

(2001) 03 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12123 of 1992

Kanaka Durga Electrical Works, Pedapudi and Others

APPELLANT

Vs

A.P. Electricity Licensing Board and Others

RESPONDENT

Date of Decision : 08-03-2001

Acts Referred:

Andhra Pradesh Electrical Licensing Regulations, 1987 — Regulation 11, 13, 26, 30, 31
Electricity (Andhra Pradesh Amendment) Act, 1984 — Section 37A

Citation : AIR 2001 AP 313 : (2001) 2 ALD 703

Hon'ble Judges : Elipe Dharma Rao, J

Bench : Single Bench

Advocate : M/s. T. Dasaratharamayya and T.S. Venkata Ramana, for the Appellant; Mr. K.N. Jwala, SC for Corporation, for the Respondent

Judgement

Elipe Dharma Rao, J.—This writ petition is filed to issue a writ of mandamus declaring the Circular Memo No.SECY/ELB/F.Genl./92 dated Nil, March, 1992 sought to be implemented the decision arrived at the 42nd Board Meeting of the 1st respondent as illegal, arbitrary and against the provisions of A.P. Electrical Licensing Regulations, 1987, particularly having regard to Rules 5, 35 and 37 of the said Rules as well as Indian Electricity Rules, 1956 and pass such other orders which are deemed fit and proper in the circumstances of the case.

2. The petitioners are Electrical Contractors and the first and second petitioners are B Grade licensees while the third petitioner is A grade licensee. It is stated that under G.O. Ms. No.1 Energy, Environment, Science and Technology (PR.II) Department dated 2-1-1987 under Rule 45 of the Indian Electricity Rules, 1956 the Andhra Pradesh Electrical Licensing Regulations, 1987 (for brevity the Rules, 1987) were issued providing for issuing licences to the electrical contractors to issue certificate of competency and permits to supervisors and wiremen. There are two types of electrical contractors and the 1st and second petitioners are governed by Rule 35 while the third petitioner is governed by Rule 37 of the Rules, 1987 and the third petitioner is given supervisor pass and permit to carry

on installation of electrical wiring in buildings.

3. The usual practice is that after the work was entrusted to the contractors, they used to submit the commencement of work report in Form No. WR-I and the completion report in Form No. WR-II to the Secretary of the Respondent Board, and after they submit WR-II, the building owner would approach the Electricity Board authorities for grant of electricity connections by establishing a meter. It is submitted that the petitioners are entitled under the permit granted as well as the licence to undertake the electrical contract work and complete the same and under the rules, they are not under the supervision of the Assistant Electrical Inspector or the Electrical Inspectors; that after they give the completion report, when an application is made by the building owner for power connection, the Electrical Inspectors and other officials inspect the wiring done and grant power connection or raise objection as to the mode of wiring. It is submitted that the Regulations framed under G.O. Ms. No.1 Energy, Environment, Science and Technology (PR-II) Department, dated 2-1-1987 are very clear and it is a self contained notification governing the duties, obligations and punishment concerning the contractors, that when once the licence and permit are granted so far as the Electrical Contractors are concerned, they have to simply submit the WR-I and WR-II without counter-signature by the Assistant Electrical Inspector or the Electrical Inspector, as the case may be.

4. It is further stated that surprisingly, the first respondent issued a circular in March, 1992 contemplating the procedure for signing WR-I and II by the Field Assistant Electrical Inspectors alleging that the licensed Electrical Contractors were issuing WR-I and II reports and selling blank test reports to the incompetent and unauthorised persons without carrying the work. It is stated that if any malpractice is detected, action should have been taken for their unlawful acts as provided under the rules instead of insisting for counter-signing on such reports by the Electrical Inspectors, who are not at all concerned or authorised or clothed with such powers under the rules and the said circular is illegal, arbitrary besides causing grave and serious troubles to the contractors in the discharge of their duties. It is also contended that the contractors are made subordinates to the concerned Assistant Electrical Inspectors, who have been given wide powers and they are not at their mercy, that under the rules, the petitioners need not approach the Assistant Electrical Inspectors for getting their attestation on WR-I and II but they are only required to submit the same to the Secretary of the respondent Board. Therefore, procedure adopted by the respondent in their 42nd Board Meeting to counter-sign WR-I and II by the Assistant Electrical Inspectors or Inspectors, which is sought to be implemented from 1-4-1992, is illegal, arbitrary and not in accordance with either the Rules, 1987 or Indian Electricity Rules, 1956.

