

Madras High Court

P. Ravichandran vs Tamil Nadu Civil Supplies ... on 28 January, 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-1-2008

CORAM

THE HON'BLE MR.JUSTICE N.PAUL VASANTHAKUMAR

W.P.No.27964 of 2007 & M.P.No.1 of 2007

P. Ravichandran ... Petitioner

Vs.

1. Tamil Nadu Civil Supplies Corporation Ltd.,  
rep. by its Chairman-cum-Managing Director,  
No.10, Thambusamy Road,  
Kilpauk, Chennai - 600 010.
2. The General Manager (Administration),  
Tamil Nadu Civil Supplies Corporation Ltd.,  
Head Office, No.10, Thambusamy Road,  
Kilpauk, Chennai - 600 010.
3. The Senior Regional Manager,  
Tamil Nadu Civil Supplies Corporation Ltd.,  
Sidco Complex, Vengikkal,  
Thiruvannamalai District - 606 604.
4. The Regional Manager,  
Tamil Nadu Civil Supplies Corporation Ltd.,  
Sidco Complex, Vengikkal,  
Thiruvannamalai District - 606 604....

Respondents

Prayer: This writ petition is filed under Article 226 of Constitution of India, praying this  
For Petitioner : Mr.K. Premkumar  
For Respondents : Mr.V.Selvanayagam

O R D E R

Prayer in the writ petition is to quash the order of the second respondent dated 25.3.2003 confirmed by the first respondent by order dated 29.12.2004 and to direct the respondents to

provide alternate employment to the petitioner by protecting his pay and other service conditions in the post of Electrician and if no equal post is available, create a supernumerary post with pay and other benefits from 30.11.2000 to 21.2.2001 including travelling allowance to attend Medical Board at Madurai and at Chennai, within the time fixed by this Court.

2. The facts necessary for disposal of the writ petition are as follows: (a) Petitioner has studied upto S.S.L.C. and he is holding Electrical 'B' grade certificate. He was appointed as an Electrician on 28.3.1991 in the Tamil Nadu Civil Supplies Corporation Limited, a Corporation registered under the Indian Companies Act, 1956, which is a Government of Tamil Nadu Undertaking. Now the petitioner is working as Electrician at the Modern Rice Mill, Polur, Tiruvannamalai District.

(b) On 31.7.1999, petitioner was working as Electrician at the Modern Rice Mill, Polur, in the third shift at about 11.45 p.m., and when he was attending to an electrical fault, he sustained injuries due to electric shock on his left hand fingers and the petitioner's face got blackened. Immediately, the petitioner was admitted in the Christian Medical College and Hospital, Vellore, and he took treatment for 15 days.

(c) Petitioner rejoined duty on 18.8.1999 and by proceeding dated 12.10.1999, the 4th respondent directed the petitioner to appear before the Medical Board for medical examination, pursuant to which the petitioner appeared before the Medical Board on 26.10.1999. After medical examination, the Medical Board, by its proceeding dated 26.10.1999, certified that the petitioner will not be able to perform his duties as before as activities of his left hand fingers lost its grip and a recommendation was made to provide alternate employment to the petitioner.

(d) The 4th respondent, on 4.11.1991 sent a communication to the Senior General Manager (Engineering) at Head Office, Chennai, for further course of action. On 25.1.2000, the 4th respondent directed the Assistant Manager (Engineering), Modern Rice Mill, Polur, to provide light work to the petitioner. However, the same was not given.

(e) On 9.8.2000, the third respondent offered conversion of duty to the petitioner from the post of Electrician to the post of Junior Assistant and the petitioner was directed to give his acceptance letter on or before 18.8.2000, and the petitioner also gave his consent letter on 14.8.2000. The third respondent by his proceeding dated 28.11.2000 relieved the petitioner from the post of Electrician of Modern Rice Mill, Polur, and the petitioner was directed to report before the General Manager (Administration), Head Office, Chennai, at once. The petitioner in compliance with the orders of the third respondent, on 29.11.2000 appeared before the second respondent at Chennai. However, on 14.12.2000, the second respondent by his order stated that there is no provision in the existing Tamil Nadu Civil supplies Corporation Limited Service Rules, for posting of employee from Modern Rice Mill (technical side to administrative side).

