

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2020

CORAM :

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.25156 of 2011
and M.P.Nos.1 & 2 of 2011

M/s.DLF Home Developers Limited,
having its Registered Office at
DLF Centre, Sunand Marg,
New Delhi - 110 017
and Zonal Office at
No.268, Poonamallee High Road,
Kilpauk, Chennai - 600 010
rep by its Special Power of Attorney
T.S.Srinivasan ... Petitioner
(Petitioner's name substituted vide order dated 20.03.2018
made in W.M.P.No.26756 of 2017)

Vs.

- 1.The Chairperson,
Consumer Grievance Redressal Forum,
Tamil Nadu Electricity Board,
Chennai Electricity Distribution Circle - South,
110 KV SS Complex,
K.K.Nagar,
Chennai - 600 078.
 - 2.The Hon'ble Ombudsman,
Tamil Nadu Energy Regulatory Commission,
19-A, Rukmani Lakshmipathy Road,
2nd Floor, Egmore,
Chennai - 600 008.
 - 3.The Superintending Engineer,
Chennai Electricity Distribution Circle - South,
Tamil Nadu Electricity Board,
110 KV SS Complex, K.K.Nagar,
Chennai - 600 078.
- ... Respondents

Petition filed under Article 226 of the Constitution of India for issuing a writ of certiorarified mandamus calling for the records relating to the order dated 07.04.2009 made in Petition No.1 of 2009 passed by the 2nd respondent and quash the same and consequently direct the respondents 1st & 3rd to refund a sum of Rs.2,49,41,848/- which was collected from the petitioner towards monthly minimum charges for the period

16.06.2007 to 13.06.2008 together with interest at the rate of 18% per annum with monthly rests from the date of such remittances till the date of refund.

For Petitioner : Mr.Jayesh B.Dolia
for M/s.Aiyar and Dolia

For Respondents: Mr.P.Gunaraj,
Standing Counsel - TNEB (R1 & R3)
R2 - no appearance

O R D E R

The petitioner has filed the above Writ Petition to issue a Writ of certiorarified mandamus to call for the records relating to the order dated 07.04.2009 made in Petition No.1 of 2009 passed by the 2nd respondent and to quash the same and consequently directing the respondents 1 & 3 to refund a sum of Rs.2,49,41,848/- which was collected from the petitioner towards monthly minimum charges for the period 16.06.2007 to 13.06.2008 together with interest at the rate of 18% per annum with monthly rests from the date of such remittances till the date of refund.

2.It is the case of the petitioner that they are constructing a multi-storeyed building in two phases for the purpose of establishing a World Class Information Technology, Special Economic Zone under the name and style of "DLF IT Park" to an extent of 41.29 acres in Mugalivakkam and Manapakkam Villages of Sriperumbudur Taluk, Kancheepuram District, after obtaining all the requisite permission from all the concerned authorities. The petitioner submitted an application to the 3rd respondent - Board on 13.01.2006 for availing 5.8 MVA HT service connection for IT office space. The petitioner received a letter from the 3rd respondent dated 27.02.2006 wherein the 3rd respondent called upon the petitioner to remit an EMD for Rs.46,40,000/-, along with Rs.500/- towards registration fee. On 17.03.2006, the petitioner remitted the sum of Rs.46,40,500/- to the respondent - Board. The petitioner received a letter dated 07.10.2006 wherein the petitioner was called upon to avail the supply of power within three months from 04.10.2006 and that the monthly minimum charges will be levied as and from that date. By letter dated 03.11.2006, the 3rd respondent again made a demand of Rs.27,53,525/- for effecting new demand of 5800 KVA. The said amount was paid by the petitioner on 20.11.2006.

3.The petitioner entered into an Agreement dated 20.11.2006 for availing electricity service connection for connected load of 670/HP and for a maximum demand of 5800 KVA at 33 KV HT supply for the purpose of temporary power supply for construction, light and power in terms of Distribution

Code. In the said Agreement, it was mentioned that the supply was availed on 24.07.2008. Further, it is the case of the petitioner that by letter dated 19.12.2006, the 3rd respondent called upon the petitioner to produce Completion Certificate for completing the building in order to effect the supply to the premises. The petitioner, by reply dated 20.12.2006, had appraised the 3rd respondent about the difficulty in obtaining Completion Certificate from CMDA. Again by letter dated 18.06.2007, the 3rd respondent called upon the petitioner to avail the supply of power within three months from 18.06.2007 and that the monthly minimum charges would be levied as and from that date.

