

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

W.P.No.10503 of 2020

D.Sivaraman

...Petitioner

Vs.

The Assistant Engineer (Pallavaram West)
Tamil Nadu Generation and Distribution
Corporation Ltd. (TANGEDCO)
Pallavaram
Chennai - 600 043.

...Respondent

This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the Respondent to forthwith give Electricity Service Connection to the Petitioner's House bearing No.12-B, Cantonment Quarters, C.Pallavaram, Chennai - 600 043 based on the Application of the Petitioner dated 20.12.2019.

For Petitioner : Mr.K.Selvaraj

For Respondent : Mr.P.Gunaraj

ORDER

This Writ Petition has been filed for issuing a Writ of Mandamus directing the respondent to provide electricity service connection to the house of the petitioner.

2. The case of the petitioner is that he and his family members are residing in a hut at Pallavaram, Chennai. The further case of the petitioner is that he submitted an application on 20.12.2019 to the respondent along with all the documents in order to prove their possession. The petitioner also submitted an indemnity bond to the respondent. The further case of the petitioner is that several persons, who are similarly placed in the same area have been given temporary electricity connection. Therefore, the petitioner also wants to be given the same treatment and the petitioner has sought for temporary electricity connection.

3. The respondent has filed a counter affidavit. The relevant portion in the counter affidavit is extracted hereunder:-

"6. I further submit that the electricity is given to one J. Ruben at Door No.5, Cantonment on 02.07.1996, on the basis of his application dated 04.05.1996 submitted along with the NOC from Cantonment Executive Officer, St. Thomas Mount, Pallavaram and while so the amended provisions of Clause 27 (12) was not in force and the Clause 27(12) of the said code come into force only on 21.6.2006 and the service connection to Mr. Chinnayogaiyya at Door No.20, Cantonment is also effected on 27.12.2000 (i.e.) which is also prior to the amendment made to Clause 27 (12).

7. I further submit that with regard to Mr. P. Konddaiya at Door No.18, Cantonment the electricity supply is effect on 03.08.2011 without knowing the amendment in Clause 27(12) of the T.N. Electricity is effected and thereafter from 03.08.2011, there was no such electricity supply effected till date as the Cantonment Tahsil instructing the TANGEDCO that no such electricity supply shall be effected without the production of the No objection certificate (NOC) from the Cantonment Tahsildar, as this lands are Government Promboke land and falls within the territory of the cantonment and defence area and hence the electricity service request was not considered due to the regular follow up from the Cantonment Tahsildar and also under the circumstances that none of the writ petitioners had produced the NOC from the Cantonment Tahsildar as contemplated under Clause 27(12) of the said code and hence the Writ Petitioners are not entitled to get the electricity supply to their recent huts occupation without the production of NOC from the said Cantonment Tahsildar being a mandatory requirement under the said code."

4. Mr.K.Selvaraj, learned counsel appearing on behalf of the petitioner submitted that the land in question is a poramboke land and as per the Electricity Distribution Code, either the petitioner will have to obtain 'No Objection Certificate' from the concerned authority or the petitioner

will have to give an undertaking as contemplated in clause- 27 (12) of the Distribution Code. Learned counsel further submitted that the respondent in the counter have accepted the fact that three other persons have been given electricity connection and therefore, the petitioner must also be treated in par with them and the petitioner is willing to give the undertaking by way of submitting an indemnity bond.

5. Learned counsel further brought to the notice of this Court the award that was passed in the Lok Adalat held on 14.07.2018, wherein a similar request made by one Mariammal was accepted by the Electricity Board, based on the indemnity bond executed by her. The learned counsel also placed reliance upon a judgment in (T.M.Prakash ..vs.. The District Collector, Tiruvannamalai District) reported in 2013 (6) CTC 849 to substantiate his submission that even those persons, who are in occupation of the poramboke land are entitled to electricity connection under the Tamil Nadu Electricity Distribution Code, 2004.

6. Per contra, Mr.P.Gunaraj, learned counsel appearing on behalf of the respondent submitted that the Cantonment is raising an objection for providing electricity connection to the petitioner and therefore, the petitioner can very well get a 'No Objection Certificate' from the Cantonment and submit it to the respondent and thereafter, the respondent will provide electricity connection to the petitioner. The learned counsel further submitted that there is absolutely no material to show that the hut, in which the petitioner and his family members are in occupation, is assessed for property tax. The learned counsel further submitted that without any assessment of property tax, the respondent will not be able to provide electricity connection. The learned counsel heavily relied upon paragraphs 6 and 7 of the counter affidavit filed by the respondent.

7. In reply to the said submissions, learned counsel for the petitioner submitted that the property will not be assessed for property tax when it is situated in a poramboke land. The learned counsel submitted that there are sufficient documents to show that the petitioner and his family members have been in occupation of the hut from the year 2005 onwards.

8. This Court has carefully considered the submissions made on either side and perused the materials available on record.

