

(2009) 10 MAD CK 0163

In the Madras High Court

Case No : Writ Petition No's. 23864, 23325, 21707 of 2008 and M.P. No's. 1, 1, 1, 2, 2, 2 of 2008

A. Iyasamy President, Tamil Nadu Electrical (EB) Licensed Contractor's Central Association, M. Chellappa, President, Tamil Nadu Thaniar Minn Paniyalargal Mathia Sangam and Pon Krishnan, The TamilNadu Min Oppendakarargal and Min-innaippukkarargal Central Association

APPELLANT

Vs

Member/Accounts Accounts Branch, Tamil Nadu Electricity Board, The Chairman, Distribution, Tamil Nadu Electricity Board and The Secretary to Government Department of Electricity

RESPONDENT

Date of Decision : 05-10-2009

Acts Referred:

Electricity Act, 2003 — Section 50, 53(A), 82
Electricity Rules, 1950 — Rule 45
Electricity Rules, 1956 — Rule 139, 2, 45, 45(1), 45(2)

Citation : (2010) 1 CTC 673 : (2010) WritLR 540

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : K. Govi Ganesan, Satish Parasaran and T.T. Ravichandran, for the Appellant; A. Selvendran, TNEB for RR1 and 2 and P. Subramanian, AGP for R3, for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J.—The petitioners in W.P. Nos. 23864, 23325, 21707 of 2008 namely, Mr. A. Iyasamy, President, TamilNadu Electrical (EB) Licensed Contractor's Central Association (Regd. 49/68), and Mr. M. Chellappa, President, Tamil Nadu Thaniar Minn Paniyalargal Mathia Sangam, Mr. Pon Krishnan, The Tamil Nadu Min Oppendakarargal and Min-innaippukkarargal Central Association respectively, have challenged the impugned circular dated 20.06.2008, issued by the Member/Accounts Accounts Branch, TamilNadu Electricity Board, Chennai, the first respondent, and consequently prayed for a direction to the respondents

to insist and obtain the signatures of the Electrical Licensed Contractors in the application form to be submitted by the consumers for Low Tension Service Connections and to follow the mandate under Rule 45 of the Indian Electricity Rules 1956.

2. As pleadings and submissions advanced by the learned Counsel appearing for the parties are common, the Writ petitions, are being disposed of by a common order.

Facts of the case are as follows:

The Writ petitioners are Associations registered under Trade Union Act, and the members of the association are Licensed Contractors and Wireman, authorised to install electrical works in Low Tension Service, for which electrical connections are given by Tamil Nadu Electricity Board. The members of the petitioner's Associations are granted certificates of competencies periodically, for the purpose of carrying out electrical installations, and to issue certificate of competency, before the electrical installation work is carried out, and for the purpose of granting test certificate, to effect electricity connection in Low Tension Services.

3. The petitioners have submitted that as per Rule 45 of the Indian Electricity Rules 1956, no electrical installation work including additions, alterations, repairs, and adjustments of the existing installations, for the purpose of supply of electricity shall be carried out, on behalf of any consumer except by a Licenced Electrical Contractor on his behalf by the State Government, and under the direct supervision of the persons holding the certificate of competency.

4. It is further submitted that, as per the practice, if any consumer wants to obtain supply of electrical energy, necessary forms would be submitted to the Board along with, the signatures of the Licensed Contractors. After the submission of the application, the test report in form "D" would be submitted by the consumer prescribed by the Electricity Board, and that the same has to be certified by the Licenced Contractors, and thereafter installations would be inspected for the purpose of granting electricity supply. Thus as per the practice, the respondents would insist and obtain the signatures of the Electrical Licenced Contractor in Low Tension Service Connection Application Forms and also in the Test Report, in the prescribed Format.

5. The petitioners have further submitted that earlier, the respondents issued a circular dated 31.10.2000, by which, the condition to obtain the signatures of the Licensed Contractors in the application forms and the declaration, that has to be made in the test report was dispensed, and the aforesaid order passed by the Board had the effect of diluting the mandate contained in Rule 45 of the Indian Electricity Rules 1950. Therefore, Writ petition were filed in W.P. Nos. 19616 and 19618 of 2000 to quash the said circular. This Court allowed the Writ Petitions, holding that the statutory requirements of certification by the Licensed Contractors are a positive requirement and that the application form, which is also a part of the statute as prescribed, cannot be amended or altered without

invoking the rule making power and the same cannot be done by an administrative order.