(f) Petitioner submitted repeated representations, pursuant to which the first respondent instructed the second respondent to get fresh medical opinion from the panel of members of Medical Board and assess the present disability. On 24.1.2001, petitioner appeared before the Medical Board and on assessment, the Medical Board opined that the petitioner's left hand grip is poor and he cannot

perform finer activities and the percentage of disability was assessed as 10%, which is partial and permanent one and based on the said medical opinion it was recommended for providing alternate job, other than Electrician work.

(g) However, contrary to the said Medical Board opinion, the second respondent, by his proceeding dated 21.2.2001, directed the petitioner to work as Electrician in Modern Rice Mill, Polur. Again, petitioner submitted representation and on 28.6.2001, the third respondent referred the petitioner to Meenakshi Mission Hospital, Research Centre, Madurai, for medical check up and on 25.9.2001, petitioner appeared before the Orthopaedic Surgeon in the said hospital and a certificate was issued in the same line as before with regard to the petitioner's disability.

(h) On 11.7.2002, the third respondent rejected the petitioner's request for sanction of pay and allowances for the period from 29.11.2000 to 22.2.2001, the period in which the petitioner was kept out of employment and treated the said period as leave without pay and allowances, apart from denying the medical expenses and travelling and other expenses for visiting Meenakshi Mission Hospital, Madurai. On 25.3.2003, second respondent again rejected petitioner's request for providing alternate employment by stating that there is no provision in the Tamil Nadu Civil Supplies Corporation Employees Service Regulations, 1989.

(i) Petitioner preferred an appeal before the first respondent on 10.12.2004, which was also rejected on 29.12.2004. On 23.3.2005, the fourth respondent again directed the petitioner to appear before the Medical Board at the Government General Hospital, Chennai-3 for medical examination and the petitioner also appeared before the said hospital on 1.5.2005 and the said medical report was not furnished to the petitioner in spite of petitioner's specific request. Thereafter, petitioner is continuously submitting representations to provide alternate employment and other service benefits.

(j) The denial of alternate employment is challenged in this writ petition on the ground that respondents are bound to give alternate job as provided under the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, as the respondent Corporation has not obtained any exemption of Section 47 of the Act. Petitioner also filed application for payment of compensation under the Workmen's Compensation Act, 1923, in W.C.No.136 of 2001 before the Deputy Commissioner of Labour, Tiruvannamalai, who in turn ordered a sum of Rs.24,714/- as compensation by order dated 24.4.2007.

3. The respondents have filed counter affidavit wherein it is stated that the disability assessed by the Regional Medical Board, Government General Hospital by certificate, dated 15.7.2005 was only 10% and that a sum of Rs.24,714/- was ordered under the provisions of the Workmen's Compensation Act, 1923, and the said amount was also paid. The contention raised in the counter affidavit is that the services of the petitioner are covered by the Modern Rice Mill Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946, whereunder there is no provision for transfer of service from Modern Rice Mill to Administrative side. Hence the petitioner's request for conversion to the post of Junior Assistant from Electrician was rejected. It is further stated in the counter affidavit that since the disability in two fingers are assessed only as 10%, petitioner can

perform his duty as Electrician in the Modern Rice Mill and therefore there is no need to give alternate employment to the petitioner.

4. The learned counsel for the petitioner submitted that the four Medical Reports clearly state that the petitioner is unable to do Electrician work due to loss of grip in his left hand and the disability having been sustained during the course of the employment and the respondent Corporation being a fully Government owned Corporation, it is bound to comply with the statutory requirement of offering alternate employment to the petitioner under the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act 1 of 1996).