5. Questioning the said procedure evolved in 42nd Board Meeting of the respondents, directing the electrical contractors to counter-sign WR-I and II by the Assistant Electrical Inspectors or Electrical Inspectors, as the case may be,

instead of submitting it to the Secretary which was hitherto being followed, the present writ petition is filed.

6. The respondents have filed their counter-affidavit stating that the Rules, 1987 were framed under 45 of the Indian Electricity Rules, 1956 through G.O. Ms. No.1 Energy, Environment Science and Technology (PR.II) Department, dated 2-1-1987 providing for issuance of licences to Electrical Contractors and issue of Competency Certificates and permits to supervisors and wiremen and two types of the contractors i.e., A and B Grades governed by Regulations 35 and 37 respectively. It is further stated that the second petitioner was granted B Grade licence to carry out the Electrical wiring upto 15 KW. It is stated that the practice is that every contractor before commencement of the work, has to submit WR-I and after completion of the work WR-II and the contractor shall make WR-I and II available to the Secretary of the A.P, Electrical Licensing Board or his representatives. It is further submitted that a complaint from Sri M.R.D. Prasada Rao and Sri B. Sundara Rao, "B" Grade contractors, Machilipatnam was received in October, 1988 to the effect that K. Veeraiah, M/s. Kanakadurga Electrical Works, Pedapudi was selling WR-I and II and Test report of books duly signed by him in advance to the Electrical Shop Owners and Pan Shop Owners in the villages to enable them to fill up the same as and when required without actually carrying out electrical installation work by the petitioners, that an officer of the Respondent Board was appointed for the purpose of investigation and the Investigating Officer could get WR-I and II books duly signed by the said K. Veeraiah without filling the necessary particulars in M/s. Thirumala Electricals, Machilipatnam and the shop owner was ready to sell WR-I and II for Rs.35/- each, that the Officer purchased the same for Rs.35/- bearing Sl.No.63 dated 1-4-1989 and Sl.No.63 dated 4-4-1989 respectively. Consequently on report of the Investigation Officer, the petitioner's licence bearing NoB/99, 0-1527 was kept under suspension and a show-cause notice dated 20-7-1989 was issued calling for his explanation as to why his licence should not be cancelled for the breach of Rule 45 of the Indian Electricity Rules, 1956 and 43, 46 and 54 of the Rules, 1987 and after examining the explanation of said K. Veeraiah dated 20-8-1989 by the Licensing Board, the Secretary of the Board has cancelled the licence and permit vide proceedings SLB/ELB/Board Meeting/Comp.31/89-3 dated 18-11-1989. Subsequently, the petitioner has pleaded innocence of Rules and Regulations and requested to revoke the cancellation of his "B" Grade Electrical Licence and wiremen permits vide his letter dated 20-11-1989 and 28-11-1989 submitted to the Secretary and his explanation was considered by the Licensing Board in its 9th Board Meeting and after considering his explanation sympathetically and taking a lenient view, the said K. Veeraiah i.e., the first petitioner was let off with a severe warning that any repetition of a similar act will be viewed seriously and the licence and permits will be cancelled and he was issued with a licence B/770, 0-4850. Thus, it is submitted that, in order to prevent such irregularities, the Licensing Board during its 42nd Meeting has decided to adopt the procedure of counter-signature by the Field Assistant

