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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.02.2022

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.17898 of 2020 and 2507 of 2021

and WMP Nos.22188 and 22191 of 2020 and 2826 of 2021

M/s.VGN Projects Estates Private Ltd.

Formerly Known as M/s.VGN

Property Developers Pvt. Ltd Rep by its

Authorised Signatory No.153 Wallace Garden

2nd Street Nungambakkam,

Chennai - 600 006.

... Petitioner in W.P.No.17898 of 2020

Vs

1 The Executive Engineer / O &M
/Ambattur Chennai Electricity
Distribution Circle / West TANGEDCO 3rd
Main Road Ambattur Industrial Estate Ambit
IT Park Road Opp to Industrial Estate,
Police Station, Chennai - 600 058.

2 The Assistant Executive Engineer
/ O and M / Thiruverkadu Chennai
Electricity Distribution Circle / West
TANGEDCO TNHB (Near Arulmigu Devi Karumari
Amman Temple) Thiruverkadu,
Chennai - 600 077.

3 The Assistant Engineer /
O and M / Thiruverkadu Chennai Electricity
Distribution Circle / West TANGEDCO TNHB
(Near Arulmigu Devi Karumari Amman Temple)
Thiruverkadu Chennai - 600 077

.... Respondents 1 to 3 in W.P.No.17898 of 2020
& Petitioners in W.P.No.2507 of 2021



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4 The Consumer Grievance Redressal Forum
Chennai Electricity Distribution Circle / West
Thirumangalam
110/ 33/ 11 KV SS Complex Chennai

... 4th respondent in W.P.No.17898 of 2020

5 Tamil Nadu Electricity Ombudsman
19A Rukmani Lakshmipathy Salai
Marshall Road Egmore
Chennai 8

... 5th respondent in W.P.No.17898 of 2020
& 1st respondent in W.P.No.2507 of 2021

6.M/s.VGN Property Developers Pvt.Ltd.,
No.153, Wallace Gardent, 2nd Street,
Nungambakkam, Chennai-600 006.

...2nd Respondent in WP.2507/2021

PRAYER in W.P.No.17898 of 2020: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records of the 5th respondent dated 11.9.2020 passed in A.P.NO.8 of 2020 confirming the order of the 4th respondent dated 24.12.2019 passed in petition No.97/2019 and quash the same by consequently directing the respondents to effect power supply to the petitioner as per the proceedings of the Chief Engineer / Distribution / Chennai North Region dated 23.9.2017.

PRAYER in W.P.No.2507 of 2021: PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari to call for the records of the 1st respondent in A.P.No.08 of 2020 dated 11.09.2020 and quash the same.

For Petitioner in W.P.No.17898 of 2020

& 2nd respondent in W.P.No.2507 of 2021: Mr.P.R.Raman,
Senior Counsel

For Mr.Ramalingam& Associates

For Petitioners in W.P.No.2507 of 2021

& For R1 to R3 in W.P.No.17898 of 2020: Mr.J.Ravindran

Additional Advocate General
Assisted by Mr.L.Jai Venkatesh

No appearance - R4 & R5
in W.P.No.17898 of 2020

R1

: No Appearance in WP.2507/2021



COMMON ORDER

These Writ Petitions challenge an order passed by the Tamil Nadu Electricity Ombudsman (in short 'Ombudsman') dated 11.09.2020. The petitioner in W.P.No.17898 of 2020 is the developer and the petitioner in W.P.No.2507 of 2021 is the Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO).

2.The petitioner, a company engaged in the development of real estate, had sought and was accorded planning permission on 14.03.2013 by the Chennai Metropolitan Development Authority in regard to the property at Sivan Koil Main Road, New Thiruverkadu Bus Stand, Thiruverkadu, Chennai - 77.