5. The learned counsel for the respondents on the other hand submitted that the petitioner is able to discharge the duty of Electrician as the disability is on the lower side and alternate employment cannot be claimed as a matter of right, particularly when there is no provision under the Standing Orders to transfer an employee from the technical side to administrative side.

6. I have considered the rival submissions made by the learned counsel for the petitioner as well as the learned counsel for the respondents.

7. It is not in dispute that the petitioner sustained electrical burns in his left hand fingers while he was attending to an electrical fault on 31.7.1999 at 11.45 p.m. It is also not in dispute that the petitioner was admitted in the Christian Medical College and Hospital, Vellore, and took treatment for about 15 days. The Medical Board, Tiruvannamalai District, examined the petitioner and a report was submitted to the Regional Manager, Tamil Nadu Civil Supplies Corporation Limited on 26.10.1999, which reads as follows:

"MEDICAL AND RURAL HEALTH SERVICES DEPARTMENTS

From	To
Dr.Jagaraj, MBBS, DCH, Joint Director of Health Services, Tiruvannamalai District, Tiruvannamalai.	The Regional Manager, Tamil Nadu Civil Supplies Corporation Ltd., SIDCO Complex, Vengikkal, Tiruvannamalai- 606 604.

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Ref.No.8783/P&D/99, dt.26.10.1999

Sir,

Sub: Medical Board - Tiruvannamalai District - Medical Examination - Thiru P.Ravichandran, Electrician, Modern Rice Mill - Polur - Report forwarded - regarding.

Ref: 1. Your office ref.No.E2/4207/99, dt.12.10.99  
2. This office ref.8783/HB/99, dt.22.10.99

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With reference to above, Thiru P.Ravichandran, Electrician, Modern Rice Mill, Polur, ha  
MEDICAL BOARD OFFERS OPINION AS FOLLOWS:-

Thiru P. Ravichandran has post electrical burns contracture of Metacarpophalangeal and interphalangeal joints of all the fingers of left hand. He is not able to perform finer activities with his left hand and not able to do hard work because of less hand grip. HENCE HE MAY BE CONSIDERED FOR ALTERNATE JOB.

Sd/- xxx 26.10.99 Joint Director of Health Services, Chairman Medical Board, Government Headquarters Hospital, Tiruvannamalai."

Based on the said Medical Report, the Regional Manager sent a communication to the Senior General Manager (Engineering), T.N.C.S.C.Ltd., Head Office, Chennai, on 4.11.99 and the contents of the said communication reads as follows.

"Thiru P.Ravichandran, Electrician, Modern Rice Mill, Polur met with an accident while attending his duty at Modern Rice Mill, Polur on 31.7.99 during night time (3rd shift at 11.45 P.M). His left hand fingers and face got blackened.

He took treatment at C.M.C.Vellore and discharged. In his letter date 09.10.99, the electrician has requested that he may be permitted to attend some other job in the office as his fingers in the left hand are inaction.

Then his case was referred to District Medical Board to examine the affected area of the left hand sought their opinion.

In the letter dated 29.10.99, the Joint Director of Health Services, Tiruvannamalai has reported that the individual could not attend the hand work because of less hand grip.

In the light of the above facts, we solicit instructions to utilise the services of the individual at some other place in the office. We enclose the X-ray photo copy of the affected areas of the individual for perusal."

The head office also ordered the Regional Manager to offer light duty to the petitioner and sent a report by proceeding dated 25.1.2000. However, the Chairman and Managing Director, TNCSC Limited, by proceeding dated 14.12.2000, rejected the proposals for giving alternate employment to the petitioner as Junior Assistant from the post of Electrician by stating that there is no provision in the existing service rules for posting of an employee from the technical side to the administrative side.

8. Petitioner's disability was again verified by the Medical Board, Tiruvannamalai District on 24.1.2001, the contents of which reads as follows:

"With reference to above letters cited Thiru P.Ravichandran, Electrician, Modern Rice Mill, Polur, has appeared before Medical Board for Medical Examination, on 24.01.2001.

