



W.A.(MD)No.211 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.A.(MD)No.211 of 2013

and

M.P.(MD)No.1 of 2013

The Superintending Engineer,
Madurai Electricity Distribution Circle,
Tamil Nadu Electricity Board,
Pudur, Madurai.

... Appellant / 1st Respondent

Vs.

1.M/s.Jothees Trading Corporation,
3/4, Narasingampatti Village,
Arittapatty Road, Melur Taluk,
Madurai District,
Represented by its Proprietor R.Jothi. ... 1st Respondent / Writ Petitioner

2.S.V.Arunachalam

3.M/s.Sree Kaderi Ammal Steels Ltd.,
Represented through one of its Director,
Alagammal.

... Respondents 2 & 3 /
Respondents 2 & 3

(R3 impleaded as party respondent vide Court order dated 28.02.2012 in
M.P.(MD)No.2 of 2011)



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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 08.01.2013 made in W.P.(MD)No.12691 of 2011 on the file of this Court.

For Appellant : Mr.S.Deenadhayalan,
Standing Counsel
For R1 : Mr.S.Manikandan
For R2 : Mr.S.Karthik
For R3 : No Appearance

JUDGMENT

(Judgment of the Court was delivered by ***R.SURESH KUMAR, J.***)

This Writ Appeal has been directed against the order passed by the Writ Court dated 08.01.2013 made in W.P.(MD)No.12691 of 2011.

2.The 1st respondent had sought for a commercial service connection from the appellant, for which all formalities have been complied with by the 1st respondent, including the payment like security deposit, earnest money deposit and other charges.

3.The papers in this regard having been scrutinized the appellant had come forward to communicate to the 1st respondent to comply with certain more conditions, which also had been complied with.



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4.At this juncture, despite such compliance, the appellant seems to have insisted upon to get a No Objection Certificate from the erstwhile partners or partners of the company otherwise to file indemnity bond by making double the payment of the security deposit. In this context, the said demand made by the appellant was not in consonance with the TNERC Distribution Code as well as it is against the practice hitherto being adopted by the appellant in respect of extending service connection.

5.Therefore, aggrieved over the same, by challenging the communication of the appellant dated 17.09.2011, the 1st respondent filed the said Writ Petition and the same was heard and disposed of by the learned Single Judge through the impugned order dated 08.01.2013, wherein the learned Single Judge, after having considered the merits of the case, directed the appellant to return the deposited amount of Rs.24,80,500/- (Rupees Twenty Four Lakhs Eighty Thousand and Five Hundred Only) to the writ petitioner within a period of four weeks.



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6.Assailing the said order passed by the learned Single Judge, the learned Standing Counsel for the appellant submitted that the said direction issued by the learned Single Judge in the impugned order is against Clause 34 of TNERC Distribution Code. Therefore, on that ground, the order impugned can be successfully assailed, he contended.

7.We have heard the matter twice, firstly on 07.06.2023 and again on 16.06.2023.

8.After hearing both sides elaborately, on 16.06.2023, we passed the following order:-

“In response to our earlier order dated 07.06.2023, the learned counsel for the 1st respondent / consumer, who made an application to get service connection from the appellant, has filed typed set of documents, where an undertaking letter has been given by the 1st respondent / consumer dated 18.02.2011. Thereafter, a demand has been made to make payment of registration charges of Rs.500/- (Rupees Five Hundred Only) and Earnest Money Deposit of Rs.24,80,000/- (Rupees Twenty Four Lakhs and Eighty Thousand Only), totally, a sum of Rs.



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24,80,500/- (Rupees Twenty Four Lakhs Eighty Thousand and Five Hundred Only) was demanded by the letter dated 26.03.2011, which was remitted by the 1st respondent on 29.03.2011 by way of Demand Draft and receipt to that effect has been issued by the appellant TANGEDCO on 30.03.2011. Thereafter, the 1st respondent had written a letter, stating the details of the property, ownership etc., and sought for extension of service connection and along with the said letter, encumbrance certificate as well as the certificate issued by the Sub-Registrar concerned with patta copy had also been produced.

2.On the basis of these documents, the appellant TANGEDCO had written a letter dated 21.07.2011 to the 2nd respondent, who had objected for extension of service connection to the 1st respondent Company that had also been replied. Thereafter, the appellant TANGEDCO, by a letter dated 12.09.2011 had stated to the 1st respondent that in view of the subsequent documents filed by the 1st respondent, a letter had been issued to the 2nd respondent for producing the latest document. However, he has not come forward to produce any latest documents. Therefore, as per Clause 27(4) of TNERC Distribution Code, the Co-Directors' / Owners' consent must be required for further proceedings on application or undertaking to be obtained in Rs.80/- stamped paper as in Form 6 of TNERC Distribution Code along with the security Deposit twice the



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normal rate from the prospective consumer.

