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(2000) 10 MAD CK 0033

In the Madras High Court

Case No : Writ Petition No. 14715 of 1996 and W.M.P. No. 20157 of 1996

Chennimalai Gounder — APPELLANT

Vs

Govt. of Tamil Nadu and Others — RESPONDENT

Date of Decision : 17-10-2000

Acts Referred:
Electricity Act, 1910 — Section 12(2)

Citation : (2000) 10 MAD CK 0033

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : R.M. Krishna Raju, for the Appellant; N. Muthusamy, for T.N.E.B. and S. Gopinathan, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—Aggrieved by the Order of the fourth respondent-Assistant Engineer (O and M), Tamil Nadu Electricity Board,

Jedarpatayam, imposing certain conditions for grant of power connection for his agricultural pump-set, the petitioner has filed the above writ

petition to quash the same and for direction to the respondents to give Service Connection to the petitioner''s pump-set in his well in Survey No.

287/6B, in E, Nalla Goundanpalayam village, Paramathi Velur Taluk.

2. According to the petitioner, the Tamil Nadu Electricity Board, under Revised Self Financing Scheme, promised and assured to give special

priority to the agricultural applicants, for energisation of pump-sets, who come forward to pay Rs. 10,000/- service connection and also Rs. 250/-

per H.P. per annum, towards electricity consumption charges. As per the said scheme, he had paid a sum of Rs. 500/- on 17-4-1995 and

expressed his willingness to avail service connection through the Revised Self

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Financing Scheme. Further, as directed by the Executive Engineer.

Paramathi-Velur, he had also paid another sum of Rs. 9,500/- by cash on 30-8-1996. According to him, he had also purchased 7.5 H.P. mono-

block pump-set and other accessories. The respondents are bound to give service connection and they cannot go behind the terms and conditions

of the said Scheme. While so, the Assistant Engineer at Jedarpalayam, by his notice dated 19-9-1996, called upon him to get the consent of the

owner of Survey No. 287/6C, to take the electrical wires from the post in Survey No. 287/6C, to give service connection to his well in Survey

No. 287/6B stating that the said owner has objected to the taking of the electrical wires from the electrical post in Survery No. 287/ 6C. Inasmuch

as it is the responsibility and legal obligation of the respondents to provide him service connection, particularly when they have collected required

amount under the scheme for giving service connection, they are duly bound to provide service connection. In such circumstances, the petitioner

has filed the above writ petition before this Court.

3. Third respondent has filed a counter affidavit disputing various averments made by the petitioner.

4. There is no dispute writh regard to payment of Rs. 500/- on 17-4-1995 and Rs. 9,500/- on 30-8-1996 by the petitioner, expressing his

willingness and readiness to avail service connection. It is further stated that at the time of his readiness, the petitioner has executed an agreement,

in which he has argued to get necessary way leave for taking electrical wire to his well from the owner of the nearby land in case if he raises

objection. He has also agreed that if he is unable to get consent from the objecting party, he will be ready to avail supply through a deviataed route

after paying the excess cost or the deviation made from the original route. Since one Chinnappa Gounder having a land in the nearby well objected

in his letter to the third and fourth respondents, they were but tn a position to comply with the request. It is also stated that as per the agreement,

the petitioner has to be bear the expenses for rerouting the service connection line,

5. In the light of the information furnished, it is clear that as per the terms of the Revised Self Financing Scheme, the petitioner, after the required

amount of Rs. 10,000/- (Rs. 500/- plus Rs. 9,500/-) executed an agreement. It

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is also seen that pursuant to the deposit made, he had also

purchased 7 H.P. mono-block pump-set and also the required capacitor etc. It is the case of the respondents that inasmuch as the neighbouring

land owner, namely, one Chinnappa Gounder has raised an objection for taking power line through his land, they were not in a position to give

service connection to the petitioner. In para 7 of the counter affidavit, it is stated thus :--

7. I respectfully, submit that TNEB is ready to effect service connection to the petitioner, subject to the following conditions :--

i. Way leave should be arranged by the petitioner at his own risk as per the Terms and Conditions of supply of Electricity and as agreed by the

petitioner.

ii. If the petitioner is unable to get way leave from the objecting party, he should be ready to bear the entire estimated amount, if the revised

estimate amount exceeds above Rs. 50,000/- as per the conditions of Revised Self Financing Scheme.