6. The petitioners have further submitted that thereafter, the first respondent issued a circular dated 05.04.2002, stating that the signature of the wiring contractors shall be obtained in the application forms prescribed for Low Tension Service connections and in the original test report, thereby, giving effect to the orders passed by this Court in the above said Writ petitions. In spite of the circular dated 05.04.2002, some of the field officers of the respondent Board did not insist for the signatures of the Licensed Contractors in the application forms and on the contrary, permitted wiremen to construct electrical installation in Low Tension Service to the consumers. In these circumstances, the Board passed an order on 15.09.2005, stating that the Tamil Nadu Electricity Regulatory Commission had given directions to the Chief Electrical Inspector to give effect to Section 53A of the Electricity Act 2003. In spite of the directions granted by the Board, again some of the field officers did not insist on obtaining the signatures of the Electrical Licensed Contractors in the application forms submitted by the consumers. Therefore, the associations" were constrained to send representations dated 25.01.2008, 27.03.2008 and 24.06.2008 bringing it their notice that the statutory provisions contained in Indian Electricity Rules have not been given effect to. The first respondent by impugned circular has revised the instructions issued earlier and directed the Superintending Engineers of the respective districts, stating that the signatures of the wiring contractors in Low Tension Service application forms are not required and the signatures of the Licenced Wiring contractors have to be obtained in the Test Report in form-B. In these circumstances, the writ petitioners have approached this Court, for the relief as stated supra.

7. While entertaining the Writ petitions this Court, has granted interim stay of the impugned circular. The Secretary, TamilNadu Electricity Board, Chennai, in his counter affidavit filed on behalf of respondents 1 & 2 have submitted that the TamilNadu Electricity Board is bound by the provisions of the TamilNadu Electricity Supply and Distribution Code as specified by the TamilNadu Electricity Regulatory Commission(hereinafter called as Commission). In exercise of the powers conferred upon it by the Electricity Act 2003, Electricity Supply and Distribution Code was notified in the Official Gazette of the Government of TamilNadu.

8. In regulation No. 27 of the Tamil Nadu Electricity Supply and Distribution code, the commission has inter-alia prescribed the terms and conditions of supply of electricity. In Form No. 1 appended to the said Code the Commission has specified the Form of requisition of supply of Low Tension Energy(single phase/ three phase). In the Form so specified, there is no provision for obtaining the signature of the electrical contractors by the competent authority. Therefore, the respondent Board has issued a Circular dated 20.06.2008, which is in accordance with the statutory provisions of the TamilNadu Electricity Supply and Distribution

Code.

9. The respondents have further submitted that the provisions of the Code have come into force from 01.09.2004 onwards, and therefore, the impugned Circular which is issued in accordance with the provisions of the Code cannot be questioned at this point of time, and therefore, the Writ petitions are to be dismissed in limine.

10. Referring to Rule 45 particularly Sub-rule 2 of the Indian Electricity Rules, the respondents 1 & 2 have submitted that the statutory rules do not cast upon any duty on the part of the Board to obtain the signatures of the electrical contractors in the application forms. It is further submitted that, sub Rule 2 would come into operation only when an occasion arises, to energize i.e., power supply by the Board, to the consumer's installation, on payments of necessary charges and on satisfaction of the conditions prescribed for supply of electricity, and also after satisfying that the consumer has produced a declaration/certificate issued by the consumers/electrical contractor in the test report at the time of connecting the power supply, electricity to the consumer's main, to the board i.e., while effecting the service connection.

11. The respondents 1 & 2 have further submitted that the Writ petitions have been filed for unlawful gain, more particularly to harass the field officials of the Board and general public namely, the intending consumers, who would be forced to engage the electrical contractors even for submission of application forms, for getting service connection from the Board.

12. The respondents have further submitted that, Rule 139 of the Indian Electricity Rules, would apply only to the consumers/owner/occupier, the contractor (if any) or the person through whom the work is being or was carried out and the person under whose immediate supervision the work is being or was carried out.

13. Referring to the statutory provisions of the Code, the respondents 1 & 2 have contended that earlier, the orders issued by the Board in Circular dated 31.10.2000, was based on the terms and conditions of supply, as formulated by the Board in exercise of his powers under the Repealed Electricity (supply) Act 1948, but while issuing the present Circular the Board has followed the statutory provisions of the Code framed by the Tamil Nadu Electricity Regulatory Commission and therefore, there is no illegality in the impugned circular.

14. The respondents have further submitted that after the enactment of Electricity Act 2003, the Tamil Nadu Electricity Regulatory commission, has framed the TamilNadu Electricity Distribution and Supply Code and that the same has to be followed by the Board (licensee). As per the said, Code in the application form (Form No. 1) of requisition for LT service connection for LT energy there is no provision for obtaining the signatures of the licensed wiring contractors, but the declaration/certificate by the electrical contractor/consumer is certainly a requirement in the test report.

