

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2021

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.17685 of 2021
and WMP.Nos.21928 of 2020
and 5928 of 2021

M/s.JSK M-Sand,
Represented by its Partner,
P.Janakiraman

.. Petitioner

vs.

1.The Superintending Engineer,
Kanchipuram Electricity Distribution Circle,
Tamil Nadu Generation and Distribution
Corporation Limited,
Railway Station Road,
Kanchipuram-631 502.

2.The Executive Engineer,
(Operation and Maintenance / South),
Kanchipuram Electricity Distribution Circle,
Railway Station Road,
Kanchipuram-631 502.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the Supply Availability Notice of the 1st respondent in Lr.No.SE/KEDC/KPM/AEEGL/AE2/F.HT NEW-D 500/20 dated 28.08.2020 and the consequential proceedings of the 1st respondent in Lr.No.SE/KEDC/KPM/AEEGL/AE2/F.HT NEW-D 857/20 dated 06.11.2020 and Lr.No.SE/KEDC/KPM/AEEGL/AE2/F.HT NEW-D 887/20 dated

17.11.2020 which culminated in the cancellation of the petitioners application for HT service connection in Regn.No.HT NEW-21-2019-20 dated 19.02.2020 in the proceedings of the 1st respondent in Lr.No.SE/KEDC/KPM/AEEGL/AE2/F.HT NEW D.926/20 dated 27.11.2020 and quash the same as illegal and contrary to the procedures of TANGEDCO and further direct the 1st respondent herein to restore the petitioners aforesaid application for HT service connection and further issue Supply Availability Notice after completing its entire scope of work for effecting actual supply to the petitioner. (Prayer amended, vide order dated 18.01.2021 made in WMP.No.23233 of 2020 in W.P.No.17685 of 2020)

For Petitioner : Mr.V.P.Sengottuvel
For Respondents : Mr.P.Gunaraj,
Standing Counsel for R1 and R2

ORDER

The petitioner is the owner of the lands comprised in S.No53/1, situated at No.179, Pazhyaseevaram Village, Kanchipuram Taluk and District. The petitioner planned to establish a M-Sand Manufacturing Unit in the above mentioned lands and submitted an application for HT Service connection dated 21.11.2019 in Form-4, with an estimated requirement of 500KVA before the first respondent on 23.11.2019. The first respondent, after scrutinizing the petitioner's application, vide proceedings dated 10.02.2020, directed the petitioner to pay a sum of Rs.4,01,180/- towards registration fees, EMD @ Rs.800/- per KVA for 500 KVA and GST and the petitioner also paid the said charges to the respondents Board on 19.02.2020.

2. The first respondent, vide proceedings dated 06.03.2020, has

informed the petitioner to pay Development Charges, Meter Caution Deposit, Estimate Cost of Consumer Portion, ESI, GST and others to the tune of Rs.14,99,660/- within a period of 15 days. On 17.03.2020, the petitioner made a representation to the first respondent, seeking to grant two months time to pay the said Development Charges, as the erection of transformer and machinery would take some more time and his request was granted vide proceedings dated 20.03.2020. Thereafter, the Central Government has issued the lockdown notification for the entire country due to unexpected Covid-19 pandemic.

3. The first respondent, vide proceedings dated 18.05.2020, has granted time to the petitioner till 20.06.2020 for payment of Development Charges, but the petitioner was unable to pay the same due to continuous lockdown and financial crisis and therefore, he sent a representation dated 12.06.2020 to the first respondent seeking additional time for payment of Development Charges. In pursuant to the same, the first respondent has issued the proceedings dated 24.06.2020, informed the petitioner to pay Development Charges to the tune of Rs.14,99,660/- on or before 20.07.2020 and the petitioner made the payment of Development Charges on 17.07.2020

together with belated surcharges.

