



W.P(MD)No.25350 of 2022

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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DATED : 02.11.2023

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**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

W.P(MD)No.25350 of 2022

S.Leelambiga

... Petitioner

Vs.

1.The Junior Engineer,  
Distribution,  
TANGEDCO,  
KKRDC, Puthukkadai,  
Kanniyakumari District – 629 173.

2.T.K.Jayachandran

... Respondents

**Prayer :** Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 1st respondent vide his proceedings Ka.yen.e.mi.po/v/Pudukadai/kopukar/a.yen.muka/22 dated 11.08.2022 quash the same and directing the 1st respondent to provide electricity service connection to petitioner house at Door No.5-184, Terku Vetta Vilai Veedu, Painkulam, Kanniyakumari District.

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For Petitioner : Mr.K.B.Karthikeyan

For Respondents : Mr.S.Deendhayalan,  
Standing Counsel for R1.  
Mr.K.N.Thambi for R2.

### **ORDER**

The writ petitioner seeks grant of electricity service connection for the premises bearing Door No.5-184, Terku Vetta Vilai Veedu, Painkulam, Kanniyakumari District. The first respondent disposed of the application vide communication dated 11.08.2022. The first respondent after noticing that civil proceedings are pending between the petitioner and the second respondent took the stand that if the petitioner is able to produce property tax assessment receipt in her name, service connection will be given. Challenging the said stand of the first respondent, the present writ petition came to be filed.

2.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He submitted that the petitioner is in possession of the petition



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mentioned premises; this is evident from the fact that the second respondent has filed execution proceeding against her for recovery of possession. He further submitted that electricity supply is a fundamental amenity and that it cannot be denied to any individual. He called upon this Court to grant relief as prayed for.

3.The learned Standing counsel for TANGEDCO submitted that inspection by the officials confirmed that the petitioner is in possession of the property. TANGEDCO is unable to concede the petitioner's request on account of statutory impediments.

4.The second respondent has filed counter-affidavit. The learned counsel appearing for the second respondent took me through its contents. He questioned the very conduct of the writ petitioner. He pointed out that in the civil proceedings instituted by the second respondent, the petitioner had taken a plea that she is the owner of the property. But in the present proceeding, the petitioner is rather harping on the possessory aspect. He wanted the petitioner to clarify if she is seeking electricity service connection in her capacity as owner or



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occupier. The other contention is that unless the petitioner furnishes valid proof of her possession, electricity service connection cannot be provided. He pointed out that Regulation 27 of the Tamil Nadu Electricity Distribution Code, 2004 has already laid down that unless the occupier can produce one of the documents catalogued therein, it is not possible to provide service connection. He called upon this Court to dismiss the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. Regulation 27(4) of the Tamil Nadu Electricity Distribution Code, 2004 reads as follows:-

***“27. Requisitions for Supply of Energy:***

*(4). An intending consumer who is not the owner of the premises shall produce a consent letter in FORM - 5 of ANNEXURE III to this Code from the owner of the premises for availing the supply. If the owner is not available or refuses to give consent letter, the intending consumer shall produce valid proof of his being in occupation of the premises and also execute an indemnity bond in FORM - 6 of ANNEXURE III to this code indemnifying the licensee against any loss on account of disputes arising out off effecting service connection to the occupant and acceptance to pay security deposit twice the normal rate.*



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*Explanation:- For the purpose of this sub-regulation, the expression “valid proof” means any proof of occupancy such as registered power of attorney or latest rental receipt issued prior to the date of application or lease deed or possession order from appropriate authority or decree or judgment of Courts.”*

The petitioner is not in a position to furnish any registered power of attorney from the owner or the latest rental receipt or lease deed. She is also not having any decree or judgment of the Courts in her favour. The question that calls for consideration is whether the material relied on by the petitioner can fall within the scope of expression “possession order from appropriate authority”. Though the learned counsel for the petitioner vehemently contended that documents such as Family Ration Card, Aadhar Card or Death Certificate can be construed to fall within the scope of the said expression, I am not persuaded to agree with the same. “Possession order from appropriate authority” can only mean an allotment order from a statutory authority.