If the petitioner agrees for any one of the above two conditions, the pumpset service connection can be given to his well situated in S. F. No.

286/6B at E, Nallagoundam-palayam village under the Revised Self Financing Scheme.

6. Learned counsel for the petitioner, by relying on Section 12 of the Indian Electricity Act, 1910 as well as the object of the Revised Self

Financing Scheme, has stated that it is the duty of the respondents to provide power connection to his pump set. In order to appreciate the said

contention, it is useful to refer Section 12 of the Indian Electricity Act, 1910 which runs as follows :--

Section 12. Provision as to the opening and breaking up of streets, railways and tramways -- (1) Any licensee may from time to time but subject

always to the terms and conditions of his licence, within the area of supply, or, when permitting by the terms of his licence to lay down or place

electric supply line without the area of supply, without that area --

(a) open and break up the soil and payment of any street, railway or tramway;

(b) open and break up any sewer, drain or tunnel In or under any street, railway or treamway;

(c) Lay down and place electric supply-line and other works;

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(d) repair, alter or remove the same;

(e) do all other acts necessary for the due supply of energy.

(2) Nothing contained in Sub-section (1) shall be deemed to authorise or empower a licensee, without the consent of the local authority or of the

owner or occupier concerned, as the case may be, to lay down or place any electric supply line, or other work in, through or against any building,

or on over or under any land not dedicated to public use whereon, whenever or whereunder any electric supply line or work has not already been

lawfully laid down or placed by such licensee :

Provided that any support of an overhead line or any stay or strut required for the sole purpose of recuring in position any support of an overhead

time may be fixed on any building or land, or having been so fixed, may be alterted, notwithstanding the objection of owner or occupier of such

building or land, if the District Magistrate or, in a Presidency town, the Commissioner of Police by order in writing so directs :

Provided also, that, if at any time the owner or occupier of any building or land on which any such support, stay or strut has been fixed shows,

sufficient cause, the District Magistrate or in Presidency town, the Commissioner of Police may by order in writing direct any such support, stay or

strut to be removed or altered.

(3) xx xx xx xx

7. It is true that as per Sub-section (2), the owner or occupier of the land in question has to give consent to do all necessary acts for the supply of

energy. In view of first Proviso to the said sub-section, I am of the view that there cannot be any impediment in complying with the request of the

petitioner. It is clear that even if the owner or the occupier objects or refuses to give consent, notwithstanding the said objection, it is open to the

District Magistrate or the Commissioner of Police as the case may be to issue appropriate orders to the concerned Authorities. In the light of the

said statutory provision, I am unable to accept the stand taken by the respondents, particularly in para 7 of their counter affidavit. In this regard,

learned counsel for the petitioner has also brought to my notice a decision of S.S. Subramani, J. in the case of Dharmsivam v. T.N.E.B. Erode,

(2000) 1 MLW 421, wherein the learned Judge had an occasion to consider the very same provision, namely, Section 12 of the Indian Electricity

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Act. The conclusion arrived at by the learned Judge with regard to the power of the concerned Authorities u/s 12 is extracted hereunder :--

Para 6. After hearing the counsel on both sidies, I do not find any merit in the Second Appeal. u/s 12 of the Electricity Act, the Electricity Board

has every right to lay down or place electric supply lines without the area of supply, without tht area (a) open and break up the soil and payment of

any street; railway or tramway, Electricity supply line has been defined u/s 2(1). On going by the said provisions, the Electricity Board is entitled to

place the transformer in a public street, for which no consent is required from a neighbouring property owner. It is not the case of the plaintiffs that

the line is drawn along with private property. Their only grievance is that the transformer is going to be placed though in a public place, but the

same is in front of their property, the plaintiffs can have any cause of action against the Board. Even in respect of private land, the decision of this