4. It is further averred by the petitioner that due to the lockdown announced by the Government of India and Government of Tamil Nadu on account of Covid-19 Pandemic, all the industries, commercial establishments and other business entities were forced to close down their operations, which resulted in huge financial loss and labour shortage. While that being so, the first respondent, vide proceedings dated 18.07.2020, has directed the petitioner to procure the HT TOD 110/5A, 0.2s class accuracy with ABT features meter and 11KV metering set 30/5A, 0.2s class accuracy in consultation with MRT wing / Kanchipuram, as per Board norms at the cost of the petitioner and handover the same to the MRT wing and the cost of the same would be adjusted in future bills, even though the respondents had collected cost of these meter, etc. as Development Charges/Estimate cost of consumer portion.

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5. It is further stated by the petitioner that during September, 2020, the petitioner has received the impugned Supply Availability Notice dated 28.08.2020, informing the petitioner to avail supply from the date of issue of

the said letter on production of necessary Safety Certificate for the machinery/equipments from the Chief Electrical Inspector to Government (CEIG), Chennai within a period of 3 months and further informed the petitioner that if supply was not availed within 3 months, a further 3 months extension would be granted, after collecting the monthly minimum charges for the extended period in advance.

6. Pursuant thereto, the petitioner made a representation dated 21.09.2020 to the first respondent requesting to withdraw the Supply Availability Notice dated 28.08.2020, as the work on the part of TANGEDCO was not completed and the petitioner's scope of electrical and plant erection works were delayed due to the global pandemic outbreak and the petitioner further informed that necessary estimated cost pertaining to TOD meter had already been paid to TANGEDCO and requested to complete its scope of work. However, without considering the aforesaid request made by the petitioner, vide proceedings dated 06.11.2020, the first respondent has directed the petitioner to either produce CEIG certificate and avail supply before completion of the 1st three months notice period or make payment of Rs.10,50,000/-, being the Monthly Minimum Charges [Rs.350 x 500 KVA x

6 months] on or before 25.11.2020, failing which the petitioner's application would be treated as cancelled and the agreement will be terminated forfeiting all the amount paid by the petitioner except Meter Security Deposit. On 16.11.2020, the petitioner replied to the said notice to the first respondent seeking extension of time to pay monthly minimum charges. However, the first respondent has passed the impugned proceedings dated 17.11.2020 by directing the petitioner to pay a sum of Rs.10,50,000/- on or before 25.11.2020, failing which the application will be closed as cancelled and the agreement will be terminated forfeiting all the amount paid by the petitioner except meter security deposit. Challenging the aforesaid notices issued by the first respondent dated 28.08.2020, 06.11.2020 and 16.11.2020, the present writ petition has been filed.

7. Mr.V.P.Sengottuvel, learned counsel for the petitioner would contend that in pursuant to the impugned order dated 27.11.2020, cancelling the petitioner's application, the petitioner has applied to the Electrical Inspector, Chengalpattu Division, to issue Safety Certificate as directed by the first respondent and the Electrical Inspector, Chengalpattu Division, has issued the Safety Certificate dated 02.03.2021 and based on the said Safety

Certificate, the petitioner has submitted a fresh application dated 04.03.2021 by enclosing the Safety Certificate and requested to effect extension of new HT supply with maximum demand of 500 KVA and there was no response and therefore, he once again submitted an application dated 25.06.2021 to the first respondent informing that he is ready to remit the entire amount of Rs.10,50,000/- as advised by the Board.

8. The learned counsel for the petitioner would further contend that under similar circumstances, a batch of writ petitions were filed before this Court in W.P.Nos.7678 of 2020 etc., batch, challenging the levy of Demand Charges by the TANGEDCO, in violation of the order passed by the Tamil Nadu Electricity Regulatory Commission as also in violation of Regulation 6(b) of the Tamil Nadu Electricity Supply Code, 2004 and this Court, after considering the elaborate arguments of the learned counsel for the parties, vide order dated 14.08.2020 has held that the respondents cannot insist for maximum demand and can only insist for 20% of the demand amount as per Regulation 6(b) of the Tamil Nadu Electricity Supply Code, 2004. The learned counsel for the petitioner would also contend that due to the sudden outbreak of Covid-19 pandemic, where the entire industrial activities were

under lock down, the petitioner could not able to complete the electrical and plant erection works due to shortage of labour and therefore, prays that considering these aspects, this Court may interfere with the impugned orders passed by the respondents and appropriate orders may be passed to effect HT service connection to the petitioner's industry.

