

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.02.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

W.P.No.18763 of 2020
and W.M.P.Nos.23319, 23321 of 2020 and 3459 of 2021

M/s.Cricket Association of Pondicerry
(Reg.No.178 of 2003)
R.S.No.104/8 & 105/7, Sedarapet Main Road,
rep.by its Honorary Secretary,
Mr.V.Chandran .. Petitioner

Versus

1. The Union of India rep.by
the Chief Secretary to Government,
Government of Pondicherry,
Chief Secretariat,
Pondicherry.
2. The Principal Secretary to the Lt.Governor,
Raj Nivas, White Town,
Pondicherry 605 001.
3. The Secretary,
Legislative Assembly,
Government of Pondicherry,
Pondicherry.
4. The Secretary to Government,
Department of Sports and Youth Department,
Government of Pondicherry,
Pondicherry.
5. The Commissioner cum Secretary to Government (Power)
Department of Electricity,
Government of Pondicherry,
Pondicherry.
6. The Commissioner,
Villianur Commune Panchayat,
Villianur.

7. The Assistant Engineer,
Sedharapet Sub Division,
Electricity Department,
Pondicherry.

.. Respondents

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 pertaining to the impugned order bearing NO.846/ED/AE/SEDH/F.25/2020-21 and dated 16.11.2020, issued by the 7th respondent, and quash the same, and further direct the respondents to process the application submitted by the petitioner for electricity connection, vide letter dated 04.12.2020, and grant electricity connection, in accordance to law, within a time frame, as determined by this Court.

For Petitioner : Mr.Sathish parasaran, Senior Advocate
assisted by Mr.B.Balavijayan

For Respondents: Ms.N.Mala
Government Pleader (Pondicherry)

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J. through
video conferencing]

The writ petitioner is Cricket Association of Pondicherry (CAP) which is registered Association and the Honorary Secretary of the said Association, in the affidavit filed in support of this Writ Petition, would aver as follows.

2. M/s.Siechem Technologies Private Limited (in short 'Siechem') had acquired certain parcels of land with an intention to set up an industry in the State of Pondicherry and on account of non-cooperation, a decision has been taken to lease a portion of their lands, admeasuring an extent of 42.69 acres (approximate) in favour of CAP as part of their corporate social responsibility scheme for creating cricket play grounds, stadium etc., and an unregistered Lease Deed dated 03.05.2020, came into being between Siechem and CAP for a period of 15 years at normal rent of Rs.1,000/- per annum and on mutual agreed terms. The petitioner would further state that in between / interspersed with the lands belonging to Siechem, there are small patches of Government poromboke lands numbering three and out of the three, two portions are in R.S.No.54/2, 54/3, 54/4 and 54/8, which fall within the campus and one portion i.e., S.F.No.5 part, falls outside the campus and they are by way of cart track from time immemorial and it is also used as access / way to reach the stadium.

3. The petitioner would further aver that there were four electricity connections in existence in respect of the leased property, which originally stood in the name of vendors, who sold the property to Siechem and even after the conveyance of the said lands in favour of Siechem, the electricity connection for the borewells continue to stand in the name of vendors. Admittedly service connection, approved and effected on 23.10.2018, was also in the name of Siechem. M/s.Siechem suggested CAP for transfer of service connection in their name and accordingly, the CAP has applied for temporary service connection which could be converted into permanent electricity connection subsequently.

4. Due to on-set of COVID-19 pandemic virus in the Union Territory of Pondicherry, CAP sent a letter dated 27.03.2020, through the President of Cricket Association of Pondicherry to the 6th respondent / Commissioner, Villianur Commune Panchayat, Pondicherry, volunteering to utilize the centers for quarantine purposes with a specific request to have a regular power connection and on inspection, the Health Department found the land to be suitable for location of a COVID-19 Centre. M/s.CAP has also obtained a consent letter dated 01.04.2020 from Siechem and the 6th respondent has also given No Objection Certificate in the light of the urgency.

