

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.11.2019

PRONOUNCED ON : 19.11.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.20163 of 2019 and
W.M.P.Nos.19602 & 19604 of 2019

K.Thangavel

Petitioner

Vs

1.The Assistant Engineer,
Operation & Maintenance,
TANGEDCO, Vaikuntham,
Sankari Taluk,
Salem District.

2.The Assistant Executive Engineer,
Operation & Maintenance,
TANGEDCO, Sankari (East),
Sankari Taluk,
Salem District.

3.The Executive Engineer,
Operation & Maintenance,
Sankari Division, Sankari,
Sankari Taluk,
Salem District.

4.R.Selvaraj

... Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Certiorarified mandamus calling for the records available on the file of the first respondent pertaining to the issue of the impugned letter viz., letter No.A.E/O&M/Vaiku/Kattu.Pukar/A.No.025/19-20 dated 07.05.2019 and quash the same and consequently to direct the respondents 1 to 3 to shift the Electricity Supply service connection, bearing SC No.167-003-201 of Valaikuttai Electricity Distribution of Vaikuntham Section to the new bore Well dug by the petitioner in the same survey no. i.e., 424/1 and to pay appropriate compensation to the petitioner for delaying the shifting of the said Electricity Service Connection.

For Petitioners :Mr.N.Subramaniyan

For Respondents 1 to 3:Mr.S.K.Raameshuwar,
Standing Counsel

For 4th Respondent : No Appearance

ORDER

The petitioner herein is an agriculturist having land in S.No.424/1, Vaikuntham Village, Sankari Taluk, Salem District. In the same survey number, there are other owners who are all blood relatives of the petitioner. The common Well in the said survey number is owned by four persons including the petitioner herein. The petitioner has installed a pump set in the said Well and was having a electricity service connection (SC No.167-003-201) common for all the four owners. When the said Well went dry, the fourth respondent and the petitioner have dug separate bore Well for their exclusive use and the existing electricity service connection SC No.167-003-201 was used to draw water from the bore Well dug by the petitioner. By efflux of time, the said bore Well also become dry and hence, the petitioner has dug another bore Well in the same survey number during the month of April 2018 and sought for shifting of electricity service connection SC No.167-003-201 to the new bore Well.

2.The second respondent on receiving his application insisting No Objection Certificate (NOC) from the fourth respondent for shifting the service connection. According to the petitioner, the respondents 1 to 3 are acting upon the influence of the fourth respondent and the impugned letter dated 07.05.2019 issued without any legal sanction and contrary to the conditions stipulated under the Tamil Nadu Electricity Supply Code and the Tamil Nadu Electricity Distribution Code.

3.According to the petitioner, the land and the Well stands in the name of Co-pattadarars including the petitioner. But the service connection bearing SC No.167-003-201 exclusively stands in the name of the petitioner. There is no legal impediment to transfer the said service connection to the bore dug in the land of the petitioner. Without mentioning the provision of law which mandates NOC from the Co-pattadarars, the first respondent has issued the impugned letter contrary to the Tamil Nadu Electricity Supply Code and the Tamil Nadu Electricity Distribution Code. Earlier, when the petitioner shifted the service connection to the open Well to the bore Well, the respondents 1 to 3 without demanding NOC from anyone, permitted the petitioner to shift the service connection. But now, at the instance of the fourth respondent, the respondents 1 to 3 demanding NOC from the petitioner which is not required

under the law.

4. In the counter affidavit filed by the first respondent, it is stated that the petitioner has not submitted proper application in Form II of Annexure III as per the Tamil Nadu Electricity Distribution Code. He has not submitted proof of his ownership in respect of existing agriculture service connection (SC No.167-003-201). The petitioner has only submitted a letter to the Superintending Engineer Mettur to shift the existing agriculture service at S.F.No.424/1. The petitioner was advised to produce revenue records like patta, chitta in his name along with application in Form II of Annexure III as required under the Tamil Nadu Electricity Distribution Code, Clause 27(2).

