

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2019

CORAM:

THE HONOURABLE MR. JUSTICE T. RAJA

Writ Petition No.19709 of 2010 and  
M.P.Nos.1 and 2 of 2010

M/s.K.L.Concast Private Limited (Unit-II),  
147/1, Periya Obulapuram Village,  
Madharapakkam Road,  
Thiruvallur District  
rep. by its General Manager  
Mr.S.R.P.Kaimal .... Petitioner

Vs

The Superintending Engineer,  
Chennai Electricity Distribution Circle/North,  
Tamil Nadu Electricity Board,  
144, Anna Salai,  
Chennai-600 002. .... Respondents

PRAYER: Writ Petition filed under Article 226 of the  
Constitution of India, praying to issue a Writ of Certiorari,  
calling for the records of the respondent in  
Lr.No.SE/CEDC/N/AEE/Dev/AE/D2/F HT K L Concast/D 629/09 dated  
13.08.2010 and quash the same as illegal and arbitrary and  
against the Supply Code, 2004.

For Petitioner : Mr.AR.L.Sundaresan,  
Senior Counsel  
for Mr.K.Seshadri

For Respondent : Mr.P.R.Dilipkumar,  
Standing Counsel

O R D E R

Questioning the correctness of the impugned order dated  
13.08.2010 issued by the Superintending Engineer, Chennai  
Electricity Distribution Circle/North, asking the petitioner to  
pay the monthly minimum charges for 180 days in advance before  
the expiry of first 90 days period, only then, the respondent

would issue the second 90 days notice, the present Writ Petition has been filed.

2. Learned Senior Counsel appearing for the petitioner argued that the petitioner applied for H.T. Service Connection with a maximum demand of 8000 K.V.A. at 33 K.V. Supply. Thereupon, the respondent also directed to petitioner to pay a sum of Rs.64,00,500/- towards Registration Fee and Earnest Money Deposit. Accordingly, the said amount was paid on 24.8.2009. Thereafter, when the petitioner has invested about Rs.60 Crores for the establishment of the said Steel Industry with Electric Furnace for the manufacture of Steel Ingots, the respondent was reluctant in sanctioning the said H.T. Service Connection to the petitioner industry. Therefore, they have approached the concerned Ministry on 27.10.2009. Subsequently, on the advise of the Government, the respondent had sanctioned a load of 8000 K.V.A. to the petitioner Industry on 22.12.2009. After some time, on 20.5.2010, the respondent has directed the petitioner to produce a Safety Certificate from the Chief Electrical Inspector to Government and also informed that they have completed board side work for effecting supply to the petitioner Industry as early as on 17.5.2010 which was not correct. They have also cautioned the petitioner that they have to pay minimum charges of Rs.24,00,000/- per month from the date of completion of Board side work and on issue of letter of supply availability to the petitioner premises. In the said letter, the respondent also posed a threat that the petitioner's application would be treated as cancelled and all charges amounting to Rs.28,00,000/- would be forfeited except Meter Caution Deposit without any further intimation.

3. The learned Senior Counsel for the petitioner further argued that in fact, the respondent has not laid any lines on 17.5.2010 as contended in their letter dated 20.05.2010 clearly indicating that the cable laying work has not been completed till date. Of course, the said letter further indicated that the cable and line works are still incomplete in 3, 4 areas. Finally, the petitioner requested the respondent to advise their staff to complete the work at the earliest. Therefore, they are not able to claim or charge any minimum charges till the work is complete. Hence, in the letter dated 20.05.2010, the respondent has mentioned that boardside work with regard to the extension of HT supply for a maximum demand of 8000 KVA at 33 KV to the petitioner has been completed on 17.05.2010. Even the letter dated 26.05.2010 of the petitioner has not been till date replied by the respondent. Therefore, reading together Clause 31 (2) and (5) of the Tamil Nadu Electricity Distribution Code, they are not entitled to issue the impugned order. Hence, the

same is liable to be set aside.

4. Again reading Clause 31(2), the learned Senior Counsel for the petitioner argued that while issuing the letter dated 20.05.2010 informing the petitioner that the board side work was over on 17.05.2010, as per the indication in Clause 31(5), they should also make it clear that the notice of availability of supply should have been given to the petitioner which has not been done in the present case. Therefore, it is not open to the respondent to issue the impugned order claiming the monthly minimum charges for 180 days in advance.

