(1982) 03 KL CK 0010

In the High Court Of Kerala

Case No : W.A. No. 536 of 1981

C. Ravindran Pillai — APPELLANT

Vs

K. S. E. Board and 2 Others — RESPONDENT

Date of Decision : 11-03-1982

Acts Referred:

Electricity (Supply) Act, 1948 — Section 26, 49, 5, 79, 79(j)
Electricity Act, 1910 — Section 10, 11, 21, 22, 22A

Citation : (1984) KLJ 192

Hon'ble Judges : P. Subramonian Poti, Acting C.J.;P. Janaki Amma, J

Bench : Division Bench

Advocate : N. Venkatarama Iyer, for the Appellant; C. K. Sivasankara Panicker, K. S. Radhakrishnan and K. V. Gopinathan Nair, for the Respondent

Final Decision : Dismissed

Judgement

Subramonian Poti, Ag. CJ.

A question of some importance arises in this Writ Appeal. The powers and obligations of a licensee under the Indian Electricity Act, 1910 which term is defined in the said Act as "any person licensed to supply energy" are defined by the provisions of the said Act. Section 3 to 11 of the Act in Part II deal with grant of licences, on application, revocation or amendment of licences, the provisions operating when licence is revoked, purchase of undertakings and matters relating there to and annual accounts of the licensee. A State Electricity Board constituted u/s 5 of the Electricity (Supply) Act 1948 is to be deemed a licensee for the purpose of the Indian Electricity Act 1910 and subject to the provisions of the Electricity (Supply) Act such Boards shall have, in respect of the whole of the State, all the powers and obligations of such licensee". The Electricity (Supply) Act is deemed to be the licence of the concerned Board for the purpose of the Indian Electricity Act as indicated by Section 26 of the Electricity (Supply) Act, 1948, which for the sake of convenience is extracted here:

26. Board to have powers and obligations of licensee under Act IX of 1910,--

Subject to the provisions of this Act, the Board shall, in respect of the whole State, have all the powers and obligations of a licensee under the Indian Electricity Act, 1910 (6 of 1910), and this Act shall be deemed to be the licence of the Board for the purposes of that Act:

Provided that nothing in sections 3 to 11, sub-sections (2) and (3) of sections 21 and section 22, sub-section (2) of section 22A and section 23 and 27 of that Act or in Clause I to V, Clause VII and Clauses IX to XH of the schedule to the Act relating to the duties and obligations of a licensee shall apply to the Board:

Provided further that the provisions of Clause VI of the Schedule to that Act shall apply to the Board in respect of that area only where distribution mains have been laid by the Board and the supply of energy through any of them has commenced.

We have already noticed that sections 3 to 11 in Part II of the Indian Electricity Act 1910 concern licence. But by reason of the first proviso to section 26 of the Electricity (Supply) Act, these sections as well as some other provisions of the Indian Electricity Act relating to duties and obligations of a licensee are made inapplicable to the Board. Evidently therefore the provisions concerning application for grant of licence, revocation and amendment of ''licence, purchase of the undertaking are all inapplicable to the Board. For our purpose it may be relevant also to notice that sub-sections (2) and (3) of section 21 and section 22 relating to the duties and obligations of the licensee are also inapplicable to the Board. But the provisions in clause VI of the Schedule to the Indian Electricity Act does apply to the Board in respect of such area where distributing mains have been laid by the Board and supply of energy through those mains or any of them has commenced.

2. Section 21 sub-sections (2) and (3) deal with restrictions on licensee''s power of controlling or interfering with use of the energy. Section 22 which deals with obligation on licensee to supply energy reads thus;

22. Obligation on licensee to supply energy.--

Where energy is supplied by a licensee, every person within the area of supply shall, except in so far as is otherwise provided by the terms and conditions of the license, be entitled on application, to a supply on the same terms as those on which any other person in the same area is entitled in similar circumstances to a corresponding supply:

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of energy for any premises having a separate supply unless he has agreed with the licensee to pay to him such minimum annual sum as will give him a reasonable return on the capital expenditure, and will cover other standing charges incurred by him in order to meet the possible maximum, demand for those premises, the sum payable to be determined in case of difference or dispute by arbitration.