9. Mr.P.Gunaraj, learned Standing Counsel for the respondents/Board would contend that the first respondent has issued the Supply Availability Notice to the petitioner as early as on 28.08.2020, subject to certain conditions, but he has not complied with the said conditions and also not paid the minimum monthly charges to the respondents/Board. It is further contended that vide proceedings dated 06.11.2020 and 16.11.2020, the first respondent has given extension of time to pay the minimum monthly charges and since the petitioner has failed to comply with the same, his application was rightly cancelled by the respondent Board vide order dated 27.11.2020 and pending the writ petition, the petitioner has obtained the Safety Certificate on 02.03.2021 from the Electrical Inspector, Chengalpattu Division and by enclosing the same, submitted the application to the first respondent on 04.03.2021 and also agreed to remit the payment of

Rs.10,50,000/- due as on 04.03.2021. The learned Standing Counsel for the respondent Board would further add that the respondent Board will consider the application of the petitioner, on payment of Minimum Monthly Charges for the period of 10 months i.e., from 28.08.2020 to till date and there is no irregularity in the impugned orders passed by the respondent Board and prays for dismissal of this writ petition.

10. This Court has anxiously considered the rival submissions and also perused the entire materials available on record.

11. It is not in dispute that the first respondent has issued the Supply Availability Notice to the petitioner on 28.08.2020 and thereafter, it was cancelled on 27.11.2020 and thereafter, the petitioner has submitted the application on 04.03.2021 by enclosing the Safety Certificate dated 02.03.2021 obtained from the Electrical Inspector, Chengalpattu Division. The contention of the petitioner is that on submission of the application dated 04.03.2021, there is no communication from the respondents till date and therefore, there is no justification on the part of the respondents in directing the petitioner to pay the Monthly Minimum Charges for the said period from

March 2021 to till date. The next contention of the petitioner is that the respondents Board is insisting for payment of Rs.1,75,000/- per month as Monthly Minimum Charges to the respondent for a period of 10 months i.e., from 28.08.2020 to till date.

12. Though the learned counsel for the petitioner submitted that the petitioner has agreed to pay 20% of the demand amount as per the directions of this Court in similar batch of writ petitions in W.P.Nos.7678 of 2020 etc., batch dated 14.08.2020 as per Regulation 6(b) of the Tamil Nadu Electricity Supply Code, 2004, this Court is not inclined to accept the said submission. However, considering the extraordinary situation that the entire State is under lockdown from April, 2020 to September, 2020 on account of outbreak of Covid-19 pandemic and after September, 2020 there was partial lifting of the lockdown by the State Government and thereafter, there was a complete lockdown from April 2021 and now the lockdown has been partially lifted, this Court is of the view that the petitioner is entitled to pay only the Monthly Minimum Charges to the respondent Board for the period of three months from 28.08.2020 to 27.11.2020 amounting to Rs.5,25,000/- [Rs.350 x 500 KVA x 3 months], by taking note of the fact that Supply Available Notice was

issued by the Respondents Board on 28.08.2020 and it was cancelled on 27.11.2020. The learned counsel appearing for the petitioner has also agreed to pay the said amount to the respondent Board. As far as the remaining period is concerned, the respondent Board has cancelled the application of the petitioner vide order dated 27.11.2020 and even after submitting an application by the petitioner on 04.03.2021, by enclosing the Safety Certificate obtained from the Electrical Inspector, Chengalpattu Division, so far the respondent Board did not sent any reply / response to the petitioner and therefore, for the period from 27.11.2020 to till date, the petitioner is not under obligation to pay any amount to the respondent Board.