15. According to the respondents 1 & 2, the test report will be taken only after remittance of necessary charges for the new electricity service connection. In the test report, two forms are available Form "A" and Form "B". In Form A, the consumer should give a certificate that the electrical installation works were carried out by "X" under the direct supervision of the licensed Chief Electrical Inspector to government. In Form "B", the licensed wiring contractor should give a declaration/certificate that the wiring works were carried out as per the Indian Electricity Rules and Regulations. Based on the declaration given by the consumer, and the licensed certified wiring contractor the TamilNadu Electricity Board would effect service connection.

16. The respondent 1 & 2 have submitted that there is no contravention of Rule 45 of the Indian Electricity Rules 1956, after the introduction of the Electricity Act 2003 and the code. It is further submitted that before the enactment of the Electricity Act 2003, and introduction of the formation of the TamilNadu Electricity Regulatory Commission, orders were issued in Board proceedings (ch) No. 5 dated 05.04.2002 restore the Original Low Tension application and the procedure for getting Low Tension Electricity Supply connection. The Electricity Board is bound to follow the provisions of the code and as such, there is a necessity to issue the impugned Circular. The respondents 1 & 2 have submitted that the petitioners have not established any legal or statutory right to insist that the consumers should obtain the signatures of the licenced contractors in the applications to be submitted by them for effecting Low Tension Electricity Supply. For the above said reasons, they prayed for dismissal of the Writ petition.

17. Referring to Rule 45 of the Indian Electricity Rules 1956, and the Circular memo No 1075/05 dated 19.05.2005, of the Tamil Nadu Electricity Board, Mr. K. Govi Ganesan, Learned Counsel for the petitioners submitted that inasmuch, as the Indian Electricity Distribution Code has not dispensed with the statutory requirement as laid down in Rule 45(1) of the Electricity Rules, the field officers were instructed to obtain the signatures of the electrical wiring contractors who are licensed in the application forms notified in the Tamil Nadu Electricity Distribution Code and in the test report. He also brought to the notice of this Court, that the Chief Financial Controller (General), Tamil Nadu Electricity Board, Chennai, in his letter No. 71 dated 25.01.2006, addressed to the President, Tamil Nadu Private Licensed Contractors Association, has stated that all the Chief Engineers and Superintending Engineers of the distribution circles were instructed to implement the above said circular memo dated 15.09.2005, issued by the Member, Distribution Tamil Nadu Electricity Board, and therefore there is absolutely no reason to supersede the same by the impugned order.

18. Placing strong reliance on the decision of this Court made in TamilNadu Minn Oppanthatharargal and another, Tamil Nadu, represented by its Secretary, and Anr. reported in 2002 WLR 130 learned Counsel for the petitioners submitted that the impugned Circular is contrary to the orders passed by this Court, and as long as Rule 45 of the Indian Electricity Rules remains intact, the first respondent has

no jurisdiction to issue a circular, contrary to the statutory requirements as laid down under Rule 45(1) of the Indian Electricity rules.

19. learned Counsel for the petitioners further submitted that when Rule 45 of the Indian Electricity Rules mandates that all electrical installation works have to be carried out, only by the electrical licensed contractors and under the direct supervision of the persons holding the certificate of competency, by virtue of the impugned circular, any person without a proper competency certificate can install the electrical works and thereby, the safeguards which are provided under the statute would be ignored by the field officers and in such an event, the Board would be failing in its duty to implement the statutory provisions.

20. He further submitted that though the Board has contended there is a change in distribution supply code there is no change in the rule, which mandates signatures from the licensed contractors at the time of submission of the application forms for low tension electricity supply.

21. Referring to Rule 139 of the Indian Electricity Rules, Learned Counsel for the petitioner further submitted that, if the electrical installation works including additions, alterations, repairs, adjustments of existing installments for the purpose of supply of electricity is carried out by an unlicensed electrical contractor on behalf of any consumer, then the contractor who gives the test report and declaration will be liable for penal action under Rule 139 of the rules and therefore, the first respondent has no jurisdiction or authority to dispense with the requirement of obtaining the signatures of the licensed contractors. For the above said reasons, he prayed that the impugned Circular should be set aside.

22. Heard the learned Counsel for the parties and perused the materials available on record.

23. The Electricity Act, 2003, which has come into force with effect from 10.06.2003. Act 36 of 2003, is intended to consolidate the laws relating to the generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to the development of electricity industry promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalisation of electricity tariff, ensuring transparent policies, constitution of Central Electricity Authority, Regulatory Commission and establishment of Appellate Tribunal and for matters connected therewith and incidental thereto.