This obligation of a licensee under the Indian Electricity Act 1910 does not arise as an obligation of the State Electricity Board because the obligation u/s 22 is excluded. Now we come to clause VI of the Schedule of the Indian Electricity Act. It may be necessary to extract clause VI here:

VI. Requisition for supply to owners or occupiers in vicinity.-- Where, after distributing mains have been laid down under the provisions of Clause IV or clause V and the supply of energy through those mains or any of them has commenced, a requisition is made by the owner or occupier of any premises situate within the area of supply requiring the licensee to supply energy for such premises, the licensee shall, within one month from the making of the requisition or within such longer period as the Electrical Inspector may allow, supply, and save in so far as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his control, continue to supply energy in accordance with the requisition:

Provided, first, that the licensee shall not be found to comply with any such requisition unless and until the person making it--

(a) Within fourteen days after the service on him by the licensee of a notice in writing in this behalf, tenders to the licensee a written contract, in a form approved by the State Government duly executed and with sufficient security, binding himself to take a supply of energy for not less than two years to such amount as will assure to the licensee at the current rates charged by him, an annual revenue not exceeding fifteen per cent of the cost of the service line required to comply with the requisition;

and

(b) if required by the licensee so to do, pays to the licensee the cost of so much of any service-line as may be laid down or placed for the purposes of the supply upon the property in respect of which the requisition is made, and of so much of any service-line as it may be necessary for the said purposes to lay down or place beyond one hundred feet from the licensee''s distributing main although not on that property;

Provided, secondly, that the licensee shall be entitled to discontinue such supply--

(a) if the owner or occupier of the property to which the supply is made has already given security, or if any security given by him has become invalid or insufficient and such owner or occupier fails to furnish security or to make up the original security to a sufficient amount, as the case may be within seven days, after the service upon him of notice from the licensee requiring him so to do or

(b) if the owner or occupier of the property to which the supply is made adopts any appliance, or uses the energy supplied to him by the licensee for any purposes, or deals with it in any manner, so as unduly or improperly to interfere with the efficient supply of energy to any other person by the licensee, or

(c) if the electric wires, fittings, works and apparatus in such property are not in good order and condition, and are consequently likely to affect injuriously the use of energy by the licensee, or by other persons, or

(d) if the owner or occupier makes any alterations of, or additions to, any electric wires, fittings, works or apparatus within such property as aforesaid and does not notify the same to the licensee before the same are connected to the source of supply, with a view to their being examined and tested; but the licensee shall reconnect the supply with all reasonable speed on the cessation of the act or default or both, as the case may be, which entitled him to discontinue it:

Provided, thirdly, that the maximum rate per unit of time at which the owner or occupier shall be entitled to be supplied with energy shall not exceed what is necessary for the maximum consumption on his premises, and, where the owner or occupier has required a licensee to supply him at a specified maximum rate, he shall not be entitled to alter that maximum, except after one month''s notice in writing to the licensee, and the licensee may recover from the owner or occupier any expenses incurred by him by reason of such alteration in respect of the service-lines by which energy is supplied to the property beyond one hundred feet from the licensee''s distributing main, or in respect of any fittings or apparatus of the licensee upon that property; and Provided, fourthly, that, if any requisition is made for a supply of energy and the licensee can prove, to the satisfaction of an Electrical Inspector,--

(a) that the nearest distributing main is already loaded up to its full current carrying capacity, or

(b) that, in case of a larger amount of current being transmitted by it, the loss of pressure will seriously affect the efficiency of the supply to other consumers in the vicinity the licensee may refuse to accede to the requisition for such reasonable period, not exceeding six months, as such Inspector may think sufficient for the purpose of amending the distributing main or laying down or placing a further distributing main.

(2) Any service-line laid for the purpose of supply in pursuance of a requisition under sub-clause (1) shall, notwithstanding that a portion of it may have been paid for by the person making the requisition, be maintained by the licensee who shall also have the right to use it for the supply of energy to any other person.

