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W.P.(MD)NO.17711 OF 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.08.2024

PRONOUNCED ON : 19.08.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.17711 of 2024 AND

W.M.P.(MD)No.15199 of 2024

P.Murugendran

... Petitioner

Vs.

1. The Superintending Engineer,
Tamil Nadu Generation of Electricity
and Distribution Corporation(TANGEDCO),
Dindigul Electricity Distribution Circle,
Dindigul.

2. The Assistant Engineer,
Tamil Nadu Generation of Electricity
and Distribution Corporation (TANGEDCO),
N.G.O.Colony,
Dindigul.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents herein to provide the benefit of order passed by this Court in W.P.(MD)No.6807 of 2016 dated 12.03.2024 to supply electricity (new connection) to the land of petitioner in survey No.966/2A(old No.966/2) measuring about 3 acres 24 cents situated at Kulathur Village, Veda sandur Taluk, Dindigul District based on the petitioner's representation dated 19.07.2024 within a time frame as stipulated by this Court.



For Petitioner : Mr.B.Saravanan,
Senior counsel,
for Mr.S.Sarvagan Prabhu.

For R-1 & R-2 : Mr.S.Deenadhayalan,
Standing counsel.

* * *

ORDER

Heard the learned Senior counsel appearing for the writ petitioner and the learned Standing counsel appearing for TANGEDCO.

2. The petitioner seeks supply of electricity. He has purchased 3 acres and 24 cents of land in the petition-mentioned survey number. It originally belonged to an entity by name Embee Tex. The said Embee Tex owed a sum of Rs.7,28,000/- to TNEB. Without clearing the said liability, the establishment was sold in favour of M/s.Aruna Textiles in the year 1996. Aruna Textiles appears to have been wound up in liquidation proceedings. The entire property measuring 8.3 acres was sold in public auction in favour of M/s.M.V.M.Traders. From M/s.M.V.M. Traders, the petitioner purchased a parcel of land measuring an extent of 3.24 acres. When the petitioner approached the respondents



for supply of electricity, the respondents insisted that the liability originally incurred by M/s.Embee Tex must be cleared in full. Challenging the stand of the respondents, the present writ petition came to be filed.

3. The learned Senior counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

4. The learned Standing counsel submitted that the issue raised in the writ petition is no longer *res integra*. He drew my attention to the decision reported in **2023 SCC OnLine SC 663(K.C.Ninan V. Kerala State Electricity Board and Others)**. It has been authoritatively held therein that the subsequent purchaser of the property is obliged to clear the antecedent liability incurred under the Electricity Act. Paragraph No.341 of the said decision reads as follows:-

"341. The conclusions are summarised below:

a. The duty to supply electricity under Section 43 of the 2003 Act is not absolute, and is subject to the such charges and compliances stipulated



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by the Electric Utilities as part of the application for supply of electricity;

b. The duty to supply electricity under Section 43 is with respect to the owner or occupier of the premises. The 2003 Act contemplates a synergy between the consumer and premises. Under Section 43, when electricity is supplied, the owner or occupier becomes a consumer only with respect to those particular premises for which electricity is sought and provided by the Electric Utilities;

c. For an application to be considered as a 'reconnection', the applicant has to seek supply of electricity with respect to the same premises for which electricity was already provided. Even if the consumer is the same, but the premises are different, it will be considered as a fresh connection and not a reconnection;

d. A condition of supply enacted under Section 49 of the 1948 Act requiring the new owner of the premises to clear the electricity arrears of the previous owner as a precondition to availing electricity supply will have a statutory character;

e. The scope of the regulatory powers of the State Commission under Section 50 of the 2003 Act is wide enough to stipulate conditions for recovery of electricity arrears of previous owners from new or subsequent owners;



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f. The Electricity Supply Code providing for recoupment of electricity dues of a previous consumer from a new owner have a reasonable nexus with the objects of the 2003 Act;

g. The rule making power contained under Section 181 read with Section 50 of the 2003 Act is wide enough to enable the regulatory commission to provide for a statutory charge in the absence of a provision in the plenary statute providing for creation of such a charge;

h. The power to initiate recovery proceedings by filing a suit against the defaulting consumer is independent of the power to disconnect electrical supply as a means of recovery under Section 56 of the 2003 Act;

i. The implication of the expression “as is where is” basis is that every intending bidder is put on notice that the seller does not undertake responsibility in respect of the property offered for sale with regard to any liability for the payment of dues, like service charges, electricity dues for power connection, and taxes of the local authorities; and

j. In the exercise of the jurisdiction under Article 142 of the Constitution, the Electric Utilities have been directed in the facts of cases before us to waive the outstanding interest accrued on the principal



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dues from the date of application for supply of electricity by the auction purchasers."