As per Section 50, the State Commission shall specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges disconnection of supply of electricity for non-payment thereof; restoration of supply of electricity; tampering, distress or damage to electrical plant, electric lines or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter; entry for replacing, altering or maintaining electric lines or electrical plant or meter.

As per Section 82, every State Government shall, within six months from the appointed date, by notification, constitute for the purposes of this Act, a Commission for the State to be known as the (name of the State) Electricity Regulatory Commission.

24. Rule 45 and 139 of the Indian Electricity rules are extracted here:

Rule: 45 Precautions to be adopted by consumers, owners, occupiers, electrical contractor, electrical workmen and suppliers.--(1) No electrical installation work, including additions alterations, repairs and adjustments to existing installations, except such replacement of lamps, fans, fuses, switches, low voltage domestic appliances and fittings as in no way alters its capacity or character, shall be carried out upon the premises of or on behalf of any consumer, supplier, owner, or occupier, for the purpose of supply to such consumer, owner, or occupier except by an electrical contractor licenced this behalf by the State Government and under the direct supervision of a person holding a certificate of competency and by a person holding a permit issued or recognized by the State Government:

Provided that in the case of works executed for or on behalf of the Central Government and in the case of installations in mines, oil-fields and railways, the Central Government and in other cases the State Government may, by notification in the Official Gazette, exempt, on such conditions as it may impose, any such work described therein either generally or in the case of any specific class of consumers, suppliers, owners or occupiers, from so much of this sub-rule as requires such work to be carried out by an electrical contractor licenced by the State Government in this behalf.

No electrical installation work which has been carried out in contravention of Sub-rule (1) shall either be energised or connected to the works of any supplier.

25. Rule: 139 penalty for breach of Rule 45.--

Where any electrical installation work of the nature specified in Sub-rule (1) of Rule 45 has been carried out otherwise than

(a) under the direct supervision of a person holding a certificate of competency issued by the State Government under that rule; and

(b) In the absence of any applicable exemption under the proviso to sub-rule of that rule, by an electrical contractor licenced by the State Government in this behalf;

the consumer, owner or occupier, the contractor (if any) or the person through whom the work is being or was carried ut and the person under whose immediate supervision the work is being carried out, shall each be punishable with fine which may extend to three hundred rupees.

26. Pleadings disclose that the Tamil Nadu Electricity Regulatory Commission in exercise of the power conferred u/s 50 of the Act has formulated the Tamil Nadu Electricity Supply and Distribution Code, and that the same has been notified in

the Government gazette on 01.09.2004. The Supply and Distribution Code formulated by the Regulatory Commission has to be followed by the Board (Licensees) and also by the consumers who apply for electricity service connection. They are also bound to follow the regulations regarding, supply, tariff, and such other matters provided therefore in the code.

27. Regulation 27 of the Tamil Nadu Electricity Supply and Distribution Code deals with the terms and conditions of the supply of electricity Form 1 appended to the code, relates to the application form for LT service connection except agriculture. Prior to the introduction of the Electricity Supply and Distribution Code the consumers have to obtain the signatures of the wiring contractor with their Seal and address.

28. As per the Code, the test report, will be taken only after remittance of necessary charges for new electricity service connection. The test report consists of two forms. Form A has to be furnished by the consumer. In addition to the particulars of domestic electrical appliances, like lights fans etc., the consumer has to give a declaration that electrical installation in his/their premises were carried out by one "X" who holds the contractor's licence issued by the electrical wireman supervisor and contractor licensing Board, Chennai, and that the work was carried out under the direct supervision of "Y" holding the certificate of competency. Form "B" is a declaration of the contractor and the person holding the certificate of competency who are responsible for construction of installation. The Form prescribed by the Board prior to the introduction of the code is as follows:

FORM-I Tamil Nadu ELECTRICITY BOARD FORM OF REQUISITION FOR SUPPLY OF LOW TENSION ENERGY (Except Agriculture and Hunts)

Applicant's Name : Father/Husband Name : Address:

For Office Use Tariff No.

Reg. Fees:

Receipt No. & Date

To The Assistant Engineer/ Regn. No Mere Service/ Junior Engineer Regn. Date Extension T.N.E.B.

(Section Office)

Sir/Madam, 1. I request you to supply electrical energy to the premises here in after described.

2. I agree to pay the tariff as notified from time to time for the energy supplied through the service connection and other dues including the current consumption and additional current consumption deposit as may be demanded and revised by the board from time to time.

3. I will avail supply under.....(Domestic/Pub. lighting & water supply/Recog.Edu

instns., etc./actual places information technology industries/Commercial).