3.The permit related to 524 dwelling units on stilts along with four floors together with a club house and a retail shops, comprising in all 12 blocks. Admittedly, the petitioner had sought approval for service connections in 3 phases, the first, on 21.04.2017 for 236 service connections, the second dated 26.12.2018 for 10 service connections and the third dated 06.06.2019 for 229 service connections.

4.Sanction was accorded for the first and second applications, the first in toto and the second for 9 out of 10 dwelling units sought for by the petitioner. The load for the first one was 1180 KW, second, 270 KVA and the third, 1756.56 KW. The report accompanying the first estimate dated 23.09.2017 refers to the entirety of the project comprising 524 dwelling units as well as the club houses and retail shops.

5.Interalia, an undertaking was produced by the petitioner to spare space for the erection of distribution transformers and associated switch gears. As per Board Proceedings (BP) 481 dated 11.09.2017, the load, as projected for all 524 dwelling units comprising 108 single bedrooms, 144 double bedrooms, 272 triple bedrooms and 6 common services, was 4961.2 KVA or in other words, 4.96 MV.

6.The tabulation and break-up as set out in the report accompanying estimate dated 23.09.2017 is as follows:

"As per BP.481 dated 11.09.2017, the total load of this project is works out for 524 dwellings, which is less than 5MVA.

1	108 single bedrooms	6.1KVA	660
2	144 two bedrooms	7.44KVA	1072
3	272 triple bedrooms	8.3KVA	2508.4
4	6 no.of common services	120KVA	720
Total			4961.2KVA



7. Great reliance is placed by the petitioner upon the above projected assessment pointing out that the estimated load at 4.96 MV took note of the entirety of the project comprising the dwelling units as well as the club house and the retail shops as referred to in the preamble to the report. The importance of this is for the reason that an estimated load in excess of 5 KVA would necessitate the allocation of space by the consumer for a separate sub-station/transformer.

8. In cases where the projected load is less than 5 KVA, the consumer is not required to allocate space and thus, according to the petitioner, there was no requirement for it to allocate space for sub-station centre in light of report accompanying proceedings dated 23.09.2017.

9. Matters did not end there as the petitioner made two further requests for service connections. The second application dated 26.12.2018 was accepted substantially by the respondents according sanction of 9 out of 10 connections sought. The third application remains pending, adversely impacting the interests of 209 consumers, who have been allotted the remaining units.

10. In response to application dated 06.06.2019, the respondent issued proceedings dated 26.09.2019 stating as follows:

TAMIL NADU GENERATION AND DISTRIBUTION CORPORATION LIMITED

From

Er.S.Purushothaman,

B.E., Executive Engineer/O&M/Ambattur,

i/c

Ambattur Indl. Estate, 3rd Main Road SS,

Chennai-58.

To

M/s.VGN Developers Pvt. Ltd.

VGN Temple Town,

Sivankoil Street,

Chennai-77.

Lr.No.EE/O&M/ABT/IE Rules/F.Land/D.1154/19

dt.26.09.2019

Sir,

Sub: Elecy - CEDC/West - Ambattur Division -
Gift of Land for Substation for 229 Dwelling
units - at VGN Temple Town, Sivan Koil Street,
Chennai - 600 077 - reg.

Ref: Your letter dt.05.09.2019.



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In continuation to your letter referred above, you are hereby informed that as per B.P.No.481/11.09.2017, the total assessed demand of your entire project works out to 5.091MVA.

Accordingly, as per the existing BP.No.481/11.09.2017 of TANGEDCO, sufficient land has to be gifted by the prospective consumer for establishment of 33/11 kV Substation to TANGEDCO, if the project demand exceeds 5MVA.

Hence, you are hereby requested to furnish the FM Sketch and the portio of land to be gifted to TANGEDCO for the purpose of Establishment of 33/11 kV Substation to be marked in the sketch.

The above details may be furnished to this office early,

Executive Engineer/O&M
Ambattur.

