



HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

WP NO.25886 OF 2013

Tidel Park Coimbatore Limited,
S.F.No.427/1, 427/2, 436, Villankurichi Village,
IT/ITES ELCOT (SEZ) Coimbatore North Taluk,
Coimbatore District.
With Regd.Office at
No.4, Rajiv Gandhi Salai,
Taramani, Chennai - 600 113.

...Petitioner

Vs.

1. Tamilnadu Generation and Distribution,
Corporation Limited (TANGEDCO)
Rep. by its Chairman,
NPKR Maligai, 144, Anna salai,
Chennai - 600 002.
2. Consumer Grievance Redressal Forum
Rep. by its Chairman (Superintending Engineer)
Coimbatore Electricity Distribution Circle / Metro
TANGEDCO (formerly TNEB)
Coimbatore - 641 012.
3. Tamil Nadu Electricity Ombudsman
19-A RukminiLakshmipathySalai,
Egmore, Chennai - 600 008.

...Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records on the file of Tamil Nadu Electricity Ombudsman culminating the 3rd respondent in the order dated 12.06.2012 in Petition No.200 of 2011 confirming the proceedings dated 26.04.2011 passed by the Consumer Grievance Redressal Forum of Coimbatore EDC/Metro, set aside the same, quash the service availability notice dated 10.08.2010 and 18.11.2010 issued by the 1st respondent and direct the 1st respondent to refund the minimum charges collected in pursuance of the above notices.

For Petitioner	:	Mr.S.Jose John
		For M/s.King and Partridge
For Respondents	:	Mr.Abdul Kalam
		Standing Counsel



O R D E R

The petitioner is a Company promoted by the Tamil Nadu Industrial Development Corporation Limited, Electronics Corporation of Tamil Nadu Limited, Tidel Park Limited and the Software Technology Parks of India. It is a Government Company. They have applied for supply of power connection of 5000 KVA at 33 KV (HT Supply) by letter dated 16.10.2009. On 30.11.2009, the first respondent inspected the petitioner's site. By letter dated 11.12.2009, the Superintending Engineer of the first respondent informed petitioner to provide indoor metering and control cubicle and other materials with proper approval by its Engineer.

2. On 24.07.2010, the Superintending Engineer of the respondent Board informed the petitioner that one 110/5A HT TOD meter was required to effect the HT supply which was not available with the respondent Board and thereby, directed to petitioner to purchase the above said HT TOD meter and 33 KV 100/5A CTs within 15 days from the date of receipt of the letter and hand over the same to the first respondent for testing and acceptance. The specifications were supplied by the respondent Board on 28.07.2010. Since the meter was not readily available, the petitioner could purchase the same only on 04.10.2010 and after laying the cables, testing was conducted by the respondent Engineer between 23.10.2010 and 29.10.2010. Thereafter, the respondent has conducted inspection and completed the work only in November 2010. The supply of energy was availed from December 2010.

3. In the meanwhile, the respondent Board has issued a notice of readiness dated 10.08.2010 and thereafter, demanded minimum charges from the petitioner from the date of issuance of notice of readiness till the actual supply. Again, vide proceedings dated 18.11.2010, the respondent Board demanded the minimum charges and threatened to cancel the application and to terminate the agreement forfeiting all the amount paid by the petitioner. Hence, under protest, the petitioner deposited the money demanded by the respondent Board and filed a complaint before the consumer Grievance Redressal Forum, CEDC (Metro) Coimbatore (CGRF).

4. The CGRF rejected the complaint and hence, the petitioner filed an appeal to the Tamil Nadu Electricity Ombudsman. The Electricity Ombudsman by its order dated 12.06.2012 confirmed the order of CGRF and also the minimum demand made by the respondent Board. Against which, the present writ petition has been preferred.



