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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.1672 of 2019

P. Sundaram

... Petitioner

Vs.

1. The Secretary,
Local Administration,
Government of Tamil Nadu
Secretariat,
St.George Fort,
Chennai - 600 009.
2. The Commissioner,
Tiruppur Corporation,
Tiruppur - 641 604.
3. The Chief Superintendent of Engineer,
Operation & Maintenance,
Tamil Nadu Electricity Board,
Kumaran Nagar,
Avinasi Road,
Tiruppur - 641 602.
4. The Assistant Director,
Operation & Maintenance,
Tamil Nadu Electricity Board,
Tiruppur Kumaran Road,
Tiruppur - 641 401.
5. The Assistant Engineer,
Operation & Maintenance,
Tamil Nadu Electricity Board,
A.P.T. Road, 6th Street,
Mangalam Road,
Tiruppur - 641 604.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the respondents to consider the petitioner representation dated 17.11.2018 for Rs.25,00,000/- (Rupees Twenty Five Lakhs Only) and one Government post for the petitioner family.



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For Petitioner : M/S.M.Murugesan
For Respondents
R1 and R2 : Mr.Silambannan
Additional Advocate General
For Respondent
R3 to R5 : M/S. Abul Kalam
Standing Counsel for
Tamil Nadu Electricity Board

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Mandamus to direct the respondents to consider the petitioner representation dated 17.11.2018 for Rs.25,00,000/- (Rupees Twenty Five Lakhs Only) and one Government post for the petitioner family.

2.Heard the arguments advanced on either side.

3.The case of the petitioner is that the petitioner is residing at No.9/2, Chinnasamy Goundar Layout, 3rd Street, Mangalam Road, Tiruppur -641 604 for the past 30 years. On 16.05.2017 at 8.20 p.m., the petitioner's son and daughter went to a hotel nearby and bought tiffin. While returning home, the electric light pole which is nearby the Corporation Bank, fell on the head of the petitioner's daughter due to which the petitioner's daughter lost her life on the spot. The said Electric light pole was maintained by the Tiruppur Corporation and Tamil Nadu Electricity Board. Thereafter, the petitioner lodged a complaint on 16.05.2017 before the Tiruppur Central Police Station to take action against the concerned corporation officials for improper maintenance of the electric light pole. The law enforcing agency registered a case in Crime No.329 of 2017 for the offence under Section 174 Cr.P.C. Subsequently, the petitioner made a representation to the respondents and claimed for compensation of an amount of Rs.25,00,000/- and a Government post to the petitioner's family. Despite, the same, no order was passed on the representation made by petitioner. Hence, this Writ Petition.

4. Mr.Silambannan, learned Additional Advocate General submits that the Tiruppur Corporation had entered into PPP concessionaire agreement on 01.12.2014 with M/s. Schnell Energy Equipments (P) Ltd., (ESCO & Lead partner) having its principal offices at 9/174 Railway Feeder Road, Periyanaickenpalayam, Coimbatore in consortium with M/s., Salzer Electronics Ltd., (ESCO & second partner) having its principal office at Samichettipalayam, Jothipuram (PO), Coimbatore. The relevant clauses in agreement as follows:



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"Whereas, Corporation desires to establish a program that makes available to Corporation the services of energy service companies to design, procure install, commission, operate, maintain and monitor the energy saving measures and cost saving measures in the Corporation street lighting and part-finance the same;

Whereas, ESCOs are energy services companies and have joined to form a consortium to provide for energy audits, engineering, financing, procurement, installation, maintenance and monitoring of energy, street lighting and other operating cost saving measures;

Whereas, the corporation is government entity that select the ESCO, negotiate and sign the contract and administer all contractual responsibilities on their behalf;

"Whereas, ESCO has submitted a response to the Corporation after conducting the Investment Grade Audit (IGA) pertaining to the finance, engineering, procurement, installation, operation & maintenance and monitoring of energy conservation measures with guaranteed energy savings over the contract period; and

Whereas, Corporation has reviewed and approved the IGA as corrected, revised and amended and negotiated the agreement based on the approved IGA and issued the letter of acceptance as in Schedule A".

5. It is further submitted by the learned standing counsel appearing for the Tamil Nadu Electricity Board submits that counter affidavit has been filed by the respondents in which it has been admitted that the electricity is being supplied to the local body authorities for purposes of street lighting, water supply etc. and for the supplied electricity, the current consumption charges are paid by the corporation. The high mast light poles, water tanks are owned and maintained by the local authorities. The role of the TANGEDCO is only with regard to supplying power to the local bodies and the said local bodies are in charge of maintaining the street light and water supply.

6. In spite of the aforesaid agreement, the 2nd respondent is ready to pay a compensation of Rs.5,00,000/- within a period of two weeks from the date of receipt of copy of this order for the death of petitioner's daughter and further submitted that the 2nd respondent will pass appropriate orders against the concerned authorities for improper maintenance of the electric light pole.

7. Heard the learned counsel appearing for the parties and perused the materials available on record. As per provisions in Clause 20 (V) of the Tamil Nadu Electricity Distribution



Code, the consumers shall maintain their apparatus, switchgear, electric lines, metering equipments and cables in good conditions and conforming to the measures specified under Section 53 of the Act and keep them suitable for connecting to the distribution system in a safe and reliable manner. Therefore, for not maintaining the street light pole, the consumer viz., the corporation is liable.

8. The supply of electricity to the consumer viz., Corporation of Tiruppur has been given as per provisions of Distribution Code and Supply Code. As per provisions in clause 30 of the Distribution code, the installations of the consumer should invariably comply with the statutory provisions of the rules framed under the Act relating to wiring and equipment. The responsibility with regard to maintenance or testing of equipments and wiring on consumer's premises vest with the consumer. As such the Tiruppur Corporation being the consumer of electricity, the corporation has to look after proper maintenance and testing. Since, the high mist light poles belong to the corporation, the same has to be properly maintained by the corporation. So far as TANGEDCO is concerned, the maintainability of the high mist light pole rests with the corporation.

9. In view of the above admitted position as stated by the respective counsels, without expressing any opinion, this Court is inclined to direct the 2nd respondent to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) as compensation within a period of two weeks from the date of receipt of copy of this order and liberty is granted to the petitioner to work out his remedies, if he want higher compensation amount, under the Victim Compensation Scheme within a period of four weeks from the date of receipt of copy of this order and by filing appropriate application before the District Legal Services Authority which shall take up the matter and pass appropriate orders. After the payment of entire amount by the 2nd respondent corporation in favour of the petitioner, liberty is granted to the 2nd respondent corporation to workout the remedy in the manner known to law.

10. Accordingly, this Writ Petition is disposed of with the aforesaid direction. No Costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Local Administration,
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St.George Fort,
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2. The Commissioner,
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3. The Chief Superintendent of Engineer,
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Tamil Nadu Electricity Board,
A.P.T. Road, 6th Street,
Mangalam Road,
Tiruppur - 641 604.
6. The Public Prosecutor,
Madras High Court.

+1cc to M/S.M.Murugesan, Advocate, S.R.No.65520
+1cc to M/S. Abul Kalam, Advocate, S.R.No.65553
+1cc to the Government Pleader, S.R.No.65799

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KSM(CO)
CT 21/01/2022