

(2007) 05 CAL CK 0029

In the Calcutta High Court

Case No : Writ Petition No's. 26799 (W) , 26800 (W) , 26801 (W) , 26802 (W) ,
26831 (W) , 26832 (W) , 26833 (W) , 26834 (W) , 27060 (W) ,
27157 (W) , 27178 (W) , 27187 (W) , 27503 (W) , 27519 (W) ,
27542 (W) , 27545 (W) , 27622 (W) , 28413 (W) , 28415 (W) ,
28416

Kartick Chandra Mondal

APPELLANT

Vs

Chairman, WBSEB and Others

RESPONDENT

Date of Decision : 17-05-2007

Acts Referred:

Constitution of India, 1950 — Article 21, 48A
Electricity Act, 2003 — Section 43, 43(1), 43(3)
West Bengal Ground Water Resources (Management, Control and Regulation) Act,
2005 — Section 7, 7(3), 7(4), 7(5), 8

Citation : (2007) 4 CHN 579

Hon'ble Judges : Aniruddha Bose, J

Bench : Single Bench

Judgement

Aniruddha Bose, J.—This batch of writ petitions relate to certain disputes arising out of applications for electricity made by mostly agriculturalists for energizing pumpsets for lifting water for cultivation purposes. These pumpsets have come to be known as submersible pumps in common parlance.

2. A three-fold connection process is being followed by the electricity companies connection. Initially, an application is required to be filed in the prescribed form on payment of stipulated fees, which at present, I have been informed is rupees one thousand. These applications are filed at the local sub-stations of the West Bengal State Electricity Board (at present, due to certain restructuring, this task is being performed by West Bengal Electricity Supply Company Ltd.), whom I shall henceforth described the distribution licensee in this judgment. On filing of the application, as per the prevailing practice, the Board issues a quotation informing the applicant the amount he is required to be deposited. In several cases, I find that the quotation includes the cost of a 10 KVA transformer, as also charges for laying the line. On payment of this amount, and completion of certain

infra-structural facilities, connection is actually effected.

3. With the laudable purpose of preventing over-extraction of ground water, the prevailing practice of the distribution licensee had been to require the individual applicant to obtain from the State Water Investigation Department a water availability certificate, which have come to be known as SWID certificate. The second condition which used to be imposed by the Board for the same purpose, was to ensure that there was a maximum distance of 200 meters between two submersible pumps. I shall refer to this norm henceforth as the minimum distance norm.

4. In recent past, some of the applicants had complained against the practice of the distribution licensee to require them to make payment for transformers, but this controversy has been set at rest by a judgment of an Hon''ble Single Judge of this Court in the case of Sk. Based Ali and Others Vs. W.B.S.E.B. and Others, . In this judgment upon construing various provisions of the Electricity Act, 2003 (the "Act" in short), it has been held that pending framing of proper Regulation by the West Bengal Electricity Regulatory Commission, it shall be within the power or authority of the Board to charge the cost of installation of a transformer and also the cost of laying the cable and other apparatus for energising the transformer, provided such charges are reasonable.

5. The nature of the complaints, made by the applicants in these writ petitions can be summarised broadly as follows:

a) The application forms in respect of supply of electricity in respect of submersible pumps are not being made available.

b) Some of the writ petitioners have applied for connections, but not in the prescribed form which they claim were not available, and the grievance of the writ petitioners in this category of cases are delay in issuance of quotations vis-a-vis their applications/representations.

c) Delay in effecting supply even after issuance of quotations and deposit made in pursuance thereof.

d) Relying on a memorandum issued by the Chief Engineer of the Board bearing No. RE/DTW/113/S-2145/3 dated 18th September, 2006 addressed to the Zonal Managers/Project Managers of the Board of different districts, it has been contended that the connection ought to be effected straightaway without insisting upon maintenance of the minimum distance norm and SWID certificate.

e) The distribution licensee is effecting connection to a neighbouring cultivator in violation of the minimum distance norm.