Medical Board Officers opinion as follows:-

Thiru P.Ravichandran has post Electrical burns contracture of left hand Meta Carpophalangeal and interphalangeal joints of all fingers. His hand grip is poor and cannot perform finer activities. Percentage of disability is 10% (Ten) which is partial and permanent. Hence he may be considered for alternate jobs other than Electrician work."

The Department of Orthopaedics and Traumatology of Meenakshi Mission Hospital and Reserch Centre, Madurai, also issued a certificate on 25.9.2001 as follows:

"This is to certify that Mr.RAVICHANDRAN, Aged 33 years, Male, has attended Orthopaedics O.P.D. on 25.9.2001, vide Hospital No:179884. He is a case of POST-TRAUMATIC STIFFNESS LEFT WRIST/FINGER. He has a partial and permanent disability of 10% (TEN PERCENTAGE)."

9. In spite of assessment of disability and medical opinion given stating that the petitioner will not be in a position to perform the Electrician duty as before due to loss of grip in left hand fingers, admittedly the petitioner was not given alternate employment, even though it was suggested to offer him Junior Assistant post by stating that there is no provision in the service rules to transfer an employee from the technical side to administrative side.

10. The Tamil Nadu Civil Supplies Corporation Limited is admittedly a Government owned Corporation, registered under the Companies Act, 1956. Section 2(k) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, section 2(k) defines the term 'establishment' as a Corporation established by or under a Central, Provincial or State Act or an authority or a body owned or controlled or aided by the Government or a local authority or a Government Company as defined under Section 617 of the Companies Act, 1956 (1 of 1956) and includes Departments of a Government. Section 47 of the Act clearly states that no establishment shall dispense with or reduce in rank an employee, who acquires disability during his service. Section 47 reads as follows:

Sec.47. Non-Discrimination of Government employment.- (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits.

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section. The disability sustained by the petitioner is also coming within the meaning of Section 2(o) of the Act, which reads as

follows:

"Section 2(o) "locomotor disability" means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy."

11. Admittedly, the Tamil Nadu Civil Supplies Corporation has not obtained any exemption for non-application of the provisions of Section 47 of the Act, till date. Therefore, Section 47 governs the respondent Corporation also. The three medical certificates referred above clearly demonstrate petitioner's disability and his inability to perform Electrician Duty as before, due to the loss of grip in his left hand fingers. The only objection as to whether under the service rules there is any provision for accommodating the petitioner in the administrative side, who is now in the technical side side alone has to be considered as sustainable in the light of the above statutory provisions and various decisions of the Supreme Court and of this Court.

12. The service rules will not prevail over Act 1 of 1996. Therefore, the said reason given by the respondents to deny alternate employment to the petitioner cannot be sustained.

(a) A person acquiring disability is entitled to get protection under section 47 of the Act was considered by the Supreme Court in the decision reported in (2003) 4 SCC 524 (Kunal Singh v. Union of India). Paragraph 9 of the decision reads as follows:

"9. ....An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of Section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service". The Section further provides that if an employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits; if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this, no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. "

(b) A question arose before this Court as to whether the Transport Corporations are bound to provide alternate employment to its employees, who sustain disability during the course of the employment. A Division Bench of this Court in the decision reported in 2007 (5) MLJ 1 (Management of Tamil Nadu State Transport Corporation v. B.Gnanasekaran) considered the benevolent provisions contained in the the Persons with Disabilities (Equal Opprotunities, Protection of Rights and full Participation) Act, 1995, the interpretation given by the Supreme Court in the above referred case and whether the disability should be to an extent of 40% for getting alternate employment and whether awarding compensation under the Motor Accident Claims Tribunal will be a bar for seeking alternate employment, were considered. The Division Bench in

paragraph 17 held as follows with regard to the percentage of disability, which reads as follows:

"17. In the instant case, the respondent workman became unfit for the duty of the driver as he lost knee movement and there is no possibility of regaining his normal movement. It is not disputed before us that the workman is suffering from locomotor disability within the meaning of Section 2(o) of the Disabilities Act. In view of the Supreme Court's decision in *Kunal Singh v. Union of India and Another* (supra) it is clear that the acquisition of disability is not the same as a person with disability and it was not necessary for the workman to establish that he suffer more than 40% disability. In our considered opinion the decision of the Division Bench in *General Manager, Tamil Nadu State Transport corporation v. A.Sengaan* (supra) does not lay down the correct law."