Electrical Inspectors on WR-I and II so as to avoid misuse of the reports from 1-4-1992 i.e., when the book of WR-I and II each containing 100 folios and to sign 2nd book of WR-I and II when 75% of the first book is exhausted and after thoroughly checking the first book has not been misused. The respondents further stated that any decision taken by the Licensing Board shall be final as per Regulation 5 of the Regulations, 1987 and accordingly, the Field Assistant Electrical Inspectors were instructed to follow the said procedure and when any contractor approaches with WR-I and II books for signing. It is further stated that as per Regulation 46 of the Regulations, 1987 the contractor shall produce reports available to the Secretary or his representatives. The respondents deny that at no point of time the petitioner's work was found unsatisfactory inasmuch as they have violated both the Indian Electricity Rules, 1956 and the Regulations, 1987.

7. It is also stated that similar complaints have been received stating that the petitioners are again issuing and selling blank WR-I and II without actually carrying out the electrical work and an officer of the respondent Board was appointed for the purpose to enquire and he confirmed the selling of WR-I and II without the counter signature of Field Assistant Electrical Inspector on the back side of the report and, therefore, the Board after prolonged discussion and having regard to the previous warning and suspension of licence, issued show-cause notice dated 28-1-1992 and after receipt of the unsatisfactory explanation from the petitioner, his licence B/770, 0-4850 was cancelled.

8. The respondents further submitted that under Regulation 5 of the Regulations, 1987 any decision taken by the Licensing Board shall be final and therefore, in order to prevent recurrence of such incidents of selling blank WR-I and II without counter-signature by the Field Assistant Electrical Inspectors, the Board in its 42nd meeting decided to adopt the procedure impugned in this writ petition. It is also stated that this decision was taken after bringing to the notice of A and B Grade Electrical Contractors Association for giving wide publicity to their members and therefore, the statement of the petitioner questioning the Regulations as per the decision of the Board is not tenable. The said procedure was informed to all the local Field Assistant Electrical Inspectors in order to avoid hardship to the contractors, that the Licensing Board's decision is regarding its functions for its implementation and the Electrical Contractors becoming subordinates to the concerned Assistant Electrical Inspectors does not arise. It is also submitted that to ensure that every electrical installation work of the owner or consumer is carried out through a licensed contractor only, as per the prescribed standards but not by incompetent and unauthorised persons and to avoid misuse of WR-I and II being sold and purchased unauthorisedly, the Regulations, 1987 are framed and the Circulars are issued.

9. To appreciate the rival contentions made by the respective parties, let us go through the Regulations, 1987. In exercise of the powers conferred u/s 37A of the Indian Electricity Act, 1810 as amended by the Indian Electricity (Andhra

Pradesh Amendment) Act, 1984 (Act 26 of 1984) (for brevity the Act), the Government of Andhra Pradesh made the Regulations for issuing of licence to the Electrical Contractors and issuing certificates of competency and permits to Supervisors and Wiremen and conditions therefore as required u/s 45 of the Indian Electricity Rules, 1956. These Regulations have application to the whole of the State of Andhra Pradesh and shall come into force with immediate effect. Rule 3 hereof contemplates constitution and composition of the Licensing Board; whereas Rule 5 enumerates the functions of the Board; to grant licenses to electrical contractors, to grant exemption to a candidate from taking prescribed examination when it is satisfied that his qualification and experience entitles him to such exemption or when he satisfies the examining Board which the Board may appoint for the purpose; to grant certificates and permits to Supervisors and Wiremen; to deal with applications in respect of any other matter that may arise under the regulations; to deal with the testimonials found to be incorrect and to take such action as may be decided; to consider allegations against supervisors, wiremen or contractors holding a permit, certificates of licence granted by the Board of incompetence, negligence, breach of Indian Electricity Rules, 1956 or malpractice or of breach of a condition of a licence and to decide and to take such action as may be considered necessary; to delegate any of its functions or powers to the Chairman and/or the Secretary from time to time and on such conditions as it may impose. It also says that any decision given by the Board in execution of its functions shall be final. Regulation 6 contemplates constitution of Sub-Committees by the Board. Regulation 11 deals with the duties of Secretary. It says that the Secretary shall scrutinise all applications, for Electrical Contractors licences and to take necessary action thereon, to scrutinise application for exemption from the examination for supervisors and wiremen and take necessary action thereon, to sign Electrical Contractors Licenses, Certificates and permits of Supervisors and Wiremen, etc.....