5. The first respondent states that earlier, the said service connection was shifted from open Well to bore Well with effect from 22.11.2011. The agricultural land for which the service connection SC No.167-003-201 provided is still undivided and co-owned by the petitioner along with others including the fourth respondent. Hence, the official respondents requested the petitioner to make application in the proper format along with NOC from the co-owners as prescribed in the TNERC Clause 27(2) and Clause 6(3) of the Tamil Nadu Electricity Supply Code. Without proper application and revenue records along with NOC of the co-owner, shifting of service connection provided for the agricultural land held by joint owners is not legally permissible.

6. In response to the counter, the petitioner has filed a rejoinder stating that Application in Form II Annexure III as per TNERC Clause 27(2) or proof of ownership of the existing location and the new location are all not necessary since, the petitioner seeks shifting of service connection in the very same survey number (S.No.424/1). The forms and clauses referred in the counter affidavit filed by the first respondent is applicable only for new service connection and not for shifting of existing service connection from one place to another within the same sub division of same survey number.

7. Regarding the other averments in the counter, the petitioner in his rejoinder states that, he has submitted his application to the respondents 1 to 3 on 10.04.2019 enclosing patta as Well as FMB copy depicting the locations of the existing bore well and the proposed bore well for which shifting is sought. Shifting of service connection is within the same survey number and sub division. Therefore, furnishing of revenue documents do not arise. There is no legal basis for insisting upon the NOC from co-owners of the land when they are not concern with the service or the land in which the bore well located.

8. In response to the re-joinder, the respondent has filed a reply wherein, it is reiterated that any application for supply of energy under agriculture category, it shall be in Form II of Annexure III as per the Tamil Nadu Electricity Regulation Code Clause 27(2). In the said application, the owner of the Well must sign and if Well or land is held by more than one person, all must sign giving consent to the applicant.

9. Heard the learned counsel for the petitioner; the learned Standing Counsel appearing for the respondents 1 to 3 and there is no representation for the fourth respondent.

10. TANGEDCO's Letter No. SE/RE&I(D) EE/RE/A1/FOOD/D.1519/2011 (tech.Br.) dated 01.12.2011 clearly spells that shifting of existing agriculture service connection may be permitted only if the existing and proposed location of the land and Well/bore Well are having agriculture operations. The shifting of agriculture service connection may be considered in case of dryness, insufficient water and due to water pollution in the existing Well/bore Well. Necessary Certificate from the concerned authorities should be obtained for the reasons stated by the applicant for shifting. Shifting of such existing agriculture service connection should be done under DCW basis.

11. These instructions are applicable for all categories of existing agriculture service connection such as normal RSFS schemes etc. This is also applicable for change of location of the Well/bore Well requested at the application stage itself.

12. The petitioner have not produced the revenue documents and NOC from the co-owners. If there is any objection from the co-owner, the respondents 1 to 3 are bound to examine the tenability and sustainability of the objection and thereafter decide in accordance with law. When there are other persons interested in the well on the service shifting without their consent is not permissible.

13. In this case, one Selvaraj, son of Rajamuthu, (fourth respondent herein) has given an objection letter dated 30.04.2018 and he being the co-owner of the land in S.No.424/1, the respondents 1 to 3 herein have insisted the petitioner herein to furnish NOC from the co-owners in the light of the order passed by this Court in W.P.No.12676 of 2016.

14. The learned counsel for the petitioner would contend that the petitioner has intended to shift the service connection from 'A' mark portion to 'B' mark portion in the very same survey number (S.No.424/1). The existing service connection is at 'A' mark portion. While the new bore Well is also within the very

same survey number. He say, for shifting of service connection, NOC from the co-owners, is not necessary and the impugned letter which demands revenue records of S.No.424/1, is illegal and liable to be quashed for the following reasons:-

(a)The impugned letter of the first respondent has been issued arbitrarily and contrary to law and hence, the same is liable to be quashed;