11.They refer to Board Proceedings dated 11.09.2017 which has been referred to in proceedings dated 23.09.2017, however, varying the assessment, and consequently the demand. The identical Board Proceedings as referred to in proceedings dated 23.09.2017 refers to a total load of 4.96 MV, whereas, as per letter dated 26.09.2019, they would state that the assessed demand works out to 5.091 MVA.

12.The above variation has not been resolved till date. The argument of the respondents is that it is the cumulative effect and assessment of all three applications filed by the petitioner, i.e., on 21.04.2017, 26.12.2018 and 06.06.2019, that has resulted in the excess load.

13.I am not entirely convinced with this argument seeing as even proceedings dated 23.09.2017 had been issued in regard to 524 dwelling units, club house and retail shops and admittedly this constitutes the entirety of the project in question. No material has been placed on record by the respondents to show that there has been any increase in the project as aforesaid and as sanctioned in 2013.

14.To complete the narration, the petitioner approached the Ombudsman, who has passed the impugned order concluding that the petitioner is to offer space for establishment of the sub-station as per Regulation 29(12)(2) of the Tamil Nadu Electricity Distribution Code, 2004 (in short 'Code') and directing the



respondents to process the application for new service connections obtained on or after 29.01.2020 in line with TNERC Regulation in force, on receipt of registered gift deed offering space for sub-station.

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15.As against the first limb of the order of the Ombudsman, the petitioner/developer is before this Court and the respondents/TANGEDCO are, as against the second limb of the order as aforesaid.

16.My attention is drawn to several intervening events pending Writ Petitions where an independent assessment of load was directed to be made by this Court. Pursuant thereto, the petitioner has also filed an affidavit undertaking to provide 364 sq. ft. of land as against the required 400 sq. ft., as per Regulation 29 of the Code. All this is rendered superfluous in light of the petitioner's acquiescence to offer space for establishment of sub-station as with this, the substratum of its Writ Petition goes.

17.Thus, and without reference to the detailed pleadings and voluminous submissions that have been placed on record by both parties in relation to the first question as to whether the load is below or in excess of 5 KVA, I record the acceptance of this requirement by the petitioner/developer, as conveyed by Mr.P.R.Raman who states that the petitioner does not pursue this argument and agrees to offer the required space for setting up of the sub-station. In effect the petitioner agrees to abide by the mandate of Regulation 29 of the Code.

18.The only legal issue that survives now is as to whether the proper Regulation to be applied would be Regulation 29 as in force at the time when the application was made on 06.06.2019 as petitioner contends, or amended Regulation 29 that in force when sanction was accorded, as respondents argue.

19.The arguments of the respondents on this score turn upon proceedings dated 26.09.2019 as this letter calls for the petitioner to furnish various particulars for the consideration of the application. Since there was substantial delay on the part of the petitioner, the disposal of the application was delayed. An application is expected to be complete in all respects, and had the application been so complete, then the delay in consideration or disposal of the same may well enure to the respondents, they argue.

20.However, in this case, the application was itself deficient as the FM sketch and the portion of land to be gifted to TANGEDCO for setting up of a sub-station had not been provided



by the petitioner. Hence, it is only Regulation 29 post amendment that would be applicable, since the amendment had come into force on 18.12.2019 even prior to passing of orders by the respondents.

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21. In this connection, they would rely upon an order passed by a learned single Judge in W.P.No.7912 of 2019 dated 28.08.2019 in the case of Vijay Shanthi Builders Limited V. TANGEDCO and others. This case is distinguished by the petitioner, who points out that in that case, the original sanctioned plan had itself been deviated from by the builder and it was in such circumstances that the Court had held adverse to the builder. In the present case, there was no deviation from the original sanctioned plan and in fact, proceedings dated 23.09.2017 had taken note of the project in entirety.