10. Regulation 13 deals with examinations which shall be conducted by the State Board of Technical Education and Training on behalf of the Chief Electrical Inspector to Government, the results of which shall be forwarded to the Chief Electrical Inspector to Government who shall announce the results and issue the competency certificates and permits. While Regulation 26 deals with the exemption from appearing Supervisors Certificate of Competence examination, Regulation 30 deals with possession of permits, which shall be inspected and scrutinised by the Chairman or the Secretary or by the officers assisting the Chairman except when they are sent for renewal. Regulation 31 contemplates renewal of permits.

11. Regulation 33 deals with the grant of Electrical Contractors licence and 34 classifies the nature of work of Grade "A" contractors while Regulation 35 enumerates the conditions for grant of "A" grade licence. Regulation 36 deals with nature of work of "B" Grade Contractors. It says Grade "B" contractors shall be eligible to take up low voltage electrical installation and medium voltage electrical installation with a connected load not exceed 20 Horse Powers or 15

Kilo watts. Regulation 37 deals with the conditions for the grant of "B" Grade licence. Regulation 38 deals with the suspension and cancellation of contractors licences.

12. Regulation 46 contemplates that the contractors shall submit the reports in respect of each work undertaken by him to the Secretary and to any concerned officers, he may direct a work commencement report in Form-WR-I immediately before commencement of work and work completion-cum-test report in Form WR-2 duly filled in by the Supervisor/Wireman, as the case may be, in his own hand and signed by the Supervisor/ Wireman and the contractor; that the contractor shall keep copies of WR-I and 2 and make them available to the Secretary or his representatives. Regulation 47 deals with renewal of the Contractor's licence, which shall be renewed once in two years and the application for renewal shall be submitted to the Secretary two months before the date of expiry of the licence in Form-N along with expiring licence, individual declaration from all employees of their continuance in the service of the contractor as full time employees and counter-signed by the contractor, etc. Regulation 49 says that no supplier shall connect to the supply any installation or any additions or alteration to an existing installation unless a licensed electrical contractor's completion-cum-test report in Form WR2 is produced; but where the Secretary is satisfied that a contractor has unreasonably withheld issue of competition-cum-test report, he may authorise the supplier to give supply on such conditions as he may prescribe. Regulation 50 contemplates that the Secretary shall maintain the register of issue and renewal of all electrical contractors licences, a register of contractor's employees, a register of issue of certificates of competency and grant and renewal of Supervisor's permits, etc. Regulation 54 deals with malpractice or infringement of Rules. It says if any permit-holders or an electrical contractor is found guilty of negligence or incompetence or malpractice or infringement of these regulations, the Secretary shall make a report to the Board and may in his discretion suspend the permit of the Contractor's licence of such holder pending decision of the Board and such decision on such report shall be final and communicated to the party.

13. The Regulation, 1987, which came into effect at once, are framed through G.O. Ms. No.1, Energy, Environment, Science and Technology (PR-II) dated 2-1-1987 in exercise of the powers conferred u/s 37-A of the Indian Electricity (A.P. Amendment) Act, 26 of 1984 for issuing licences to Electrical Contractors and certificate of competency and permits to the Supervisors and Wiremen and conditions thereof as required u/s 45 of the Indian Electricity Rules, 1956. As stated above, the Regulations, 1987 contemplates constitution and composition of Licensing Board and its functions, functions of Secretary, etc. The exemption from appearing supervisors certificate of competence examination, division of contractors into A and B Grades, regulations and powers of Secretary to suspension and cancel the contractors licence. These regulations obligate the contractors to submit reports in respect of each work undertaken by them, the functions of Secretary and his powers to renew the contractor's licence, the

registers to be maintained by him. These regulations also cast a duty on the Secretary to submit a report to the Board with regard to the malpractice or irregularities committed by the Electrical Contractors and during the pendency of decision by the Board, he is empowered to suspend the contractor's licence.