6.The moot question that calls for consideration is whether the petitioner can be denied the relief sought for on the ground that the documents furnished by her do not fall within the scope of Explanation



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to Regulation 27(4) of the Tamil Nadu Electricity Distribution Code, 2004.

7.It is relevant to note that this provision underwent an amendment vide Notification No.TNERC/DC/8-25, dated 18.12.2019. The earlier provision was as follows:-

***“27. Requisitions for Supply of Energy:***

*(4). An intending consumer who is not the owner of the premises (he occupies) shall produce a consent letter in Form 5 of Annexure III to this code from the owner of the premises for availing the supply. If the owner is not available or (he) refuses to give consent letter, the intending consumer shall produce proof of his/her being in lawful occupation of the premises and also execute an indemnity bond in Form 6 of the Annexure III to this code indemnifying the licensee against any loss on account of disputes arising out off effecting service connection to the occupant and acceptance to pay security deposit twice the normal rate.”*

8. Earlier an intending consumer had to produce proof of his / her being in lawful occupation of the premises. Now the applicant has to produce valid proof of his / her being in occupation of the premises.



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Earlier, the expression “proof” was not preceded by any objective. But the expression “occupation of the premises” was preceded by the word “lawful”. In the post-amendment Code, the applicant has to produce valid proof. The expression “lawful” preceding occupation has been deleted. In the Tamil Nadu Cinemas (Regulation) Act, 1955 also, the expression employed was “lawful possession”. The Hon'ble Apex Court interpreted the word “lawful possession” as “not referring to litigious possession”. In other words, mere physical possession is not to be equated with lawful possession vide *M.C.Chockalingam V. C.Manickavasagam AIR 1974 SC 104*.

9. When the pre-amendment Regulation 27(4) of the Distribution Code referred to lawful occupation, it meant that the applicant's occupation of the premises should not be litigious occupation. The deletion of the word “lawful” must be given its due effect. The applicant has only to furnish valid proof of occupation of the premises. The question that arises for consideration is whether the explanation appended to the provision would undo the effect of deletion of the adjective “lawful”.



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10. Section 43 of the Electricity Act, 2003 is as follows:-

***“Section 43. (Duty to supply on request): --- (1) [Save as otherwise provided in this Act, every distribution] licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:***

*Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:*

*Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.*

*[Explanation.- For the purposes of this sub-section, “application” means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.]*



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*(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1) :*

*Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.*

*(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.”*

Explanation to Regulation 27(4) of the Code will have to be understood in the light of Section 43 of the Act. The Distribution Code cannot prevail over the parent statute. An explanation must be read ordinarily to clear up any ambiguity in the main section and it cannot be construed to widen the ambit of the section. However, if on a true reading of an explanation, it appears to the Court in a given case that the effect of the Explanation is to widen the scope of the main section then effect must be



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given to the legislative intent. In all such cases, the Court has to find out the true intention of the legislature vide ***Government of A.P. V. Corporation Bank (2007) 9 SCC 55***. Applying the ratio laid down by the Hon'ble Supreme Court in the above case, one can note that as a result of the amendment, the main provision in the Regulation 27(4) has become narrow. But the Explanation widens the scope. Hence, one has to look at the legislative intent. Section 43 of the Act furnishes the key. The object is to give connection to the applicants subject to fulfilment of usual formalities. The Explanation cannot be understood or applied in a manner so as to deprive an occupant of the premises from getting electricity service connection. If the Regulation had employed the expression “lawful occupation”, the petition would have suffered dismissal. Since the expression “lawful” was deleted, the Explanation for “valid proof” must be interpreted accordingly.

11. The materials furnished before me such as Aadhar Card and Ration Card establish that the petitioner is in physical possession of the premises. In fact, the inspection done by the TANGEDCO officials also confirms the same. In this view of the matter, the impugned



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communication is set aside. The first respondent is directed to give electricity service connection to the petitioner without any delay subject to fulfilment of other usual formalities. I however make it clarify and make it clear that grant of relief in this writ petition will not in any way strengthen the hands of the petitioner in the pending civil proceedings. They will have to be contested on their own merits and in accordance with law. The moment the second respondent succeeds in the execution proceedings by taking possession, the first respondent shall disconnect the supply of electricity.

12.This writ petition is allowed on these terms. No costs.

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

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**G.R.SWAMINATHAN, J.**

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