5. M/s.CAP had applied for temporary as well as permanent service connection bearing application Nos.325271 and 305457 respectively and along with the said application, enclosed all the required documents and those applications were duly acknowledged by the 7th respondent and other formalities have also been complied with and in view of the same, temporary service connection with a service load of 86Kw have also been given, subject to certain conditions. Subsequently, the virulence of COVID-19 started coming down and accordingly, the land and premises which were used for COVID-19 centres were released and CAP decided to commence cricket activities with permission from the authorities concerned. The CAP also decided to conduct T-20 cricket tournament between 11.11.2020 and 27.11.2020 and took a decision to conduct the inauguration function for the same, in the presence of dignitaries. Some individuals who had an oblique and malafide motive, appeared to have complained to Hon'ble Lieutenant Governor of Union Territory of Pondicherry, alleging that there were encroachments upon the government land, including water body and borewells have also sunk unauthorizedly. Immediately the Hon'ble Lieutenant Governor summoned the jurisdictional District Collector and directed him to take appropriate action against the said illegal acts by letter dated 12.11.2020.

6. The jurisdictional District Collector, in terms of the directions issued by the Hon'ble Lieutenant Governor , dated 12.11.2020, directed the Sub Collector (Revenue) to conduct proceedings under Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 in respect of the lands comprised in R.S.No.54/2, 54/3, 54/4 and 54/8 and also passed an exparte order and that apart, Criminal Complaint was also lodged on 13.11.2020 in C.C.No.81/2020 for the alleged commission of offences under Sections 447 and 430 IPC. The 6th respondent, acting on the directions of the Hon'ble Lieutenant Governor , sent a communication dated 13.11.2020, to the Sub Collector (South) as well as to the jurisdictional revenue as well as electricity officials, stating among other things that the consent offered by them, stand withdrawn and it is to be treated as nullified with immediate effect and acting upon the same, the Executive Engineer, Irrigation (PWD) has also issued a Show Cause Notice under Sections 4(1) and (2)(b)(ii) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, in respect of land in R.S.No.5/2 (part) and the same has been put to challenge in W.P.No.17613 of 2020 and is pending.

7. It is the specific case of the petitioner that he did not encroach upon any Government poromboke land and the petitioner merely sought permission from the Government to grant a lease / license, in respect of the said lands and it is pending consideration.

8. Mr.Sathish Parasaran, learned Senior Counsel assisted by Mr.B.Balavijayan, learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of documents and would submit that M/s.Siecham has applied for new LT service connection (temporary) in respect of R.S.No.45/1, Cadastre No.193/3, Patta No.309, Thuthipet Village, vide application dated 03.12.2017 and also paid necessary charges. The petitioner Association also sent a communication to the 6th respondent as to the ownership of the land by M/s.Siecham and also expressed their desire to have temporary COVID-19 quarantine centers at free of cost and therefore, for that purpose requested the Electricity Department to provide 125 HP for dormitories to support the outbreak of epidemic and also prays for regular power connection and undertakes to pay the necessary charges and the said request was processed and the 6th respondent, vide communication dated 11.04.2020, to the Superintendent Engineer-I, Puducherry, has given No Objection for establishment of the quarantine centres in R.S.No.56/5 of Thuthipet Village. The petitioner has also applied for temporary and permanent electricity supply, vide application dated 05.05.2020 (referred to supra) in respect of R.S.No.55/4.

9. The primordial submission made by the learned counsel appearing for the petitioner, by drawing attention of this Court to the communication of the Hon'ble Lieutenant Governor of Union Territory of Pondicherry, dated 12.11.2020, addressed to the Jurisdictional District Collector, is that in the light of the adverse comments and directions given in the said communication, the local body vide communication dated 13.11.2020, has informed the Sub Collector, Revenue (South), the Superintendent Engineer, Department of Electricity, Puducherry and the Tahsildar, Villianur, as to the withdrawal of electricity power supply to R.S.No.56/5, wherein no objection has been given for the COVID-19 Centre and the Superintendent Engineer of the Department of Electricity, has forwarded the same to the office of the Assistant Engineer, Sedharapet Sub-Division, Electricity Department, Puducherry and the said official, vide impugned communication dated 16.11.2020 has informed the petitioner as to the withdrawal of NOC issued by the local body, namely, the 6th respondent, to the proposed quarantine center in R.S.No.55/4, Thuthipet Village, with immediate effect (emphasis applied) and further informed that the electricity connection has also been disconnected on 16.11.2020.

