
(2002) 07 KL CK 0089

In the High Court Of Kerala

Case No : O.P. No"s. 3065 and 5808 of 2002 and connected cases

Ammini Gopalakrishnan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 26-07-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 2 KLJ 593

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : Rajiv, for the Appellant; C.C. Thomas, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The petitioners in all these Original Petitions are agriculturists who have been enjoying exemption from payment of electricity charges for power connection taken by them i"or agricultural purposes. In all these cases, the petitioners have been granted separate connections by the Electricity Board at the concessional tariff applicable to agriculturists. The exemption claimed by the petitioners is pursuant to the order, G.O. MS. No. 311/95/AD dated 31.8.1995 as modified from time to time. Under the original notification exemption was granted only for paddy cultivation without any limit of area of holding. In the later notifications the benefit was extended to other lands, if the holding was within one hectare. This was later increased to two hectares. The notification now stands modified vide G.O. MS.No. 30/99/AD dated 4.2.1999, which is produced as Ext. P3 in O.P. No. 36963 of 2001. The Government Pleader has produced Ext. R1 (a) which is a letter from the Agricultural Secretary to the Agricultural Director under reference No. 9903/PA3/01 dated 26.3.2001. According to the petitioners, the petitioners were all through entitled to the benefit of exemption and they are entitled to continued exemption under the latest notification, G.O.MS.No. 30/ 99/AD dated 4.2.1999. The Government Pleader on the other hand pointed out that the procedure for granting exemption for power charges to the agriculturists was laid down in the above referred G.O.

dated 4.2.1999. However, under Ext. R1(a) the Government has fixed a cut-off date for registration of exemption applicable before the Agricultural Officer of the area where the farm is located by 20th May, 2001. It is pointed out by the Government Pleader that a farmer to be eligible for exemption should not own more than two hectares of land, other than land used for paddy cultivation, and there is no limit on the extent of ownership of paddy land. The further condition according to him is that only those farmers who are registered upto 20th May, 2001 and whose names are forwarded by the Agricultural Officer to the concerned Electricity Board Official will qualify for exemption.

2. The petitioners in these Original Petitions claim that they have submitted the form prescribed to the local Agricultural Officer who was not in the habit of acknowledging receipt of the applications. The forms were stated to be forwarded by the Agricultural Officers to the concerned Electricity Board Officials and in some cases the Electricity Board Officials state that forms are received and in some other cases they deny having received the same from the local Agricultural Officer. The exemption is therefore not available to such of the farmers whose applications were not forwarded by the Agricultural Officer to the concerned Electricity Board official is the case of the respondents.

3. It is seen from the electricity bills produced in all these cases that the bills are not current bills and pertain to earlier periods. It is not known why periodically regular bills are not raised against the farmers. Therefore, it should be assumed that these farmers who were not served with periodical regular bills were on record of the Electricity Board claiming exemption for agricultural connections. On going through Ext. R1(a) I do not find any reference to the main consolidated notification above referred dated 4.2.1999. That notification which is exhaustive and deals with earlier notifications does not prescribe any cut-off date for making application for availing of the exemption for agricultural connections; that is for use of power for agricultural operations. Nothing is mentioned in any of the Government Orders, including the G.O. dated 4.2.1999, dealing with cases of transfer of farm lands, and the eligibility of the buying farmers to claim the benefit. Further, those farmers who have taken up cultivation later are also not specifically barred from claiming exemption. In other words, I do not find that the cut-off date canvassed by the Government Pleader for granting exemption to agriculturists has any significance nor is it intended by the Government. The only two conditions for availing of the exemption are that the farmers should be small holders with not more than two hectares of garden land and in respect of paddy cultivation exemption is seen granted to whole paddy cultivators irrespective of extent of holdings. The scheme of exemption under the notification is therefore to promote paddy production without ceiling and to encourage small farmers, engaged in cultivation of garden land with holding of two hectares and below. I do not find any other limitation in any of the notifications, particularly under the notification dated 4.2.1999 which is a consolidated notification dealing with earlier notifications. Ext. R1(a) relied on by the Government Pleader is only a communication between the Government Secretary and the Agricultural Director,

