

(2011) 07 KL CK 0203
In the High Court Of Kerala
Case No : Writ Petition (C) No. 5568 of 2011

E. John Thomas

APPELLANT

Vs

Kerala State Electricity Board and Assistant Engineer,
Electrical Section

RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:

Electricity Act, 2003 — Section 181, 181(2), 50

Citation : (2011) 07 KL CK 0203

Hon'ble Judges : P.N.Ravindran, J

Bench : Single Bench

Advocate : Santhosh G. Prabhu, for the Appellant; P.P. Thajudeen, SC, K.S.E.B,
for the Respondent

Final Decision : Allowed

Judgement

P.N. Ravindran, J.—The Petitioner is the owner of a two storied commercial building. With a view to start a business in one room on the ground floor of the said building bearing door No. 40/8815(1) of Cochin Corporation, he applied for electricity connection by submitting Ext.P1 application. The Assistant Executive Engineer, Electrical Section, Central, Kerala State Electricity Board, Ernakulam, the officer having jurisdiction over the area, thereupon sent Ext.P3 letter dated 10.12.2010 informing the Petitioner that electricity connection can be given only after installation of a separate transformer and that he will have to meet the expenses for the transformer and associated works. Such a stand was taken relying on Sub-clause (5) of paragraph 5 of the Kerala State Electricity Board Terms and Conditions of Supply, 2005. The said letter was followed by Ext.P2 letter dated 22.12.2010 wherein the Petitioner was asked to intimate his willingness to meet the expenses for installing the transformer. The Petitioner thereupon submitted Ext.P4 representation dated 4.1.2011 wherein he inter alia contended that the stipulation that the consumer should meet the expenses for the transformer does not apply to him for the reason that the building to which

connection is sought is not a Multistoried (High rise) Building as his building has a height of only 7.25 meters. He also raised other contentions. This writ petition was thereafter filed on 21.2.2011 challenging Exts.P2 and P3 and seeking the following reliefs:

i) to call for the records leading to Exts.P2 and P3 and quash the same by issuing writ in the nature of certiorari.

ii) to issue a writ in the nature of mandamus directing the second Respondent to consider and pass orders on Ext.P4 within a time frame fixed by this Hon''ble Court.

iii) to issue a writ in the nature of mandamus directing the 2nd Respondent to take adequate and effective steps to accept the required charges for service connection as mentioned in Ext.P1 and to provide service connection to the premises bearing No. 40/8815(1) situated near Padma Junction M.G. Road, Ernakulam of the Petitioner within a time frame fixed by this Hon''ble Court.

iv) to declare that the Petitioner is entitled for service connection to his premises bearing No. 40/8815(1) situated near Padma Junction in M.G. Road, Ernakulam.

2. The main contention raised by the Petitioner is that as the height of the building to which connection is sought is only 7.25 meters, it is not a Multistoried (High rise) Building as defined in the Kerala Electricity Supply Code, 2005 and the Kerala State Electricity Board Terms and Conditions of Supply, 2005, and therefore, the Board cannot insist that the consumer should pay for a dedicated transformer and meet the expenses for installing the same.

3. The Kerala State Electricity Board has filed a counter affidavit wherein it is contended that though the load requirement of the Petitioner is only 5 KW, the total load of the building to which the connection is to be given is more than 50 KVA and therefore the Petitioner is bound to meet the expenses for a dedicated transformer. Relying on Ext.R2(a) Circular dated 17.10.2007 issued by the Kerala State Electricity Board, it is contended that even in cases of buildings having a height of less than 15 meters, the total load of individual consumer's may be clubbed together and a transformer of adequate capacity may be insisted, if the total load exceeds 50 KVA.