4. Further, the 3rd respondent demanded Completion Certificate from CMDA for availing the power supply, failing which, informed that the amount paid by the petitioner would be forfeited and treat the application as cancelled. Since the Completion Certificate from the CMDA was not produced, another notice was issued to the petitioner to avail the supply of power within three months from 14.09.2007 and that the monthly minimum charges will be levied as and from 18.06.2007 till the supply is availed by the petitioner. Subsequently, by letter dated 31.07.2008, the 3rd respondent demanded payment of Rs.2,30,40,966/- for HT Supply Service Connection No.731 as current consumption charges attaching a Bill mentioned that monthly minimum charges for non-availing period and demanded the petitioner to pay the same within seven days and payments made thereafter will be subject to the levy of belated payment surcharge at 1.5% per month. The petitioner was also advised to approach the 1st respondent for redressal of their grievance. By order dated 07.04.2009, the 2nd respondent rejected the appeal by holding that there was no illegality in the order passed by the 3rd respondent in collecting the monthly minimum charges and held that there was no infirmity in the order passed by the respondent and thus rejected the claim of the petitioner. Aggrieved over the order passed by the 2nd respondent dated 07.04.2009, the petitioner has filed the present Writ Petition.

5. Mr. Jayesh B. Dolia, learned counsel appearing for the petitioner submitted that since there was delay in getting the Completion Certificate from the CMDA, the same could not be produced before the 3rd respondent in time and therefore, the 3rd respondent cannot claim the minimum charges for the said period. In support of his contention, the learned counsel relied upon a judgment dated 07.01.2008 passed by this Court in W.P.No.28943 of 2007 [Sonal Vyapar Limited rep by its Director, by its President Aravind Gupta Vs. 1. The Tamil Nadu Electricity Board, 800, Anna Salai, Chennai - 600 002 rep by its Chairman and 2 others] wherein this Court held as follows:

"...

13.A reading of the above said Regulation also makes it clear that the consumer is liable to pay to the licensee, namely, the Electricity Board, the monthly minimum charges from the commencement of supply till the agreement is terminated.

14.In this case, it is not even the case of the Electricity Board in the communication dated 5.9.2002, that the Electricity Board has demanded the petitioner to pay the amount of arrears in respect of Service Connection No.147 and until the amount is paid the petitioner will not be given supply and such a stand has never been made. Even in the absence of such a stand, the Electricity Board has right to recover the amount. It cannot be said that during the said period, namely, from 6.9.2002 to 10.9.2002, when the petitioner has not actually availed the supply, he should be made responsible for the payment of monthly minimum charge."

6.Mr.P.Gunaraj, learned Standing Counsel for the respondents 1 & 3 submitted that the petitioner was called upon to produce the CEIG Certificate even in their letter dated 07.10.2006. Since the petitioner failed to produce the same, they are not entitled to claim refund from the respondents. Further, the learned standing counsel submitted that the order relied upon by the learned counsel for the petitioner is not applicable to the present case for the reason that the petitioner therein had complied with all the requisites and inspite of the same, the service connection was not provided to the petitioner therein and hence, this Court found that the Electricity Board cannot claim the minimum consumption charges during the said period. In the case on hand, only because of the non-production of the CEIG Certificate, the respondents did not provide electricity supply to the petitioner's building.

7.On a reading of the letter dated 07.10.2006, it is clear that the petitioner was called upon to avail the supply within three months from 04.10.2006 and also it was informed to the petitioner that the monthly minimum will be levied from the said date since the TNEB had completed all works in connection with effecting the HT supply as requested by the petitioner. Further, the 3rd respondent had informed that the petitioner was not in a position to avail the HT supply. Further, in the said letter, it has been specifically mentioned that the supply can be availed by the petitioner by duly producing CEA/CEIG Certificate within the stipulated time limit, failing which, all the amounts paid by them will be forfeited and no further time extension will be permitted and also the application will be cancelled and agreement

terminated.

