

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.754 of 2020

and

C.M.P.No.9978 of 2020

Mahindra Lifespace Developers Ltd.  
a Company Registered under the Companies Act  
rep. by its Authorized Signatory, R.Eswaran  
having project office at 5<sup>th</sup> Cross Street  
VGN Royal Enclave Extension  
Off Poonamallee Avadi High Road  
Paruthipet, Avadi  
Chennai - 600 071. .... Appellant

Vs.

1. The Chairman and Managing Director  
TANGEDCO, Anna Salai  
Chennai - 600 002.
2. The Chief Engineer/Distribution  
Chennai West Region, TANGEDCO  
Head Quarters Office, No.144, Anna Salai  
Chennai - 600 002.
3. The Chief Engineer/Commercial  
TANGEDCO, Head Quarters Office,  
No.144, Anna Salai  
Chennai - 600 002.
4. The Superintending Engineer  
CEDC/West, 110/33/11KV  
Thirumangalam Sub Station  
Chennai - 600 040.
5. The Executive Engineer  
O&M/Avadi, Chennai EDC/West  
229, N.M.Road, Avadi  
Chennai - 600 054.

6. The Assistant Executive Engineer  
O&M/Pattabiram, CEDC/West  
TANGEDCO, Chennai.

... Respondents

Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 28.8.2020 made in W.P.No.8171 of 2020 and thus render justice and direct respondents 4 to 6 to provide forthwith single phase service connections as prayed for in W.P.No.8171 of 2020.

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records comprised in the proceedings in [i] Lr.No.AEE/O&M/PTM/F.New SS.Mahindra/D.No.136/18 dated 09.04.2018 issued by the 6<sup>th</sup> respondent, [ii] Lr.No. AEE/O&M/PTM/F.NewSS /D.No.424/2018 dated 24.12.2018 issued by the 6<sup>th</sup> respondent ; [iii] Lr. No. SE/CEDC/West/AEE/DEV/AE.II/F.Land/D.1491/2018-19 dated 09.01.2019 issued by the 4<sup>th</sup> respondent ; [iv] Lr.No.EE/O&M/Avadi/AE.R.46/F.Mahindra/D.Camp/19 dated 04.04.2019 issued by the 5<sup>th</sup> respondent and [v] Lr.No.SE/CEDC/West/AEE/DEV/AE.II/F.Land/D.73/2019-20 dated 12.04.2019 issued by the 4<sup>th</sup> respondent and quash the same and consequently direct the respondents 4 to 6 to effect single phase service connection to the petitioner's project in terms of clause 5[d] of the 1<sup>st</sup> respondent's proceedings without insisting upon the petitioner to provide lands for sub-station.

For Appellant : Mr.Srinath Sridevan

For Respondents : Mr.P.R.Dhilip Kumar  
Standing Counsel

#### JUDGMENT

(Delivered by the Hon'ble Chief Justice)

Heard Mr.Srinath Srideven, learned counsel for the appellant and Mr.P.R.Dhilip Kumar, learned Standing Counsel, for the respondents.

2.The appellant is a Developer who has set up a Housing Colony and the dispute giving rise to the present controversy is with regard to LT service connection to the individual flats in the housing colony developed by the appellant. It is not in dispute that it was developed in several phases and in the first phase, single phase connections have been provided to 604 flats.

3.It is with regard to the second phase of supply of

electricity that led to the filing of the writ petition giving rise to this appeal, wherein a challenge was raised to the letters issued by the Superintending Engineer, the Executive Engineer and the Assistant Engineer, informing the appellant that unless the appellant provides space for setting up of a sub-station, it would not be possible to accept the request of the appellant for extending power connections to the flats, which have been constructed and for which the conditions as stipulated in the Board Proceedings No.481, dated 11.09.2017, are to be complied with.