4. I heard Sri. Asok. M. Cherian, learned Counsel appearing for the Petitioner and Sri. Pulikool Abubacker, learned standing counsel appearing for the Kerala State Electricity Board. The fact that the height of the two storied building to which the Petitioner seeks electricity connection is only 7.25 meters is not in dispute. Likewise, the fact that load requirement of the Petitioner is only 5 KW is also not in dispute. However, on the ground that the total load requirement of all the consumers in the building to which connection is sought is more than 50 KVA, the Petitioner has been called upon to pay for a dedicated transformer even though the height of the building is less than 15 meters. It is relying on Ext.R2(a) Circular dated 17.10.2007 that such a demand is raised. Section 50 of

the Electricity Act, 2003 read with Section 181(2)(x) thereof empowers the Kerala State Electricity Regulatory Commission to specify an electricity supply code to provide inter alia for recovery of electricity charges and other matters. In exercise of the said power, the Kerala State Electricity Regulatory Commission has issued the Kerala Electricity Supply Code, 2005 (hereinafter referred to as "the Supply Code" for short). Clause 2 (bb) of the Supply Code defines the term "Multi-storeyed (High rise) Building" as a building exceeding 15 Mts. in height from the ground level. Clause 8(5) of the Supply Code, stipulates that for giving electrical connection to Multistoried (High rise) Buildings having a connected load below 50 KVA, the licensee shall provide service connection from the low tension line, subject to sub-clauses 1, 2, 3 and 4 therein. However, it is stipulated that for loads of 50 KVA and above, the connection shall be effected only after installation of a separate transformer of adequate capacity by the owner/occupier. The stipulations in the Kerala State Electricity Board Terms & Conditions of Supply, 2005 (hereinafter referred to as "the Conditions of Supply" for short) are similar. Therein, the term "Multi-storied (High rise) Buildings" is defined in Clause 1(ab) to mean a building exceeding 15 Mts. in height from the ground level; the same definition as in the Supply Code. Paragraph 5(5) of the Conditions of Supply is identical to paragraph 8(5) of the Supply Code framed by the Kerala State Electricity Regulatory Commission. Going by the definition of the term "Multi-storied (High rise) Building" occurring in the Supply Code as well as in the Conditions of Supply, the stipulation that the consumer shall provide a dedicated transformer cannot apply to the building to which the Petitioner seeks electricity connection for the reason that the height of the said building is only 7.25 meters. If that be so, the Board cannot insist that the Petitioner should pay for a dedicated transformer as a condition precedent for giving electricity connection. That takes me to the question whether the Board can rely on Ext.R2 (a) Circular dated 17.10.2007 to insist that the Petitioner should meet the expenses for installing a transformer if he wants electricity connection.

5. As stated earlier, Sections 50 and 181 of the Act empower the Kerala State Electricity Regulatory Commission to frame the Supply Code. The provisions of the Supply Code can therefore be amended only by the Kerala State Electricity Regulatory Commission. Even assuming for the sake of arguments that the Board can frame and issue the Conditions of Supply, the stipulations therein cannot militate against the Supply Code framed and issued by the Kerala State Electricity Regulatory Commission. Any stipulation in the Conditions of Supply will have to be in tune with the Supply Code. Therefore, even assuming that the Conditions of Supply can be amended by the Board by stipulating as done in Ext.R2(a) that even in the case of buildings having a height of less than 15 meters, the total load of individual consumers can be clubbed together and a transformer of adequate capacity can be required to be installed, if the total load exceeds 50 KVA, the amendment cannot operate in view of the absence of any such stipulation in that regard in the Supply Code. The Supply Code can be amended only by the Kerala State Electricity Regulatory Commission. That has

admittedly not been done. I accordingly hold that the Board is not entitled to insist that though the Petitioner's building does not satisfy the definition of the term "Multi-storied (High rise) Building", he should pay for a dedicated transformer. The Petitioner is, in my opinion, entitled to have the electricity connection without being compelled to pay for a dedicated transformer.

6. I accordingly allow the writ petition, quash Exts.P2 and P3 and direct the Respondents to give electricity connection to the Petitioner's building, without insisting on the Petitioner paying for a dedicated transformer. The electricity connection shall be given within a period of one month from the date on which the Petitioner produces a certified copy of this judgment before the second Respondent. If for that purpose, a transformer is required to be installed, the Board shall do so at its expense.