



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 21.08.2019	Pronounced on: 28.08.2019
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Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition No.7912 of 2019
& W.M.P.Nos.8519 & 18625 of 2019

Vijay Shanthi Builders Limited,
Rep. by its Managing Director,
Old No.8, New No.21,
1st Avenue Indira Nagar,
Adyar, Chennai - 600 020.

... Petitioner

/versus/

1. Tamil Nadu Electricity Generation & Distribution Company Limited (TANGEDCO),
Rep. by its Chairman-cum-Managing Director,
NPKRR Maaligai, 144 Anna Salai,
Chennai - 600 002.
2. The Chief Engineer,
South Region Chennai,
Tamil Nadu Electricity Generation and Distribution Company Limited (TANGEDCO),
NPKRR Maaligai, 144, Anna Salai,
Chennai - 600 002.
3. The Superintending Engineer,
Tamil Nadu Electricity Generation and Distribution Company Limited (TANGEDCO),
Chengalpattu Electricity Distribution Circle,
Opp. to New Bus Stand, 130, G.S.T Road,
Chengalpattu - 603 001.
4. The Executive Engineer (O&M),
Tamil Nadu Electricity Generation and Distribution Company Limited (TANGEDCO),
110 KV Sub-Station Complex, G.S.T.Road,
Maraimalai Nagar,
Chengalpattu District - 603 209.
5. The Assistant Executive Engineer (O & M),
Tamil Nadu Electricity Generation and Distribution Company Limited (TANGEDCO),
110 KVSS Complex,
Mambakkam, Chennai - 600 048.
6. Boulevard Flat Owners Welfare Association - Kandigai,
Represented by its Secretary,
Tower No.7, Boulevard,
No.3, Vengadamanglam Road,
Off:Kelambakkam-Vandalur Road,
Melakottaiyur P.O,
Kandigai, Chennai - 600 127.

... Respondents

Letter No.AEE/O&M/Mambakkam/F.Vijayashanthi SS Land/D.065/2018, dated 11.06.2018 and quash the same and to consequently directing the respondents to grant regular permanent LT supply in respect of the balance 249 units and required common connections for common facilities in the petitioner's residential project 'Phase - II Boulevard' situated in Melakottaiyur Village, now Thiruporur Taluk, previously Chengalpet Taluk, Kancheepuram District, without insisting on earmarking of space for establishment of a sub-station in the said project and pass orders.

For Petitioner : Mr.R.Parthasarathy

For R1 to R5 : Mr.S.K.Rameshwar, Standing Counsel

For R6 : Mr.R.Saravana Kumar

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents.

2. The grievance of the petitioner is that the respondents TANGEDCO vide impugned letter dated 11.06.2018 demands demarcation of land for establishment of Sub-Station as a pre-condition to provide Electricity service connection to the dwelling units which were constructed by the petitioner under the residential project named as Boulevard Phase-II, Melakottaiyur Village. According to the petitioner, during the month of January 2010, they entered into a Joint Development Agreement with the owners of land, for developing an extent of 10 acres situated in Melakottaiyur Village in two Phases. The phase No.1 comprising of 469 of dwelling units [both flats and row house) plus two commercial shops, under the name and style of 'Park Avenue' and Phase No.2 comprising of 332 units (both flats and row houses), under the name and style 'Boulevard'. Totally 801 dwelling units and two commercial units constructed by the petitioner, after obtaining Planning Permission from the Directorate of Town and Country Planning, Chennai, vide approval in Ns.Ka.No.24096/2009/CP, dated 04.02.2010. At the time of obtaining planning permission for the building, the petitioner has intimated the respondent/TANGEDCO regarding the total requirement of energy estimated for all the 801 dwelling units and two commercial units, proposed to be developed in two phases.

3. According to the petitioner, they have informed the respondent that they may required about 4 Kilowatts per units/flats/houses/shops and that total demand will not exceed 4000 KW. The Petitioner completed the construction of Phase No.1 'Park Avenue' during the year 2013-2014 and obtained permanent electricity connection for all 469 units. As far as, Phase No.2 'Boulevard' is concerned, the petitioner has applied for and obtained permanent electricity connection for 83 dwelling units for the remaining 249 dwelling units, they required electricity service connections. The completion of Phase No.2 (Boulevard) was delayed due to shortage of construction material in the state. Therefore, the application for energising the units in Phase No.2. was made in March 2018.

units/flats/houses/shops in the said development, irrespective of the number of bedrooms in such units/plots/houses. Later, as per instruction of Chairman-cum-Managing Director of the TANGEDCO issued on 11.09.2017, while considering the demand for group housing projects, the assessment is to be made depending upon the size of the unit. As per instruction of Chairman-cum-Managing Director, dated 11.09.2017, permanent electricity demand requirement for each type of unit is to be assessed. The petitioner project comprising of 801 dwelling units, 2 commercial shops and common connections for common facilities in two Phases works out to more than 5 M.V.A.