6. Having regard to the fact that grievances of a large number of persons are involved in the present matters, and there are certain complexities also involved as regards implementations of certain provisions of the Electricity Act, 2003, I requested Mr. Sobhanlal Hazra, learned Government Pleader to assist this Court

as *amicus curiae*, a request which he gracefully accepted. I have been addressed by the petitioners in individual cases by their learned Advocates, whereas for the distribution licensee also learned Advocates in each individual case addressed this Court, but lead argument was advanced by Mr. Sumit Panja. In this judgment, however, to avoid repetition, I propose to not to deal with the arguments advanced in each case individually, but deal with the issues collectively and dispose of all these writ petitions in a composite manner.

7. The first set of grievance relates to availability of forms for making application for supply of electricity for the purposes of operating submersible pumps. It is common grievance in many cases that individuals have filed applications in plain paper and not in the prescribed form because of nonavailability of such forms. Mr. Panja appearing for the Board submits that his clients shall ensure availability of such forms at individual sub-stations. As regards the allegations that these forms are not being furnished, he submits that such non-availability might have been due to temporary shortage. I am of the opinion, however, that the Board must depute a senior officer for each district to take responsibility for ensuring such forms are available, and to eliminate harassment of individual applicants, forms must be made available with the individual substations as also the District Headquarter of the distribution licensee in each district.

8. I am also of the view that since a form has been prescribed, and fees for Rs. 1000/- has been prescribed, there has been no error on the part of the distribution licensee in declining to process such applications. The individual applicants in such cases must obtain the forms and file the same with prescribed fee. I am also of the view that each sub-station ought to maintain the list of the applicants in a chronological order vis-a-vis their filing dates and such applications must be processed on the basis of their seniority status in relation to their dates of filing. Each sub-station may consider disclosure in a visible place the number of pending applications in a given day, as also the number, of quotations issued and connection given on each day. This will ensure transparency in the whole operation for providing connections. A tentative date of issuance of quotation and providing connection may also be given.

9. On the issue of delay in effecting supply in spite of deposit money. I am of the opinion that the distribution licensee, having regard to the provisions of Section 43 is bound to effect connection on receipt of the quotation money. The submission of the learned Counsels for the distribution licensee is that always the endeavour of their clients is to provide connection, but mostly because of non-availability of transformers the connection is delayed. In my opinion, this submission cannot be accepted. Under the aforesaid provision of the Act, supply is to be effected within one month from the date of application. By the very fact that the distribution licensee issues a quotation and accepts the quotation amount, they accept the responsibility to comply with the time frame stipulated in the Act. It would be unfair on the part of the distribution licensee to receive the money and thereafter sit tight on the plea that transformers are not

available. Before accepting the money the distribution licensee ought to ensure that they are in a position to provide connection. The distribution licensee, at the time of issuance of the quotation should inform the consumer the approximate time that may be necessary to effect connection.

10. The next set of controversy relates to requirement of the SWID certificate. The learned Counsels for the petitioners have submitted that this is no more necessary because of a memorandum dated 18th September, 2006. This memorandum had been issued by the Chief Engineer (Dist. Constn.)-RE of the erstwhile West Bengal State Electricity Board. For proper appreciation of the scope of this memorandum the text of the same is reproduced below:

Enclosed please find till above letter under reference along with the copy of the West Bengal Act XVIII of 2005, the West Bengal Ground Water Resources (Management, Control and Regulation) Act, 2005.

A system of a mandatory clearance of SWID was introduced in 8 (eight) districts in State of West Bengal in the year 1993 as a pre-requisite for electrification by WBSEB STW (illegible) with submersible pumps belonging to private individuals for imposing indirect restrictive measure towards indiscriminate use of ground water. From the enclosed copy of the Act captioned "West Bengal Ground Water Resources (Management, Control and Regulation) Act, 2005" which has been enforced in the State with effect from 15.9.2005 and the rules make it mandatory for obtaining permit for construction of new tube-well and certificate of registration for the existing the tube-wells, but have no provision for issuing clearance by SWID for energisation by WBSEB of Shallow Tube Wells fitted with submersible pumps.

Accordingly, in view of the introduction of the Act and the rules thereunder, issue of clearance by SWID for energisation of Shallow Tube Wells fitted with submersible pumps has been discontinued with effect from 01.8.2006.