9.The Tamil Nadu Electricity Distribution Code, 2004, provides for the procedure for conducting inspection, testing and effecting supply. Regulation 31(2) of the Code specifically states that the intending consumer shall avail himself of the supply within three months in case of HT and one month in case of LT from the date of issue of notice in writing, informing him that supply is available. Using the above provisions, the respondent Board demanded minimum charges for the period between the issuance of notice of readiness and the actual supply of power.

10.It is pertinent to note that Regulation 32 of the very same Electricity Distribution Code, 2004, mandates that for HT service connection, the Licensee shall provide his own circuit breaker, high tension fuses and other equipments and these will remain as the property of the Licensee and must, on no account, be operated, handled or removed by anyone, who is not an employee of the Licensee, unless authorised by the Licensee.

11.Regulation 29(6) of the Electricity Distribution Code, 2004, specifies that the consumer shall permit the Licensee to install all requisite equipments, such as transformers, switchgears, meters, etc., and to lay necessary cables or overhead lines and to provide connections thereto on the consumer's premises.

12.Regulation 30 of the Electricity Distribution Code, 2004, lays down certain restrictions on the consumer with regard to tampering or meddling with the equipments supplied by the Licensee. A consumer is required to do wiring as per the statutory provisions of the rules framed under the Act and shall not touch the equipments which are the properties of the Licensee.

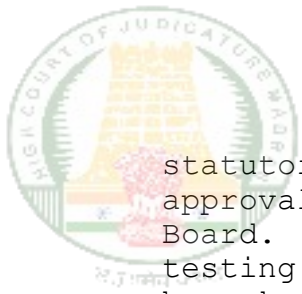
13.Therefore, it is very clear that the supply of HT TOD meter and other cut outs and equipments shall be made by the Licensee, namely Electricity Board. Unlike a Low Tension supply consumer, the High Tension supply consumer has no option of procuring his own meter and fixing it. In such circumstances, it is clear that the supply of HT TOD meter falls within the exclusive control of the Electricity Board. Obviously, by letter dated 24.07.2010, the respondent Board have required the petitioner to purchase a meter, which was not readily available with them. The petitioner had complied with the request. The crucial issue is that a condition was made to supply all the equipments, within 15 days from the date of receipt of the notice. Specifications were supplied on 28.07.2010 and there is no dispute about the facts.



14. Admittedly, the petitioner immediately acted upon the demand made by the Electricity Board. But the meter was not readily available in the market. The respondent Board, which could not procure the meter in the open market, made the petitioner to purchase the same within 15 days. Even though it is within the knowledge of the respondent Board that the meter is not readily available and they could not purchase the same, the Board should not have fixed the time limit, for procuring the same. When the petitioner approached for advise, the respondent Board should have provided the information as to whether the said meter is readily available and it can be purchased within 15 days. When the Electricity Board itself is not in a position to purchase the meter, it cannot find fault with the petitioner for not complying with the request within the impossible time limit. The Electricity Ombudsman though framed an issue on this issue, has failed to answer the same and approached the issue with bias in favour of the Electricity Board. Besides this, the letter issued by the Board itself goes to show that the other works were not completed by the Board on the said date. Only because an unilateral statement is made that non supply of the equipments shall not be construed as non completion of other works by the Board and no objection was received to the conditions imposed, will entitle them to demand as per their whims and fancies.

15. Regulation 31 of the Code provides for the procedure for inspection, testing and installation of the meter and other electrical equipments. The procedure to be followed in supply of electricity that the Board after registration of application shall not sanction the load that could be supplied to the consumer. Once the consumer complies with the requirements of the Board and completes its wiring and erection of other equipments, issue a notice to the Electricity Board of its readiness to avail the electricity. Thereafter, an agreement is executed between the parties and an Engineer of the Department conducts spot inspection, inspection of meters, testing of meters and other equipments and thereafter, the Board issues a notice for its readiness to supply electricity. If the consumer fails to avail the power supply within 90 days from the date of issuance of notice, then as per Clause 3 of Regulation 31, the Board has power to cancel the application and terminate the agreement and forfeit the charges deposited by the consumer. But in the impugned notice dated 10.08.2010, it is specifically stated that the consumer is requested to supply 33 KV CTs, PTs, HT TOD meter and produce safety certificate and execute necessary test report and avail supply within three months from the date of issue of that notice.

