

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2019

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. 27501 of 2007
and
M.P. 1 of 2007

M/s. Ramaniyam Real Estates (P) Ltd.,
rep. by its Managing Director
V.Jagganathan,
11, Second Main Road,
Gandhi Nagar, Adyar,
Chennai-600 020. Petitioner

Versus

The Superintendent Engineer,
C.E.D.C./South,
110, KVSS Complex,
Anna Main Road,
K.K.Nagar,
Chennai-600 007. Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the respondent relating to the impugned notice of the respondent No.SE/CEDC/SS/DFC/AAO/HT/AS/A7/F.HTSC No.660/D417/07, dated 31.07.2007 and to quash the same in so far as it relates to monthly minimum charges.

For Petitioner : Mr.S.Sundaresan

For Respondent : Mr.S.K.Rameshuwar,
Standing Counsel for TNEB

ORDER

This Writ Petition has been filed challenging the impugned notice issued by the respondent Board vide No.SE/CEDC/SS/DFC/AAO/HT/AS/A7/F.HTSC No.669/D417/07, dated 31.07.2007 and to quash the same in so far as it relates to monthly minimum charges.

2. The case of the petitioner is as follows :-

The petitioner company is a real estate company, has entered

into a joint development agreement with the owner of the property situated at Door No.129B, Block No.38, S.No.24/3 to 9, Thiruvannamiyur Village, Chennai-41 to construct a multi storied building of I.T. Park and the same was approved by CMDA vide their approval letter PP No.C/PP/MSB IT/48-A to B/2006 in Letter No.C3/18050/2005. The said building was constructed in accordance with the planning permission without any deviations. After completion of the said buildings, the company has applied for supply of HT service connection to the petitioner building vide their application dated 28.08.2006 to the respondent Tamil Nadu Electricity Board (hereinafter called as 'Board'). The respondent Board has issued a communication dated 31.08.2006 asking the petitioner company to remit various charges amounting to Rs.5,28,500/- and registered the petitioner's application vide No.ASO 52/2006-2007, dated 01.09.2006. Thereafter, the agreement was entered into between the petitioner and the respondent Board on 30.09.2006 and as per the terms of the agreement, the petitioner has to pay necessary charges and to comply with necessary conditions. Further, the petitioner has complied all the conditions by letter and spirit and thereafter, on 30.10.2006, the respondent has issued the first notice for the availability of power supply and directed the petitioner to produce the CEA/CEIG Certificate. Immediately after receipt of the notice, the petitioner has produced the CEA/CEIG Certificate on 27.12.2006 and on the same day, the petitioner has requested the respondent board to effect power supply. Thereafter, the respondent Board has insisted the petitioner to produce the completion certificate from the CMDA. However, the said condition was not imposed either in the agreement or contemplated in the Electricity Act and in view of the condition imposed as if the petitioner has to produce the completion certificate, the petitioner has produced the completion certificate on 12.06.2007 and it was informed to the petitioner that the power supply would be effected. Thereafter, the respondent board has effected the power supply to the petitioner building. After effecting the power supply, though the petitioner is ready to pay the consumption charges and though the petitioner is not entitled to pay monthly minimum charges and the petitioner has produced CEA/CEIG certificate, the respondent Board had passed the impugned order dated 31.07.2007 demanding the petitioner to pay monthly minimum charges for the period commencing from 27.10.2006 to 27.06.2007. Even though the respondent Board is entitled to collect monthly minimum charges for the period commencing from 29.12.2006, the minimum charges was imposed against the petitioner from 27.10.2006 to 27.06.2007, which is illegal and unsustainable. Against which, the present Writ Petition has been filed.

3. Mr.S.Sundaresan, learned counsel appearing for the petitioner would submit that though the petitioner is liable for payment of consumption and other charges as per the agreement

dated 30.09.2006, the first availability certificate was issued on 30.10.2006 and immediately, thereafter, the petitioner has produced the CEA/CEIG certificate on 27.12.2006 and on receipt of the same, it is the duty cast upon the respondent board to effect electricity service connection. However, the electricity board has imposed further condition as if the petitioner has to produce the completion certificate obtained from the CMDA authority, but that was not imposed in the original condition or in the Electricity Act. A new condition was imposed by the Electricity Board, which is not binding on the petitioner and the petitioner is covered by the agreement and as per the agreement, the petitioner has to pay necessary charges. In the present case, the minimum charges levied by the respondent board from 27.10.2006 to 27.06.2007 is unsustainable, in which the petitioner is not liable to pay any amount except the amount agreed as per the agreement. Hence, he prayed to grant the relief as prayed for.