The eligibility to receive the benefits, after receipt of compensation from the Motor Accident Claims Tribunal, was also considered by the Division Bench. In paragraph 13 the Division Bench held as follows:

"13. In Tamil Nadu State Transport Corporation (Villupuram Division-I) Limited v. R.Jayakumar (Writ Appeal No.610 of 2007) decided on 13.4.2007, a Division Bench expressly rejected the argument that since the workman has been awarded compensation under the Motor Vehicles Act in a claim petition filed by him before the Motor Accidents Claims Tribunal, including compensation towards loss of earning, he is not entitled to the benefit of Section 47 of the Disabilities Act. It was held that Section 47 of the Act casts a mandatory duty on the part of the employer to provide an alternative employment to an employee who has suffered disability during the course of his employment, and the fact that such an employee has received some compensation under the Motor Vehicles Act is no ground to deny him the alternative employment, to which he is otherwise entitled under the Disabilities Act. It was held that if it is the case of the Transport Corporation that the compensation awarded towards loss of earning is on the higher side, the Corporation is free to agitate this point in the appeal filed against the award of compensation."

The contention as to whether the service rules will prevail over the Act was also answered in paragraph 12, wherein it is held that even if there is other rules, if the Persons with Disabilities (Equal Opportunities, Protection of Rights and full Participation) Act, 1995 is more beneficial to the persons concerned, the same alone can prevail and it is the mandatory duty and statutory obligation on the employer to protect the employee, acquiring disability during service.

13. Further, forcing the petitioner to do Electrician work even after his sustaining disability, is to be treated as violation of human rights as well as Article 21 of the Constitution of India. The said view was taken by another Division Bench of this Court in the decision reported in (2006) 4 MLJ 1669 (G.Muthu v. Management of T.N.State Transport Corporation (Madurai) Ltd., wherein the very same Act 1 of 1996 came up for consideration. In paragraphs 22 and 26, the Division Bench held thus, "22. Welfare legislations are meant to ensure benefits to the needy. They should be interpreted in such a way so that the purpose of the legislation is allowed to be achieved. Even assuming that there is any ambiguity in the provisions of the Act, in view of the object underlying the Act, it requires a reasonable interpretation of Section 2(i) of the said Act so as to make it applicable to the case on hand. The legislative purpose must be noted and the statute must be read as a whole.



23. ....

24. ....

25. ....

26. After analysing the entire provisions of the Act and also various decisions cited above, we feel that the Courts cannot shut its eyes if a person knocks at its door claiming relief under the Act. In a welfare State like India, benefits of benevolent legislation cannot be denied on the ground of mere hyper-technicalities. When the law makers have conferred certain privileges on a class of persons, like in this case to a disabled person, the duty is cast upon the judiciary to oversee that the authorities or the persons to whom such a power is conferred, enforce the same in letter and spirit for which such enactment has been made. In the present case on hand, the appellant has been discharged on the ground of 'colour blindness' without providing alternative job as per Section 47 of the Act, which is unjustified and unreasonable. Hence, the order of the respondent dated 26.3.2002 discharging the appellant on medical grounds has no leg to stand. The appellant is entitled to the protection under Section 47 of the Act. He should have been given a suitable alternative employment with pay protection, instead of discharging him from service on the ground of 'colour blindness'. Viewed from any angle, the order of the learned single Judge dismissing the writ petition on the mere ground of laches without considering the claim of the appellant on merits is liable to be set aside."