4. I agree to take supply for more than two years and utilise the energy in the premises described hereunder.

5. In case, I sell or otherwise dispose of the property/vacate the premises while the supply is continued in my name, I agree to give one calendar month/seven days notice in writing and pay all the arrears to the Board. Failing such notice, I hold myself responsible for all the charges payable in the service including energy consumed in the premises even after my vacation or dispossession.

6. Description of Premises:

Door No. Street Town/Village Taluk Owned by (name in Block letters) Tenanted by (Name in Block letters)

7. The following are my requirement:

Lighting number & wattage Total: Points/Wattage Lights Fans Domestic electrical appliance cookers Water heaters Refrigeration Other purpose Wall plugs 5 amps - do- 15 amps Motors: Industrial Pumps Other purposes

8. I declare that I... am the legal owner or lawful occupier of the above said premises.

9. I declare that there is no disconnected service in my building and no court case in pending and no objection for the building to get service connection and that the meter board is placed at convenient height to take meter reading.

10. (A) For mere service connection from overhead lines only:

I declare that

I. My building is within 36.56 meters (120 feet) from nearest TNEB Pole.

II. the vertical clearance of the service connection wire is well within the clearance from the ground as per Indian Electricity Act and Rules framed there under. (The clearance as of now is)

III. Service connection wire is with enough way leave or I am enclosing no objection letter from the concerned, if it crosses the other's concerned building/ Land.

IV. No L.T./H.T./E/H.T. Lines crosses in any way over by build

(B) For service connection involving extension, I agree to pay the difference in estimate charges.

(C) I hereby undertake to provide space as per Board requirement in out premises if the total floor area is 900 sq. mts. And above for erection of Board equipments.

11. I/We, undertake and certify that all the particulars and information furnished

above are true, correct, complete and upto-date in all respects to the best of my knowledge and also undertake to indemnify the TamilNadu Electricity Board against any loss caused to it as a result of effecting electric supply to the said premises on the strength of such particulars and information. I further agree that case any of the particulars or information furnished above is found to be false at the time of effecting service connection or at a later date, the electric supply to the premises will be refused/disconnected without any notice to me in addition to launching of civil and criminal proceedings against me/us and that appropriate damages as fixed by the TamilNadu Electricity Board from time to time may also be claimed from me/us.

12. I also undertake that I will not tamper with the meter or seal and I will not use electricity for purposes other than purpose for which it was obtained.

13. The wiring has been completed by Thiru approved wiring contractor E.B. No

If any theft of energy or violation is noticed in the service connection, I am aware that I am liable for any criminal proceedings, penal levy as decided by Board from time to time in addition to disconnection of service.

Signature of applicant's Date

I certify that the wiring has been carried out and completed by me in all respects according to the rules and specification as provided in the Indian Electricity Rules 1956. I am bound to be penalized if my above certificate is proved false.

Approved wiring Contractor (Signature with seal and address)

Date EB No.

NOTE:

PRECAUTIONS TO BE ADOPTED BY CONSUMERS, OWNERS, ELECTRICAL CONTRACTORS, ELECTRICAL WORKMEN, LICENSEES AND SUPPLIERS OF ENERGY.

No electrical installation work, including additions, alterations, repairs and adjustments to existing installations except such as replacement of lamps, fans, fuses, switches and other component parts of the installations, as in no way alter its capacity or character shall be carried out upon the premises or on behalf of any consumer or owner for the purpose of the supply of energy to such consumer or owner, except by an electrical licensed by State Government. In this behalf and under the direct supervision of a person holding a certificate of competency issued by the State Government.

The model application form and the test report, prescribed by the Board after the introduction of the Electricity Supply and Distribution codes are follows:

FORM I Application Form for L.T. Service connection (except Agriculture and Hut) FORM OF REQUISITION FOR SUPPLY OF LOW TENSION ENERGY (Single Phase/Three Phase) (Refer Clause 27(3))

To The Designated Engineer (Address of Licensee)

Sir, 1. I hereby require you to supply electrical energy to the premises hereinafter described.

(Note this undertaking does not preclude a separate written contract being entered into, if so desired by the Licensee or the consumer.)

2. I agree to pay for said energy, service connection and other dues including the deposit of such security, meter rent, as may be demanded in accordance with the scale of rates prescribed under TamilNadu Electricity Distribution Code, Supply Code, notifications and orders issued in this regard by Tamil Nadu Electricity Regulatory Commission.

3. I wish to be charged under tariff under schedule of the TNERC tariff order dated.

4. I agree to take supply for years and utilize the energy in the premises described hereunder or outside the premises for my bonafide use.

5. In case I sell or otherwise dispose of the property/Vacate the premises while the supply is continued, I agree to give one Calendar month notice in writing and pay all the arrears to the Licensee. Failing such notice, I hold myself responsible for energy consumed in the premises till such notice is given to the licensee.

