

(2013) 11 KL CK 0007

In the High Court Of Kerala

Case No : Writ Petition (C) No"s. 25108 and 26660 of 2013

Bhargavan Pillai

APPELLANT

Vs

Kerala State Electricity Board

RESPONDENT

Date of Decision : 13-11-2013

Acts Referred:

Citation : (2014) 1 ILR (Ker) 502 : (2014) 1 KHC 143 : (2014) 1 KLJ 456 : (2014) 1 KLT 48

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

Bench : Single Bench

Advocate : A.T. Anilkumar and V. Shylaja, for the Appellant; Sajeew Kumar Gopal, Jaice Jacoo and S. Vasudevan, for the Respondent

Judgement

C.K. Abdul Rehim, J.—Since the issue involved in both these cases are more or less similar, they are considered together and disposed of through this common judgment. In W.P. (C). No. 25108/13 challenge is against disconnection of electric supply provided to the 1st floor portion of petitioner's residential building, which is assigned separate building number as VIII-569/A. In the building in question there existed an electric connection since the year 1995, which was given by drawing service wire from a post situated on the boundary of the 5th respondent's property. According to the petitioner, the 1st floor was constructed in the year 2013. Ext. P2 is the ownership certificate and Ext. P3 is the Tax Receipt issued by the Grama Panchayat with respect to the First Floor. On 23.7.2013 a separate electric connection was provided to the 1st floor portion. But on 12.8.2013 the 4th respondent had disconnected the supply and dismantled the Meter and other equipments, without issuing any notice to the petitioner. Despite Exts. P5 and P6 requests, the supply was not restored. When approached under the Right to Information Act, Ext. P7 reply was issued stating that the disconnection was for the reason that no consent was obtained from the 5th respondent for drawing service wire from the post situated in his property. The petitioner was also intimated to take necessary steps for getting permission from the Additional District Magistrate for drawing of the line.

2. Contention of the petitioner is that he was enjoying a service connection provided to the said building since the year 1995 through service wire drawn from the very same post and therefore no consent is required for drawing one more service wire from the said post, which is not in any manner crossing property of the 5th respondent. Respondents 1 to 4 were perfectly justified in exercising powers vested under S. 10 of the Indian Telegraph Act in drawing of the service wire. They were not resisted or objected by the 5th respondent in any manner at the time of drawing the line. Under such circumstances the petitioner is approaching this court seeking appropriate directions for restoration of the connection.

3. Petitioner in W.P. (C). 26660/13 is the 5th respondent in W.P. (C). No. 25108/13. Challenge is against Ext. P5 notice issued by the 4th respondent requiring him to comply with conditions stipulated in the Board Order, BO(FB) (Genl.)510/2010, dt. 24.2.2010, (hereinafter referred as "the Board Order") failing which it is informed that the separate connection provided to the 1st floor portion of his building will be dismantled.

4. In the statement filed on behalf of the Board in W.P. (C). 25108/13 it is mentioned that, the 4th respondent had received a lawyer notice on behalf of the 5th respondent threatening legal action for drawing of the service wire from a post situated in his property without obtaining his consent. The connection was dismantled by the Overseer concerned, when it was revealed that the petitioner had mislead the Board by misrepresenting that the post is situated in his property, at the time when the estimate was prepared. It is mentioned that, when the complaint submitted by the petitioner before the Additional District Magistrate was forwarded to the Assistant Executive Engineer for taking necessary action, the petitioner was requested to fulfill the requisite formalities for referring the matter for adjudication under S. 16(1) of the Indian Telegraph Act. But during inspection the 4th respondent became convinced that the connection was given not in conformity with the Board Order, to the extent that no separate service connection could have been provided to the upstairs portion because there was no separate entrance from outside and there was no separate wiring. Hence the connection in question was not given legally and it cannot be restored, is the contention. It is evident that Ext. P5 notice impugned in W.P. (C). No. 25108/2013 was also issued for the very same reason, with respect to the connection provided in the 1st floor of the building of the petitioner therein.

5. One of the issues mooted for decision is regarding sustainability of the dismantling of the connection given to the petitioner in W.P. (C). No. 25108/13, alleging non-obtainment of consent from the 5th respondent. In this respect the stand taken by the 4th respondent is totally misconceived. It is not disputed that there existed a service wire drawn from the very same post standing in the corner of the property of the 5th respondent, since the year 1995 onwards. If that be so, drawing of one more service wire to the same building for providing connection to the 1st floor portion cannot be objected as causing any prejudice

or inconvenience to the 5th respondent. More over there was no resistance or obstruction raised from the side of the 5th respondent against drawing of the service wire at the time when the connection was provided. For exercising power vested under S. 10 of the Indian Telegraph Act there is no necessity to obtain prior consent from any land owner. Invocation of power vested on the District Magistrate under S. 16(1) will become necessary only if exercise of power vested under S. 10 is resisted or obstructed. Once the line is drawn there is no scope for invoking S. 16(1). If anybody in whose property the Telegraph line is placed has got any inconvenience or prejudice with respect to beneficial enjoyment of the said property, the course left open is to invoke provisions of S. 17 of the Indian Telegraph Act, seeking shifting of such line or post. Therefore the act of dismantling of the connection on the ground that there was failure to obtain consent from the 5th respondent, cannot be sustained.

