

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :22.10.2019

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Writ Petition No.24838 of 2019
and

W.M.P.No.24463 of 2019

D.Thangamani

.. Petitioner

/versus/

1.The Superintending Engineer,
Tamil Nadu Electricity Generation &
Distribution Corporation,
Capper Quarry,
Cuddalore 607 004,
Cuddalore Taluk,
Cuddalore District.

2.The Executive Engineer,
(Operation & Maintenance),
Tamil Nadu Electricity Generation &
Distribution Corporation,
Kurinjipadi 607 302,
Cuddalore Taluk,
Cuddalore District.

3.The Assistant Engineer,
(Operation & Maintenance),
Tamil Nadu Electricity Generation &
Distribution Corporation,
Kurinjipadi 607 302,
Cuddalore Taluk,
Cuddalore District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records and quash the proceedings of the 2nd respondent in his Ka.No.Se/Po/EPa/Kubadi/Thonuvoo/Ko.Manu/A.No.90/19-20, dated 30.07.2019 and consequently directing the respondents to permit shifting of 039-001 S.C.No.261 to New S.No.147/9A in

Muthukrishnapuram, hamlet of Ellappanpettai, Kurinjipadi,
Kurinjipadi Taluk, Cuddalore District.

For Petitioner :Mr.R.Gururaj

For Respondents :Mr.M.Varunkumar,
Standing Counsel for
R1 to R3

O R D E R

This Writ Petition is filed to issue a Writ of Certiorarified Mandamus to call for the records and quash the proceedings of the 2nd respondent in his Ka.No.Se/Po/EPa/Kubadi/Thonuvoo/Ko.Manu/ A.No.90/19-20 dated 30.07.2019 and consequently directing the respondents to permit shifting of 039-001 S.C.No.261 to New S.No.147/9A in Muthukrishnapuram, hamlet of Ellappanpettai, Kurinjipadi, Kurinjipadi Taluk, Cuddalore District.

2. Heard the learned counsel appearing for the petitioner and the learned Standing counsel appearing for the respondents.

3. The case of the petitioner is that his father Dhandapani who is the owner of the land in S.No.142/1 was enjoying free electricity service connection since 1984 and cultivating his land. During his lifetime, since there was not sufficient yield of ground water in the well situated at S.No.142/1, with permission of the Electricity Board, he shifted the service to the well located in S.No.142/6A (old S.No.201/4). After the demise of the petitioner's father, the petitioner has sought for name transfer vide application dated 19.06.2019. The Executive Engineer had caused inspection of the field of the petitioner and has found that while originally the service connection was given to the well located in S.No.142/1, presently it is shifted to the housing site eighty meters away from the agricultural land and the petitioner is drawing water in the well located in S.No.142/6A, which is a residential plot and not agricultural land. Hence, a show cause notice was issued to the petitioner why the service connection should not be terminated under Rule 33(4) of the Tamil Nadu Electricity Distribution Code for violating the conditions.

4. The petitioner herein thereafter has given a representation to the respondents on 13.08.2019 pointing out that the shifting of the service connection to the well located

80 meters away from the agricultural land bearing S.No.142/1 was done in the year 1996 itself after obtaining permission from the Electricity Board and presently the petitioner has dug a new bore well in his agricultural land bearing S.No.147/9. The present service connection located in S.No.142/6A can be shifted to S.No.147/9 and the name transfer may also be effected. After making the said representation, the present writ petition is filed seeking Certiorarified Mandamus to quash the show cause notice of the 2nd respondent dated 30.07.2019 and also to consider the representation of the petitioner dated 13.08.2019.

5. According to the learned counsel appearing for the petitioner, the earlier shifting of the service connection from S.No.142/1 to S.No.142/6A was pursuant to the order passed by the Electricity Board in the year 1996 and only after obtaining permission from the electricity board, the shifting was done. For nearly 15 years the petitioner is drawing the water from the well situated in S.No.142/6A to irrigate his land in S.No.142/1. When the petitioner sought for name transfer, the Department pointed out that he cannot continue to enjoy of the service connection which is in the residential plot. Hence, the petitioner has dug a new bore well in his agriculture land at S.No.147/9. Since there is no violation of usage of the free service connection at any point of time the respondents cannot resort to Rule 33(4) of the Tamil Nadu Electricity Distribution Code, 2004 and try to disconnect the service connection.

6. Furthermore, the learned counsel appearing for the petitioner would submit that taking note of poor yield of water from the well in S.No.142/1 the petitioner has dug a new bore well in the nearby land at S.No.147/9 which is an agricultural land to an extent of 16 ares. Hence, there can be no legal impediment for the respondents to shift the service connection No.039-001-261 which presently stands in the name of Dhandapani the father of the petitioner to the well situated in S.No.147/9 and also cause due name transfer.

7. The learned standing counsel appearing for the respondents would submit that the petitioner has violated the condition of free electrical service connection provided to him. The land at which the present service connection provided is a non-agricultural land plotted out as a residential site. Since there is possibility of misuse of the service provided, the connection given to the petitioner is liable to be disconnected in the light of the Rule 33(4) of the Tamil Nadu Electricity Distribution Code, 2004.

8. Rule 33(4) of the Tamil Nadu Electricity Distribution Code, 2004 reads as follows:

33(4):Agreements: The Licensee can terminate the agreement of a consumer at any time by giving one month's notice if the consumer has violated the terms of the agreement or the terms and conditions of this Code or the provisions of any law relating to the agreement including the applicable Acts and Rules under the Act and other orders from time to time. [The Licensee shall inform the consumer regarding the grounds for such termination]. It is obligatory on the part of the Licensee to inform the consumer regarding the grounds for such termination.

9. The learned standing counsel appearing for the respondents would submit that the service provided for agricultural use for irrigating a particular survey number cannot be utilized for the other survey number. On that ground also the petitioner is not entitled for shifting the service connection.

10. On considering the rival submissions, this Court is of the view that as long as the consumer utilize the service connection for the purpose of the agriculture activity, he must be provided with free service connection as a policy of the State Government. The alleged loss incurred by the TANGEDCO for providing free of electricity service connection to the agriculturist cannot be a ground to deprive any farmer who wants continuation of free electrical service to irrigate his land.

11. In this case, the petitioner has not misused the agriculture service for any other purpose. He has shifted the location of the service to an alternate place, since he had no sufficient yield in the existing place. Even that shifting was done nearly 15 years ago, when the Code was not in force and done with the permission of the Electricity Board. While so, when the petitioner has come forward to shift the electricity connection to the well in S.No.147/9 which is admittedly an agriculture land, this Court finds that there is no legal impediment for the respondents to consider the representation of the petitioner.

12. Therefore, this Writ Petition is allowed with a direction to the petitioner to give fresh application for shifting and name transfer with all relevant documents and

necessary fees to the respondents. On receipt of such application, the respondents shall consider the representation of the petitioner and permit him to shift the existing service connection in S.No.142/6 A to S.No.147/9 subject to the satisfaction of all other requirements and production of documents within a period of 8 weeks from the date of receipt of the application. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

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+1 cc to M/s.R.Gururaj,Advocate Sr.No. 88787

AKM/22.11.19/5P- 5C /

W.P.No.24838 of 2019