

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.12.2018
CORAM
THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.A.No.2650 of 2018 and
C.M.P.No.21583 of 2018

- 1.The Chairman
Tamilnadu Electricity Board (TANGEDCO)
800, Anna Salai, Chennai - 600 002.
 - 2.The Superintending Engineer,
Coimbatore Electricity Distribution Circle/Metro
Tatabad, Coimbatore -12.
 - 3.The Executive Engineer,
(Operation and Maintenance)
Tamil Nadu Electricity Board (TANGEDCO)
Ondipudur, Coimbatore District.Appellants
- Vs
- N.Sendamaraai Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent against the order dated 02.11.2018 in W.P.No.25321 of 2018. filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order made in Lr. No. SE/CEDC/M/AEE.GI/AE/F. New HT SC/D.1114/18-19 dated 06.09.2018 passed by the 2nd respondent quash the same and consequently direct the respondents to grant new HT Service Connection for 750 KVA by considering the petitioners application dated 24.08.2018 without insisting her to clear the consumption charges relating to pre-sale period in W.P.No. 25321/2018.

For Appellants : Mr.S.K.Rameshwar
For Respondent : Mr.N.Manoharan

J U D G M E N T

[Judgment of the Court was made by
M.SATHYANARAYANAN, J.]

By consent, this writ appeal is taken up for final disposal and is disposed of by this judgment.

2. The petitioner had purchased the landed property measuring an extent of 3.62 1/2 acres in S.F.Nos.674/1C, 674/2, 674/3 and 674/3A at Neelambur Village, Sulur Taluk, Coimbatore District, along with 58714 sq.ft. of ACC Sheet and RCC roofed factory building together with right to use the common roads and all other common appurtenance in the auction sale conducted under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 and he was also issued with a Sale Certificate by the Authorised Officer and Chief Manager, Stressed Assets Management Branch, Coimbatore, dated 15.04.2016 and also took possession and paid sale consideration of Rs.6,80,00,000/-. It is the case of the petitioner that Sale Certificate was issued without any encumbrance over the property.

3. The grievance expressed by the petitioner is long after the purchase, the second respondent sent a communication dated 25.07.2017 to the erstwhile land owner Mr.K.R.Guruswami, alleging that he was in arrears of electricity consumption charges to the tune of Rs.11,65,138/- in respect of HT SC No.243, which was disconnected on 01.11.2010 due to non-payment of consumption charges. It is the specific case of the petitioner that since the sale of the landed property along with shed was done free of all encumbrances, he is not liable to pay the said amount and it is also his further case that he purchased only the industrial shed, which also came to be removed subsequent to the purchase and as such, he cannot be mulcted with the consumption charges due and payable by the erstwhile land owner/consumer. Therefore, the respondent filed writ petition in W.P.No.25321 of 2018 for the quashment of the said demand. Pending disposal of the writ petition, he filed WMP No.29455 of 2018 for interim direction to grant electricity service connection without insisting arrears. The learned single Judge vide impugned order dated 02.11.2018 had granted interim direction as prayed for in the main writ petition itself and therefore, the official respondents in the writ petition aggrieved by the said interim order came forward to file this writ appeal.

4. Mr.S.K.Rameshwar, learned counsel appearing for the appellant has invited the attention of this Court to the prayer sought for by the respondent/writ petitioner in the writ petition and would submit that Mandamus is consequential to the quashment of the impugned order by way of issuance of a Writ of Certiorari and curiously, interim direction is part of the main prayer and unless and until, the impugned demand is quashed, the consequential interim direction cannot be granted. Alternately, the learned counsel for the appellant by drawing the attention of this Court to Clause 17(9)(a) of the Tamilnadu Electricity Supply Code, which is akin to terms and conditions of Supply of

Electricity framed under the Tamil Nadu Electricity Act, 1948 and would submit that after the enactment of Electricity Act 2003, Supply Code was issued under Section 50 of the Act and therefore, it is having a statutory backing and in terms of the said clause, unless and until, the dues are cleared, the writ petitioner is not entitled to get fresh connection and therefore, prays for interference.

5. Per contra, Mr.N.Manoharan, learned counsel for the respondent/writ petitioner, has invited the attention of this Court to the decisions rendered by this Court in Kadhariya Oriental Nursery and Primary School v. Tamil Nadu Generation and Distribution Corporation Ltd., (Madras) [2015 (8) MLJ 555, E.Balasubramanian v. The Superintending Engineer, Tamil Nadu Electricity Generation and Distribution Corporation Circle (TANGEDCO) Tirunelveli District [2018-2-W.L.R. 397] and a decision of the Hon'ble Apex Court in Southern Power Distribution Company of Telangana Limited through its CMD v. Gopal Agarwal and others [(2018) 12 SCC 644] and would submit that in the light of the propositions/ratio laid down in the said judgments, the respondent/writ petitioner is entitled to fresh connection without the electricity consumption charges due and payable by the erstwhile consumer and prays for dismissal of this writ appeal.

6. This Court has carefully considered the rival submissions and also perused the materials placed before it.

7. Insofar as reliance placed by the learned counsel for the respondent on the above said decisions is concerned, this Court is not inclined to consider the same for the reason that the decisions have to be appreciated by the learned single Judge while disposing of the writ petition. As rightly pointed out by the learned counsel for the appellant, unless quashment of the impugned demand is made, consequential direction cannot be granted and further by way of interim direction, the respondent/writ petitioner has sought for the same and it was granted by the learned single Judge. However taking into consideration the fact that electricity is a basic necessity and considering the hardship and difficulty being undergone by the respondent/writ petitioner on account of non-consideration of fresh application for electricity supply, this Court is inclined to pass the following order to meet the ends of justice.

8. In the result, the writ appeal is partly allowed and the interim order passed by the learned single Judge is modified to the effect that the respondent/writ petitioner without prejudice to their rights and contentions shall deposit a sum of Rs.5,00,000/- (Rupees Five lakhs only) to the second appellant, within a period of one week and on receipt of the said amount,

the second respondent is directed to process the application submitted by the respondent/writ petitioner for fresh electricity connection, if the application is otherwise in order and pass appropriate orders, within a further period of two weeks thereafter. It is made clear that the modification of the interim order passed in this appeal, is subject to the outcome of the writ petition. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

TO

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Ondipudur, Coimbatore District.
- +lcc to Mr.S.K.Raameshuwar, Advocate, S.R.No. 83823
+lcc to Mr.N.Manokaran, Advocate, S.R.No. 8.891

svki

WA.No.2650 of 2018

GN(17/12/2018)

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