The said Judgment has become final, as SLP filed against the said decision was dismissed by the Supreme Court. Similar view was taken in the Division Bench Judgment of this Court reported in 2007 II LLJ 407 (State v. K.Mohammed Mustafa); (2006) 1 MLJ 452 (P.Thangamarimuthu v. Tamil Nadu State Transport Corporation, Madurai) (D.Murugesan. J); and in the decision of mine reported in 2007 II LLJ 300 (K.Selvaraj v. State Express Transport Corporation).

14. How the officers should change their mind set and extend the benefit to the disabled persons as per Section 47 of the Act 1 of 1996 was considered by the Supreme Court in Civil Appeal No.8 of 2008 by Judgment dated 4.1.2008 and in the penultimate paragraph, the Supreme Court held thus, "We understand that the concerned officers were acting in what they believed to be the best interests of the Board. Still under the old mind-set it would appear to them just not right that the Board should spend good money on someone who was no longer of any use. But they were quite wrong, seen from any angle. From the narrow point of view the officers were duty bound to follow the law and it was not open to them to allow their bias to defeat the lawful rights of the disabled employee. From the larger point of view the officers failed to realise that the disabled too are equal citizens of the country and have as much share in its resources as any other citizen. The denial of their rights would not only be unjust and unfair to them and their families but would create larger and graver problems for the society at large. What the law permits to them is no charity or largess but their right as equal citizens of the country."

15. In the light of the above settled legal position, the respondents are not justified in contending that their service rules do not provide transfer/posting of an employee from the technical side to the

administrative side.

16. Insofar as the contention of the respondent that the petitioner is discharging his duty as Electrician even now, the learned counsel for the petitioner submitted that he is doing the said works with the help of others and due to his partial disablement he is entitled to get lighter duty with pay protection and all other benefits as contemplated under section 47 of the Act. Hence, the said submission of the respondents is also bound to be rejected.

17. In the light of my above findings, I pass the following orders:

(i) The impugned orders are set aside.

(ii) The writ petition is allowed in part with a direction to the respondents to provide alternate employment to the petitioner, equal to the cadre of Electrician in the Tamil Nadu Civil Supplies Corporation Limited, within a period of two weeks from the date of receipt of copy of this order.

(iii) For the period for which the petitioner was kept on leave and he was not given alternate employment, the respondents are directed to pay salary to the petitioner within a period of four weeks from the date of receipt of copy of this order.

(iv) It is made clear that the petitioner is entitled to get promotional opportunity and other benefits as per section 47 of the Disabilities Act.

(v) Since the petitioner is given all the benefits under Section 47 of Act 1 of 1996, the prayer seeking travelling allowance to attend Medical Board at Madurai and Chennai are rejected.

(v) As the petitioner was repeatedly directed to undergo medical examination before four Medical Boards and in spite of issuance of disability certificates by all the Medical Boards, the respondents have not provided alternate employment to the petitioner, which the petitioner is eligible as statutory right under section 47 of the Act 1 1996, and the respondents having forced the petitioner to approach this Court for getting the relief, the respondents are bound to pay cost to the petitioner. The cost is quantified as Rs.5,000/- and the same is directed to be paid within a period of four weeks from today. Post this matter on 3.3.2008 for reporting compliance regarding payment of costs.

vr To

1. The Chairman-cum-Managing Director, T.N.Civil Supplies Corporation Ltd., No.10, Thambusamy Road, Kilpauk, Chennai - 600 010.

2. The General Manager (Administration), Tamil Nadu Civil Supplies Corporation Ltd., Head Office, No.10, Thambusamy Road, Kilpauk, Chennai - 600 010.

3. The Senior Regional Manager, Tamil Nadu Civil Supplies Corporation Ltd., Sidco Complex, Vengikkal, Thiruvannamalai District - 606 604.

4. The Regional Manager, Tamil Nadu Civil Supplies Corporation Ltd., Sidco Complex, Vengikkal, Thiruvannamalai District 606 604.