Court as well as other High Courts are unanimous, where it is held consent need not be obtained. This Court in Nithyanandam, M. v. The

Chairman, Tamil Nadu Electricity Board, Madras 2 1994 WLR 445 has followed the decision of Kerala High Court reported in Bharat Plywood

and Timber Products Private Ltd. Vs. Kerala State Electricity Board Trivandrum and Others, . In para 17 of the Judgment, AR. Lakshmanan, J.

extracted the Full Bench decision of the Kerala High Court and followed it, which reads thus :--

One other subject which came up for discussion was the question whether a notice should be issued by the public officer, licensee or other person

chosen by the Slate Government u/s 51 of the Electricity Act for the conferment of powers under the Telegraph Act to the owner or occupier or

other person in the control or management of the property over which the electric supply line is proposed to be placed intimating the intention of

the authority, to place supply lines over the property. Issac, J. has held in his judgment in O.P. No. 1454 of 1967 (Kerala) that a notice should be

given in order to satisfy the requirements of natural justice and also because unless a notice is given the owner of the land will not be in a position to

know under what authority action is being taken."" There may be yet another reason in favour of the contention that notice should be given normally,

that unless the owner or occupier is informed of the exact nature of the proposal for laying the electric supply line he will not be in a position to

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decide whether the exercise of the power should be resisted or obstructed. Even so, we do not think that in the light of the provision in Section

16(1) of the Telegraph Act under which the District Magistrate has been given the power to decide whether an order should be passed that the

authority should be permitted to exercise the the power, a prior notice to the owner or occupier is necessary. The whole procedure under the

scheme of the provisions in Part III of the Telegraph Act seems to be different. As the provisions stand, we do not think that It is obligatory on the

part of the competent authority to Issue a prior notice before exercising the power u/s 10 of the. Telegraph Act. Before passing an order u/s 16(1)

the District Magistrate has necessarily to issue notice to all persons interested and given them an opportunity to state their objections, if any.

Without giving such an opportunity he will not have any material, at any rate, adequate material to decide whether he should pass an order that the

authority shall be permitted.

No doubt, it will be proper and certainly desirable that the owner or occupier should be informed before acts are done on his property. It is

conceivable that, when he is so informed, the exact location and the alignment of the line can be settled without resistance or obstruction by actual

understanding. However, that be, as we understand the provisions in the Telegraph Act, Part III, we do not consider it necessary that there should

be prior notice.

No doubt, the said decision relates to installation of a transformer In a public place in front of the property of the plaintiffs therein. However, in the

light of the language used in the first Proviso to Sub-section (2) of Section 12, I am in agreement with the view expressed by the learned Judge and

I hold that the respondents are not justified in imposing conditions as mentioned in the impugned order. I have already stated that there is no

dispute regarding the remittance of the entire amount in terms of the Scheme and he had also purchased the required pump set and other

accesories. Apart from the above decision, it is also brought to my notice that electric post has already been installed in Survey No. 287/6C which

is adjacent to the land of the petitioner in Survey No. 287/6B. In such circumstances and in the light of the statutory provisions referred to above, it

is the duty and resposibility as well as the legal obligation of the respondents to

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provide service connection, particularly when they have collected

the entire amount of Rs. 10,000/- under the Revised Self Financing Scheme.

8. In the light of what is stated above, the impugned order of the fourth respondent IS quashed and the respondents are directed to give service

connection to the petitioner''s pump-set in his well in Survey No. 287/6B, in E. Nalla Gundanpalayam villager Paramathi Velur Taluk within a

period of eight weeks from the date of receipt of a copy of this Order. Writ Petition is allowed. No costs. Consequently, W.M.P. No. 20157 of

1996 is closed.

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