13. In view of the above discussions, this Court passes the following order:

(i) The impugned Supply Availability Notice of the 1st respondent in Lr.No.SE/KEDC/KPM/AEEGL/AE2/F.HT NEW-D 500/20 dated 28.08.2020 and the consequential proceedings of the 1st respondent in Lr.No.SE/KEDC/KPM/AEEGL/AE2/F.HT NEW-D 857/20 dated 06.11.2020 and Lr.No.SE/KEDC/KPM/AEEGL/AE2/F.HT NEW-D 887/20 dated 17.11.2020 which culminated in the cancellation of the petitioners application for HT service connection in

Regn.No.HT NEW-21-2019-20 dated 19.02.2020 in the proceedings of the 1st respondent in Lr.No.SE/KEDC/KPM/AEEGL/AE2/F.HT NEW D.926/20 dated 27.11.2020, are set aside.

(ii) The petitioner shall pay a sum of Rs.5,25,000/- being the Minimum Monthly Charges for the period between 28.08.2020 and 27.11.2020 [i.e., Rs.350 x 500 KVA x 3 months] to the respondents Board within a period of one week from the date of receipt of a copy of this order.

(iii) On such payment being made, the respondents Board is directed to proceed further in accordance with law by following the procedures contemplated under Tamil Nadu Electricity Supply Code, 2004 for giving HT service connection to the petitioner's industry/manufacturing unit as early as possible, preferably within a period of four weeks thereafter.

14. The Writ Petition stands allowed with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

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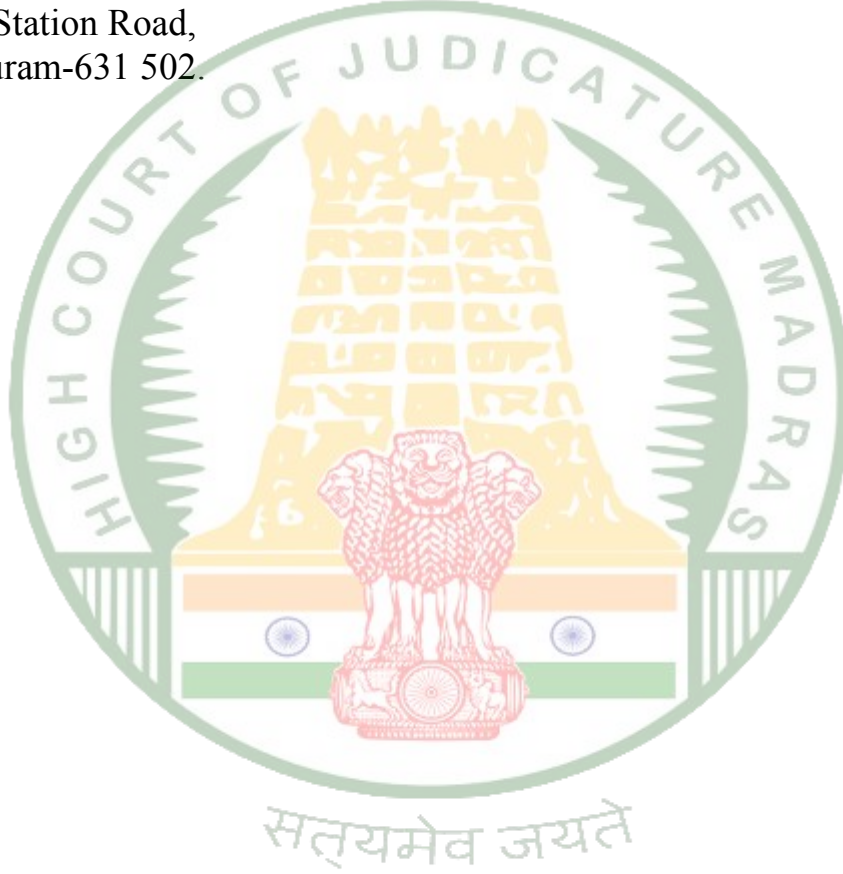
Index : Yes / No

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To

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Tamil Nadu Generation and Distribution Corporation Limited,
Railway Station Road, Kanchipuram-631 502.
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(Operation and Maintenance / South),
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D.KRISHNAKUMAR. J



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