14. The Board has to perform the functions of granting licence to individual contractors, conduct examinations and it has got powers to consider the allegation against Wiremen, Supervisors, holding permits and competency certificates, that the Board is empowered to take action against them when they indulge in malpractice or breach of conditions of licence. The Board can also delegate its powers to Chairman and any decision given by the Board in the execution of its functions shall be final.

15. Equally a post of Secretary is created and the duties and functions are enumerated in Regulation 11 to scrutinise the application of electrical contractors and take necessary action thereon, to sign the electrical contractors licences, certificates and permits of Supervisors and Wiremen, etc.

16. Though the first petitioner's licence is cancelled, but the issue involved in this writ petition required adjudication in view of the subsistence of the licences of petitioners 2 and 3.

17. The main issue involved in this writ petition is with regard to the submission of the Work Reports 1 and 2, dealt with under Regulation 46.

18. The Regulations, 1987, as seen above, empower the Secretary to sign WR1 and 2. They further obligate the contractors to submit reports in respect of each work undertaken by them, before commencement and after completion of the work, to the Secretary to the officer he may direct, duly filled in by the Supervisor/Wiremen as the case may be in his own hand and signed by such Supervisor/Wiremen and shall keep copies of the reports and shall make available to the Secretary or his representatives. The Secretary was also given the power under Regulation 47 to renew the contractor's licence granted under these regulations once in two years on the basis of the application submitted by the contractors two months before the expiry of the licence in Form N alongwith the expiring licence and other documents.

19. Regulation 49 specifies that no supplier shall connect the supply to any installation or any additions or alteration to an existing installation unless a licensed Electrical Contractor's completion-cum-Test report in WR 2 is produced, but the Secretary was given the power, on satisfaction, that a contractor has unreasonably withheld issue of the WR2, he may authorise the supplier to give supply on such conditions as he may prescribe. The Secretary is also given the power to suspend the licence or permit given to the Electrical Contractor who is found guilty of negligence or incompetence or indulging in malpractice pending consideration by the Board on the report submitted by him to the Board. Thus, under these regulations, the Secretary is given a unique position and he has to discharge varied nature of functions, whereas the Board is given certain specified

powers to discharge functions as a superior authority.

20. On the basis of the complaints received with regard to the discharging of duties by the Electrical Contractors and misuse of WRs by selling them blank in the pan shop and other electrical shops without actually carrying out the work, the respondent Board has taken up the issue in its 42nd meeting and replaced the procedure that the WRs 1 and 2 shall be countersigned by the Field Assistant Electrical Inspector instead of submitting it to the Secretary and resolved that the said procedure shall into effect at once i.e., from 1-4-1992. Whatever might have been the genuine reasons, manifestly the Board with an intention to curb the malpractice and irregularity adopted the new procedure to prevent the misuse of WRs.1 and 2. Though the Board, which is empowered to take decision to implement and achieve the objects and reasons for which the regulations are made, has taken the impugned decision in its 42nd Meeting to replace the Secretary for signing the WRs.1 and 2 by the Field Assistant Electrical Inspector, is not in accordance with the Regulations. If the Electrical Contractors have indulged in some malpractice or committed breach of the conditions of licence by selling blank WRs. 1 and 2, as alleged in this case, these Regulations, 1987 empower both the Board and the Secretary to enquire and consider such allegations against them or the incompetence, breach of the conditions of licence, negligence breach of Indian Electricity Rules, 1956 and to decide and take such action as may be considered necessary. But during the pendency of consideration by the Board in respect of such activity of the Electricity Contractors or permit holders, Supervisors, Wiremen, the Secretary has got the power to suspend such licence or the permits.