6. Description of the premises

Door No. and or/name of the house or premises Street Town/Village and Taluk

Owned by (Name in Block letters) Tenated by (Name in block letters)

Applicant's correspondence address

7. The following are my requirements

(A) Lighting Number of Wattage of Total point's Point's Wattage (i) Lights----

(ii) Fans

(iii) Convenient wall plugs ...

(B) Domestic electrical apparatus

(i)Cookers

(ii) Water heaters

(iii) Refrigerator

(iv) Air Conditioners

(v) Other purpose

(vi) Convenience wall plugs

(C) Power Loads

(i) Domestic

(ii) Industrial

(iii) Welding

(iv) Other purposes

(v) Convenient Wall Plugs

Demand applied for in KW

The wiring has been completed on:

Signature of the Consumer

Place

Date

Note: The application shall be accompanied with the following documents:

i) Proof of ownership (sale deed or property/water/sewerage tax receipt)

ii) Consent letter from owner wherever applicable

FOR LICENSEE'S USE ONLY Application registered as No. dated

Note: 1. In case of transfer of the service, fresh application should be signed by the transferee (or a letter signed by both the transferor and transferee, agreeing to the above conditions for transfer should be obtained).

2. Additions or omissions to the connected load to be notified to the Licensee before effecting the electricity connections.

Tamil Nadu ELECTRICITY BOARD TEST REPORT Name of the Distribution

FORM - A

S.C. No. _____

I/We have to inform you that installation at _____ owned by _____ and occupied by _____ is ready for test. The details of installations are:

LIGHTING AND FANS : No. of wattage of Total Points Points Wattages

Lights : Fans : Convenience wall plugs of lights and Fans

(i) DOMESTIC ELECTRICAL APPARATUS: MOTORS No Wattage Sl. No. H.P.

Cookers : water Heaters: (ii) INDUSTRIAL Refrigerators Rice Hulling: Air-conditioners: Oil Pressing: Pumpsets: Grinding: Others: Others: (To be specified) (To be specified) Convenience Wall Plug 5 Amps (iii) AGRICULTURAL PUMPSETS Convenience Wall Plug 15 Amps (iv) Others (To be specified) Total

I/We hereby declare that the Electrical installation in my/our premises was carried out by Thiru _____ who holds Contractors Licence No. _____ dated _____ issued by the Electrical Wireman Supervisors and contractors Licensing Board Chennai and that work was carried out under the direct Supervision of Thiru _____ holding Competency Certificate No. _____ dated _____. I/We request that installation may kindly be connected to your mains. The bills for current consumption charges may be sent to (Address).

Witness: Date: Station: Signature of Owner

FORM - B

Declaration of Contractor or and the person holding a Certificate of Competency who is/are responsible for the Construction of the installation.

Electrical installation at:

Particulars of earthing: The continuous earth resistance is _____ Domestic Motors and Appliances Lighting Machinery Circuit

1. Insulation between conductor

and earth:

2. Insulation between poles:

3. Number of points:

4. Total connected load:

5. Earth resistance:

CERTIFICATE : I certify that the installation detailed above has been constructed. Inspected and tested by me and that to the best of my knowledge and belief, it complies with the Indian Electricity rules and the Regulation made thereunder and current at the date of contract for the work, except as stated below.

Date: Signature of the Contractor, Licence No. and date of expiry of the Licence

The work was carried out under my direct supervision

Date: Signature of Wireman and competency certificate No and date of expiry of the Certificate.

29. In TamilNadu Minn oppanthathrargal case 2002 WLR 130, relied on by the learned Counsel for the petitioners, the associations of Licenced Electrical Contractors have challenged the Board proceedings (FB No. 25) Accounts Branch dated 31.10.2000, of the TamilNadu Electricity Board, and for a direction to the respondents therein, to follow the then existing procedure for effecting new service connections in respect of Low Tension Services by the TamilNadu Electricity Board. It was inter-alia contended by the petitioner's therein that for

the purpose of any prospective consumer, who applies for supply of electrical energy, he has to submit necessary application forms prescribed by the Board. In the original form Column No. 9, requires that wiring has to be done by a Licensed Contractor and that the name of the registered wiring contractor has to be given with his address and License number. After the submission of the said application, by the prospective consumer, the Board had prescribed a test report to be submitted by the consumer, which has to be certified by the Licensed Contractor to the effect that installations were constructed inspected and tested by him, and it also complies with the rules and regulations. In the reported case, as per the impugned Board proceedings, the necessity of getting a certificate of the wiring contractor was dispensed with. Further the consumer was obliged to give only the name and address of the wiring contractor. The said revised procedure was challenged on the ground that, it was in violation of Indian Electricity Act and the rules framed thereunder.

