(2012) 11 KL CK 0231

In the High Court Of Kerala

Case No : Writ Petition (C) No. 21753 of 2012

Abdul Kareem APPELLANT

Vs

Kerala State Electricity Board RESPONDENT

Date of Decision : 06-11-2012

Acts Referred:
Kerala Electricity Supply Code, 2005 — Regulation 12

Citation : (2013) 1 KLT 25

Hon'ble Judges : C.K. Abdul Rehim, J

Bench : Single Bench

Advocate : Rajesh Vijayendran, for the Appellant; Sajeev Kumar K. Gopal and C. Ajith Kumar, for the Respondent

Final Decision : Allowed

Judgement

C.K. Abdul Rehim, J.—The petitioner is challenging Exhibit P4 notice issued by the 2nd respondent, informing that his application for electric connection to his villa will be considered only after settling payment of the amount of Rs. 11,68,000/- due from Consumer No. 18754, and only after installing a Transformer at the premises of the villa project for meeting energy demand of the on going and completed construction of villas. The residential villa belonging to the petitioner is situated in a property having an extent of 9.88 cents comprised in Re-survey NO. 176/1A of Kadannappally Village. The property was purchased from the third respondent on 27.03.2009. The building in question was constructed through the fourth respondent, builder. Exhibit P2 Ownership Certificate issued from the Grama Panchay at will indicate that the building in question was registered in the name of the petitioner for assessment of Property Tax and the building was assigned with No. IX/431-N. Petitioner submitted Exhibit P3 application for electric connection on 3.8.2012. Exhibit P4 is challenged on the ground that the petitioner is not liable for payment of the amounts demanded and on the ground that he is not at an obligation to install any Transformer for getting the connection.

2. It is evident that the 3rd respondent was imposed with penalty alleging unauthorised usage of electricity in a connection provided to him, with Consumer No. 18754. Question posed is as to whether electric connection can be denied to the petitioner for default committed by the 3rd respondent in paying the amount of penalty.

3. In the counter affidavit the respondents 3 and 4 contended that the 3rd respondent was the absolute owner of the property having an extent of 1 acre 41 cents and he had obtained permit from the Grama Panchayat for developing the aforesaid land. It is conceded that in July 2008 he applied for power allocation for 12 villas to Deconstructed in the said property, as per Exhibit R3(a), But thereafter the 3rd respondent had assigned the property to different persons, who in turn entrusted construction of villas with the fourth respondent Since the third respondent had already assigned the property to various persons, who became rightful owners of the respective properties, he had submitted an application as per Exhibit R3(b) for cancellation of the request for power allocation. Thereafter on 10.7.2011 the 2nd respondent issued a letter to the third respondent requesting to remit a sum of Rs. 3,54,464/- for power allocation, being amount required under the OYEC Scheme. But the 3rd respondent took the stand that he had already intimated cancellation of the application for power allocation.

4. It is admitted that the Anti Power Theft Squad inspected the property on 10.7.2012 and penalty to the tune of Rs. 11,68,000/- was imposed on the 3rd respondent, alleging unauthorised extension of 32 KW power for construction of 4 villas. It is stated that among the 12 villas proposed in the property, 7 villas constructed by the fourth respondent were already transferred into the name of the respective buyers.

5. In a statement filed on behalf of respondents 1 and 2 it is contended that the stand taken in Exhibit P4 is legal and justified in view of Regulation 12 of the Kerala Electricity Supply Code, 2005. Respondents have produced Annexure R2(a) notification issued by the Kerala State Regulatory Commission, amending Regulation 12 of the Supply Code which insist that for getting connection the purchaser has to deposit amount equivalent to the arrears due with respect to any previous connection existed in the property, excluding interest, which shall be reimbursed as and when released from the previous owner. It is stated that the penal bill was challenged by the 3rd respondent before this court in W.P.(C) 16740/12. Subsequently, the 3rd respondent had also filed another Writ Petition against the final bill as W.P.(C) No. 19087/2012, and further a Writ Appeal as W.A. 1578/2012. This court held that, recovery of amounts will be based on order to be passed in the appeal, and the 4 individual villa owners were directed to regularise the connection complying with the statutory formalities. According to respondents 1 & 2 the 3rd respondent has to remit cost of installation of the Transformer as required under Annexure R2(b) letter issued on 4.7.2008. It is further contended that building permit with respect to all the 12 villas were

obtained in the name of the 3rd respondent and the third respondent had applied for power allocation to all the villas. Hence the application of the petitioner can not be considered as an individual application because the total connected load applied for by the 3rd respondent was 160 KW, inclusive of load for common facilities. On the basis of application of the 3rd respondent, estimate was prepared and administrative sanction was issued for installation of 250 KVA transformer by drawing 230 Meters of 11 KV line at a cost of Rs. 6,08,300/-. But the 3rd respondent had failed to remit the estimated cost. It is further stated that recovery of the amounts due from the third respondent is now kept pending in view of the judgment in the Writ Appeal. Connection to individual villas can be regularised only after completing all the formalities required. It is pointed out that the estimate prepared as above was reduced to Rs. 3,54,464/-. The connection to the petitioner cannot be provided without remitting the said amount and without erecting the Transformer, is the contention.

6. In Exhibit P4 the demand is made on the basis that the building in question is a part of the villa project and the owner of the project has defaulted payment of the penalty amount. It is insisted that only after clearing payment of the arrears application for connection submitted by the petitioner can be considered. It is a fact that ownership of the property stands transferred into the name of the petitioner, with effect from 27.3.2009. Admittedly, the APTS inspection was on 10.7.2012, much after transfer of ownership of the property. The respondents 1 and 2 have no case that the unauthorised extension detected during inspection was to the villa of the petitioner. Reg. 12 of the Kerala Electricity Supply Code, 2005 reads as follows:

12. Does of previous consumer

(1) If a purchaser of a premise requires to have a new connection, as the earlier connection has already been dismantled after disconnection, the arrear, if any, shall be realised from the previous owner/occupier of the premises and not from the purchaser.