10. It is the submission of the learned Senior Counsel that under the garb of granting temporary service connection in respect of R.S.No.55/4, for establishment of COVID-19 center, temporary service connection in respect of R.S.No.45/1 has been withdrawn and acting on the above cited communication of the Hon'ble Lieutenant Governor dated 12.11.2020, further proceedings have been taken in utter violation of the principles of natural justice and temporary electricity connection given to the premises in various survey numbers, have been totally disconnected and as on date, the premises as well as grounds are without any electricity supply, which is a minimum basic necessity and on account of the same, the maintenance of the ground also got affected and therefore, prays for setting aside the impugned order with a further direction to grant reconnection in respect of S.F.No.45/1 at the first instance, with a further request to direct the official respondents concerned to adhere to the principles of natural justice and pass appropriate orders on merits and in accordance with law.

11. Per contra, Ms.N.Mala, learned Government Pleader (Pondicherry), has drawn the attention of this Court to the affidavit filed in support of this Writ Petition as well as the typed set of documents and would submit that in the impugned order, an inadvertent error has crept in by stating R.S.No.55/4, instead of 56/5 and it may not be put against the official respondents concerned, for the reason that the petitioner himself is very well aware of the fact that admittedly service connection has been granted only in respect of R.S.No.56/5, for

the purpose of running temporary relief center for COVID-19 pandemic virus.

12. The learned Government Pleader (Pondicherry) has also invited the attention of this Court to the notification dated 26.11.2018, issued by the Joint Electricity Regulatory Commission, especially to Clauses 5.30 as well as 5.63 and would submit that admittedly the Lease Deed between Siecham and the petitioner is an unregistered one and though it is for a period of 15 years, as per Clause no.1 of 5.30, the Lease Deed should be a registered one and admittedly neither M/s.Siecham nor the petitioner had complied with the said regulation and by drawing attention of this Court to second proviso to 5.63, it is the submission of the learned Government Pleader (Pondicherry) that admittedly the NOC granted by the 6th respondent came to be withdrawn, vide communication dated 13.11.2020 and copy of the same has also been marked to the Honorary Secretary of the petitioner Association and acting upon the same, the impugned order came to be passed by the 7th respondent and it cannot be faulted with. It is also the submission of the learned Government Pleader that application for getting permanent electricity connection for S.F.No.55/4, also came to be rejected on 20.05.2020 and it has not been challenged and also stated that all the action has been taken pursuant to the communication of the Hon'ble Lieutenant Governor of Union Territory of Pondicherry, dated 12.11.2020. The learned Government Pleader (Pondicherry) on instructions from Mr.C.Mouthanandame, Assistant Engineer, Sedarapet, Sub Division, Electricity Department, Puducherry, would further submit that in respect of R.S.No.45/1, sanctioned load is 5.42 kw.

13. In sum and substance, it is the submission of the learned Government Pleader that in light of second proviso to Clause 5.63 of JERC, it cannot be said that the principles of natural justice have been violated and further points out that it has been impliedly excluded. Insofar as the mistake crept in in respect of survey number in the impugned order, it is the submission of the learned Government Pleader that since it is an inadvertent error and that the petitioner is also very well aware of the fact that admittedly, the connection was granted only in respect of premises in R.S.No.56/5 for establishment of temporary COVID-19 center and since it no longer survives, it has been rightly withdrawn and it cannot be faulted with and prays for dismissal of this Writ Petition with exemplary costs.

14. This Court has carefully considered the rival submissions and also perused the materials placed before it.

15. It is not in dispute that the temporary service connection in respect of R.S.No.45/1 was granted in favour of

S.Dhamodaran, Managing Director of M/s.Siecham and it came to be disconnected on account of the fact of granting of temporary service connection in respect of R.S.No.56/5 for the establishment of temporary COVID-19 center. It is also the submission of the learned Senior Counsel that assuming that the impugned order is sustainable in all fairness, in that event, the official respondents concerned, ought to have restored the temporary connection granted in respect of S.F.No.45/1 and as on date, the grounds as well as premises attached are suffering without any electricity service connection, which is a minimum basic necessity, dehors the fact whether it is corporate or an individual. A perusal of the impugned communication dated 16.11.2020 sent by the 7th respondent to the petitioner would disclose that he placed reliance upon the communication of the 6th respondent dated 13.11.2020, which speaks about R.S.No.56/4, however in the impugned communication, the survey number referred as R.S.No.55/4 and it finds place in both paragraphs of the impugned communication.

