

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.12.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.982 of 2015 and
M.P.No.1 of 2015

- 1.The Chairman
Tamil Nadu Electricity Board,
Anna Salai, Chennai - 2.
- 2.The Assistant Engineer
Tamil Nadu Electricity Board,
The Nilgiris Electricity Board
Distribution Circle (O & M)
Nilgiris District.Appellants

Vs

T.VivekanandhanRespondent

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent against the order made in W.P.No.33995 of 2014 dated 07.01.2015.

Prayer in W.P.No.33995 of 2014:

Writ Petition filed under Article 226 of the constitution of India the issue a Writ of Mandamus directing the respondent the consider my application dated 14.11.2014 the issue three phase electricity connection under Tariff V for commercial purpose.

For Appellants : Mr.C.Manishankar
Additional Advocate General
for Mr.S.K.Rameshuwar

For Respondent : Mr.P.Wilson
Senior Counsel for
M/s.P.Wilson Associates

J U D G M E N T

(Judgment of the Court was made by K.K. SASIDHARAN,J.

The writ petition filed by the respondent for a direction to the Tamil Nadu Electricity Board to consider his application to provide three phase electricity connection under Tariff V for commercial purpose was allowed by the learned single Judge. The order is under challenge at the instance of the Electricity Board primarily on the ground that for such conversion, No Objection Certificate from the Forest Department is necessary as the electricity line has to pass through the lands covered under Section 17 of the Gudalur Janmam Estates (Abolition and Conversion into Ryotwari Act 1969).

2. The learned Additional Advocate General contended that the writ petition was allowed by the learned single Judge without even permitting the appellants to file counter affidavit. According to the learned Additional Advocate General, the fact that Government of Kerala has given no objection alone cannot be a ground to direct the electricity department in the State of Tamil Nadu to provide three phase electricity connection. The learned Additional Advocate General further contended that permission from the Forest Department is a statutory requirement. It was further contended that the existing 17 poles should be replaced by lengthier ones for conversion and the single phase two wire lines should be converted as three wire HT lines with higher size conductor. The learned Additional Advocate General submitted that the application should be considered at various levels and as such, the learned single Judge was not correct in issuing a positive direction.

3. The learned Senior Counsel for the respondent by placing reliance on the plan indicating the existing single phase electricity line and the order passed by the Hon'ble Supreme Court dated 24 November, 2017 in Writ Petition Civil No.202 of 1995 submitted that the permission of the Forest Department is not necessary. According to the learned Senior Counsel, it is a simple case of conversion of single phase line into a three phase line. The conversion does not involve the erection of transformer or replacement of existing poles. The learned single Judge was therefore correct in issuing a direction for conversion.

4. The respondent filed a writ petition in W.P.No.33995 of 2014 to direct the second appellant herein to consider the application dated 14 November, 2014 submitted for giving three phase electricity line under Tariff V for commercial purpose. The learned single Judge without directing the second appellant to consider the application submitted by the respondent issued a

positive direction for providing three phase connection.

5. The appellants have taken up a contention that permission from the Forest Department is necessary for the erection of 17 poles. Similarly, there is a requirement for a separate distribution transformer. Those contentions are refuted by the learned Senior Counsel for the respondent.

6. The question as to whether three phase electricity connection should be given to the respondent is essentially an issue to be decided by the jurisdictional Engineer, who is the second appellant herein. There is no question of issuing a Mandamus to the Electricity Department to give connection. The Court in such cases must call upon the statutory authority to exercise its statutory function. In fact, the request of the respondent was only to consider the application. There was no prayer directing the appellants to give three phase electricity connection.

7. The second appellant is the authority to take a decision with regard to conversion of electricity connection. The said authority must be given a free hand to take a decision on merits. We are therefore of the view that the order passed by the learned single Judge deserves to be modified.

8. The order dated 7 January, 2015 in W.P.No.33995 of 2014 is set aside. We issue a Mandamus directing the second appellant to consider and dispose of the application submitted by the respondent dated 14 November, 2014 on merits and as per law. The respondent should be given an opportunity of hearing before taking a decision in the matter. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this judgment.

9. The intra court appeal is disposed of with the above direction. No costs. . Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

svki

+1 CC to Mr.S.K.Rameshuwar, advocate sr 88654

+1 CC to Mr.Richardson, advocate sr 15849(11/01/2018)

W.A No.982 of 2015

SP(09/01/2018)