5. He also drew my attention to the Regulation 17(9)(a) of the Tamil Nadu Electricity Supply Code. It reads as follows:-

**"17. Agreement with respect of Supply :
Issues on recovery of charges**

...

9(a) In case of service connections in a premises, which have been disconnected / dismantled for defaults in payment of dues whatsoever and if such service connections are to be reconnected or new service connections are to be obtained by other persons in such premises either by purchase or transfer or lease basis, the Distribution Licensee shall reconnect such service connections or effect new service connections, as the case may be, in such premises only after payment of dues attributed to such premises by the applicant :

Provided that in cases such premises have legally been sub-divided, the outstanding dues attributed to such premises shall be divided in proportion to the area covered by that sub-division. A new service connection to any of such sub-divided premises shall be given only after the share of outstanding dues attributed to such sub-divided premises, is duly paid by the applicant. The Distribution Licensee shall not refuse



connection to an applicant of such sub-divided premises only on the ground that, dues attributed to the other portion(s) of such sub-divided premises have not been paid, nor shall the licensee demand record of last paid bills of such other portion(s) from such applicants.”

6. The learned Standing counsel called upon this Court to dismiss the writ petition in the light of the aforesaid Regulation as well as the decision laid down by the Hon'ble Supreme Court.

7. I carefully considered the rival contentions and went through the materials on record.

8. I would have straightaway dismissed the writ petition by upholding the stand of the learned Standing counsel. But I am unable to do so because of the order dated **12.03.2024** made in ***W.P.(MD) No.6807 of 2016***. The said writ petition was filed by D.Premkumar. D.Premkumar is not a stranger. According to the petitioner, the said D.Premkumar too purchased 2.26 acres of land which originally stood in the name of M/s.Embee Tex. When D.Premkumar was confronted with a similar demand by TANGEDCO, he filed the writ petition and a learned Judge



of this Court disposed of the writ petition in the following terms:-

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“12.The earlier service connection was for the entire extent of 8.30 Acres. Of this 8.30 Acres, the petitioner has purchased 2.26.23 Acres. Therefore, the respondents shall collect the dues proportionate to the area which the petitioner has purchased.

...

15.The petitioner who is said to have purchased the property in the month of March, 2016, was deprived from utilising the property for the past eight years on account of the dues liable to be paid by the previous occupier. In view of the same, coupled with the conduct of the respondents, this Court is inclined to waive the outstanding interest accrued on the principal dues.

16.Accordingly, this writ petition is disposed of with a direction to the respondents to collect the outstanding amount on the premises proportionate to the area in occupation / owned by the petitioner and also without insisting on any interest / penalty.”

9. It is asserted by the learned Senior counsel appearing for the petitioner on instructions that this order has become final and that D.Premkumar has also been granted service connection on that basis.

10. Similarly placed individuals must be treated alike. When D.Premkumar was given certain benefits by an order of this Court, there



is no reason to treat the petitioner who is identically placed on a different basis. This writ petition is also disposed of on the same lines. The respondents are directed to extend the same benefits that were given to D.Premkumar, petitioner in W.P.(MD)No.6807 of 2016 upon the petitioner paying the proportionate share of his liability. The electricity service connection as sought for shall be granted. The entire exercise will be completed within a period of six weeks from the date of receipt of a copy of this order. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

19.08.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes/ No

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Note : Issue order copy on 23.08.2024

G.R.SWAMINATHAN,J.

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W.P.(MD)NO.17711 OF 2024

To:

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1. The Superintending Engineer,
Tamil Nadu Generation of Electricity
and Distribution Corporation(TANGEDCO),
Dindigul Electricity Distribution Circle,
Dindigul.
2. The Assistant Engineer,
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and Distribution Corporation (TANGEDCO),
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