11. Learned Government Pleader, appearing as amicus curiae in this matter submitted that the SWID clearance certificate was necessary in eight specified districts of West Bengal as at that point of time, there was no other regulatory measure available for the purpose of preservation of ground water vis-a-vis extraction for agricultural purpose. However, the State Legislature has enacted the "West Bengal Ground Water Resources (Management, Control and Regulation) Act, 2005 (West Bengal Act XVIII of 2005). This statute became operational on 1st August, 2006. Under the provisions of Section 7 this statute, sinking of any well after the coming into force of this Act has been prohibited except in certain cases involving low-level extraction without obtaining permit from the authorities constituted under this legislation. I shall refer to these authorities as the water management authorities. As regards existing wells, a provision for registration of the same has been mandated u/s 8 of the West Bengal Act XVIII of 2005. The relevant provisions of this Act in this regard are reproduced below:

7. (1) On and from the date of coming into force of the Act, no user shall sink any well for extracting or using ground water without obtaining a permit issued by the State Level Authority or the District Level Authority or the Corporation Level Authority, as the case may be, as stated in Sub-section (3), Sub-section (4) or Sub-section (5), in such Form as may be prescribed:

Provided there where any user extracting or using ground water for irrigation or domestic purposes, sinks-

(a) any tube-well or hand-pump; or

(b) any well from which such extraction or use is made without the help of any mechanical or electrical devices,

such user may sink tube-well or hand-pump or well, as the case may be, without obtaining a permit of the concerned authority as provided in this section;

of the opinion that the sinking of any well or category of wells for extracting or using ground water is necessary for the public interest, the State Government may, by notification, exempt such well or category of wells from the purview of this section.

8. (1) Any user who has sunk a well for extracting or using ground water in an area before the date of coming into force of the Act shall make an application, within such period, in such Form and in such manner, as may be prescribed, to the District Level Authority of such area or the corporation Level Authority of such area, as the case may be, for obtaining a certificate of registration authorising such user the extraction or use of ground water:

Provided that where any user has sunk-

(a) any tube-well or hand-pump; or

(b) any well from which such extraction or use is made without the help of any mechanical or electrical devices,

for extracting or using ground water before the date of coming into force of the Act for irrigation or domestic purposes, such user may continue to use such tube-well or hand-pump or well, as the case may be, without obtaining a certificate of registration from the concerned authority as provided in this section:

Provided further that where the State Government is of the opinion that the extracting or using of ground water from any well or category of wells is necessary for the public interest, the State Government may, by notification, exempt such well or category of wells from the purview of this section.

12. Learned Government Pleader has also brought to my notice a memorandum dated 27th November, 2006 bearing number 422 issued by the Member-Secretary, State Water Level Ground Water Resources Development Authority containing recommendation of a set of guidelines for the District Level Authorities for the purpose of issuance of permits and registrations. This guideline appears

to have been formulated in the first meeting of the State Authority held on 9th November, 2006.

13. This guideline appears to have been formulated upon considering the finding of a joint investigation conducted by the Central Ground Water Board (CGWB) and the State Water Investigation Directorate. These expert bodies have worked out a block-wise utilizable ground water potential for 269 blocks in West Bengal. Two sets of blocks, however, have been left out from this exercise of assessment, being 59 blocks in the coastal tract, in which the aquifer has salinity problem and 13 blocks in the districts of North Bengal which have more than 20% ground slope in major part. Of these blocks, 231 blocks were found to be safe, 38 blocks in the semi-critical and critical category. Such assessment appears to have been made on the basis of present ground water availability as also long term variational trend. In addition, these expert bodies found ground water in 81 blocks in 8 districts of the State with arsenic contamination and 46 blocks of 7 districts having fluoride contamination.

14. The proposal and/or recommendation of the authority as regards grant of permit is that the same may be issued in the safe category blocks, whereas for the critical/semi-critical blocks and the unassessed blocks, specific study/investigation may have to be conducted in individual cases before grant of permit. It has further been recommended that certificate for registration of existing wells, the same may be issued in all category of blocks.

15. On the aspect of distance between wells/tube wells, a safe distance criteria has been formulated for the purpose of issuing permits/registrations. This criteria is reproduced below:

Discharge range of proposed		Discharge range of existing		>50m ³ /hr to 100m ³ /hr		>100m ³ /hr	
Tube-Well		Tube-Well		Upto		50m ³ /hr	
						Upto	
50m ³ /hr		200m.		400m.		600m.	