6. Next question mooted is common in both the cases and has got legal importance. Issue is regarding eligibility forgetting separate connection for different floors in any residential building, for domestic usage, when separate building numbers are assigned for each floors. Learned Standing Counsel for the Board had drawn attention of this court to Regulation 14(9)(a) of the K.S.E.B. Terms and Conditions of Supply 2005, which reads as follows:-

Service connection to the building constructed for bona fide domestic purpose shall be given based on the approved plan/permit issued by local body (Corporation/Municipality/Panchayat, as the case may be). Connection can also be given for construction purpose based on approved plan/permit. For all other cases, the building number allotted by the local body must be insisted. Independent service connections shall also be given to the different floors of the building for domestic purpose if so desire by the consumer, only if separate entrance from outside and separate wiring is provided for each floor.

(emphasis supplied)

7. Learned Standing Counsel had also placed a copy of the Board Order for perusal. It is evident that clarifications and guidelines were issued through the Board order, based on recommendations of the Distribution Advisory Committee. Clause 1.1 therein reads as follows:-

Multiple service connections may be permitted in a premise, even if separate building number is not allotted by the local body subject to the following conditions:

- i) The building should have a building number allotted by the local body.
- ii) A service connection given without separate building number will be disconnected if Secretary of the local body requests in writing to disconnect the service connection on the grounds that building was constructed violating building rules. Consumer shall give an undertaking in non-judicial stamp paper worth Rs. 100/- to this effect.

iii) There should not be more than one service connection allotted for the same purpose and in the same tariff in the same premise. However, separate service connections in domestic tariff will be given to independent dwelling units in buildings for domestic purpose if so desired by the consumer, if separate entrance from outside and separate wiring is provided for each dwelling unit.

(emphasis supplied)

8. Rival contentions were advanced on the interpretation of Regulation 14(9)(a) and Clause 1:1 of the Board Order. Contravercy is on the question as to whether separate connections can be provided in each floor of a residential building, which is not having separate entrance from outside and not provided with separate wiring. Learned standing counsel contended that Regulation 14(9)(a) can be interpreted only as one enabling the Board to provide separate connections without insisting for separate building numbers, provided separate entrance from outside and separate wiring are available. Per contra, counsel for the petitioner contended that the said Regulation will apply only in cases where there is no separate building numbers and the stipulations need not be insisted in cases where separate numbers are provided.

9. On a close reading of Regulation 14(9)(a), it only enables the Board to provide domestic connections on the basis of approved plans or building permits, in distinction to all other connections for which building number should be insisted. Therefore it is evident that, domestic connection can be provided even without numbering of the residential building, if approved plan or permit is produced. The Regulation further provides that, separate connections to each floor for domestic purpose can also be given if separate entrance from outside and separate wiring are provided. It cannot be interpreted that, on assignment of separate building number the consumer is entitled for separate connection to each floor, without there being a separate entrance from outside and without there being separate wiring provided for each floors. In this regard the objective of the legislation has to be looked into. Domestic connections are provided at a reduced tariff when compared to connections for other purposes. There is also variation in the rate applicable within the domestic tariff itself, depending on the quantum of consumption. If it is held that a consumer is entitled to get separate connection for each floor of a residential building based on separate building number assigned from the local authority, there will be attempt to segregate domestic connections by obtaining separate building number for each floor, in order to get reduction in the rate of electricity charges. The stipulations for separate entrance from outside and for separate wiring, are intended only to ensure that separate connections are provided only for separate dwelling units and it is not misused within one dwelling unit itself.

10. Through the Board Order guidelines are issued for providing multiple connections within a building, in cases where there are no separate building numbers. It insists that there should not be more than one service connection allotted for the same purpose in the same premise. But an exemption is provided

under Clause 1.1(iii) enabling separate service connection to independent dwelling units within a building for domestic purpose, if separate entrance from outside and separate wiring is provided. There also the emphasis is on the aspect that, separate connections should be for usage by independent dwelling units. Hence the authorities are justified in insisting upon a condition that, independent dwelling units within a building will be provided with separate connections only if there is a separate entrance from outside and only if there is separate wiring provided.

11. Learned counsel for the petitioner had produced for my perusal another Board Order, B.O. No. 1538/2010, dated 15.6.2010. There the clarification is only with respect to a doubt as to whether more than one service connection can be permitted in a building having no separate building numbers, for different purposes, under the same tariff. The question is answered on the positive, subject to satisfying all the conditions contained in B.O. No. 510/2010. Hence it is clear that the subsequent Board order has not diluted the rigor of the condition stipulating separate entrance from outside and separate wiring. Based on the findings as above, challenge in W.P. (C) No. 25108/2013 against dismantling of the connections as well as the challenge against Ext. P5 notice in W.P. (C) No. 26660/2013, fails. Hence both these Writ Petitions are liable to dismissed. However, this Court is of the opinion that the petitioners can be given a chance to comply with the required conditions, within a short time. Therefore the Writ Petitions are disposed of with the following directions;

(i) If the petitioner in W.P. (C) No. 25108/2013 satisfies the conditions with respect to providing separate entrance from outside and separate wiring for each floor and makes a request for re-connection of supply, within a period of two months from the date of receipt of a copy of this judgment, the electric connection shall be restored without insisting for obtaining any consent from 5th respondent for drawing of the service wire from the post situated in his property. If any such request for re-connection is received within the time stipulated, the 4th respondent shall be disposed of the same without any further delay.

(ii) The respondents in W.P. (C) No. 26660/2013 are restrained from disconnecting or dismantling supply provided to the petitioner therein on the basis of Ext. P5 notice, for a period of 2 months from the date of receipt of a copy of this judgment, if the petitioner complies with the stipulations contained in the said notice. Needless to observe that, if the petitioner fails to comply with the conditions within the time stipulated, then further actions pursuant to Ext. P5 should be perused.

In both these cases the respondent will be at liberty to ensure that the separate connections are requested for separate dwelling units.