

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/11/2015

C O R AM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.32673 of 2015

S.Sivasubramaniam

...Petitioner

Vs

1. The Executive Engineer
Operation and Maintenance
Udumalai Distribution Circle
Tamil Nadu Electricity Generation
and Distribution Corporation
Negamam 642 120
Coimbatore District.

2. The Assistant Engineer
Operation and Maintenance
Kattampatti
Tamil Nadu Electricity Generation
and Distribution Corporation
Coimbatore District.

3. The Chairman
Tamil Nadu Electricity Board
Anna Salai
Chennai - 600 002.

...Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified mandamus calling for the records relating to the impugned cash demand made in Lr.No.EE/O&M/Negamam/Tech.1/Self-finance/Appln.No.790 dated 22/9/2015 issued by the first respondent and quash the same and consequently direct the respondents to grant electricity service connection to petitioner's borewell in S.No.349/1C of Malapalayam Village, Sulur Taluk, Coimbatore District within the time frame fixed by this Court.

For petitioner ..Mr.N.Manokaran

For respondents ..Mr.S.K.Rameshwar

O R D E R

With the consent of the learned counsel appearing for the parties, this writ petition is taken up for final disposal.

2. Heard Mr.N.Manokaran, learned counsel appearing for the petitioner and Mr.S.K.Rameshwar for the respondents.

3. The petitioner seeks for the issuance of a writ of certiorarified mandamus to quash the impugned demand notice dated 22/9/2015 and to direct the respondents to grant electricity connection to the petitioner's borewell in S.No.349/1C of Malapalayam Village, Sulur Taluk, Coimbatore District.

4. The undisputed facts are that the petitioner applied for an agricultural service connection under the self-finance scheme and his application was registered as Regn.No.13/05-06 on 28/4/2005 for the bore well in the land situated in S.F.No.349/1C, Malapalayam Village under RSFS 25,000/- scheme with payment of Rs.500/-. The petitioner had given an undertaking to pay the estimated cost under RSFS Rs.25,000/- scheme and on the basis of seniority, the petitioner's application was considered along with similar other application in the financial year 2015 - 2016. The estimate was prepared and notice was issued to the petitioner vide letter dated 22/9/2015 to pay the estimate charges of Rs.4,38,320/-, as per Rules prevailing in TANGEDCO.

5. This according to the respondents is the cost that will be incurred by the Board for establishing a new transformer. Admittedly, the petitioner is a small agriculturalist, owning an extent of 2.05 acres. The object of the self-financing scheme is to provide free agricultural service connection on condition that the petitioner would pay the estimated costs for drawing the lines to the well or the borewell.

6. The respondents had taken a stand that the existing transformer capacity of electricity load is 100 KVA in which only upto 100 HP can be loaded and service connections have been given to the consumers and if one more connection is given, transformer will fail and power supply to consumers will be affected frequently. It is further submitted that already service connections were given to the consumers for 97.5 HP load and hence the respondents could not make service connection through the above transformer to the petitioner load of 7.5 HP and therefore, they are unable to give service connection to the petitioner through the existing transformer.

7. Therefore, it is stated by the respondents that only after complete survey, they will decide to erect a new transformer with the capacity of 100 KVA/22KV in the nearby petitioner's land, in order to give service connection to the petitioner and only for that purpose, new transformer is to be erected and as per their Board Rules and Regulations, the petitioner is liable to bear the estimate charges and other incidental charges.

8. In the counter affidavit, it is further stated that no service connections under RSFS 25000/- scheme were effected overlooking petitioner's seniority. As per the seniority, the

petitioner is in serial No.11 out of 276 applicants. Under RSFS 25,000/- scheme, as many as 27 notices were issued, to pay the estimate cost and as on date, 12 such notices/applicants have paid the estimate amount and entered their readiness.

9. Further it is stated that the demand to deposit the estimated costs towards the petitioner's part of Rs.4,38,320/- is only according to agreed SFS terms and conditions which is very well known to the petitioner. The petitioner's application will be considered even if the estimate cost under RSFS category is not paid and the same application will be carried over to normal category entire cost of estimate will be borne by TANGEDCO.

10. Thus, the issue involved in this writ petition is whether the petitioner can be called upon to pay the costs or estimated costs of erecting the transformer.

11. Self-financing scheme promoted by the respondents is to provide free electricity supply for agricultural purpose as per the policy decision of the State Government. Self financing scheme did not state that the petitioner would be called upon to pay the cost of the transformer, as admittedly, it is a common facility not exclusively meant for the petitioner.

12. The reason assigned in the counter affidavit is that the existing transformer capacity of electricity load is 100 KVA through which only upto 100 HP can be loaded and service connections are given to the consumers for 97.5HP in the said transformer which is having a load of 100 HP and hence the respondents could not effect further service connection through the said existing transformer to service the petitioner's load of 7.5 HP. Further it is stated that only after complete survey, the Board has to either increase the load or make other alternative arrangements. The interpretation given to the term 'estimated costs' also includes the cost of the transformer is not a proper interpretation and not in consonance with the object of the scheme. In my view, 'estimated costs' as mentioned under self-financing scheme should be the cost which will be incurred by the Board to draw the lines from their supply point which can be a transformer or a pole to the petitioner's premises where the service connection has to be effected.