16. On behalf of the petitioners, an argument has been advanced that the Electricity Act, 2003 and the West Bengal Act XVIII of 2005 are two different statutes and so far as obligations of the distribution licensee under the Electricity Act, 2003 is concerned, discharge of such obligations cannot be made dependent on compliance of the provisions of the statute on water. Relying on the memorandum dated 18th September, 2006, submissions of the learned Counsels for the petitioners has been that there is no scope for any enquiry as regards the availability of water or maintenance of the distance norm for the purpose of giving connection for supply of electricity. The substance of this argument is that in view of the provisions of Section 43 of the Electricity Act, 2003, for the purpose of effecting connection, the same should be done straightaway. For the purpose of enforcing the West Bengal Act XVIII of 2005 that would be upto the

authorities under the said Act.

17. The contention of the learned Counsel for the Board, however, is that the provisions of the West Bengal Ground Water Resources (Management, Control and Regulation) Act, 2005 cannot be ignored by the Board while effecting connection for submersible pump. The Board, in public interest had always considered the aspect of sub-soil water availability before providing supply of electricity for submersible pumps, and it is for this reason the mandatory requirement of SWID certificate was introduced. The memorandum dated 18th September, 2006 was issued discontinuing the clearance of SWID only because of enactment of West Bengal Act XVIII of 2005.

18. On this count, prima facie, the submissions of the learned Counsels for the petitioners appear to be attractive. Why should implementation of one statute be made dependant on compliance of the provisions of another statute in the absence of any legislative mandate to that effect? On a proper consideration of the provisions of these two enactments, however, in my view, the application of the Electricity Act, 2003 in so far as the same relates to supply of electricity for energising submersible pumps and the implementation provisions of the West Bengal Act XVIII of 2005 is concerned they are so interconnected that the distribution licensee cannot ignore the provisions of the latter statute.

19. The object of West Bengal Act XVIII of 2005 becomes clear from the long title and preamble to this legislation itself, which is reproduced below:

An act to manage, control and regulate indiscriminate extraction of ground water in West Bengal and to provide for matters connected therewith or incidental thereto,

WHEREAS it is expedient to manage, control and regulate indiscriminate extraction or use of ground water;

AND WHEREAS it is further expedient to provide against the widespread contamination of ground water with arsenic, fluoride, chloride, iron other heavy metals or metalloids, organic and inorganic pesticides, fungicides, and rodenticides.

Sinking or operation of any well, barring those with limited extraction potential has been regulated by the statute through a process of pre-sinking permit and registration regime by water management authorities created at two levels, the State and the district, with a special authority having jurisdiction over the area under the jurisdiction of the Kolkata Municipal Area.

20. So far as the submersible pumps are concerned, their sole purpose is extraction of ground water. Thus, for the purpose of sinking a well with submersible pump, prior permission from the appropriate authority under the West Bengal Act XVIII 2005 is a statutory mandate: Violation of these mandatory provisions have penal consequence. Since the very purpose for which supply of electricity is sought for by the petitioners require prior permission, or mandatory

registration, as the case may be, unless the distribution licensee and the water management authorities operate in close association, the very purpose of the West Bengal Act XVIII of 2005 would be frustrated.

21. Moreover, if the electricity authorities and the water management authorities do not work in tandem, the same may lead to rendering both the statutes unworkable. For instance, there may be cases where the distribution licensee may decide to give connection to one person without a permit under the Water Act for operating a submersible pump. The water management authority, having knowledge of this connection, may chose to give permit to another person within the 200 meter distance of the submersible pump, for which the distribution licensee has given connection. Then the former would not be able to obtain the permit, and consequentially his supply connection would be of no use.