22. Any project of some magnitude is expected to involve more than one application for service connection as the project evolves. Thus, there is nothing untoward in the fact that successive applications have been filed seeking service connections as and when construction is complete and buyers are identified. In my considered view, the relevant point would be to note whether the applications taken cumulatively, relate to the project as sanctioned, or whether they exceed the scope of the original sanction.

23. As in this case, in the case of Vijay Shanthi Builders too, the project had comprised two phases, phase-I comprising 469 dwelling units and two commercial shops and phase -II comprising 332 units, in all 801 dwelling units and two commercial units. The planning permission was thus in respect of 801 units and two commercial establishments.

24. Vijay Shanthi had informed the respondents that its requirement would be in the range of 4 Kilowatts per unit and the total demand would not exceed 4000 KW. This was held to be an under-assessment and ultimately the demand was found to be in the region of 5.708 MVA. Thus, the learned single Judge held that the assessment at 4 KW was only a self-serving statement made while obtaining building plan approval.

25. In conclusion, he held that the requirement of sub-station or otherwise would depend upon a proper assessment of the load and that the assessment made by Vijay Shanthi had no proper or scientific basis to it. Those facts are distinguishable for the reason that the assessment of load in this case was by the authorities themselves. Proceedings dated 23.09.17 refer to Board Proceedings dated 11.09.2017 that are stated to have taken into account the entirety of 524 dwelling units.



26. Since Board Proceedings dated 11.09.2017 are not before me, it is unclear as to whether the club house and the retail shops have been included therein. In any event, as no objection is taken by the petitioner to assessment of load in excess of 5 KVA nothing more need be said in this regard.

27. As regards the applicable Regulation, useful reference may be made to order dated 05.01.2021 of the Tamil Nadu Electricity Regulatory Commission in the case of CREDAI, Chennai V. Tamil Nadu Generation and Distribution Corporation Limited in M.P.No.21 of 2020 answering this very question.

28. CREDAI, the Confederation of Real Estate Developers' Associations of India had sought a clarification on the amendment to the Tamil Nadu Electricity Distribution Code (in short 'Code') in Notification TNERC/DC/8-25 dated 18.12.2019 amending Regulation 29 of the Code relating to space allocation for erection of sub-station when the load exceeds 5 MVA dated 05.01.2021.

29. The exact question as has arisen in this matter, came up for consideration in that matter. The Code, prior to amendment, required the allottee to provide space of 225 Sq.ft. for the setting up of a sub-station if the load exceeded 5 MVA. The amendment to the Code vide Notification dated 18.12.2019 increased the area to be given for compact sub-station to 400 sqft., providing in addition that where the developer chose to allot land for a compact sub-station, the difference in cost between establishment of a conventional sub-station and a compact sub-station shall be borne by them.

30. The explanatory statement for the amendment reads as follows:

"Explanatory Statement

- (1) Ease out practical difficulties while accepting applications online
- (2) To facilitate network upgradation to cater to the increase in demand and further, to alleviate difficulties and undue delays faced by the licensee in obtaining lands for establishment of substations that are essential to provide quality supply."



31.The authority concluded that the amendment was prospective and would relate to projects/developments where applications for temporary service connection for construction were made on or after the date of amendment coming into force, i.e., 29.01.2020. In the present case, the last application seeking service connection has been made on 06.06.2019 prior to the date of coming into force of the amendment, and this then, would clinch the issue as regards its applicability. This issue is answered in favour of the petitioner.

32.The writ petitions are ordered in the above terms and connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

S1

To

- 1 The Executive Engineer / O &M
/ Ambattur Chennai Electricity
Distribution Circle / West TANGEDCO 3rd
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5 Tamil Nadu Electricity Ombudsman
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Marshal Road Egmore
Chennai 8

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+2cc to Mr.L.Jai Venkatesh, Advocate SR.10126

W.P. Nos.17898 of 2020 and 2507 of 2021
and WMP Nos.22188 and 22191 of 2020 and 2826 of 2021

BR(CO)

CB(04/04/2022)