4. As far as petitioner is concerned, even before this instruction, part of the units were already energized with permanent electricity supply. Therefore, the instruction of Chairman-cum-Managing Director, dated 11.09.2017, will not apply to the petitioner building. The petitioner for the said submission would rely upon the clarification issued by TANGEDCO in Memo No.CE/Comml/SE/Comml/EEE3/AEE3/F.Group Housing/D.55/18, dated 14.03.2018, wherein, the respondent has categorically stated that in case where service connections had already been extended to dwelling units before issuance of the proceedings, dated 11.09.2017 based on the planning permission issued and the developer applies for new electricity service connections for the remaining dwelling units/tower blocks which loads were already considered for development, then earmarking additional lands for erection of sub-station need not be insisted. While so, in spite of clarification, the 5th respondent has issued demand dated 11.06.2018 to demarcate the land for establishment of sub-station. Hence, the same is challenged.

5. This Court, after hearing the counsels, who apart from canvassing the merits of the Writ Petition and arbitrariness in the impugned order, submitted that already the petitioner has provided space for transformer and there is no space available for establishing sub-station. The common area available is for the use of flat owners and if at all, any space has to be earmarked, the builders cannot unilaterally allot the land to TANGEDCO, without the consent of the flat owners. Therefore, this Court permitted the petitioner to implead flat owners Association and Accordingly, they were impleaded as 6th respondent/Boulevard Flat Owners Welfare Association.

6. After few deliberations and joint inspection of the site by the petitioner, 6th respondent and TANGEDCO Officials, were identified two sites suitable for constructing of sub-station were identified. The site No.2 identified by the parties is located interior of the building and therefore, the issue who has to bear the cost of laying duct arose. While the TANGEDCO counsel relying upon the Tamil Nadu Electricity Distribution code would submit that the cost of erection of sub-station and material will be bound by TANGEDCO and the consumer has to provide space/land for erection of sub-station. The cost of laying service line has to be bound by the consumer as per code 29(16) of the Tamil Nadu Distribution Code. He further submitted that, if the site No.1 identified by the parties is given to TANGEDCO, being near the road, the cost of laying cable duct will be very minimum. Whereas, the alternate site No.2 identified by the builder requires laying of duct to longer distance. which may incur additional cost of nearly 50 Lakhs

instruction of the Chairman-cum-Managing Director, dated 11.09.2017 will apply to the petitioner in spite of clarification dated 14.03.2018 in respect of partly energised projects.

8. In the counter, the 5th respondent has stated that the petitioner while seeking planning permission, he estimated the demand will be less than 4000 KW [4 MVA]. Therefore, based on the prevailing provision they were asked to provide space for erecting two transformers. Initially the petitioner has made application seeking service connection under residential tariff. Considering their application, the service connection was effected for 93 units on 04.01.2013 thereafter, in phased manner, the petitioner has made application on various dates and totally 580 service connections has been provided. As per regulation 29 (12) of the Tamil Nadu Electricity Distribution Code, if the total load exceeds 5 MVA, the land should be provided by the consumer for TANGEDCO to erect sub-station. In order to circumvent the statutory provision builders/developer, started providing wrong information regarding their minimum load demand for their proposed building by underestimating their demand assessment in order to avoid providing land for erecting sub-station. Hence, the proceedings dated 11.09.2017 was issued. When the petitioner approached the respondent/TANGEDCO for service connection for the remaining units, the power consumed and the load required were assessed and found that the required demand is about 5.708 MVA. Therefore, if service connection to be provided for such a magnitude then the petitioner has to provide land for establishment of sub-station as per Tamil Nadu Distribution Code under Section 29(12). The clarificatory communication in Memo No.CE/Comml/SE/Comml/EE3/AEE3/F/Group/Housing/D.55/18, dated 14.03.2018 is misconceived by the petitioner and it is not applicable to the petitioner. Further, the G.O.Ms.18 issued by the Municipal Administration and Water Supply Department on 04.02.2019 also been brought to the notice of this Court. The said Government Order envisages that for approval of plan one per cent of the layout area excluding roads, additional, shall be reserved in the layout for "Public Purpose", of which 0.5% of the area shall be transferred to the Local body and 0.5% of the area shall be transferred to the TANGEDCO free of cost, through a registered gift deed, before the actual sanction of layout.