(b)The earlier service connection, bearing SC No.167-003-201 was obtained without any no objection from the co-pattadarars. Therefore, the petitioner right to shift the same to other place is absolute. Hence, the first respondent has no power to deviate from the said condition he is duty bound to comply shifting. Hence the impugned order having been issued contrary to the same is liable to be quashed;

(c)The impugned letter issued by the first respondent without mentioning the provision law seeking NOC from the co-pattadarars is arbitrary and abuse of powers;

(d)The official respondents having granted the earlier electricity service connection without any NOC from any one, it is illegal for them to demand NOC from co-pattadars and it is nothing but to coerce the petitioner for obvious reasons;

(e)The 4th respondent is not at all aggrieved in any manner in shifting the service connection and in fact he is benefited from leaving the bore Well 'A' dug by the petitioner in his lands and hence, the question of him objecting does not arise and hence, the demand of NOC by the respondents 1 to 3 from other co-owners is illegal and hence, the impugned order is liable to be quashed.

15.The learned counsel for the petitioner would also state that there is no provision under the law to demand NOC from the co-owner while shifting the existing service connection from one place to another. Referring the provisions of the Tamil Nadu Electricity Act 2003; the Tamil Nadu Electricity Distribution Code and the Tamil Nadu Electricity Supply Code, the learned counsel would submit that the demand of NOC in the impugned letter is without sanction of law, perverse and abuse of power by the first respondent.

16.It is also submitted by the learned counsel for the petitioner that without quoting the relevant provision of law, the impugned letter directs the petitioner to produce all revenue records and NOC from the co-owners for the land situated in S.No.424/1. Therefore, the impugned letter is vitiated for want of power and jurisdiction.

17. Yet another contention of the petitioner is that, in the year 2011 the official respondents have permitted the petitioner to shift the service connection from common Well to the bore Well exclusively dug by the petitioner without demanding NOC. While so, when the similar request for shifting the service from the existing bore Well to new bore Well without insisting upon NOC, the official respondents ought to have shifted. Clauses 29 (5) and 29(6) of TNERC reads as under:-

"29(5) The consumer shall provide free of cost to the Licensee adequate land/space in his/her premises, as may be considered necessary by the Engineer and afford all reasonable facilities for bringing in not only cables or overhead lines from the Licensee's system for servicing the consumer but also cables or overhead lines connecting other consumers. The land/space should be at a location near the entrance to the premises and should be easily accessible to Licensee's officials for inspection.

29(6) The Consumer shall permit the Licensee to install all requisite equipments such as Transformers, switchgears, meters etc., and to lay necessary cables or overhead lines and to provide connections thereto on the consumer's premises and shall also permit the Licensee to extend supply to other consumers through the cables, lines and equipments installed in the consumer's premises, provided that supply to the consumer in the opinion of the Engineer is not thereby unduly affected."

18. The learned counsel for the petitioner states that on providing space in the premises the respondents are duty bound to provide electricity. Referring the objection letter of the fourth respondent and his non appearance in the present writ petition, the learned counsel for the petitioner would submit that the complaint letter of the fourth respondent against the petitioner is only in respect of using the service connection without getting permission for shifting. The fourth respondent has not made any objection for shifting. While so, the respondents 1 to 3 should not have considered the request for shifting as an application for new service connection.

19. Further, the learned counsel submits that if the respondents 1 to 3 fail to provide electricity within a period of one month from the date of application, they are liable to pay to the extend of Rs.1,000/- for their failure. The TANGEDCO

has got power to enter upon anybody's land for erecting supply towers. While so, they are also bound to provide electricity service for the persons who make application. As per Regulation 21 of the Tamil Nadu Electricity Distribution Standards of Performance Regulations, 2004, if there is any delay in providing service, the licensee is liable to pay compensation of Rs.100 per day for the delay cause subject to maximum of Rs.1,000/-. In case of request for shifting has to be done within 15 days as per Regulation 7 of the Tamil Nadu Electricity Distribution Standards of Performance Regulations, 2004.