30. In the decided case, on behalf of the Board, it was inter-alia contended that, as per the impugned Board proceedings, it was specifically mentioned that wiring should be done only by the Licensed Wiring Contractor, as per the conditions stipulated and that the signatures of the contractors can be dispensed with. According to the Board, the only requirement was that the consumer should furnish an undertaking that the wiring of the electrical fittings were done by the competent Licensed Contractors/Electricians as stipulated under the Electricity Act. The Board has not interfered with or restricted the contract between the consumers and the Electrical Contractor. In the earlier round of litigation the Board has further contended that they have not prevent the work of the Electrical Contractors being proceeded with and that there was no interference with the rights of the Licensed Contractors. Perusal of the order made in the earlier Writ petitions, further shows that the petitioners therein had contended that the Indian Electricity Act 1910, prescribes certain basic requirements to eliminate substandard work in providing electrical connections which are bound to result in accidents and short circuits, fire accidents, and related risk factors and that is the reason, why the rules require that the wiring work has to be done by a Licensed Contractor and that the Electrical Contractor has to certify that installation was done, inspected and tested by the wireman and also countersigned and it is only thereafter, the officials of the Board inspect the premises, as per the impugned procedure therein. Thus in the name of elimination of defects and to prevent complaints of harassment, the Board had totally dispensed with the basic requirement, which resulted in the removal of safeguards. On behalf of the Board, it was contended inter-alia that there were several complaints from the consumers/public, about unnecessary harassment made by the Contractors, in the matter of furnishing the certificates, and that the public were fleeced by vested interests and therefore, the Government decided to do away with unnecessary formalities and to simplify the procedure.

31. It was also contended that there was no question of any compromise with the quality of the work to be carried out, and that there was also no possibility of

any risk factor. Considering that the ultimate discretion to give supply of electricity was with the authorised engineers of the TamilNadu Electricity Board, who would inspect the premises, and only after satisfying with the quality of work, power supply would be granted, the rival union has contended that, the rule does not provide any personal, technical qualification, and all that the Licensed Contractor has to do was to employ a wireman holding a wireman competency certificate while addressing the issue the learned Judge, summarized of the dispute and held as follows:

The crux of the dispute relates to the dispensing of the signature and seal of the Licensed Wiring contractor. The said requirement is replaced by the consumer himself giving the declaration that the wiring had been carried out by a competent Licensed Contractor as per the conditions laid under the Indian Electricity Act, 1910. The procedure to be followed under Rule 45 of the Indian Electricity Rules, the condition imposed in the model forms and the necessity to furnish the details of the licensed contractor and the position after the revision made by the TamilNadu Electricity Board have been explained at paragraph No. 13 of the judgment considering the safeguards required to be followed by the Electricity Board and the adverse effects in simplifying the procedure this Court, at paragraph No. 14 and 15 has held as follows:

The statute (Rule 45) requires certification by a licensed contractor. This is a positive requirement. The annexure which is also a part of the statute has prescribed the format and the said format cannot be amended or altered without invoking the Rule making power. It is settled proposition of law that when a statute requires anything to be done in a particular manner, it cannot be substituted or modified by any other procedure.

Another outcome of the modified procedure is the risk to which the contractor who is named in the application is exposed for punishment under Rule 139 if there is any complaint or violation. A perusal o Rule 139 discloses that apart from the consumer or the occupier, the contractor is also liable for punishment. The consumer at his will and pleasure can name a, b or c as the contractor who had carried out the work and such a statement which is not countersigned by the contractor, will expose the contractor to penal action and also cancellation of his License.

A reading of the judgment shows that by the impugned Board proceedings therein, B.P. No. 25 dated 31.10.2000 the TamilNadu Electricity Board,

- (1) Dispensed with the signature and seal of the wiring contractor
- (2) the said requirement was replaced by the consumer himself giving a declaration that wiring had been carried out by a competent Licensed contractor as per the conditions laid down under the Indian Electricity Act,
- (3) when there is a positive requirement of certification under Rule 45 of the Indian Electricity Rules supported by the annexure, which formed part of the

statute and which prescribe a specific format that format cannot be amended or altered, without invoking the rule making power.

(4) the board proceedings which is only an administrative order cannot amend or alter Rule 45 which mandates a positive requirement of certification by a Licensed Contractor and Giving the name of a contractor in the application form that he had carried out the work and the statement made by the consumer which is not countersigned by the contractor, will expose the contractor of penal action and also consideration of license.

