu Act was discussed and was negated. It is one thing to say that the Government of Tamil Nadu was competent to revise tariff vide G.O.M. dated 28th November, 2001 and the said G.O.M. is legally valid but it is another thing to say that the tariff fixed vide said G.O.M. cannot be revised by the Electricity Regulatory Commission.

32. Therefore, we are of the considered view that the Commission has erred in holding in the order dated 31st October, 2002 (passed in 245 revision petitions) and in the impugned order that it does not have power to re-visit the tariff determined prior to 10th June, 2003 under 1978 Tamil

Nadu Act. It was contended that the order dated 31st October, 2002 of the Commission has been affirmed by the Hon'ble Madras High Court in Civil Misc. Appeal Nos. 2298 of 2002 and batch J K Pharmachem Ltd. & ors. Vs. TNERC & ors. decided on 28th November, 2002 and, therefore, the view of the Commission that it can exercise only future power tariff revisions and cannot interfere with the tariff revisions done in the past by way of G.O.M. 95 of 2001 by the Government of Tamil Nadu, cannot be faulted with and has attained finality as the SLP filed against the said order dated 28th November, 2002 of the Madras High Court was dismissed by the Supreme Court on 24th January, 2005. We are unable to countenance the said submission made on behalf of the Respondents. We have perused the entire judgement dated 28th November, 2002 of the Madras High Court in J K Pharmachem case. Only following four points, which had been dealt by the Commission in the Order dated 31st October, 2002 were considered and discussed by the High Court also in the said judgement :-

"(a) Whether the Commission is competent to review G.O.Ms. No.95 Energy Department, dated 28-11-2001 in so far as it relates to quantum of tariff, and whether the judgment of the Hon'ble Supreme Court in West Bengal Electricity Regulatory Commission's case is applicable to the instant case and under

what authority of law the Commission is empowered to review the tariff already reviewed by the Hon'ble High Court;

(b) Whether the tariff fixed in G.O.Ms. No. 95 can be said to be in consonance with sections 22 and 29 of ERC Act so as to be valid in law, and whether the tariff rates in G.O.Ms. No. 95 can be said to be arbitrary and unreasonable:

(c) Whether the tariff fixed in G.O.Ms. No. 95 without hearing the consumers is in consonance with the principles of natural justice and in particular the principle of Audi Alteram Partem;

(d) Whether there is any need for constitution of Rating Committee as required under section 57-A of the Electricity Supply Act 1948 for fixing the tariff.”

33. The issue with regards to the competence of the Commissions to review or revise the tariff fixed by Government of Tamil Nadu was neither raised nor considered by the High Court in the said judgement.

34. We have already noted that the Appellant had initially assailed the revision of tariff effected by way of G.O. No. 95 of 2001 dated 28th November, 2001 in the High Court by way of Writ Petition No. 6852 of 2002. The High Court had even stayed the operation of G.O.M. in so far as it related to fixation of tariff in respect of supply of electricity to the Appellant. However, the Writ Petition was ultimately disposed off vide order dated 28th March, 2013 relegating the parties to the Commission for

suitable orders as the Commission had started functioning by then. We have already extracted the relevant portion of the High Court order in paragraph No. 17 herein above. Concededly, the Respondents have accepted the said order of the Madras High Court and did not impugn the same before the Hon'ble Supreme Court. Therefore, it was not open to the Commission to run contrary to the High Court order by saying that it does not have power to review or revise the tariff fixed under 1978 Tamil Nadu Act. It is true that the High Court or the Supreme Court cannot confer jurisdiction upon a court or a Tribunal if the law does not provide so. Reference can be made to the judgement of the Hon'ble Supreme Court in Chiranjilal Shrilal Goenka vs Jasjit Singh and Ors. 1993 2 SCC 507 and B. Chiranjirao and Ors. Vs. Union of India and Ors. 2001 SCC online CAL 882. However, these judgements are not applicable to the facts and circumstances of the instant case for the reason that the Commission had power and jurisdiction to review or re-visit the tariff fixed under 1978 Tamil Nadu Act and it was for this very reason that the Madras High Court, while disposing off the Writ Petition No. 6852 of 2002 of the Appellant, relegated the parties to the Commission for suitable orders.

35. Thus, we are unable to sustain the impugned order of the Commission. The same is hereby set aside. The Appeal stands allowed. The case is remanded back to the Commission for fresh decision on the merits of the contentions of the parties, which shall be rendered within six months from today positively after hearing the parties.

Pronounced in the open court on this 14th day of May, 2025.

(Virender Bhat)
Judicial Member

(Sandesh Kumar Sharma)
Technical Member (Electricity)

✓

REPORTABLE / NON-REPORTABLE
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