20.Hence, the learned counsel would state that the inordinate delay in shifting the service connection from the bore Well which is dried up to the new bore Well is contrary to law and Code. Hence, the writ petition has to be allowed with exemplary costs.

21.The learned counsel for the petitioner has also submitted a written submission wherein, he has also made allegation of perjury against the respondents 1 to 3 and sought leave to initiate criminal proceedings.

22.The petitioner herein as well as the respondents have filed typed set of papers to substantiate their respective stand. The petitioner herein does not dispute that the land in S.No.424/1 is held jointly by him and other co-owners. Even in his own affidavit filed in support of the writ petition, he admits that the joint service connection was provided for Well held in common located in the said survey number. While so, in the year 2011, from the common Well, the service connection has been shifted to the bore Well located within the same survey number.

23.The proceedings of the Executive Engineer dated 01.11.2010 issued pursuant to the application of the petitioner herein for shifting of the said service connection from the open Well to the bore Well is enclosed as a document in the typed set of papers furnished by the respondents. In that proceedings, this Court finds that, the application of the petitioner has been taken up for consideration and the petitioner was asked to produce revenue records like patta, chitta, adangal field map with marking of the existing Well and the new Well along with the application duly filled and attested by the Village Administrative Officer regarding ownership.

24.This proceeding dated 01.11.2010 is pursuant to the application of the petitioner on 14.07.1998 for service connection to cultivate his 10 acres of land in S.F.No.424/1 by

using 7.5 hp motor to draw water from the bore Well. In the said application, he has disclosed that four persons are the owners of the Well and he has mentioned their names in the application as under:-

- "1.Rajammal
- 2.Arumugam
- 3.Thangavel (writ petitioner)
- 4.Selvarajan"

25.This application has been attested by Village Administrative Officer and the joint pattadars have also affixed their thumb impressions in the application. Based on this application, fresh service connection was provided to the bore Well, with the consent of the other co-pattadarars.

26.The Executive Engineer, Sankagiri has issued proceedings dated 01.11.2010 informing the petitioner herein to furnish revenue records and F.M Sketch of the field since his application dated 14.07.1998 under special priority scheme application for fresh service connection under Special Priority Scheme has been taken up for scrutiny.

26.The said service connection provided to the petitioner herein after obtaining the consent of the other co-owners is now sought to be shifted to a different bore Well in the same Survey number. It is pertinent to state that the patta for S.No.424/1 still stands jointly in the name of four persons, the petitioner is one among them. In his application dated 10.04.2019, the petitioner herein claims that the present service connection was given in the name of the petitioner, exclusive, but the records reveals that, it was given on consent of other co-owners. Since, service connection was earlier given on consent of the co-owners, when the petitioner wants to shift the present service connection from one bore Well to another bore Well situated in the land jointly held, in the very same survey number, a similar consent from co-owners is sought by the respondents.

27.The petitioner contention that there is no provision under the Electricity Code to demand NOC from the co-owners is incorrect. Clause 27(2) of the Tamil Nadu Electricity Distribution Code deals with supply of energy to agricultural category. It says the application for supply of agriculture category shall be in Form II of Annexure III. The said Form starts with a note that "the application should be signed by owner of the Well. If there are partners, all must sign or consent to be given by co-owners". In the end of the form, space for the list of owners provided and certificate by the Village Administrative Officer is required.

28.In this case, the petitioner herein has not made an

application in the said form and not provided the informations as found in this Form. The contention of the petitioner is that, he is only seeking shifting of existing service connection and therefore, he need not make application in the said format. The learned counsel contention is that, Clause 27(2) of the Tamil Nadu Electricity Distribution Code is exclusively for new service connection and not for existing service connection where shifting is requested.

29. According to the petitioner, Clause 37 of the Tamil Nadu Distribution Code which deals with shifting of service connection alone is applicable and not Clause 27(2). The reading of Clause 37 of the Tamil Nadu Distribution Code though it is captioned as shifting of electricity service connection, it deals only about the cost of new service connection or when shifting of an existing service connection to a different place how the cost to be arrived. Whereas, Rule 27(2) of the Tamil Nadu Distribution Code is specifically for supply of energy to the agricultural category. Whether it is a new service connection or shifting an existing to a different place, the application has to be made in a particular Form which is annexed in the Code. Therefore, the contention of the petitioner that Clause 27(2) of the Tamil Nadu Electricity Distribution Code do not apply for shifting of existing service connection is a misplaced argument.