3.By citing this the appellant requested the 1st respondent to produce consent of other co-owners of the lesser company or the resolution passed if any in this regard or otherwise, furnish an undertaking in Rs.80/- stamped paper in Form 6 and also to pay security deposit twice the normal rate immediately.

4.It is the contention of the learned counsel for the 1st respondent that already an undertaking affidavit in Rs.100 stamped paper has been executed on 18.02.2011. Insofar as the security deposit is concerned, they have not stated what is the normal rate and what is the amount to be deposited for security deposit. Without even disclosing anything, they had simply given the letter, thereafter, despite the request made by the 1st respondent, service connection has not been given.

5.In view of the same, Clause 34 of TNERC Distribution Code as sought to be implemented or invoked against the 1st respondent by the appellant may not be justifiable. Thereafter, to that extent, the reason given by the learned Single Judge through the impugned order passed by the Writ Court is to be fully justified. Therefore, we are of the view that this Writ Appeal has to fail.

6.Only at this circumstance, the learned Standing Counsel for the appellant seeks further a week time to get instructions as to whether the appellant is ready and willing to



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return the deposited amount immediately.

7.We feel that if at all the deposited amount to be refunded immediately, the same shall be refunded to the 1st respondent with interest at the rate of 18% per annum. Further, if the appellant voluntarily comes forward to refund the same by compliance of the order of the Writ Court, which is impugned herein, we feel that the rate of interest either can be reduced or even waived after getting views of the 1st respondent in this regard, otherwise we feel that the said EMD deposited by the 1st respondent to the appellant shall be refunded with interest at the rate of 18% per annum.

8.Before passing the order, as requested by the learned Standing Counsel for the appellant, we give a week time to respond in writing. For the aforestated purpose, post the matter on 23.06.2023 under the caption 'for orders'."

9.Pursuant to these developments, when the Writ Appeal is taken up for hearing today further, the learned Standing Counsel for the appellant has submitted that the appellant has decided to refund the earnest money deposit in toto forthwith to the 1st respondent ie., the writ petitioner and in this context, the appellant has given the following written statement:-

“ Written Statement

The Writ Appeal WA(MD)No.211 of 2013 was filed by



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TANGEDCO against the order of learned single judge in WP. (MD)No.12691 of 2011 on 08.01.2013 filed by M/s.Jothees Trading corporation Ltd. In this regard, after getting concurrence from HQ as per the direction of court order dated 16.06.2023, it is decided to refund the EMD by compliance of the order of the Writ Court. The EMD amount of Rs.24,80,500/- (Rupees Twenty four lakhs Eighty thousand and five hundred only) already paid by M/s.Jothees Trading Corporation will be refunded. Action is being taken towards the refund.

*SUPERINTENDING ENGINEER,
Madurai ElecY.Distn.Cicle
Tamilnadu Generation and Distribution
Corporation Limited, Madurai-7.”*

10.Relying upon this written statement given by the appellant, the learned Standing Counsel for the appellant would submit that soon the said amount of Rs.24,80,500/- would be refunded to the 1st respondent and since the appellant has voluntarily come forward to refund the same, after having gone through the order dated 16.06.2023, no interest can be imposed on the appellant.

11.We have considered the said submissions made by the learned Standing Counsel for the appellant as well as the learned counsel for the 1st and 2nd respondents.



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12. Even though the 1st respondent is entitled for normal interest in getting back the earnest money deposit amount, we feel that in order to give a quietus to the issue, as the appellant has come forward to settle the amount immediately and this has been committed in writing by the appellant, this Writ Appeal can be disposed of with the following order:-

(i) that the order impugned passed by the learned Single Judge is to be sustained, accordingly, it is sustained. Hence, this Writ Appeal is liable to be dismissed, accordingly, it is dismissed;

(ii) As a result of which, the written undertaking / statement given by the appellant is taken on record. Accordingly, the appellant shall refund a sum of Rs.24,80,500/- to the 1st respondent by way of Demand Draft or Cheque within a period of two weeks from the date of receipt of a copy of this order; and

(iii) In view of the said gesture shown by the appellant by coming forward to settle the entire amount within a period of two weeks, the said amount would not carry any interest. Within a period of two weeks, if the



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said amount is not paid by the appellant, certainly, it would carry interest at the rate of 12 % per annum till the appellant makes the payment in complete. No costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.) & (K.K.R.K, J.)

23.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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AND
K.K.RAMAKRISHNAN, J.
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