(3) Where any difference or dispute arises as to the amount of energy to be taken or guaranteed as afore said, or as to the cost of any service-line or as to the sufficiency of the security offered by any owner or occupier, or as to the position of the meter board or as to the improper use of energy, or as to any alleged defect in any wires, fittings, works or apparatus, or as to the amount of expenses incurred, under the third proviso to sub-clause (1), the matter shall be referred to an Electrical Inspector and decided by him.

(4) Every requisition under this clause shall be in a form to be prescribed by

rules under the Indian Electricity Act, 1910 and copies of the form shall be kept At the office of the licensee and supplied free of charge to any applicant,

Clause IV of the Schedule-obliges a licensee within a period of three years after the commencement of the licence to execute to the satisfaction of the State Government all such works as may be specified in the licence in that behalf or if not so specified as the State Government may by order in writing issued within 6 months of the date of the commencement of the licence, direct. Clause V deals with provisions concerning laying down of further distributing mains on a requisition made by two or more owners or occupiers of premises. We have necessarily to advert to Clause VI because second proviso to section 26 of the Electricity (Supply) Act makes Clause VI specifically applicable but only in respect of that area where distributing mains have been laid by the Board and supply of energy through any of them has commenced. In respect of any such area the Board is obliged to comply with the requisition made by the owner or occupier of any premises situate within the area of supply. That has to be within one month from the making of the requisition or within such longer period as the Electrical Inspector may allow, unless it be that the licensee is prevented from doing so by circumstances beyond control like cyclones or floods. It is the provisos that are really relevant for our case.

3. The petitioner in the Original Petition who is the appellant before us is the owner of the Chavarickal Saw Mills. He was operating the- Mill- near Karunagapally Market with the assistance of a 20 H.P. electric motor. The site of the mill was acquired by Government and possession of land was taken over on 8-5-1980 for constructing a Railway siding. Thereupon the appellant had necessarily to shift his mill. He shifted the mill to his residential plot nearly about a mile away from the original site. It is not in dispute that the new site to which the mill has been shifted is within the area where distributing mains have already been laid and supply of energy has commenced. The licensee is, of course the Kerala State Electricity Board.

4. There are two transformers near about the area of the new site and these are Kannetti and Kollaka transformers having a load capacity of 100HP and 50HP respectively. The petitioner''s case is that two of the consumers Nos. 1070 and 1071 who have been connected to the Kollaka transformer till about 18 months back are no longer being fed from the Kollaka transformer on account of the line having been cut to accommodate the Kannetti Bridge on the National Highway NH.47. It is said that they were later connected to the Kannetti transformer. The Kollaka Transformer has, it is said, therefore spare capacity of at least 30HP sufficient to accommodate the petitioner as well as another applicant. We are not resting our decision on this fact and therefore we are merely mentioning these facts here.

5. Ext. P2 application was made by the petitioner for supply of electric energy for his 20HP Motor. This was made on 4-8-1980. After nearly one year Ext. P3 reply was received by the appellant requiring him to execute within two months

minimum guarantee agreement with the Kerala State Electricity Board assuring that for a period of 10 years 10 percent of the capitalised "cost. of Rs. 21,670/- estimated for the work would be paid. It is this insistence on minimum guarantee that has taken the petitioner appellant to the Court. The petitioner''s case is that apart from the fact that the Kollaka transformer would take in the increased load caused by service connection being given to the petitioner even if expenses are incurred in stepping up the transformer or in installing an additional transformer'' he should not be asked to pay the cost there of. In the counter-affidavit it has been explained that the Kollaka transformer has no surplus left to serve the petitioner, that no steps were taken to step-up the energy production but an additional transformer was installed. The capitalised cost is mostly the cost of such additional transformer. The petitioner has no case that he would not pay any other additional cost. To the extent the capital cost indicated includes the cost of the additional transformer the petitioner objects to the insistence of minimum guarantee. Therefore the question that had to be decided was whether the Board was right in insisting upon the payment for 10 years by way of minimum guarantee the capitalised cost of an additional transformer installed to boost the production of electrical energy in a distributing main already established pursuant to which service also had commenced long ago. The definite stand taken by the petitioners is that this would be contrary to the Electricity (supply) Act and the Indian Electricity Act and particularly clause VI of the Schedule to the Indian Electricity Act and that is the question that calls for examination by us. The learned Single Judge after referring to the various provisions relevant to the case seems to consider that the only contention raised is that there cannot be any discrimination between one consumer and another consumer and that since it is shown that in the case of some such minimum guarantee has not been insisted upon it should not be insisted upon in the case of the petitioner too. That of course was also a contention raised. That has been answered by the learned Single Judge with reference to Section 22 of the Indian Electricity Act which prohibits such differential treatment. Since Section 26 of the Electricity (Supply) Act excludes Section 22 the learned Single Judge seems to think that no other question would arise. In fact before us the case is not rested on section 22 or any question of discriminatory treatment. The main point urged does not appear to have been dealt with by the learned Single Judge and that is the question which we have already posed.