4.A counter-affidavit was filed before the learned single Judge on behalf of the respondents relying on Regulation 29 (12) (ii) of the Tamil Nadu Electricity Distribution Code, 2004, contending that a 400 sq.m. of land is required for setting up of a 33/11 KV sub-station in order to provide 3 Phase electricity connection, as the requirement now, according to Clause 5 (c) of the Board Proceedings dated 11.09.2017 envisages setting up of a sub-station of 33/11 KV in the project premises, which is the only way to feed the project site. This has been done on the basis of certain calculations. Regulation 29(12) (ii) is extracted hereinunder:-

"12.For any building/premises requiring LT service connection (s) having either (a) total floor area of 900 square meter and above (excluding the stilt floor/basement floor) or (b) the total demand of all the LT services in the building exceeds 150 KW.

(i) ...

(ii) Space as per the norms to be specified by the Commission shall be allotted for establishment of a sub station/switching station in places of group housing/commercial complex where the total demand exceeds 5 MVA. These areas shall be specifically shown in the plan."

5.The respondents took a stand that according to their calculation, the total load reaches to a stage which crosses 5 MVA and according to the project requirement and the number of flats, it works out to 6.48 MVA. Hence, the land requirement should be fulfilled and only then the sub station can be set up so as to provide electricity connection to the flats.

6.It is also the stand of the respondents that on the directions of this Court, the possibility of exploring supply of single phase connection was considered and since there are only two sub-stations in and around the locality that are already saturated upto the peak point, there is no possibility of supplying single phase electricity to the project. Thus, again it has been reiterated that the matter can be resolved only if 400 sq.m. of land is provided by the appellant to enable the

electricity department to set up a sub station of 33/11 KVA.

7.The proceedings dated 11.09.2017 in its entirety are extracted hereinunder:-

"Proceedings:

Instruction on assessing the total demand of the group housing commercial complex was issued vide reference (1) cited, wherein, it was specified that the developer or owner of the group housing / commercial complex has to earmark the land for installing the Substation / Distribution Transformer as the case may be when the total demand of the premises exceeds 5 MVA / 150 kW or total floor area of the building exceeds 900 sq.metres as the case may be.

2. Even though the TNE Distribution Code has the provision that the developer/owner of the group housing has to earmark the land for development of sub-station when their total demand exceeds 5 MVA, most of the developers under quote their demand of less than 5 MVA and get service connections without allotting the land for development of sub-stations.

3. Further, it is stated that as per the statutory provisions made in the TNE Distribution Code, the Distribution Licensee has the powers to assess the actual demand of the building / group housing projects even though the developers / owners under quote their demand to avoid earmarking of land for establishment of Sub- Station.

4. Whereas, different methodologies are being followed in the various Electricity Distribution Circles in assessing the demand of the group housing. In order to have uniformity in assessing the demand of the group housing, it has been decided in the Distribution Review Meeting held on 20-07-2017 to adopt the uniform procedure across the State. The minutes of the Distribution Review Meeting was communicated vide reference (2) cited.

5. Now, the CMD/TANGEDCO has approved vide reference (3) cited to adopt uniform procedure in assessing the electrical demand of the group housing projects. In view of above, all the field officials are instructed to follow the procedure prescribed below in assessing the total demand of the group housing in addition to the procedure prescribed vide reference (1) cited above:

- (a)The field officials shall consider the leads of the group housing projects that will be incident in the near future and that of the existing loads

in the premises of the applicant while assessing the total demand of the group housing project.

(b) Further, the field officials shall not follow piecemeal approach in sanctioning the estimate in respect of group housing. One single estimate shall be prepared and got sanctioned from the competent authority so as to design the distribution network to the total demand of the group housing.

(c) The following demand in respect of group housing projects considered so as to have uniformity across various EDCS:

| Sl.No. | Description of flats                                                                                             | Demand to be adopted for each LT 3 Phase connection |
|--------|------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------|
| 1      | Single bed room flat                                                                                             | 5.5 kW (or) 6.1 kVA                                 |
| 2      | Double bed room flat                                                                                             | 6.7 kW (or) 7.5 kVA                                 |
| 3      | Triple bed room flat                                                                                             | 8.3 kW (or) 9.2 kVA                                 |
| 4      | Four bed room flat                                                                                               | 9.5 kW (or) 10.6 kVA                                |
| 5      | Common load such as lifts, water pumping, common lighting, swimming pool, club house, etc. (for every 100 flats) | 108 kW (or) 120 kVA                                 |

(d) In case of single phase service connection, demand of 3 kw (or) Shall be considered for each connection.