9. The petitioner herein rely upon their Self Serving statements of demand assessment made while getting building plan approval and the clarificatory memo of the respondents issued on 14.03.2018. Whereas, the TANGEDCO rely upon the Regulation code 29 (12) and the instruction of Chairman-cum-Managing Director, dated 11.09.2017 besides the G.O.Ms.18 of Municipal Administration of Water Supply Department dated 04.02.2019.

10. Section 29 of the Tamil Nadu Electricity Distribution Code deals with Service Lines. Clause 12 reads:- if the building/premises exceeds 900 square meter floor area [excluding the stilt floor/basement area] or the total demand for all the LT services in the building exceeds 150 KW. The builder has to provide space preferably at the main entrance for installing super structure mounted distribution transformer and associated switch gears. In the place of group

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KW [4 MVA]. Whereas, the present consumption of the consumers in the building has exceeded the permitted load and from the submission of the respondents including the 6th respondent flat owners, it is admitted that the temporary service connection obtained by the petitioner herein for construction purpose in the year 2014 for the load of 10 KW has been exceeded and the service connection has been disconnected on 01.08.2019, for non-payment of consumption charges. Presently the arrears towards CC charges and miscellaneous arrears sum stands to a tune of Rs.21,06,451/-.

12. The estimated assessment of electricity demand for the entire dwelling unit and commercial units in phases I and II of the petitioner building is arrived at 5.084 MVA. Therefore, it is obvious that the electricity requirement for the 801 dwelling unit and two commercial units, on real consumption is certainly will be more than 5 MVA. The petitioner at the time of obtaining planning approval has given a under-estimated demand and the planning approval was granted based on his self-assessment. Estimating 4 KW per unit is in fact found to be wrong from the actual consumption by the dwelling units for whom the electricity service connection provided. Therefore, if at the time of submitting planning approval, had the petitioner properly estimated the demand, he should have provided space for sub-station as per Clause 29(12) of the Code, since he has under estimated the demand, he cannot take the advantage of his own wrong and plead that the instruction of Chairman-cum-Managing Director, dated 11.09.2017 will not apply to him and the clarification note dated 14.03.2018 exempts his project. The instruction of Chairman-cum-Managing Director of TANGEDCO, dated 11.09.2017 reads as below:

Instruction of assessing the total demand of the group housing/commercial complex was issued vide reference (1) cited, wherein, it was specified that the developer or owner of the group housing/commercial complex has to earmark the land for installing the sub-stations/Distribution Transformer as the case may be when the total demand of the premises exceeds 5 MVA/150 KW or total floor area of the building exceeds 900 sq.metres as the case may be.

2. Even though the TNE Distribution Code has the provision that the developer/owner of the group housing has to earmark the land for development of sub-station when their total demand exceeds 5 MVA, most of the developers under quote their demand of less than 5 MVA and get service connections without allotting the land for development of sub-stations.

3. Further, it is stated that as per the statutory provisions made in the TNE Distribution Code, the Distribution Licensee has the powers to assess the actual demand of the building/group housing projects even though the developers/owners under quote their demand to avoid earmarking of land for establishment of sub-station.

Meeting held on 20.07.2017 to adopt the uniform procedure across the State. The minutes of the Distribution Review Meeting was communicated vide reference (2) cited.

5. Now, the CMD/TANGEDCO has approved vide reference (3) cited to adopt uniform procedure in assessing the electrical demand of the group housing projects. In view of the above, all the field Officials are instructed to follow the procedure prescribed below in assessing the total demand of the group housing in addition to the procedure prescribed vide reference (1) cited above:

(a). The field officials shall consider the loads of the group housing projects that will be incident in the near future and that of the existing loads in the premises of the applicant while assessing the total demand of the group housing project.

(b). Further, the field Officials shall not follow piecemeal approach in sanctioning the estimate in respect of group housing. One single estimate shall be prepared and got sanctioned from the competent authority so as to design the distribution network to the total demand of the group housing.

