



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2021

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WEB COPY

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P (MD)No.8475 of 2021

and

W.M.P (MD) .Nos.6377, 6378 and 8119 of 2021

M.Manivasagan

... Petitioner

Vs.

- 1.The Chairman-Managing Director,
TANGEDCO,
No.144, Annasalai,
Chennai.
- 2.The Director (Distribution),
TANGEDCO,
No.144, Annasalai,
Chennai.
- 3.The Chief Engineer (Distribution),
TANGEDCO,
Thirunelveli,
Thirunelveli District.
- 4.The Superintending Engineer,
TANGEDCO,
Virudhunagar,
Virudhunagar District.
- 5.The Executive Engineer (Distribution),
TANGEDCO,
Aruppukottai,
Aruppukottai Taluk,
Virudhunagar District.
- 6.The Assistant Executive Engineer (Rural),
TANGEDCO,
Aruppukottai,
Aruppukottai Taluk,
Virudhunagar District.



7.The Assistant Engineer(Rural),
TANGEDCO,
Muthuramalingapuram,
Kallurani Post,
Aruppukottai,
Virudhunagar District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order passed by the fourth respondent in Lr.No.SE/VREDC/VDR/AEE.GL/AE.1/F.HTSc/D.No.1556 dated 09.03.2021 as far as the demand of Estimate Charges of Rs.65,85,500/- are concerned and the consequential impugned proceedings of the fourth respondent in Lr.No.SE/VREDC/VDR/AEE.GL /AE.1 /F.HTSc/D.No.1629 dated 19.03.2021 and quash the same and direct the respondents to receive Demand Draft for the value of Rs.15,45,700/- and provide electricity HT service connection immediately to the petitioner's industry Sri Vinayaga Blue Metal situated in SF.No:56/4, 58/2, 58/3 and 67/2 in R.Kallumadam Village, Aruppukottai Taluk, Virudhunagar District.

For Petitioner : Mr.K.Govindarajan
For Mr.M.Karthikeyavenkitachalapathy
For Respondents : Ms.M.Parameswari
For S.M.S.Johny Basha,
Standing Counsel.

ORDER

The petitioner challenges an order of the fourth respondent dated 09.03.2021 insofar as the demand of estimate charges of Rs.65,85,500/- (Rupees Sixty Five Lakhs Eighty Five Thousand and Five Hundred only) is concerned and also challenges the consequential proceedings dated 19.03.2021.

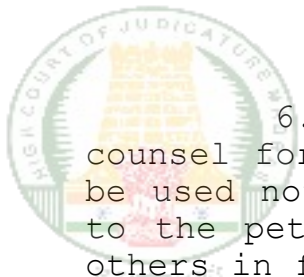
2. The petitioner states that he had applied for a HT electricity service connection. In response thereto, by impugned order dated 09.03.2021, the petitioner was called upon to pay a sum of Rs.12,00,000/- (Rupees Twelve Lakhs only) towards development charges, Rs.65,85,500/- (Rupees Sixty Five Lakhs Eighty Five Thousand and Five Hundred only) towards estimate charges and Rs.80,000/- (Rupees Eighty Thousand only) towards MCD charges, thereby aggregating to a total demand of Rs.78,65,500/- (Rupees Seventy Eight Lakhs Sixty Five Thousand and Five Hundred only). The petitioner does not have any objection to the payment of development charges and MCD charges. In fact by a Demand Draft dated 08.03.2021, the petitioner has remitted a sum of Rs.15,45,700/- (Rupees Fifteen Lakhs Forty Five Thousand and Seven Hundred only) for such purpose.



3. As regards estimate charges, the contention of the petitioner is that such charges cannot be claimed by the respondents. For such purpose, the petitioner relies upon an order passed by the Tamil Nadu Electricity Regulatory Commission (the TNERC) on 03.10.2019 in M.P.No.7 of 2018. The petitioner relies upon paragraph 3.12 of the said order read with Tables 17 to 20 thereof. On such basis, it is contended that the respondents are not entitled to recover the entire infrastructure cost from a particular consumer. The petitioner contends that the TNERC made an assessment of the development charges that may be levied by the respondents. In the context of an HT electricity supply connection, which is to be provided through the overhead mode, such charges were fixed at Rs.1500/- (Rupees one Thousand and Five Hundred only) per KVA without ceiling limits. The petitioner contends that Item (a) in the impugned order pertains to such development charges computed at Rs.1500/- (Rupees one Thousand and Five Hundred only) per KVA. Such charges are not objected to by the petitioner and have been tendered. In this connection, the petitioner also refers to Section 46 of the Electricity Act, 2003 and contends that Section 46 only enables the distribution licensee to claim expenses reasonably incurred in providing any electric line or electrical plant. In addition, the petitioner relies upon Regulation 44 of the Tamil Nadu Electricity Distribution Code which provides for the distribution licensee to collect reasonable expenses incurred in providing any electric line or electrical plant at the rate specified by the relevant Electricity Regulatory Commission in such regard. In the case at hand, the petitioner contends that the TNERC has not fixed any rates other than the development charges at the rate of Rs.1500/- (Rupees one Thousand and Five Hundred only) per KVA. For all these reasons, the petitioner contends that the impugned order is not sustainable insofar as it pertains to estimate charges.