(e) The working methodology of demand calculation is enclosed as Annexures I, II, III, IV and V. As per the provisions made in the TNE Supply Code, a Load Factor of 0.7 and a Diversity Factor of 1 has been considered in arriving the demand.

(f) Based on the above procedure of demand estimation and as per the statutory provisions made in the Regulation 29(12) of the TNE Distribution Code, the TANGEDCO officials shall insist the developers / owners of the group housing to demarcate the land for establishment of Sub-Station if the demand exceeds 5 MVA.

6. The above procedure of assessing demand of the group housing projects shall come into immediate effect and any service connections to the group housing projects

shall be effected only based on this instructions."

8. On a perusal thereof, we find that the said proceedings are in relation to group housing and commercial complex and therefore, Clause 5 indicates the options in respect of the demand of group housing projects to be considered accordingly. Clause (c) indicates the demand in respect of LT 3 phase connections. The case of the appellant is that not a single person or a consumer has demanded a 3 Phase connection and therefore, clause 5 (c) would not be attracted and rather clause 5 (d) would be attracted. Learned counsel for the appellant has urged that the consumers cannot be compelled to take a 3 Phase connection and once there is a provision for single phase, then the same could be appropriately considered, for which the respondents are obliged to make arrangements. He submits that electricity is no longer a luxury and it is rather a necessity, for which reliance has been placed on some judgments.

9. Thus, denial of any service connection is arbitrary and the appellant cannot be compelled to conform to a condition which he is not obliged to perform. In effect, the appellant's contention is that the compulsion to provide land to the extent of 400 sq.m. is not correct, however, he contends that in future in the event any such requirement arises, the appellant will consider negotiating the same. But, at present, the only requirement of single phase connection cannot be denied to the flats of the housing colony developed by the appellant. It is urged that this is a colony developed for the weaker sections and therefore, the apprehension of larger consumption of electricity so as to obligate the consumers to have 3 phase lines does not arise at present.

10. Learned counsel for the respondents has filed the following affidavit in response, which is extracted hereunder:-

I, P. Raghavan, S/o. P. Ponnusamy, Hindu, aged about 56 years, working as the Superintending Engineer, Chennai Electricity Distribution Circle/West, having office at 110/33/11 KV Thirumangalam Sub-Station, Chennai - 40, do hereby solemnly affirmed and sincerely state as follows:

1. I am the 4th respondent in the above case and I am well acquainted with the facts of the case from records. I am authorised to file this affidavit on behalf of the 1st, 2nd, 3rd, 5th and 6th respondents herein. As such, I am filing this affidavit on behalf of myself and on behalf of the 1st, 2nd, 3rd, 5th and 6th respondents herein as well.

2. I submit that the above Writ Appeal was

filed challenging the order passed in WP. No. 8171 of 2020 dated 28.08.2020.

3. It is most respectfully submitted that the appellant has stated in para 8 of the Affidavit which is extracted hereunder:

"8. UNDERTAKING:

I submit that the Petitioner. without prejudice to its above contentions, agrees to pay to the Respondents the guideline value of 400 sq.m of land in the adjoining Survey Fields in Paruthipattu village, so that the Respondents can procure the lands themselves Within seven (7) days of the Respondents identifying the relevant Survey Numbers and guideline value, and intimating to the Petitioner, the Petitioner will cross check and confirm if the Survey Numbers and Guideline Value are in order. Thereupon, the Petitioner will pay the same within 30 days of such confirmation. Needless to say, such payment shall be without prejudice to the Petitioner's contentions herein, and subject to the outcome of the present Writ Appeal

ALTERNATIVELY.

The Petitioner is also agreeable to acquire 400 sq.m of lands approved by the Respondents at the Petitioner's cost and expense for establishing a compact Substation as sought for by the Respondents in their Counter Affidavit filed before this Hon'ble Court. in W.P.No.8171 of 2020. The Petitioner undertakes to accomplish the same within a period of one year from the date of acceptance of this undertaking and thereafter transfer the said lands by way of a registered gift deed in favour of the Respondents. Needless to say such purchase of land shall be without prejudice to the Petitioner's contentions herein, and subject to the outcome of the present Writ Appeal."

