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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2020

CORAM:

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.23148 of 2012
and M.P.Nos.1 & 2 of 2012

1.K.Jaya Kumar
2.K.Ashok Kumar
3.K.Pradeep Kumar
4.K.Prem Kumar
5.K.Suresh Kumar
6.K.Anand Kumar
7.Mrs.K.Amsa
8.Mrs.Shanthi

...Petitioners

vs.

1. The Chairman,
Tamil Nadu Electricity Board,
No.800, Anna Salai,
Chennai - 600 002.

2. The Superintendent Engineer,
C.E.D.C/South,
110, SS Complex,
K.K.Nagar, Chennai - 600 078.

3. The Chief Engineer (Commercial)
Distribution Chennai South Region,
Tamil Nadu Electricity Board,
TNEB Complex, NPKR Maligai,
No.800, Anna Salai,
Chennai - 600 002.

...Respondents

PRAYER: Writ Petition filed Under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the 2nd respondent vide his impugned letter No.SE/CEDC/S/AEE/G1/AE DEV/F.Jayakumar/D 1764/12 dated 01.08.2012 and to quash the same.

For Petitioners : Mr.S.Sundaresan

For Respondents : Mr.P.Gunaraj for R1 to R3
Assisted by Ms.G.Krithika



O R D E R

Heard Mr.S.Sundaresan, learned counsel for the petitioners and Mr.P.Gunaraj, learned standing counsel appearing for the respondents assisted by Ms.G.Krithika.

2.The petitioners have challenged a demand issued by the second respondent dated 01.08.2012, demanding monthly minimum charges as per the TNERC norms viz. for the period from December 2009 to 08.06.2010 and from 09.06.2010 to 21.05.2012. The petitioner had earlier filed W.P.No.6160 of 2010 questioning the demand dated 09.12.2009 demanding monthly minimum charges for the earlier period. The said writ petition was dismissed by an order dated 17.07.2019, the operative portion of the order reads as follows:

"8.On perusal of the records, it seems that the petitioners have made application for HT service connection on 07.09.2009 to the respondent. The respondent also issued a communication asking the petitioners to remit a sum of Rs.4,00,500/=~ to register their application and also for EMD. The petitioners also paid the amount and registered their application. Thereafter, the respondent sent a communication dated 25.09.2009 calling upon the petitioners to pay various charges amounting to a sum of Rs.4,56,280/=~. The petitioners also paid the said amount. Thereafter, the respondent sent the availability notice on 09.12.2009, however, the supply was not effected for non production of completion certificate from the CMDA and safety certificate from the Chief Electrical Engineer. However, the respondent board demanded the monthly minimum charges.

9.Perusal of Clause 31(5) of the Tamil Nadu Electricity Distribution Code disclose that if the intending consumer avail 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.

10.As per Clause 8 of the agreement entered into between the petitioners and the respondent Board, the petitioners have agreed to pay the monthly minimum charges every month as prescribed in the tariff and supply code even if no electricity is consumed for any reasons whatsoever. Thus a combined reading of Clauses 2, 6 and 8 makes it abundantly clear that from the date of agreement has come into force, the petitioners are bound to pay the monthly minimum charges.



11. In the present case, the first availability notice was issued on 09.12.2009. Hence, the petitioners have to necessarily pay the monthly minimum charges from 09.12.2009.

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12. In view of the above, I do not find any merits in the writ petition. The writ petition is accordingly dismissed. However, liberty is granted to the petitioners to pay the balance amount without any BPSC or penal interest within a period of eight weeks from the date of receipt of a copy of this order.

13. The writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed."

3. Till date, the petitioners have not filed any appeal against the said orders. Consequently, the finding rendered in the earlier writ petition will hold good in the present writ petition as well. Therefore, this writ petition has to be necessarily dismissed. However, the learned counsel for the petitioner persuaded to this Court to examine the contentions raised.

4. According to the learned counsel, the condition imposed for payment of monthly minimum charges though contained in clause 8 of the Agreement signed by the petitioners, there is no condition imposed in the Agreement that the petitioners should produce the planning permission and completion certificate from the Competent Authority. Therefore, the respondent cannot insist upon payment of monthly minimum charges. Clause No.8 of the Agreement reads as follows:

8. monthly minimum Charges: The consumer agrees to pay minimum charges every month as prescribed in the tariff and supply code even if no electricity is consumed for any reasons whatsoever and also if the charges for electricity actually consumed are less than the minimum charges. The minimum shall be payable even if electricity is not consumed because of disconnection of supply by the Licensee due to Non-payment of electricity charges, pilferage or other mal-practices or for any other valid reasons.

5. The power to impose such a condition flows from Clause 31 (5) of the Tamil Nadu Electricity Distribution Code which reads as follows:

(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.

6. Admittedly, the petitioners application for grant of High Tension service connection was favourably considered. It was for the petitioners to avail the supply. The petitioners being High Tension consumers 500 KVA power supply was allotted in their favour, till they avail supply, they are required to pay the monthly minimum charges, there can be no exemption in this regard. The fact that the petitioners are required to produce the planning permission and completion certificate from the Competent Authority was a condition imposed by the respondent, when the application for High Tension service connection was favourably considered. The petitioners cannot wriggle out of the said condition.

7. That apart, from the counter affidavit, it is seen that the petitioners have paid the entire amount of Rs.35,65,000/- on 15.09.2012 and consequently, supply was effected on 27.09.2012. Though the petitioners state that the amount was paid under protest, there is nothing on record to indicate the same and in the counter affidavit of the first respondent which has been clearly stated that the petitioners had voluntarily effected the payment.

8. Thus, for all the above reasons, this Court finds no grounds to interfere with the impugned order. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

pam

To

1. The Chairman,
Tamil Nadu Electricity Board,
No.800, Anna Salai,
Chennai - 600 002.
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Distribution Chennai South Region,
Tamil Nadu Electricity Board,
TNEB Complex, NPKR Maligai,
No.800, Anna Salai,
Chennai - 600 002.

+1cc to Mr.S.Sundaresan, Advocate, S.R.No.21474

+1cc to Mr.P.Gunaraj, Advocate, S.R.No.21624

W.P.No.23148 of 2012

LN(CO)
KKV/14/07/2020