4. On the contrary, Ms.M.Parameswari, learned counsel appearing for Mr.S.M.S.Johny Basha, learned Standing Counsel for the TANGEDCO, submits that Regulation 45 of the Tamil Nadu Electricity Distribution Code enables the distribution licensee to levy service connection charges in addition to development charges. In particular, Regulation 45(1) (i and iii) is cited to contend that the licensee is entitled to charge the consumer for the actual cost of materials up to meter board, including labour, transport, etc.

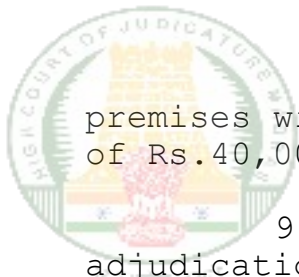
5. As regards development charges, learned counsel contends that such development charges pertain to the creation of infrastructure for general use by all consumers in a particular locality or area. By contrast, it is contended that the estimate charges of Rs.65,85,500/- (Rupees Sixty Five Lakhs Eighty Five Thousand and Five Hundred only) pertain to creation of infrastructure (such as poles, etc.) only for purposes of providing the HT connection to the petitioner.



6. This contention is, however, countered by learned counsel for the petitioner by contending that these PSC poles would be used not only for the purpose of providing a service connection to the petitioner but also to provide such service connections to others in future. Consequently, without prejudice to the contention that all such charges are subsumed in development charges, the petitioner cannot be mulcted with the entire cost in such regard.

7. Upon consideration of the rival contentions, it is evident that the present dispute turns on the ambit and scope of the expression "Development Charges" vis-a-vis the ambit and scope of the expression "Service Connection Charges". As regards development charges, there is no doubt that the TNERC by its order has fixed such development charges at Rs.1,500/- (Rupees One Thousand and Five Hundred only) per KVA. The question that arises is whether such development charges would also include service connection charges in terms of Regulation 45 of the Tamil Nadu Electricity Distribution Code. The ancillary question that arises is even assuming that service connection charges are different from development charges, in view of the admitted position that such infrastructural facilities are going to be used for other consumers in future, is the distribution licensee entitled to collect the entire amount in such regard from one consumer? These are matters which require a measure of technical expertise. Regulation 50 of the Tamil Nadu Electricity Distribution Code enables the Tamil Nadu Electricity Regulatory Commission to decide disputes relating to the interpretation of the provisions of the Code. Therefore, notwithstanding the fact that the exercise of extraordinary jurisdiction under Article 226 of the Constitution is only subject to self imposed fetters, I am of the view that this dispute may be more appropriately dealt with by the TNERC in view of the involvement of various technical aspects and bearing in mind that development charges were fixed by the TNERC.

8. Nonetheless, the petitioner is in urgent need of an HT Connection since the petitioner is currently operating its facilities by using generators. While the Distribution licensee has claimed a sum of Rs.65,85,500/- (Rupees Sixty Five Lakhs Eighty Five Thousand and Five Hundred only), the petitioner points out that the said estimate is exorbitant when compared to estimates provided to similarly situated consumers. The petitioner cites an estimate of Rs.2,00,000/- (Rupees Two Lakhs only) provided to another consumer in such regard. On this issue, the equities are required to be balanced between the distribution licensee and the consumer. For such purpose, it would be just and reasonable to direct the petitioner to remit a sum of Rs.40,00,000/- (Rupees Forty Lakhs only) as an adhoc payment at this juncture. Such payment shall be remitted within a period of two (2) weeks from the date of receipt of a copy of this order. Upon receipt thereof, the distribution licensee is directed to take necessary action to provide the HT service to the petitioner at the relevant



premises within a period of sixty (60) days from the date of receipt of Rs.40,00,000/- (Rupees Forty Lakhs only).

9. The petitioner is directed to refer this dispute for adjudication before the Tamil Nadu Electricity Regulatory Commission. The petitioner shall file the relevant petition in this regard within a period of two (2) weeks from the date of receipt of a copy of this order. Upon receipt of such petition, the Tamil Nadu Electricity Regulatory Commission is directed to consider the same and dispose of such petition on merits and in accordance with law within a period of two (2) months from the date of receipt of a copy of this order. Before disposing of such petition, a reasonable opportunity shall be provided both to the petitioner and the distribution licensee. The adhoc payment made by the petitioner shall be subject to the outcome of proceedings before the Tamil Nadu Electricity Regulatory Commission.

10. With the above observations, the Writ Petition stands disposed of without any order as to costs. Consequently, W.M.P(MD). Nos.6377, 6378 and 8119 of 2021 are closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

tsg/LM

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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+1 CC to M/s.M.KARTHIKEYAVENKITACHALAPATHY, Advocate (SR-29698 [F]
dated 21/09/2021)

W.P (MD) No. 8475 of 2021
20.09.2021

MGJ(28.09.2021) 6P 9C