22. The jurisdiction of the Constitutional Writ Court is discretionary jurisdiction and one of the fundamental basis for exercising such discretion is protection of, or advancement of public interest. Since this Court has been set in motion with the causes of the petitioner in its Constitutional Writ Jurisdiction, I do not think I ought to pass any order or direction that may lead to conflicting situations in application of two statutes. This Court also cannot but take judicial notice of the widely acknowledged fact that ground water is a fast depleting natural resource, and if any order is passed which may have the effect of short-circuiting the regulatory process mandated by the legislature, that would be against public interest, and breach the Fundamental Right of the general public enshrined in Article 21, read with Article 48A of the Constitution of India.

23. I am of the opinion that the distribution licensee as also the water management authority must device a common working strategy so far as providing connection for submersible pumps are concerned. For appropriate management of the demand and supply of electricity for operating submersible pumps, the distribution licensee in consultation with the water management authority ought to formulate a guideline or regulation, so that interest of the applicants/consumers are best preserved. It is not the task of the Court to mandate the administration how best to perform their statutory duties. But before me, a large number of writ petitions have been filed, primarily founded on Section 43 of the Electricity Act, 2003, which entitles a consumer to receive electricity within one month of making the application, subject of course, to certain exceptional circumstances. I am to consider the manner in which such connections may be given equitably, without causing prejudice to any of the parties. In the process, the claims of individual applicants who may not have approached this Court but waiting in the queue for connection but having the same grievance also cannot be ignored altogether.

24. Since, the distribution licensee is yet to formulate a comprehensive policy to deal with the large number of applications for supply of electricity for the purpose of energising submersible pumps, I am of the view that following directive shall be complied with or followed by the distribution licensee, till a

comprehensive policy is worked out by them, on the basis of which the complaints of individual petitioners may be redressed to and the same procedure may be adopted in similar cases:

(a) Each sub-station of the distribution licensee must have sufficient number of prescribed forms which are required for obtaining supply of electricity for submersible pumps. Simultaneously, the District Head quarter of the Distribution Licensee also must keep adequate stock of such forms. The administrative head in each district shall monitor the availability of such forms, and the person in charge of each sub-station must provide the District Headquarter their requirements as also applications received within a certain period e.g. a week.

(b) Upon receiving application for submersible pumps, the person-in-charge of individual sub-stations must give a receipt to the applicant. For the purpose of processing, a list of applicants in a chronological order shall be maintained and the receipt shall contain the serial number of the applicant, and this order shall be maintained as far practicable for raising quotation and giving connection.

(c) The quotation in individual cases must be issued within three weeks from the date of application. Along with the quotation an approximate time-frame shall be disclosed within which time the connection shall be effected on payment of the amount quoted. This time-frame shall operate from the date of deposit of money indicated in the quotation.

(d) If any individual applicant is dissatisfied with the quantum demanded in the quotation, he shall be entitled to raise his grievance before such forum he may be advised.

(e) Before accepting the sum stipulated in the quotation, the concerned official of the distribution licensee must satisfy himself to the effect that the applicant has obtained the permit u/s 7 or Registration u/s 8 of the West Bengal Act XVIII of 2005, as the case may be. In the event applications for such permit or registration certificate is filed with the water authority, the application for connection may be processed, but actual supply may be withheld till permit is received. In case of existing tube-wells, supply may be given subject to the condition that such connection would be revoked if the water authority cancels the registration application.

(f) Once the deposit is accepted, and other formalities are complied with, connection must be effected within three weeks. If for any reason the distribution licensee is unable to effect connection within the three weeks time-frame, then such consumer must be informed in writing the reason for delay and the extended time-frame.

(g) There is also one set of complaint about sharing of transformers. It appears that the requirement in individual cases is for a 3.5 HP motor. But the available transformer in the market it appears are of the capacity of 10 KV. In the case of Sk. Based Ali (supra), an Hon"ble Single Judge of this Court held that till the

Commission frames appropriate regulations, in locations where no transformer is available, a consumer would have to bear cost of one 10 KV transformer only. But this leaves the transformer with a spare capacity for one more pump. In cases where prayer for sharing of transformer was made, in the same decision it was observed:

The definition of "sub-station" read with the definition of "electrical plant" with the statutory mandate contained in Section 43 of the Act makes it abundantly clear that the transformer, which is required for transmission of electricity, is an equipment owned by and remains under the control of the distribution licensee, though paid for by the customer, and accordingly, the relative of the petitioner who has paid for installation of such transformer, has no say how that transformer shall be used. At the same time, the distribution licensee, in the instant case, being a public authority, cannot spare capacity of the 10 KV transformer already installed for energising the submersible pump of a relative of the applicant and will not do so when the existing customer is not a relative of the prospective applicant.