4. It is respectfully stated that the undertaking submitted by the Appellant is not feasible in view of the fact that the existing feeders in 33/11 KV Kamaraj Nagar SS. Avadi and 110/11 KV Ayapakkam, has reached its full load and further load cannot be extracted from the existing Sub-stations in and around the

Appellant Project site as it has already attained its peak and proposed load could not be accumulated even for a short time as it may cause electrical accident and short circuit.

5. I respectfully submit that the existing 604 Nos (Mahindra Happinest) service connections are fed from 11 KV sundracholapuram feeder of 110/11KV Ayapakkam Sub-station. The 110/11KV sundracholapuram feeder and Power Transformers have also reached the maximum capacity and it is now impossible to accommodate the load in the present network unless new sub- Station is erected since the paruthipet area where the present project is located, is developing in a fast phase with many group housing projects with demand less than 5 MVA category and bulk load of 3 to 4 MVA gets added in the network for residential projects. It is further stated that only if the Appellant provides land for his genuine demand exceeding 5 MVA, quality supply can be extended to the consumers and any future electrical accident can be averted.

It is therefore prayed that this Hon'ble court may be pleased to dismiss the writ Appeal as devoid of merits and pass such further or other orders as this Hon'ble court may deem it fit and proper and thus render Justice."

11. Having considered the submissions raised, we find that the learned single Judge has proceeded to uphold the contention of the respondents after taking notice of the aforesaid facts and held that there is no violation of the regulations and that the respondents have rightly taken into consideration the future anticipated consumptions as the project will have 1260 dwelling units. The learned single Judge also found that in view of the other sub stations having already reached their peak demand are not in a position to supply electricity and in that view of the matter, the requirement of setting up of a sub- station as indicated by the respondents is necessary. The writ petition was, therefore, dismissed, hence, this appeal.

12. What we find is that the learned single Judge while proceeding to dismiss the writ petition has not considered the distinction between clause 5 (c) and 5 (d) of the Board Proceedings dated 11.09.2017. In this view of the matter, we find that this possibility has to be explored and a positive conclusion has to be drawn as to why clause 5 (d) would not apply, when it is urged that there is no demand of a 3 Phase LT line by either the consumers or by the Project. Even assuming for the sake of argument that a separate sub-station is required to be set up, it is informed by the learned counsel for the

respondents that the same would take almost six months time provided the land is given by the appellant. In this view of the matter, we find that this possibility also has to be explored, even if a separate sub station has to be set up in this regard.

13. Apart from this, it is not the case of the respondents that they have not given any connection of single phase from other sources to any consumer. The respondents will have to take into account that if they have been giving connection of single phase till now, then there can be no reason to discriminate the inhabitants of the present project.

14. The Apex Court in the case of Chandu Khamaru vs. Nayan Malik and Others, (2011) 12 SCC 314, paragraphs 7 to 9, has held as under:-

7. It will be clear from sub-section (1) of Section 42 that every distribution licensee has a duty to develop and maintain an efficient, coordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act. Sub-section (1) of Section 43 provides that every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply. These provisions in the Electricity Act, 2003 make it amply clear that a distribution licensee has a statutory duty to supply electricity to an owner or occupier of any premises located in the area of supply of electricity of the distribution licensee, if such owner or occupier of the premises applies for it, and correspondingly every owner or occupier of any premises has a statutory right to apply for and obtain such electric supply from the distribution licensee.

8. The Electricity Act, 2003 has also made provisions to enable the distribution licensee to carry out works for the purpose of supplying electricity to the owners or the occupiers of premises in his area of supply. Section 67 of the Electricity Act, 2003 is quoted hereinbelow:

"67. Provision as to opening up of streets, railways, etc.-(1) A licensee may, from time to time but subject always to the terms and conditions of his licence, within his area of supply or transmission or when permitted by the terms of his licence to lay down or place

electric supply lines without the area of supply, without that area carry out works such as—

- (a) to open and break up the soil and pavement of any street, railway or tramway;
- (b) to open and break up any sewer, drain or tunnel in or under any street, railway or tramway;
- (c) to alter the position of any line or works or pipes, other than a main sewer pipe;
- (d) to lay down and place electric lines, electrical plant and other works;
- (e) to repair, alter or remove the same;
- (f) to do all other acts necessary for transmission or supply of electricity.