16. This Court has also taken note of the submission made by the learned Government Pleader (Pondicherry) that it is an inadvertent error or mistake and since the petitioner is very well aware of the fact that it is in respect of R.S.No.56/5 only, not in respect of R.S.No.55/4, he may not be put to prejudice in any manner. In the considered opinion of this Court, the said submission lacks merit and substance for the reason that the 6th respondent purported to have exercised his power in terms of Second proviso to Clause 5.63 of Joint Electricity Regulatory Commission (JERC). The learned Senior Counsel also made a submission by submitting that Clause 5.63 can be applicable to a place owned by the local authority and since it is a private limited concern, namely, M/s.Siachem, Clause 5.63 have no application to the case on hand. However, a perusal of the application submitted for temporary service connection, especially Clause no.8, would disclose that details such as Registered Sale Deed, Registered Partnership Deed, Registered Successionship Certificate, Legal Heir Certificate, Registered Will, Registered Power of Attorney, Latest Rent Receipt, Lease Deed, Rent Agreement, either of them documents have been entertained upon.

17. This Court is also not inclined to go into the interpretation of Clause 5.63 for the reason that for testing the legality of the impugned proceedings, it may not be necessary. In the light of the fact that the notification of Joint Electricity Regulatory Commission (for the State of Goa and Union Territory of Pondicherry), Electricity Supply Code Regulation, 2018 came to be issued and that the 6th respondent purported to have exercised his power in terms of second proviso to Clause 5.63 and that the impugned proceedings also refers to

a totally wrong survey number, is of the considered view that there appears to be lack of application of mind on the part of the 6th respondent.

18. It is a well settled position of law that the impugned order is to be tested in respect of the reasons assigned therein and though it is the vehement and forceful submission of the learned Government Pleader (Pondicherry) that mentioning of wrong survey number is an inadvertent error, this Court is not inclined to accept the same, for the reason that disconnection of electricity supply would affect the civil rights of the petitioner and since it is a minimum basic necessity, care and caution should have been exercised by the 6th respondent before doing so, but it appears to be not so.

19. In the result, the Writ Petition is Partly Allowed and the impugned order dated 16.11.2020, on the file of the 7th respondent is quashed, with the following directions:

(i) the 7th respondent is directed to follow due process of law in respect of R.S.No.56/5, and pass appropriate orders.

(ii) In the light of the grant of temporary service connection in R.S.No.56/5, the electricity service connection granted in respect of S.F.No.45/1 with a load of 5.42 kw have been disconnected and since the impugned order passed by the 6th respondent has been quashed, the respondents 5 and 7 are directed to restore the electricity service connection in respect of S.F.No.45/1 of Thuthipet Village, in terms of the original load of 5.42 kw, within a period of two weeks from the date of receipt of a copy of this order / uploading of the order in the website, by also taking into consideration the Regulation 9.2 of Joint Electricity Regulatory Commission, dated 26.11.2018. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Union of India rep.by
the Chief Secretary to Government,
Government of Pondicherry,
Chief Secretariat,
Pondicherry.

2.The Principal Secretary to the Lt.Governor,
Raj Nivas, White Town,
Pondicherry 605 001.

3.The Secretary,
Legislative Assembly,
Government of Pondicherry,
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4.The Secretary to Government,
Department of Sports and Youth Department,
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5.The Commissioner cum Secretary to Government (Power)
Department of Electricity,
Government of Pondicherry,
Pondicherry.

6.The Commissioner,
Villianur Commune Panchayat,
Villianur.

7.The Assistant Engineer,
Sedharapet Sub Division,
Electricity Department,
Pondicherry.

+1 cc to M/s.B.Balavijayan,Advocate Sr.No. 9576
+1 cc to The Government Pleader Sr.No. 9375

W.P.No.18763 of 2020

JP II (CO)
RMP (17/03/2021)

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