9. There is no dispute with regard to the fact that the petitioner is in occupation of the poramboke land and the petitioner has constructed a hut and he is in possession of the same along with his family members. Be that as the case

may, the petitioner wants to be treated on par with three other persons who have been given temporary electricity connection and who are living near the place in which the petitioner has put up a hut.

10. It is seen that the three persons, who are given electricity connection have also been acknowledged in the counter affidavit filed by the respondent. Similarly, it is seen that one more person, named Mariammal was also given temporary electricity connection by virtue of an award passed in the Lok Adalat in the year 2018. The said Mariammal has also executed an indemnity bond before she was provided with the electricity connection.

11. This Court has recognised the right of an encroacher to receive electricity connection in the judgment that was cited by the learned counsel for the petitioner. Therefore, this Court does not want to once again go into the same issue with regard to the entitlement of an encroacher to get electricity connection.

12. The only other issue that has to be considered is whether the petitioner will have to get a 'No Objection Certificate' from the authority before being considered for giving electricity connection. A careful reading of clause-27 (12) of the Tamil Nadu Electricity Distribution Code shows that insofar as a poramboke land is concerned either 'No Objection Certificate' must be obtained from the concerned authority or an undertaking affidavit must be furnished as provided in the said clause.

13. In the facts of the present case, there are atleast four electricity connections given in favour of persons, who are on the same footing like that of the petitioner. Therefore, the petitioner cannot be treated differently. Therefore, if the petitioner establishes the possession over the property, the respondent will have to consider the application submitted by the petitioner and get an indemnity bond and also an undertaking as contemplated under clause- 27 (12) of the Tamil Nadu Electricity Distribution Code. Once that is done, the temporary electricity connection can be given to the petitioner.

14. The petitioner is directed to give a fresh application to the respondent and the respondent shall consider the same in line with the findings given in the present Writ Petition and get the necessary indemnity bond and undertaking from the petitioner and provide for temporary electricity connection. This process shall be done within a period of four weeks from the date of receipt of the application from the petitioner.

15. This Writ Petition is disposed of with the above direction. No costs.

Sd/-
Assistant Registrar(CS)

//True copy//

Sub Assistant Registrar

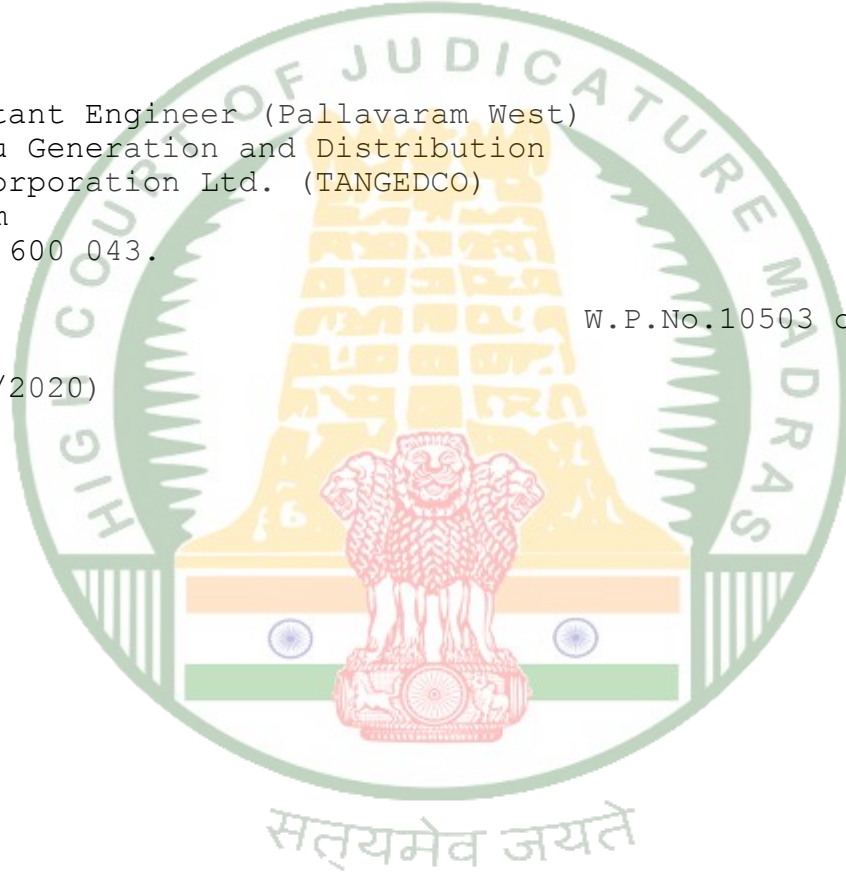
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To

The Assistant Engineer (Pallavaram West)
Tamil Nadu Generation and Distribution
Corporation Ltd. (TANGEDCO)
Pallavaram
Chennai - 600 043.

MG(CO)
GMY(14/09/2020)

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