(2) The appropriate Government may, by rules made by it in this behalf, specify,—

- (a) the cases and circumstances in which the consent in writing of the appropriate Government, local authority, owner or occupier, as the case may be, shall be required for carrying out works;
- (b) the authority which may grant permission in the circumstances where the owner or occupier objects to the carrying out of works;
- (c) the nature and period of notice to be given by the licensee before carrying out works;
- (d) the procedure and manner of consideration of objections and suggestions received in accordance with the notice referred to in clause (c);
- (e) the determination and payment of compensation or rent to the persons affected by works under this section;
- (f) the repair and works to be carried out when emergency exists;
- (g) the right of the owner or occupier to carry out certain works under this section and the payment of expenses therefor;
- (h) the procedure for carrying out other works near sewers, pipes or other electric lines or works;
- (i) the procedure for alteration of the position of pipes, electric lines, electrical

plant, telegraph lines, sewer lines, tunnels, drains, etc.;

(j) the procedure for fencing, guarding, lighting and other safety measures relating to works on streets, railways, tramways, sewers, drains or tunnels and immediate reinstatement thereof;

(k) the avoidance of public nuisance, environmental damage and unnecessary damage to the public and private property by such works;

(l) the procedure for undertaking works which are not repairable by the appropriate Government, licensee or local authority;

(m) the manner of deposit of amount required for restoration of any railways, tramways, waterways, etc.;

(n) the manner of restoration of property affected by such works and maintenance thereof;

(o) the procedure for deposit of compensation payable by the licensee and furnishing of security; and

(p) such other matters as are incidental or consequential to the construction and maintenance of works under this section.

(3) A licensee shall, in exercise of any of the powers conferred by or under this section and the rules made thereunder, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.

(4) Where any difference or dispute including amount of compensation under sub-section (3) arises under this section, the matter shall be determined by the appropriate Commission.

(5) The appropriate Commission, while determining any difference of dispute arising under this section in addition to any compensation under sub-section (3), may impose a penalty not exceeding the amount of compensation payable under that sub-section."

9. Thus, sub-section (1) of Section 67 of the Electricity Act, 2003 provides that the licensee may, from time to time, but subject always to the terms and conditions of his licence, within the area of supply

carry out the works mentioned in clauses (a) to (f) therein. It is provided in clause (d) of sub-section (1) of Section 67 that the licensee may lay down and place electric lines, electrical plant and other works. Sub-section (2) of Section 67 of the Electricity Act, 2003 further provides that the appropriate Government may, by rules made by it in that behalf, specify the various matters mentioned in clauses (a) to (p) thereof."

15.The aforesaid decision, therefore, lays down that there is a statutory right enabling a consumer to have an electricity connection, which is, of course, subject to the regulations framed by the department.

16.Apart from this, keeping in view the nature of the commodity, it would be apt to quote paragraph 17 of the judgment of a learned single Judge in the case of Brojendra Nath Samanta vs. CESC Limited and CMC, 1997 SCC OnLine Cal 125 :: AIR 1997 Cal 352, which is as hereinunder:-

"17.Electricity is a basic amenity. It is not disputed that for effective running of business, it is necessary for the petitioners to obtain supply of electrical energy. The obligation on the part of the licensee to supply electrical energy to a consumer is not only to be viewed in the context of the provisions of the Indian Electricity Act but also in the context of the fundamental rights of the petitioner. Requisition to obtain electricity is no more a luxury. It is a basic necessity for human existence."