In situations like this, when the existing consumer is willing to share the transformer capacity with a new applicant the same shall be allowed.

(h) The Distribution Licensee must co-ordinate with the water management authorities for ensuring strict compliance of minimum distance norm between two submersible pumps.

(i) In the case of application for temporary connection, the distribution licensee shall dispose of the same in accordance with the existing procedure for providing connection for 90 or 105 days, as the case may be. For this purpose, connection must be effected within a period not later than one month, subject to compliance of the prescribed procedures. The applicants in such cases must pay the tariff as fixed by State Electricity Regulatory Commission for such temporary connection.

(j) The time-frame given above must not be deemed to have relaxed the one-month limit stipulated in Section 43 of the Electricity Act, 2003.

(k) In the cases of pending applications, the same time-frame shall be followed.

25. While fixing the time-frame above, I have considered the submissions of the learned Counsels for the distribution licensee that because of large number of application, they do not have adequate number of transformers, meters, etc, and this direction is being issued considering the proviso to Sub-section (1) of Section 43. In the event any consumer finds the time taken beyond the one month period is not because of the reasons contemplated in the two provisos to Sub-section (1) of Section 43, such consumer shall be at liberty to approach the appropriate forum for realisation penalty as contemplated in Sub-section (3) of Section 43 of the Electricity Act, 2003.

26. This arrangement may continue till the Board creates its own comprehensive mechanism for the purpose of dealing with the individual applications for supply

of submersible pump.

27. Now turning to the individual writ petitions, the grievance of the writ petitioners in W.P. 26799(W), 26800(W), W.P. 26801(W), W.P. 26802(W), W.P. 27157(W), W.P. 27187(W), W.P. 27178(W), W.P. 27542(W), W.P. 27545(W), W.P. 27622(W), W.P. 28413(W), W.P. 28415(W), W.P. 28416(W), W.P. 28417(W), W.P. 28427(W), all of 2006 and W.P. 79(W), W.P. 80(W), W.P. 82(W), W.P. 217(W), W.P. 248(W), W.P. 249(W), W.P. 250(W), W.P. 251(W), W.P. 252(W), all of 2007 are similar. The common grievance is in spite of applications being made, no step is being taken by the distribution licensee. The writ petitions stand disposed of in terms of the directives contained in paragraph 24(1) above.

28. In W.P. No. 26831(W), W.P. No. 26832(W), W.P. No. 26833(W), W.P. 26834(W), W.P. No. 27060(W) and W.P. No. 27159(W), all of 2006, the grievance of the petitioners is that quotations have been raised and in some cases, payment has been made, but connection is yet to be effected. These writ petitions are disposed of in terms of the directives contained in paragraph 24(1) above, provided payment has been made.

29. In W.P. Nos. 218(W) and 220(W) of 2007, the prayer is for temporary connection for which quotation appears to have been issued. Let connection be given to the petitioners in terms of directives as per paragraph 24(1) above. W.P. Nos. 306(W) and 307(W) of 2007, the prayer is also for temporary connection and these two writ petitions are disposed of in the same terms as in the cases of W.P. Nos. 219(W) and 220(W) of 2006, with a further direction that their connection shall be given from the existing transformers if capacity permits.

30. In W.P. No. 27503(W) of 2006, the petitioner's grievance is on the question of maintenance of minimum distance norm. This writ petition is disposed of with a direction that connection may be given provided minimum distance norm stipulated as per regulations framed under the Water Act.

31. In all these writ petitions, however, the directives contained in different subparagraphs of paragraph 24 above, wherever applicable shall be followed.

32. With these directions, these writ petitions stand disposed of.

33. This Court records its appreciation for the assistance received from Mr. S.K. Mazra, learned Senior Counsel, who appeared in these matters as *amicus curiae*.

34. There shall be no order as to costs.

35. Urgent Xerox certified copy of this judgment may be made available to the learned Advocates for the parties on usual undertaking.