5. A detailed counter affidavit has been filed by the respondent.

6. Learned Standing Counsel appearing for the respondent stated that when Clause 31(2) of the Electricity Distribution Code is very clear that the intending consumer shall avail himself of the supply within three months in case of HT and one month in case of LT from the date of issuance of the notice dated 20.05.2010 informing the petitioner that boardside work with regard to HT supply for a maximum demand of 8000 KVA at 33 KV to the petitioner has been completed on 17.05.2010, from the date of notice, the monthly minimum charges for 180 days shall be liable to be paid by the petitioner. Although, Mr.P.R.Dilipkumar, learned Standing Counsel appearing for the respondent partly agreed that the Letter dated 20.05.2010 has not been specifically worded, the issuance of the notice in respect of supply availability that will not give any benefit to the petitioner to say that they are not liable to pay the monthly minimum charges.

7. The learned Standing Counsel for the respondent further stated that a reading of the Clause 31(5) of the Tamil Nadu Electricity Distribution Code makes the issue very clear that there is no infirmity or error in issuing the impugned order claiming monthly minimum charges from the petitioner.

8. But this Court hardly finds any merit on the submission made by the learned Standing Counsel for the respondent. It is the claim of the petitioner that they have applied for HT Service Connection with a maximum demand of 8000 K.V.A. at 33 K.V. Supply. Immediately thereafter, the respondent also directed the petitioner to pay the Registration Fee and the Earnest Money Deposit. Accordingly, it was complied with by making the payment on 24.08.2009. Although, on 22.12.2009 the respondent has sanctioned the load of 8000 K.V.A. to the

petitioner Industry, the respondent has to comply with as a matter of fact two vital conditions. Firstly, they should issue the Readiness Certificate informing the petitioner that all board side work with regard to the extension of HT supply has been completed. Secondly, the respondent also shall clearly indicate that they are ready to supply the maximum demand of 8000 K.V.A. at 33 K.V. Supply.

9. As contended by the learned Senior Counsel for the petitioner, when the respondent has complied with the first condition in their letter dated 20.05.2010 that the board work with regard to extension of HT supply for a maximum demand of 8000 KVA at 33 KV to the petitioner Industry has been completed on 17.5.2010, nowhere in the said letter, the respondent has complied with the conditions mentioned under Clause 31(5) of the Electricity Distribution Code indicating the supply of availability of the said demand. Thirdly, when the letter dated 20.05.2010 was issued by the Superintending Engineer informing the petitioner that the Boardwork with regard to the extension of HT supply for a maximum demand of 8000 KVA at 33 KV to the petitioner Industry has been completed on 17.05.2010, despite the said statement, on 26.05.2010, the petitioner has written a letter indicating that the line and cable work have not been completed on 26.05.2010 was not correct. Interestingly, it is not known why the respondent has not replied to the said letter. The stand of the respondent in not meeting the letter dated 26.5.2010 can be construed against the respondent that they have not complied with the conditions mentioned in Clause 31(5) of the Electricity Distribution Code.

10. In this regard, it is relevant to extract Clause 31(2) and (5) of the Electricity Distribution Code here under:

'31(2) The intending consumer shall avail himself of the supply within three months in case of HT and one month in case of LT from the date of issue of notice in writing, informing him that supply is available.

...

...

31(5) If the intending consumer avails supply during the notice period of availability of supply, he shall pay the monthly minimum charges at the notified tariff rate for the period from the date of issue of first notice of supply availability till the date of availing supply.'

A conjoint reading of Clause 31(2) and (5) of the Electricity Distribution Code would go to clearly show that the petitioner being an intending consumer no doubt shall avail himself within 3 months in case of HT from the date of issuance of notice in writing informing them that the supply is available. But in the present case, neither the letter dated 20.05.2010 informing the petitioner that the Board side work with regard to the extension of HT supply for a maximum demand of 8000 KVA at 33 KV to the petitioner Industry has been completed on 17.05.2010 has given the supply availability nor the respondent despite the letter dated 26.05.2010 has completed the line and cable work, therefore, this Court is unable to find any merit in the Writ Petition for the reason that even when the respondents also have not completed the work, it is their fault only for which the petitioner cannot be held liable for payment of minimum charges.

11. In the result, the impugned order dated 13.08.2010 of the respondent is set aside and the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

-Sd/-

Asst.Registrar (CS IV )

/true copy/

Sub Asst. Registrar

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To

The Superintending Engineer,  
Chennai Electricity Distribution Circle/North,  
Tamil Nadu Electricity Board,  
144, Anna Salai,  
Chennai-600 002.

+1 cc to Mr.K.Seshadri Advocate sr84624

+1 cc to Mr.P.R.Dhilip kumar Advocate sr84750

W.P.No.19709/2010

aa19/11/2019