32. As stated supra, the Distribution and Supply code framed by the Regulatory Authority, constituted under the Indian Electricity Act has the statutory force and the regulations framed thereunder, are binding on the licencees and the consumers. As per Rule 45(1), no electrical installation work including additions, alterations, repairs and adjustments to existing installations, except such replacement of lamps, fans, fuses, switches, low voltage, domestic appliances and fittings, as in no way alters its capacity or character, shall be carried out upon the premises of or on behalf of any consumer, supplier, owner or occupier, for the purpose of supply to such consumer, owner, or occupier except by an electrical contractor licensed in this behalf by the State Government, and under the direct supervision of a person holding a certificate of competency and by a person holding a permit issued or recognised by the State Government, provided that in the case of the works executed for or on behalf of the central Government and in the case of installations in mines, oil-fields and railways, the Central Government and in other cases the State government may, by notification in the official Gazette ,exempt, on such conditions as it may impose, any such work described therein either generally or in the case of any specified class of consumers, suppliers, owners or occupiers from so much of this sub-rule as requires such work to be carried out by an electrical contractor licensed by the State Government in this behalf.

33. As per Rule 45(2), no electrical installation work which has been carried out in contravention of sub rule (i) shall either be energized or connected to the works of any supplier.

34. A bare reading of the rule makes it clear, that the rule does not cast upon a duty on the part of the Board to obtain the signature of an electrical contractor, at the time of submitting an application for getting low tension supply energy. The rule only contemplates that installations, additions, etc., have to be done by a Licensed Electrical Contractor, under the direct supervision of a person holding a certificate of competency. The safeguard provided under the Electricity Act, and rules framed thereunder is to eliminate substandard work in providing electrical connections which are bound to result in accidents. That is why the rule mandates that wiring work has to be done by a Licensed Contractor. What was dispensed with earlier, by the then Board-Proceedings was the declaration of the contractor signature and the seal of the Licensed wiring contractor and it was replaced by the consumer himself giving a declaration that the wiring had been

carried out by a competent Licensed Contractor. Under the present code, perusal of the test report and the model forms prescribed, clearly shows that the prospective consumer applying for low tension energy has to give a declaration in Form A, that electrical installation in his/her premises, was carried out by "X" who holds a contractor's licence issued by the Electrical Wireman Supervisors and Contractors and that the said work was carried out, under the direct supervision of "Y", holding a competency certificate. In addition to that a licensed contractor has to give a declaration in Form B, certifying that the installation has been constructed, inspected and tested by him and that to the best of his knowledge and belief it complies with the Indian Electricity Rules and regulations made thereunder. The said declaration has to be countersigned by a wireman holding a competency certificate, certifying that the works have been carried out under his supervision.

35. As rightly contended by the learned Counsel for the Electricity Board, sub Rule 2 of Rule 45 of the Electricity Rules, would come into operation only when the occasion arises to energize i.e., to give electricity supply by the Board, to the consumers for installation, if the intending consumer, is otherwise entitled to be supplied with electricity. The statutory requirement provided under the Rule 45 and the forms, dispensed with earlier, have been how reintroduced in Forms A and B, of the test report signed both by the prospective consumer and the electrical contractor with their declaration, and countersigned by a wireman holding a competency certificate. Thus it could be seen that the contents of forms A & B which form part of the test report, satisfies the mandatory requirement of Rule 45 of the Indian Electricity Rules. Therefore, this Court is of the considered view that there is no contravention of Rule 45 of the Indian Electricity Rules. By obtaining the declaration/certificate in the test report from the electrical contractor/consumer, the Board has ensured implementation of Rule 45 of the Indian Electricity Rules, and there is no need to get the signature of the licensed wiring contractor in LT service connection application.

36. The Electricity Board Rules, do not impose any condition that the prospective consumer has to obtain the signature of the Licensed Contractor, at the time of submission of the application, for low tension energy supply. But it is certainly a requirement at the second stage, where the consumer has to produce a test report to the Board, for supply of power.

37. There is no statutory or legal right for the petitioners to insist at the time of submission of application forms they consumers should obtain their signatures in the application form. Earlier by simplification of the procedure, the safeguards provided under the statutory rules were given a go bye, by issuing a Board proceeding without amending the rules. Now under the code, sufficient safeguards have been provided for ensuring proper installation and safety and therefore the impugned proceedings issued under the code have the statutory effect.

38. In such a view of the matter, this Court, is of the considered view that the

impugned Board proceedings are in accordance with the rules, and not contrary to the judgment relied on by the Writ petitioners. Hence the Writ petitions are dismissed. The interim stay granted is vacated. Consequently, the connected Miscellaneous Petitions are also dismissed. No costs.