



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.04.2019

DELIVERED ON : 08.05.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P. (MD) No.3561 of 2019

and

W.M.P (MD) .No.2788 of 2019

T.S.Rajan

... Petitioner

Vs

1.The Tamil Nadu Generation and Distribution Corporation Ltd.,
Anna Salai, Chennai-600002.
Rep., by its Chairman.

2.The Assistant Executive Engineer,
The Tamil Nadu Generation and Distribution Corporation Limited,
Kuzhithurai, Kanyakumari District-629163.

3.The Junior Engineer,
The Tamil Nadu Generation and Distribution Corporation Ltd.,
Kannumamoodu, Kannumamoodu P.O.,
Via Palukal, Kanyakumari District,
Pin:629160.

4.Balalojana Nair,
(Father's name not known to the petitioner),
Suba Anantham, Kumarapuram,
MCH, Thiruvananthapuram, Kerala State.

5.Thulasi Bai

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the third respondent pertaining to his order in letter Ka.No.EMi Po/Pa/Ka.Maa/Ko.Kattu/ANo.67/2017 dated 31.01.2017 on his file, quash the same, directing respondents 1 to 3 to give the petitioner supply of electricity for his building bearing Door No.I.3.187A of Puliyoorsalai Village Panchayat, that is, Manchadivilai Puthen Veedu, Mancode Post, Via Edaicode, Kanyakumari District within a time to be fixed by this Court.

For Petitioner

: Mr.K.N.Thampi

<https://hcservices.ecourts.gov.in/hcservices/> For R1 to R3

: Mr.A.V.Ramanathan

For R4 & R5

: Mr.K.P.Narayanakumar

**ORDER**

The writ petitioner owns the petition mentioned building. He is residing there with his family. He seeks provision of electricity supply. He submitted an application in this regard. But by the impugned communication dated 31.01.2017, the third respondent has informed the writ petitioner that it is not possible to draw the line over the area mentioned as pathway by the writ petitioner. Questioning the same, the writ petition has been filed.

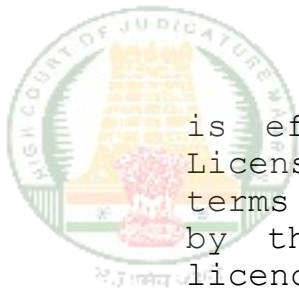
2.Heard the learned counsel on either side.

3.The learned counsel appearing for the writ petitioner contended that the impugned order has to be set aside inasmuch as the third respondent has not borne in mind the statutory scheme set out in "Works of Licencees Rule 2006". He pointedly argued that merely because some objection has been raised by the contesting private respondents, the authority cannot refuse to discharge the duty cast on them under Section 43 of the Electricity Act, 2003 to supply electricity on request. It is the submission of the petitioner's counsel that electricity has become a basic-cum-essential necessity and that therefore refusal to supply electricity amounts to a serious infringement of his right.

4.The stand of the writ petitioner is assailed by the learned counsel appearing for the private respondents. The learned counsel appearing for the private respondents would assert that the route on which the petitioner wants the lines to be drawn and pole to be erected are very much the private property of the contesting respondent and that there is no pathway as claimed by the writ petitioner.

5.As rightly contended by the learned Standing counsel for TANGEDCO, Regulation 27 of the Tamil Nadu Electricity Distribution Code cannot be lost sight of. Regulation 27 (6) Tamil Nadu Electricity Distribution Code reads as follows:-

"(6) Where the intending consumer's premises has no frontage on a street and the supply line from the Licensee's mains has to go upon, over or under the adjoining premises of any other person (whether or not the adjoining premises is owned jointly by the intending consumer and such other person), the intending consumer shall arrange at his/her own expense for any necessary way leave, licence or sanction before the supply is effected. Even when the frontage is available, but objections are raised for laying lines / cables/ poles through a route proposed by the Licensee involving minimum cost and in accordance with the technical norms, to extend supply to the intending consumer, the intending consumer shall arrange at his/her own expense necessary way leave , licence or sanction before the supply



is effected. .Any extra expense to be incurred by the Licensee in placing the supply line in accordance with the terms of the way leave, licence or sanction shall be borne by the intending consumer. In the event of way-leave, licence or sanction being cancelled or withdrawn, the intending consumer shall at his/her own cost arrange for any diversion of the service line or the provision of any new service line thus rendered necessary. "

6.No doubt "Works of Licencees Rules 2006" made by the Central Government appears to support the stand of the writ petitioner's counsel. Rule 3 of the said Rules reads as follows:-

"3. Licensee to carry out works.- (1) A licensee may-
(a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, wherever or whereunder any electric supply-line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;
(b) fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of an overhead line on any building or land or having been so fixed, may alter such support:

Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorised by the State Government in this behalf, for carrying out the works:

Provided further that if at any time, the owner or occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer authorised may by order in writing direct for any such works, support, stay or strut to be removed or altered.

(2) When making an order under sub-rule (1), the District Magistrate or the Commissioner of Police or the officer so authorised, as the case may be, shall fix, after considering the representations of the concerned persons ,if any, the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(3) Every order made by a District Magistrate or a Commissioner of Police or an authorised officer under sub-rule (1) shall be subject to revision by the Appropriate Commission.



(4) Nothing contained in this rule shall effect the powers conferred upon any licensee under section 164 of the Act."

7. I am of the view that there is no need to go into the said contention. This is because the writ petitioner in his application had taken a categorical stand. According to the writ petitioner, the route through which he wants the line to be drawn belongs to the local Panchayat. If the writ petitioner had come out with the case that he wants the lines to be drawn over the property of the contesting private respondent and that he is ready to pay compensation, then it would be a different matter altogether. But that is not the case here.

8. A reading of the materials enclosed by the writ petitioner in the typed set of papers indicates that according to the petitioner, the route on which the lines are sought to be drawn are the Panchayat property. In fact, the petitioner has enclosed the certificate issued by the local Panchayat. Therefore, even while declining to interfere with the order impugned in the writ petition, I direct the third respondent to refer the matter to the jurisdictional Tahsildar. The jurisdictional Tahsildar will clarify if the route indicated by the writ petitioner is a pathway belonging to the local panchayat or belongs to the contesting private respondent. The third respondent will take further action in the matter based on the decision of the jurisdictional Tahsildar. The jurisdictional Tahsildar will issue proceedings in this regard, after hearing both the parties concerned and after causing a survey inspection to be done in the presence of both the parties.

9. It is of course open to either parties to move the civil Court also based on the decision of the jurisdictional Tahsildar. The Tahsildar will carry out and complete the survey exercise within a period of 4 to 6 weeks from the date of receipt of a copy of this order. If the decision of the jurisdictional Tahsildar is in favour of the writ petitioner, the third respondent will provide the electricity connection sought for in the writ petition. If the same is in favour of the contesting private respondent, the impugned order will stand as it is.

10. The Writ Petition is disposed of with the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Vacation Officer/
Assistant Registrar (CO)

// True Copy //



1.The Chairman,
Tamil Nadu Generation and Distribution
Corporation Ltd.,
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The Tamil Nadu Generation and Distribution
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3.The Junior Engineer,
The Tamil Nadu Generation and Distribution
Corporation Ltd.,
Kannumamoodu, Kannumamoodu P.O.,
Via Palukal, Kanyakumari District,
Pin:629160.

+1CC TO MR.K.P.NARAYANA KUMAR, Advocate Sr. No.65362
+1CC TO MR.K.N.THAMPI, Advocate Sr. No. 65318

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TR (20.05.2019) 5P 6C