30. Both for new connection as well as shifting, the consumer has to abide Clause 27 of the Tamil Nadu Electricity Distribution Code for getting supply of energy. The other contention of the petitioner is that, the failure of the respondents 1 to 3 for not shifting the line as per the request made by the petitioner will attract penalty under Regulation 21 of the Tamil Nadu Electricity Distribution Standards of Performance Regulations, 2004. It is to be noted that under Section 43 of the Electricity Act 2003, the supplier has a duty to provide electricity on demand within the period specified from the date of application. But the explanation to this section state that to cast such duty upon the supplier, the application must be a complete application, in all respect, in the appropriate form as required by the Distribution Code along with documents showing payment of necessary charges and other compliances.

31. The petitioner herein has first of all not made his application as per Form II of Annexure III mentioned in the Tamil Nadu Electricity Regulation Code Clause 27(2), the petitioner has not provided the documents as required by the respondents 1 to 3. Without proper application, without producing necessary documents and without the consent of the co-owners, the petitioner wants shifting of the service connection

to the new bore Well. When the existing bore Well and the service connection given to the petitioner itself is based on the consent given by the co-owners for further shifting within the same survey number, NOC from the co-owners is essential and pre-requisite. Hence, the petitioner herein is bound to make his application in the prescribed format with all revenue documents and consent of the co-owners for drawing water in the new bore Well dug by the petitioner in the land jointly held by other co-pattadarars. Without compliance of these requirements, the petitioner herein cannot maintain a writ of certiorarified mandamus to quash the impugned letter.

32.To sum up, clauses 5, 6 (1) of the Tamil Nadu Supply Code and Clause 37 of the Tamil Nadu Electricity Distribution Code deal with cost of shifting service line structure and equipment in case of shifting. It states that the shifting will be taken up only after the payment made by the consumer. So, both Clause 37 of the Electricity Distribution Code as well as Clauses 5, 6 of the Tamil Nadu Electricity Supply Code relate to charges to be levied when shifting is ordered. This has to be preceded with an application for shifting as prescribed under Clause 27(2) of the Tamil Nadu Electricity Distribution Code. When the statute mandates that application must be only as per the format prescribed under the Code, there is no duty cast upon the respondents 1 to 3 to entertain any request or application which is not in the prescribed format or which is not annexed with required documents or without the consent of the co-owners.

33.When admittedly, the land in S.No.424/1 jointly owned by few others including the fourth respondent and when the fourth respondent has objected for shifting the service connection to a place which falls within the survey number for which he is a co-pattadarar, this Court finds that though the petitioner is entitled for shifting of the existing service connection from the dried bore Well to a live bore Well, such shifting can be done only on proper application along with proper documents and consent of the co-owners, as it was done earlier in the year 2011 based on the application of the petitioner along with the consent of the co-owners and revenue documents. There cannot be any deviation in the said procedure.

34.In the result, the writ petition is dismissed with liberty to the petitioner herein to make a proper application in a proper format along with required documents and if he is of the opinion that the consent of the co-owners is not required or cannot be obtained, he can place the reasoning for that before the respondents 1 to 3 and seek for shifting. Without the above

compliances, the respondents have no duty to shift the service line. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

jbm
To

1.The Assistant Engineer,
Operation & Maintenance,
TANGEDCO, Vaikuntham,
Sankari Taluk,
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Sankari Division, Sankari,
Sankari Taluk,
Salem District.

+lcc to Mr.N.Subramaniayan , Advocate SR.No. 95897

+lcc to Mr.S.K.Raameshuwar, Advocate SR.No. 97178

W.P.No.20163 of 2019

A.SK(26/12/2019)

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