8. When the 3rd respondent had made it clear that the petitioner has to produce the CEA/CEIG Certificate and in the event of failure to produce the said Certificate before the 3rd respondent, the 3rd respondent cannot be blamed for not providing HT supply to the petitioner. The fault is only on the petitioner in not producing the CEIG Certificate as required by the 3rd respondent. Further, in the letter dated 07.10.2006. it has been made clear that the petitioner has to pay the monthly minimum charges from 04.10.2006. Therefore, even at the earliest point of time, the 3rd respondent had made it clear that the petitioner is liable to pay the monthly minimum charges and they have to produce the CEIG Certificate for availing the HT supply. Even in the subsequent letters dated 18.06.2007 and 17.09.2007 also, the 3rd respondent had re-iterated the conditions which were mentioned in the letter dated 07.10.2006. In these circumstances, the judgment relied upon by the learned counsel for the petitioner is not applicable. The 2nd respondent, taking into consideration all these aspects, rightly dismissed the petition filed by the petitioner.

9. I do not find any error or irregularity in the order passed by the 2nd respondent. The Writ Petition is liable to be dismissed. Accordingly, the same is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairperson,
Consumer Grievance Redressal Forum,
Tamil Nadu Electricity Board,
Chennai Electricity Distribution Circle - South,
110 KV SS Complex, K.K.Nagar,
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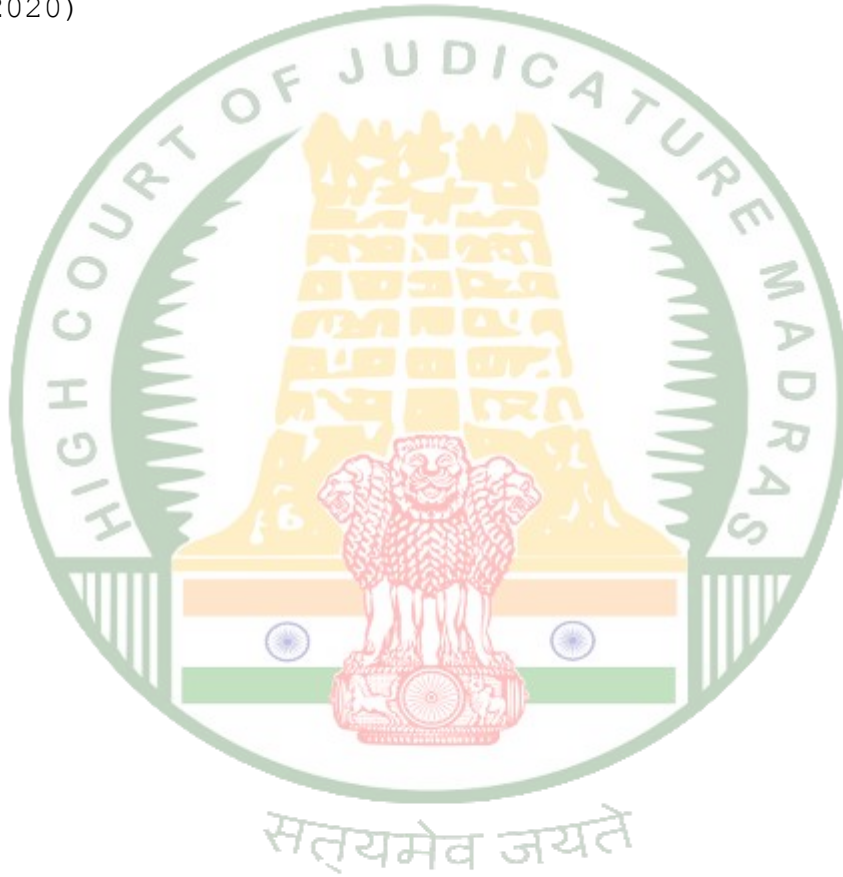
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+1cc to M/s.P.Gunaraj, Advocate SR.33683

W.P.No.25156 of 2011
and M.P.Nos.1 & 2 of 2011

RP (CO)
CB(23/11/2020)



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