13. Assuming that the petitioner's bore well is situated in a remote area of his property and closest pole erected by the Electricity Board is at a far away distance, then there may be a justification in saying that the petitioner will have to bear the cost of additional poles to be erected in his land for drawal of the supply and pay for the materials. This demand would be justified as the supply line is drew for the exclusive use of a consumer.

14. However, in the instant case, the petitioner is burdened by the cost of erecting a transformer. The transformer being a common facility and the property of the Board, it is the Board which has to provide for the same, so as to carry forward

the objective of the scheme which has been announced by the Government. Therefore, the demand made on the petitioner towards the payment of cost of transformer is arbitrary, unsustainable and defeat the very object of the scheme.

15. The learned counsel appearing for the petitioner referred to the proceedings of CMD in his Proceedings No.325 dated 12/10/2012 and by the said proceedings approval was accorded for the proposal for adoption of revised diversity factor in the Distribution networks based on the decision taken in the Chief Engineer/Distribution review meeting conducted by CMD/TANGEDCO on 18/8/2012 in the Head Quarters.

16. By referring to clause 6.9, it is submitted that No service connection under SFS schemes shall be effected if the total load including or without proposed load exceeds unity of DF unless necessary loading is actually brought down as per the above mentioned procedure or cost borne by prospective consumer.

17. The proceedings dated 12/10/2012 was issued much after the petitioner's application was registered under the scheme which was on 28/4/2005. Therefore, whatever rights accrued to the petitioner on the date of registration of his application alone will be applicable as it is the self-financing scheme and the petitioner was assured that he may required to pay a sum of Rs.25,000/- or the estimated charge. Therefore, to rely upon the Board proceedings which was subsequently issued and to state that now the petitioner has to pay the costs of transformer would be a most unreasonable action on the part of the respondent Board.

18. Clause 27(2) of the Tamil Nadu Electricity Distribution Code, 2004 wherein it is stated that in respect of the agricultural category, this provision shall be governed by the directives issued by the Commission from time to time, on the basis of the guidance on this matter by the National Electricity Policy (as stipulated in sub section 4 under section 86 of the Act) and the policy directions in public interest given by the State Government under sub section (1) of section 108 of the Act.

19. The respondent Board has not placed on record any order passed by the Commission which would justify the action of the respondents in demanding the costs of the transformer. Therefore, reliance on Clause 27 (2) of the Supply Code does not in any manner advance the case of the respondents.

20. The Memorandum of the Member (Distribution) dated 14/2/1992 has been produced by the learned Standing Counsel for the respondent. This Memorandum deals with the manner in which the extension of supply to agricultural pumpsets and the manner in which estimation has to be done and the Memorandum also gives the form of the application to be submitted. This Memorandum dated 14/2/1992 is pursuant to the order passed in G.O.Ms.No.145 dated 30/1/1992. Paragraph 3 of the G.O., reads as follows:-

"The Government have carefully examined the proposal of the Tamil Nadu Electricity Board and hereby order that out of the target fixed for energisation of pumpsets 50% shall be energised as per the waiting list and in the remaining cases power connection may be given to the agriculturists who are willing to pay the actual cost of Rs.25,000/- whichever is higher. The agriculturists who pay the actual cost of Rs.25,000/- whichever is higher shall pay electricity consumption charges at the rate of Rs.150/- (Rupees One hundred and fifty only) per annum to meet the operational cost of the Tamil Nadu Electricity Board.

21. On a reading of the above order passed by the Government, it shows that the agriculturists, who are willing to pay the actual cost of extension or Rs.25,000/- whichever is higher are entitled for supply of electricity. Such agriculturalists/applicants shall pay electricity consumption charges at the rate of Rs.150/- per HP per annum, to meet the operation cost of the electricity Board. The Government order does not authorise or empower the Board to recover the cost of establishment of common facilities such as transformer.

22. In the light of the above, this Court has no hesitation to hold that the impugned order, demanding the cost towards the establishment/erection of the transformer from the petitioner, who is an agriculturalist is wholly arbitrary and unreasonable.

23. The learned counsel appearing for the respondents further produced details of the applicants for agricultural service connection 2015 - 2016 under SFS @ Rs.25,000/- category in Negamam division in which the name of the petitioner finds place in S.No.11. From the said list produced by the respondent Board there is nothing to show that the applicants from 1 to 10 had already paid for the costs of the transformer. In any event, this Court having held that the expression 'estimated costs' as contained in the scheme can be interpreted only to mean the costs which would be incurred for the drawal of the lines to the well or the bore well from a common facility such as a pole or transformer and cannot include the costs of the transformer, which is a common facility, the impugned demand is not sustainable.

24. In the result, this writ petition is allowed and the impugned order passed by the first respondent is quashed and the respondents are directed to effect service connection to the

petitioner, within a period of eight weeks, from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.
mvs.

Sd/-
Assistant Registrar (Judicial)

/True Copy/

Sub-Assistant Registrar

To

1. The Executive Engineer
Operation and Maintenance
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Tamil Nadu Electricity Generation
and Distribution Corporation
Negamam 642 120
Coimbatore District.
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Operation and Maintenance
Kattampatti
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3. The Chairman
Tamil Nadu Electricity Board
Anna Salai
Chennai - 600 002.

+1 C.C. To MR.S.K.Rameshwar, Advocate in SR.NO.64784

+1 C.C. To MR.N.Manokaran, Advocate in SR.NO.64733

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PPA(CO)
sd : 11/12/2015

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