which does not lay down any other condition but stipulates a date for registration for availing exemption. Further, it would be discriminatory to disallow exemption to these farmers who take up cultivation after the cut-off date provided in Ext. R1(a). This being the position, and in view of the fact that there is no other limitation, I feel that all the paddy cultivators without limit of holdings and cultivators of other land who have land not in excess of two hectares will qualify for exemption. It is obvious from the records produced and the facts available that there was no proper system followed for filing of applications before the Agricultural Officers, inspection of farms or certification of eligibility either by the Agricultural Officers or by the Electricity Board. When no receipt is issued by the Agricultural Department for acceptance of applications for exemption from electricity charges, the Department cannot take the view that the farmers who personally handed over the applications before the Agricultural Officers have in fact not made any such applications. In any case, the case of the farmers is supported by the conduct of the Electricity Board in not raising bills on periodical basis on such farmers who have taken agricultural connections. It is always open to the Agricultural Officer and the field staff of the Electricity Board to inspect the agriculture farm and verify the holdings of the farmers who have applied for exemption and examine whether they are entitled to exemption based on the notifications and whether the connection is used for non-agricultural purposes.

4. In the light of the above observations, the Original Petitions are disposed of with the following directions:

5. The petitioners will approach the local Agricultural Officer, who will visit the farm of the petitioners and conduct an investigation and shall certify the petitioners' eligibility within a period of one month from the date of receipt of a copy of this judgment, which will be produced by the petitioner. Since the Electricity Board is interested in the matter, they are free to co-ordinate in the matter with the Agricultural Officer and can be a party to the proceedings of the Agricultural Officer. If the Agricultural Officer finds that any claimant was ineligible for the exemption, and wrongly claimed the same, it is for the Electricity Board to demand power charges for back periods also, subject to Rules. On the other hand, if farmers with exclusive agricultural connections are found eligible, then of course the Board cannot collect the arrears as well ever since the notification came into force merely because they were not registered by the Agricultural Officer or their applications not forwarded to K.S.E.B. before 20.5.2001. The petitioners will be allowed to participate in measuring the land and if any petitioner is found ineligible, then the Agricultural Officer will issue notice, hear the petitioner and pass orders. Thereafter the K.S.E.B. is free to raise bills on such agriculturists.

6. In view of the findings above, I declare that any agriculturist who has not availed of exemption is also free to get the benefit of notification, provided he satisfies the conditions, as explained above. All the bills produced in the Original Petitions stand quashed with liberty to the Board to issue fresh bills in cases

exemption is declined by the agricultural officer, after inspecting the farms and after hearing the petitioners. However, the Board is free to collect minimum guarantee charges subject to the ceiling stated in the notification dated 4.2.1999. It is made clear that if power bills relate to any period prior to the period of exemption granted under the notifications to the petitioners, then of course, the Board is free to recover the same subject to limitation, if any. The petitioners are free to challenge such bills on any other reason, including limitation in appeal and the appellate authority will hear the petitioners and dispose of the appeals within two months from the date of receipt of the appeals. It is also open to the Agricultural Officer as well as the Board to examine whether the connection is used for any purpose other than irrigation and related agricultural purposes and if there is any violation, they are free to disallow the exemption in part or in full. In O.P. No. 10099 of 2002 this Court ordered reconnection under the interim orders. However, reconnection is not given for the reason that connection was dismantled. Since disconnection is admittedly for nonpayment of arrears, in respect of agricultural connection, and the petitioners claim exemption on the basis of certificate obtained from the Agricultural Officer, there will be a direction to the respondents to restore power connection subject to the observations made above and after the petitioners produce an eligibility certificate from the Agricultural Officer who is directed to issue the same after inspection of the farm within two weeks from the date of request from the petitioners. If the petitioner is found ineligible, the Board is free to recover the arrears. In cases where disconnection is effected on account of arrears and if such persons do not want reconnection, then it is for the Agricultural Officer and Electricity Board officials to examine whether the petitioners were entitled to exemption for the period for which the arrears relate. The Agricultural Officer and the Electricity Board officials are free to call for documents, measure the land and consider eligibility. What is important is not documents of title but physical holding of the land and proof of cultivation, that are to be reckoned for the purpose of granting exemption. If such agriculturists are found to have excess holding making them ineligible for exemption, or if power was used for non-agricultural purposes, the K.S.E.B. is free to raise bill after issuing an order in this regard on request from the Agricultural Officer. I make it clear that field staff of K.S.E.B. can always inspect any farm and disallow exemption if found ineligible or take appropriate action if there is misuse of energy.

The Original Petitions are disposed of as above.