6. Adverting again to section 26 of the Electricity (Supply) Act the obligation of the Board as a deemed licensee obliges the Board to be governed by the provisions of Clause VI of the Schedule to the Indian Electricity Act, a provision which has already been adverted to in detail. That clause, it is said, obliges the consumer to execute a written contract binding himself to take a supply of energy with a minimum guarantee in regard to the cost of service line. Clause VI, it is said, does not enable cost of the equipment such as transformers to be passed on to the consumer. That of course, is so. We find nothing in Clause VI which enables the State Electricity Board to pass on to a consumer the cost of an

additional transformer installed. A reference to Clause VI which has already been made, would amply evidence this.

7. It is said in answer to this that section 79 of the Electricity (Supply)

Act, 1948 confers power to make Regulations and one of the matters concerning which Regulation could be made is that in clause (j), namely, principles governing the supply of electricity by the Board to persons other than licensees u/s 49. Before we advert to the Regulation so framed it may be necessary to advert to section 49 itself. That section reads thus:

49. Provision for the sale of electricity by the Board to persons other than licensees.-- (1) Subject to the provisions of this Act and of regulations, if any, made in this behalf, the Board may supply electricity to any person not being a licensee upon such terms and conditions as the Board thinks fit and may for the purposes of such supply frame uniform tariffs.

(2) In fixing the uniform tariffs, the Board shall have regard to all or any of the following factors:

(a) the nature of supply and the purposes for which it is required:

(b) the co-ordinated development of supply and distribution of electricity within the State in the most efficient and economical manner, with particular reference to such development in areas not for the time being served or adequately served by'' the licensee;

(c) the simplification and standardisation of methods and rates of charge for such supplies;

(d) the extension and cheapening of supplies of electricity to separately developed areas.

(3) Nothing in the foregoing provisions of this section shall derogate from the power of the Board if it considers it necessary or expedient to fix different tariffs for the supply of electricity to any person not being a licensee, having regard to the geographical position of any area, the nature of the supply and purpose for which supply is required and any other relevant factors.

(4) In fixing the tariff and terms and conditions for the supply of electricity, the Board shall not show undue preference to any person.

Evidently the section is intended mainly for framing uniform tariffs. In exercise of the power u/s 79(j) of the Electricity (Supply) Act the Kerala State Electricity Board has framed Regulations dated 28-10-1966 and amended the same by order dated 24-11-1969. That has been subsequently re-issued by order dated 16-8-1972 to come into effect from 1-10-1972. Regulation 3 as well as Regulation 16 may have to be referred to in this context and therefore we extract the said Regulations here.

3. Line Extension and Minimum Guarantee Agreement.

If the application is from an area where service can be effected only by extending H.T. Lines, installation of transformer and or L.T. distribution lines, then an estimate for the work will be prepared and the prospective consumer (s) asked whether they are willing to guarantee a minimum revenue return of 10% of the Capitalised Cost of the work for 3 years. For isolated consumers where the load growth is merge the Minimum Guarantee Period will be 10 years. If the beneficiaries are willing to execute the Minimum Guarantee Agreement, the administrative sanction to the estimate for work will be issued and the parties asked to execute the Minimum Guarantee Agreement in the form No. 7 annexed, within 3 months. If the agreement is executed within this time, technical sanction will be issued and work will be taken up for execution according to priority. The Minimum Guarantee consumers can register their services along with the Minimum Guarantee Agreement by paying their security deposists even though their internal installations may not have been completed. For more details on Minimum Guarantee Agreement see para 16. After completion of the extension the consumer will be intimated of the power availability and to apply for service connection within 3 months.