4. Per contra, the learned standing counsel appearing for the Board would submit that as per 31(5) of the Distribution Code, the petitioner has to pay the monthly minimum charges from the date of first notice. In the present case, the first notice was issued on 30.10.2006 informing the petitioner that the electricity board completed the work and they are ready to provide the electricity supply to the petitioner building. But, the petitioner has not produced the CEA/CEIG certificate as well as the completion certificate. Further, at the relevant point of time, it is necessary for the petitioner to produce the completion certificate. The Division Bench of this Court has issued a direction to the Electricity Board, only after securing the completion certificate, the electricity supply would be effected. In the present case, the completion certificate from CMDA is produced only on 13.06.2007 and the supply was effected on 27.06.2007. Hence, the minimum charges levied by the Electricity Board is in terms of 31(5) of Distribution Code and there is no violation in imposing the minimum charges against the petitioner. Hence, he prayed to dismiss the Writ Petition.

5. On perusal of the materials available on record, it is seen that the petitioner has constructed multi storied building for the purpose of IT park at Door No.129 B, Block No.38, S.No.24/3 to 9, Thiruvannamiyur, Village, Chennai. Admittedly, the petitioner has entered into agreement with the respondent board on 30.09.2006 and the relevant portion of the agreement are as follows :-

"2. Date of coming into force of the agreement:-

The consumer shall begin to take electrical energy from the Licensee subject to the conditions of this agreement within three months from the date on which intimation is sent in writing to the consumer by the Licensee that supply of electrical energy is available.

The provision of this agreement shall be deemed to come into force from the date of commencement of supply of energy or the date of issue of first three month's notice of availability of supply whichever is earlier.

4. To comply with requirements of Act and Terms and conditions of Distribution Code and Supply Code

The consumer hereby undertakes to comply with all the requirements of the applicable Acts, Regulations etc. and Grid code, Distribution code and Supply code and of any amendments, modifications or reenactment thereof or of any other enactment to be passed in relation to supply made under this agreement from time to time and the rules, regulations or orders etc., made thereunder from time to time, provisions of Tariffs, Scale of Miscellaneous and other charges and the terms and conditions of supply prescribed from time to time, and the consumer hereby agrees not to dispute their applicability to this agreement.

8. Minimum monthly charges

The consumer agrees to pay minimum charges every month as prescribed in the tariff and supply code even if no electricity is consumed for any reasons whatsoever, and also if the charges for electricity actually consumed are less than the minimum charges. The minimum shall be payable even if electricity is not consumed because of disconnection of supply by the Licensee due to non-payment of electricity charges, pilferage or other malpractices or for any other valid reason.

On perusal of the conditions stipulated in the agreement makes it clear that the petitioner has to pay the monthly minimum charges from the date of first notice and also clause 4 of the agreement reveals that the petitioner has to comply with all the requirements of the applicable Acts, Regulations etc. and Grid code, Distribution Code and Supply Code and of any amendments, modifications or reenactment thereof etc. and further, clause 8 had imposed the condition that the petitioner has to pay monthly minimum charges prescribed in the tariff and supply code even though no electricity is consumed for any reasons whatsoever. In the present case, the availability of the supply is informed to the petitioner on 30.10.2006 and the learned counsel appearing for the petitioner also did not dispute the fact that the petitioner has to pay minimum monthly charges right from 27.10.2006. However, he is disputing the payment of monthly charges from 27.12.2006 after producing the CEA/CEIG certificate. However, clause 4 of the agreement imposed the condition that the petitioner has to comply with all the requirements whatsoever even subsequent to the amendments. In the meanwhile, the Division Bench of this Court has issued a

direction to the Electricity Board to give the service connection only after the production of completion certificate. The Electricity Board has also incorporated the pre-condition in the Board's proceedings. Hence, the petitioner cannot say that he is not liable to produce the completion certificate and the impugned order also clearly indicates that the Electricity Board has levied minimum charges from 27.10.2006 to 27.06.2007 and further, the Electricity Distribution Code 31(5) also makes it clear that on the date of receipt of first notice i.e. on 27.10.2006, the petitioner has to pay monthly minimum charges. In view of the above, I do not find any error in the order passed by the respondent Board. Hence, this Writ Petition stands dismissed. However, the learned counsel appearing for the petitioner submitted that the petitioner has already complied the condition by paying 50% of the amount, he pray for time for the remaining 50% of the amount. Considering the limited request, time is granted for the period of six weeks from the date of receipt of the copy of this order for payment of remaining 50% amount. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

The Superintendent Engineer,
C.E.D.C./South,
110, KVSS Complex,
Anna Main Road,
K.K.Nagar,
Chennai-600 007.

+1cc to Mr.S.Sundaresan, Advocate, SR. No. 48445

+1cc to S.K. Rameshuwar , Advocate, SR. No. 47944

W.P. 27501 of 2007
and

M.P. 1 of 2007

NRL (CO)

RMP (02/07/2019)