(2) Notwithstanding anything contained in sub-section (1), purchaser referred to therein shall deposit an amount equivalent to such arrears excluding interest with the licensee, which shall be reimbursed as and when realised from the previous owner/occupier:

Provided that the auction purchaser who obtains property by auction by a court of law or other authorities duly constituted by law or an allottee of Government land shall not deposit any such amount.

Going by the above said provision it is clear that the purchaser can be insisted upon to deposit the amount only if there existed an earlier connection in the property in question which has already been dismantled after disconnection, and only if the previous owner is in arrears with respect to such dismantled connection. As observed above, in the case at hand the property was transferred to the petitioner as early as on 27.3.2009. There is no case that the connection in which the penalty was imposed was provided in the property wherein the petitioner''s villa is situated. Learned standing counsel contended that the said connection was provided to the entire property in question. But for applying Regulation 12(2) it should be clear and evident that the earlier connection was provided in the same premises to which electric connection is now sought for. It is evident that the arrears had fallen due only subsequent to the transfer of the property. Therefore the property of the petitioner was not property owned by the third respondent as on the date on which the amount became due. There is no arrears with respect to any connection provided in the property of the petitioner which was disconnected and dismantled. Hence insistence on the petitioner for payment of the penalty due from the 3rd respondent cannot be sustained in any manner.

7. Next question arising for consideration is regarding sustainability of the demand for installation of Transformer for meeting energy demand of the on going and completed construction of all the villas. Reg. 8(5) of the Supply Code provides that in case of multi storied buildings having connected load of 50 KVA and above, connection shall be effected only after installation of Transformer of adequate capacity by the owner/occupier. But in the case at hand the electric connection is not sought for with respect to any multi storied building. The connected load applied by the petitioner is much below than the prescribed limit of 50 KVA. Therefore Reg. 8(5) cannot be made applicable in the case of the petitioner. Learned standing counsel placed heavy reliance on Reg. 8(1)(C) of the Supply Code which deals with preparation of estimate for providing connection to LT consumers. It provides that for loads of 50 KVA and above, connection shall be effected only after installation of Transformer of adequate capacity, the cost of which shall be recovered from the consumer. It is contended that the power requirement for all the 12 villas proposed in the project would come to more than 50 KVA. According to the standing counsel, fact that the 3rd respondent had applied for power allocation with respect to all the 12 villas and the fact that connection was obtained for construction of all the villas, the power requirement need to be clubbed together as a single unit for the purpose of Reg. 8(C). Further it is contented that since all the villas are situated within the very same compound of the project, enclosed through a common compound wall, the power requirement should be considered as a single unit. The Board cannot bear cost of the Transformer in such cases. Since a lot of villa projects are being constructed with so many individual houses which may require heavy connected load, if the Board is not permitted to recover the cost of installations like Transformer from such builders, it may lead to severe prejudice and it may also lead to a situation where the Board will become unable to provide individual connections to small houses and commercial establishments, is the contention.

8. Standing counsel had placed for my perusal a letter received from the Secretary of the Kerala State Electricity Regulatory Commission, in reply to a clarification sought for by the Chairman of the Board. The Regulatory Commission had pointed out that in view of Reg. 8(1)(c) of the Supply Code, in

case of buildings having night less than 15 mtrs, the total load of individual consumers can be clubbed together and Transformers of adequate capacity can be insisted if total load exceed 50 KVA. But in the case at hand, it is not the case of many individual consumers coming within the same building. But it is a case where individual houses situated in different plots owned by separate owners are seeking electric connections. Even if such house plots are situated within a common compound, electric connection cannot be denied to individual consumers having connected load less than 50 KVA, insisting on installation of Transformers at their cost, by clubbing the connected load of all the villas together. I am of the view that unless there is any statutory provision enabling the Board to club together power requirement of all the villa owners, as in the case of multi storied (High Rise) buildings as provided in Regulation 8(C) of the Supply Code, the Board cannot insist for payment of the cost of Transformer by any one of the consumer who applies for individual connection with a connected load less than 50 KVA. Probably, it may be left open to the Board to insist upon the builder or land owner as the case may be, to provide such facilities before starting development of the project or construction of the villas or during the course of such construction, by imposing any restrictions in providing temporary connections for the purpose of construction, if permissible under law. The Board can also think of approaching the Government for introducing any restrictions in the Building Rules for putting such measures. However, under the existing law I find no legal or justifiable reasons to insist upon any individual consumer owning a villa to bear cost of installation of the Transformer. Therefore, I am of the view that the insistence in this regard in Ext. P4 cannot be sustained.

9. Going by Reg. 8(1)(a) of the Supply Code, it is obligatory on the part of the Electricity Board to provide connection within one month on the receipt of application. In view of the findings rendered as above, I am of the opinion that the petitioner is entitled to get connection without any further delay. Therefore, the Writ Petition is allowed and Ext. P4 is hereby quashed. The respondents 1 and 2 are directed to process the application for electric connection submitted by the petitioner and to provide the petitioner with electric supply without insisting for payment of arrears due from the 3 respondent or without insisting for payment of cost of Transformer, if any to be installed.

Needful steps in this regard shall be taken at the earliest. If the petitioner complies with all the requisite conditions and formalities, connection shall be provided without any further delay.