16. Unremunerative Works & Minimum Guarantee Agreement.

(a) Whenever new works are to be carried out to effect supply to prospective consumers, such works will be taken up only if they will fetch the required minimum return. At present the minimum return fixed is 10% of the capitalised cost of the work for three years. If the work is for isolated consumers and there is no likelihood of the work becoming self remunerative after three years, the period of minimum guarantee agreement will foe 10 years. Minimum Guarantee Agreement can be executed by a single consumer or by a number of consumers. Panchayats and Local Bodies can also execute minimum guarantee agreements for works for lighting their public roads and public places if the expenditure is within the limits of their funds as certified by the competent authority (District Panchayat Officer), The Executive Authority of the Local Body shall execute such agreements along with a valid resolution to that effect and accepting the rates and conditions of the Board and passed by the Local Body at its duly constituted meeting.

(b) The intention of minimum Guarantee is only to ensure the Board that the required minimum revenue return is forth coming. Hence the current charges realised from other non-guarantor consumers, who might subsequently be connected up to the minimum guarantee lines will also be considered in determining the short fall fare venue- to be realised from the guarantors. The procedure in billing the minimum guarantors will be as follows:

(i) Initially the guarantors will be served with monthly invoices for the amount guaranteed by them or the actual current charges, whichever being higher, plus the other usual charges.

(ii) Whenever a non-guarantor consumer is connected to the minimum guarantee lines, his meter minimum charges will be reduced from the guaranteed amount and revised minimum guarantee amount for each guarantor will be arrived at and invoices served accordingly. If the actual current charges are more than the meter minimum, the position may be reviewed at the end of the year.

The Kerala State Electricity Board has been relying mainly on Regulation 3 in support of its stand. A reading of the provisions already adverted to must necessarily furnish the background for understanding Regulations 3 and 16, as, without such background, it may not be easy to understand the rather involved language of Regulations 3 and 16. We say ''involved'', because the very same idea could have been and should have been conveyed ID a simpler form giving room for no ambiguity. The stand taken up by the Board on the basis of Regulation 3 is that in every case where an additional transformer is installed the Board could ask for a minimum guarantee of 10% of its capital cost. On the other hand, the stand taken by the appellant before us is that the clause applies only where extension of H.T. lines is called for, or installation of L.T. distribution lines is called for or installation of transformer is called for. Read in the context of Regulation 16, it would, according to appellant''s counsel, show that the object of a minimum guarantee is to compensate for unremunerative work. It will have no application to a case where the maximum possible number of consumers who could be accommodated are available to be served. It may not then be said that the work is unremunerative. In other words if in an area the moment more quantum of energy becomes available there are enough people waiting to take it, it would not be an unremunerative work at all and therefore there is no question of a "guarantee". Such guarantee in regard to a transformer arises only when a new transformer is installed and there are not sufficient number or people who could be served by it. This is the question which we have to consider, Reading Regulations 3 and 16 in the background of our earlier discussion, we do not think that there is any justification in seeking payment of the cost of an additional transformer by insisting on a minimum guarantee. The reference in Regulation 3 to the installation of a transformer has to be understood as an installation of a new transformer (not an additional one to meet higher demand) which at the time of installation may not prove to be remuenrative enough for want of sufficient number of consumers.

Hence we hold that the appeal must succeed. The petitioner is entitled to be serviced by the Kerala State Electricity Board by connection being given to his mill without insisting upon a minimum guarantee in respect of the cost of the additional transformer installed at Kollaka. The Kerala State Electricity Board is directed to take steps to give energy to the mill of the petitioner on his executing an agreement without the provision for minimum guarantee in regard to the cost of the additional transformer. This shall be done expeditiously and at any rate later than 4 months from today. No costs.