(c). The following demand in respect of group housing projects shall be considered so as to have uniformity across various EDCs:

Sl.No.	Description of flats	Demand to be adopted for each LT 3 phase connection
1.	Single bed room flat	5.5 kW(or) 6.1KVA
2.	Double bed room flat	6.7KW(or) 7.5KVA
3.	Triple bed room flat	8.3KW(or) 9.2KVA
4.	Four bed room flat	9.5KW(or)10.6KVA
5.	Common load such as lifts, water pumping, common lighting, swimming pool, club house, etc., (for every 100 flats)	108KW (or)120KVA

13. The above instruction is self explanatory and the reason for issuing the above instruction is also candidly spelt out. The clarificatory memo of Chief Engineer, TANGEDCO, dated 14.03.2018, relied by the petitioner reads as under:

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In continuation to the above, the following instructions are issued for assessing the demand of the group housing/Villa projects, where service connections have been extended to certain number of dwelling units before issuance of (Per) (CMD) TANGEDCO Proceedings No:481, dated 11.09.2017:-

sub-station based on the load arrived for the entire dwelling units/tower blocks as mentioned in the planning permission and if the developer applies for new service connections for the remaining dwelling units/tower blocks which loads were already considered for developing sub-stations, the field officials need not insist additional land for developing sub-station of higher capacity.

14. In this case, from the affidavit of the petitioner and the additional counter affidavit filed by the 3rd respondent, we see the petitioner has completed Phase-II only in the year 2017 and applied for service connection only during the month of March - 2018. Admittedly, he has not applied for new Electricity service connection, before 11.09.2017. He has only obtained planning permission disclosing about the requirement of Electricity service connection for the entire buildings [801 dwelling units and 2 commercial units]. Further, the paragraph No.1 of the clarificatory note, pre-conditions that, "the tower blocks which loads were already considered for developing sub-station, then the field Officer need not insist for additional land for developing sub-station of Higher capacity." It is not the case of the petitioner that, there is an already existing sub-station or the tower blocks and the load has been taken into consideration and fall within the permissible limit.

15. Contrarily, in the counter it is stated that already the permissible load of 10 KW has been exceeded, leading to disconnection. Therefore, the petitioner is bound to provide land for putting up sub-station in order to get service connections for the existing dwelling units.

16. Since the 6th respondent/ flat owners are now facing disconnection. The learned Counsel appearing for the 6th respondent would submit that their service may be restored and they are ready to pay the consumption charges as per their consumptions, pending promoters take a decision on allotting land for erecting sub-station.

17. The learned counsel appearing for the respondent/TANGEDCO would submit that the members of the 6th respondent Flat Owners Association are using temporary connection provided to the builder for construction purpose. The total consumption of the building has exceeded 10KW, unless the arrears to a tune of Rs.21,06,451/- is cleared, restoration is not permissible under the law.

18. In the light of the above submissions, this Court confines its order with the prayer sought in the Writ Petition. In view of the above discussion, this Court finds there is no merit in the Writ Petition. Hence, liable to be dismissed.

19. If the petitioner wants electricity service connection, then he has to abide by the Regulation code. Just because planning permission was granted based on the estimated demand, petitioner cannot stick on to his self serving rough estimation, which prove to be under estimated. Further, the requisite of establishing sub-station is for the safety of the consumer and to ensure proper distribution of Electricity.

dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

bsm

To,

1. The Chairman-cum-Managing Director,
Tamil Nadu Electricity Generation &
Distribution Company Limited.,
NPKRR Maaligai, 144 Anna Salai,
Chennai - 600 002.
2. The Chief Engineer,
South Region Chennai,
Tamil Nadu Electricity Generation and
Distribution Company Limited.,
NPKRR Maaligai, 144, Anna Salai,
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5. The Assistant Executive Engineer (O & M),
Tamil Nadu Electricity Generation and
Distribution Company Limited.,
110 KVSS Complex,
Mambakkam, Chennai - 600 048.

+1cc to Mr.R.Parthasarathy, Advocate, S.R.No. 74122
+1cc to Mr.R.Saravana Kumar, Advocate, S.R.No. 73908
+1cc to Mr.S.K.Rameshuwar, Advocate, S.R.No. 73775

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SAI (CO)
GN(29/08/2019)