16. From the above, it is clear that the equipment sought to be supplied by the Board was not handed over to it and other



statutory requirements of conducting inspection, testing and approval of the equipments was not made by the Engineer of the Board. In that event, the required procedures of inspection, testing and approval and execution of an agreement, could not have been complied with. Without there being completion of works and issuance of notice by the consumer, the Electricity Board, at any stretch of imagination, should not have issued any letter of readiness to supply power. It is an abuse of power or misuse of power by the respondent Board. The issuance of notice of readiness even before completion of the basic works is illegal and arbitrary. The Electricity Ombudsman has failed to consider the issue in proper perspective. Therefore, the order of the Electricity Ombudsman is bad and not sustainable.

17. Apart from this, the Electricity Ombudsman has exceeded the scope of the complaint wherein the demand of the minimum charges is the subject in issue. Whereas, it has dealt with the point of supply, laying of underground cables and other issues, which were irrelevant and therefore also, the order of the Electricity Ombudsman is ex facie biased and illegal.

18. On 18.11.2010, the respondent Board has informed the petitioner that the Electricity Board has completed all the works and threatened them with termination of agreement and forfeiture of the amount. But, from the materials, it is noted that inspection of the electrical installations by the Engineer, was actually conducted only on 01.12.2010 and a safety certificate for commissioning the installation was issued only on 13.12.2010. In that view of the matter also, the action of the respondent Board demanding minimum charges is arbitrary. Only because a statutory provision empowers the respondent to disconnect the power supply or cancel the application or terminate the agreement, it is not legal to do so bypassing the other prerequisites.

19. It is to be noted that the petitioner is also a Government company and they have no reason to delay the procurement of electricity supply. It all happened only when the Electricity Board required the petitioner Government company to purchase the meter, which was not available in the market at that point of time. After issuing such demand notice and compelling to perform an impossible task within a short time, is nothing but misuse of power conferred by the statute. Attention was drawn to the notice of this Court that the same person, namely Er.A.D.Thirumoorthy, Superintending Engineer, who issued the proceedings dated 10.08.2010 demanding minimum charges, sat as a Judge while disposing of the complaint filed by the petitioner before the CGRF. Thus, the Prosecutor himself has acted as a Judge for his own cause is in violation of principles



of natural justice. On this ground alone, the entire proceedings stands vitiated.

20. In view of the above findings, the order passed by the third respondent Tamil Nadu Electricity Ombudsman dated 12.06.2012 in Petition No.200 of 2011 confirming the proceedings dated 26.04.2011 passed by the Consumer Grievance Redressal Forum of Coimbatore EDC/Metro and the service availability notice dated 10.08.2010 and 18.11.2010 issued by the first respondent are ex facie illegal and liable to be set aside and accordingly, set aside. A direction is issued to the respondent Board to refund the minimum charges deposited by the petitioner within a period of eight weeks from the date of receipt of a copy of this order or to adjust the future payment to be made by the petitioner to the respondent Electricity Board.

21. In fine, the writ petition stands allowed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kmm/tk

To

1. The Chairman
Tamilnadu Generation and Distribution
Corporation Limited (TANGEDCO)
NPKR Maligai, 144, Anna salai, Chennai - 600 002.
2. The Chairman (Superintending Engineer)
Consumer Grievance Redressal Forum
Coimbatore Electricity Distribution Circle / Metro
TANGEDCO (formerly TNEB), Coimbatore - 641 012.
3. Tamil Nadu Electricity Ombudsman
19-A Rukmini Lakshmipathy Salai,
Egmore, Chennai - 600 008.

+1cc to Mr.M.Abulkalam, Advocate, S.R.No.24989

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EV(CO)

RGA(20/06/2022)