17.Consequently, applying the aforesaid principles, we find that the interest of the consumers has also to be kept in mind. The concerns of the electricity department have also to be addressed to about the mechanism through which the electricity can be supplied and also the nature of the load that is likely to be consumed. For this, it would be appropriate that the electricity department itself conducts a survey of all the 604 connections which have already been given to a part of the same project in order to ascertain as to the load consumption of the area as to whether it qualifies for any enhancement of load as envisaged under Clause 5 (c) of the Board Proceedings dated 11.09.2017. The decision as directed hereinunder would be taken after carrying out such a survey, which should be done immediately.

18.We, therefore, modify the impugned judgment to the effect that the respondents including respondents 4 to 6 shall within one month proceed to negotiate this issue and finally

inform the appellant as to why Clause 5 (d) of the proceedings dated 11.09.2017 cannot be applied and services given and the appellant shall also respond to about any further space that may be required for the setting up of any such unit, which will be necessary for the purpose of providing electricity to the flat owners of the project. Needless to state that genuine and bonafide steps be taken by both sides keeping in view the larger interest of the residents of the colony or those who would inhabit in future to provide service connections, whether it is single phase or 3 phase, keeping in view the nature of the connections or consumptions that may be demanded or required in future.

19. We further provide that it will be open to the respondents to take appropriate measures to resolve the present requirement, but the future requirements of the project shall be dealt with keeping in view the relevant regulations, requirements and the nature of the load which is likely to be required in future.

The Writ Appeal is disposed of with the said directions. No costs. Consequently, C.M.P.No.9978 of 2020 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

sra

To

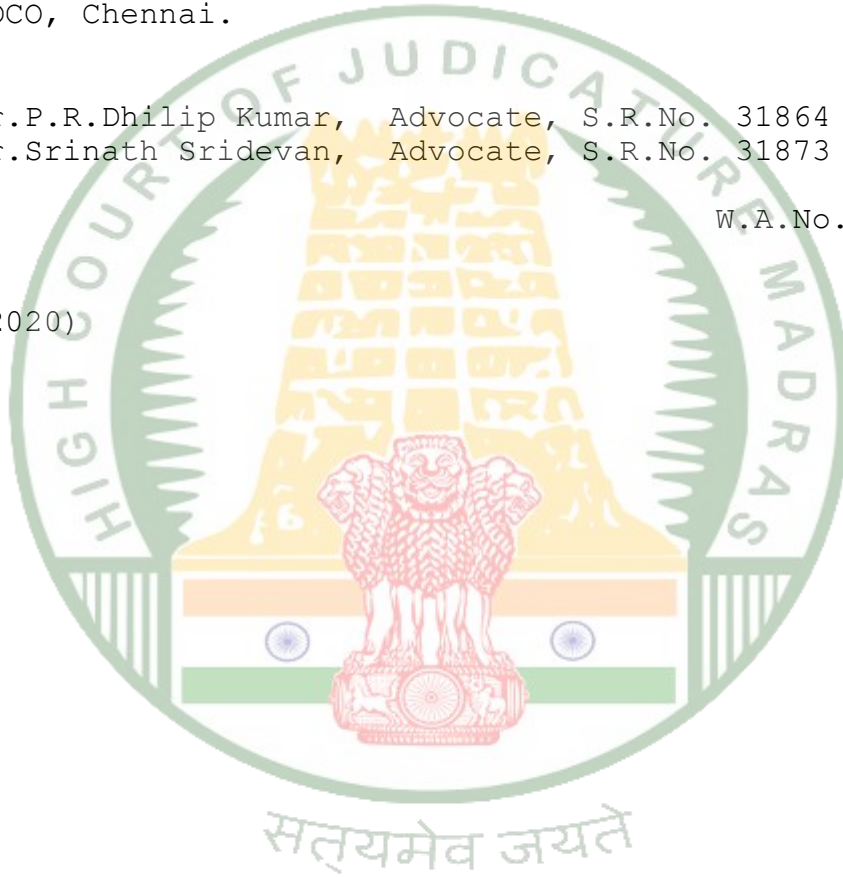
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+1cc to Mr.P.R.Dhilip Kumar, Advocate, S.R.No. 31864  
+1cc to Mr.Srinath Sridevan, Advocate, S.R.No. 31873

W.A.No.754 of 2020

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