21. The Government framed the above regulations under delegated legislation and placed the Secretary aloof giving such a position, as stated supra. Therefore, when once the Government under delegated legislation, have framed the Regulations u/s 37-A of the Indian Electricity (A.P. Amendment) Act, 1984 and in its wisdom has given power to the Secretary or his representative to sign and receive the WRs.1 and 2, as submitted by the Electrical Contractors before the commencement of the work and after completion of the work report. But the Board through the impugned circular replaced the Secretary by the Field Assistant Electrical Inspector or Inspector which impugned action amounts to amending the Regulation 46. Under Regulation 5, the Board is not empowered to replace the Secretary in signing the WRs. 1 and 2 by the Field Assistant Electrical Inspector or Inspectors while exercising power under Regulation 5. If the intention of the Board is to make such drastic amendment to the Regulations, 1987, the Board should have recommended its intention to the Government in the 42nd Board Meeting. Therefore, without amending Regulation 5 and 46, the Board cannot acquire the powers to make such drastic amendment in the Regulations. It is manifestly clear that the Secretary is authorised to receive by himself or through an officer authorised by him, in this behalf, to receive the work commencement and work completion-cum-test report in WRs.1 and 2, it is not for the Board to exercise the power of issuing the Circular which amounts to

amendment of the Regulations. If the contractors have indulged in malpractice or committed any irregularities, the Board and Secretary are given ample powers under the Regulations to deal with them i.e., to conduct enquiry either to suspend or cancel their licence or certificates. Therefore, on the ground that the contractors are indulging in committing irregularities and under the guise of regulating such irregularities, powers conferred on the Secretary need not be taken away by amending the Regulation for which, the Board has no power to amend the Regulations. The duty of the Board is to take steps to implement the objectives of the regulations and not to amend the Regulations. On the other hand, the Regulation 46 empowers the Secretary either to receive by himself WRs.1 and 2 or he may direct the concerned officer to receive the reports for the work undertaken by the contractor. Therefore, the Government while framing Regulations made it clear in Regulation 46 that the Secretary alone is competent to receive the above said reports in Form Nos.WR1 and 2 by himself or under his direction through any officer or officers. If the Government intended to exercise that power by the Board, it should have incorporated such a power under Regulation 5. Therefore, the Board has no competency or power to substitute the Field Assistant Electrical Inspector in place of the Secretary. At the most, the Board should have requested the Secretary to direct the Assistant Electrical Inspector to sign on the reports WRs.1 and 2 of the contractors. Therefore, the powers exercised by the Board in its 42nd meeting adopting the new procedure, under the guise of regulating the irregularities committed by the contractors substituting the Secretary by the Field Assistant Electrical Supervisor is without power and jurisdiction and in violation of Regulations 5 and 46.

22. For the above reasons, I am unable to accede to the contention of the respondents Counsel that the Board has got all supervisory powers to implement the objects of the regulations, and on receipt of the complaints against the electrical contractors, it has taken such decision authorising the Field Assistant Electrical Inspectors to maintain such records which action is impugned in this writ petition and it is not violative of the regulations. Of course, the Board has got the power to achieve objects and reasons of the regulations which is permissible under the regulations, but not beyond the scope of its power. In this case, without amending Regulations 5 and 46, the Board cannot exercise its powers to issue the circulars impugned in this writ petition, which is clearly in violation of Regulations 5 and 46 enacted under the conferment of powers u/s 37-A of the Indian Electricity (A.P. Amendment) Act, 1984.

23. For all the foregoing reasons, I am of the considered view that the impugned circular issued by the respondents is ultra vires the scheme of the Regulations, 1987 and hence, liable to be set aside and is accordingly set aside. The writ petition is accordingly allowed. No order as to costs.