

(1987) 12 KAR CK 0004

In the Karnataka High Court

Case No : Writ Petition No's. 3625 and 3626 of 1984 and etc.

K.S. Susheela and Another

APPELLANT

Vs

The Karnataka Electricity Board, Bangalore and Others

RESPONDENT

Date of Decision : 09-12-1987

Acts Referred:

Electricity Supply Regulations made by Karnataka Electricity Board — Regulation 2F
Karnataka Land Revenue Act, 1964 — Section 95

Citation : AIR 1988 Kar 178

Hon'ble Judges : M. Rama Jois, J

Bench : Single Bench

Advocate : K. Subba Rao, J. Nagaraja Rao, N.B. Krishnan and B. Sachidananda Murthy, for the Appellant; C.R.V. Swamy, S.G. Sundaraswamy and Ashok R. Kalyana Shetty and N.K. Gupta, for the Respondent

Judgement

1. In all these writ petitions presented by the Petitioners who are the owners of residential buildings constructed on revenue lands situate within the area of the Corporation of the City of Bangalore without securing permission for conversion of agricultural lands for non-agricultural purpose and without licence from the Corporation, the following question of law arises for consideration :-

"Whether Regn. 2(f) of the Electricity Supply Regulations made by the Karnataka Electricity Board, which provides that the Board may require an applicant seeking supply of electric energy to produce a certificate from the concerned local authority to the effect that the construction is an authorised one as a condition for supply of electric energy, is invalid ?"

2. The facts of the case, in brief, are as follows : Each of the petitioner's in this batch of petitions has constructed a residential building on a revenue site without there being any permission for conversion of the land for non-agricultural use which is a condition precedent for constructing a building, in view of S. 95 of the Karnataka Land Revenue Act., The petitioners have also not taken any licence from the Corporation of the City of Bangalore though the lands in question are

within the limits of the Corporation of the City of Bangalore. Each of the petitioners, after constructing building applied to the Karnataka Electricity Board (the Board for short) established under the provisions of the Electricity (Supply) Act 1948. The Board called upon each of the petitioners to produce a Certificate from the Local Authority namely the Corporation of the City of Bangalore, to the effect that the construction is unauthorised one. Obviously, none of the petitioners was in a position to secure and produce any such certificate for two reasons. Firstly, there has been no permission for conversion of agricultural lands for non-agricultural use. Secondly, the construction had been made without securing the licence from the Corporation in accordance with the provisions of the Karnataka Municipal Corporation Act and the Building Bye-Laws framed thereunder. Consequently, the Board has refused to supply electric energy A) the petitioners relying on Regn. 2(f) of the Electricity Supply Regulations made by the Board. In this situation, the petitioners have presented these writ petitions questioning the validity of Regn. 2(f) of the Regulations and seeking for the issue of writ of mandamus directing the Board to supply electric energy to the residential premises of each of the petitioners.

3. The Electricity Board has framed the Regulation in exercise of its powers under S. 790) of the Act. Regn. 2(f) reads:

"With a view to prevent unauthorized construction on Government and Revenue lands the prospective consumers shall, if so required by the Board, produce a certificate from the Corporation /Trust Board/ Municipality or other competent authority, to the effect that the construction is an authorized one and is fit for accommodation."

(underlining by me)

The opening words of the Regulation namely "with a view to prevent unauthorised construction on Government and Revenue lands" only incorporates one of the reasons for framing the regulation and need not have been made part of the rule. Omitting those words the rule is clear. It provides that the Board is entitled to call upon a prospective consumer to produce a certificate from the concerned Local Authority that the construction is an authorised one. There is no dispute about the meaning of the regulation. The plea of the Board is that the above regulation has been validly made by the Board under S. 790) of the Act and in terms of the Regulation the petitioners were called upon to produce certificate from the Corporation to the effect that the construction was an authorised one and as no such certificate had been produced by the petitioners, they were not entitled to the relief sought for in the petitions.

4. The learned Counsel for the petitioners contended that Regn. 2(f) was ultra-vires the power of the Board and therefore invalid. Elaborating the said contention, the learned Counsel stated as follows: S. 26 of the Electricity (Supply) Act makes Clause VI of the Schedule to the Electricity Act 1910 applicable to the supply of Electricity by the Board. According to the said clause,

the Board is under an obligation to supply electric energy to applicants if distributing mains have been laid down. The said clause also prescribes the circumstances under which the, supply of electricity could be refused and also the maximum period during which the Board can refuse to supply electric energy. The condition that a building should be an authorised construction is not one of the conditions prescribed therein. The Board could not, in exercise of its power under S. 79 of the Act, frame Regn. 2(f) as it would amount to adding a new condition not incorporated in Clause VI of the Schedule to the 1910 Act. Therefore the said Regulation is ultra vires the power of the Board and therefore invalid. If the construction is an unauthorised one, it is for the Authority concerned to take action for demolition of the building and so long as no such action is taken and the, building is not demolished, there is no power in the Electricity Board to refuse to supply electric energy. The learned Counsel submitted that for instance, Government cannot refuse to give a ration card to a family on the ground that it is living in an unauthorised construction. On the same analogy, the Electricity Board cannot refuse to supply the electric energy to the residential houses even on the basis the house is an unauthorised construction.

5. Sri N. K. Gupta, learned Counsel appearing for the Board, however, submitted as follows having regard to the provisions of S. 49 and S. 79 of the Act the Board had got powers to frame Regulations laying down the principles governing the supply of electricity to individual consumers. The conditions prescribed in, the Regulations made under S. 79 would be additional conditions governing the supply of electricity and would supplement the conditions laid down in Clause VI of the Schedule to the 1910 Act : The condition laid down under Regn. 2(f) is one which the Board had competence to make, in exercise of its power under S. 79 of the Act. The contention of the petitioners that it was ultra vires of the power of the Board was untenable.

6. In order to appreciate" the rival contentions, it is necessary to refer to the relevant provisions of the Act. The Board is constituted under the provisions of the 1948 Act. S. 49 of the Act provides for the sale of electricity by the Board to consumers other than licensees. Relevant portion of the Section reads :---

"(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 purpose of such supply frame tariffs.

(underlining by me)

The above provision empowers the Board to lay down the terms and conditions for the purpose of supply of electric energy and to fix the rate for the supply of electric energy.

7. Section 79 of the Act reads :

"The Board may, by notification in the Official Gazette. make regulations.

XXXX XXXX XXXX XXXX

(j) principles governing the supply of electricity by the Board to persons other than licensees u/s 49."

(underlining by me)

It is in the exercise of the powers under the above provision, the Board has framed the Regulations. S. 26 of the Act reads .

"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, 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-secs0) and (3) of Section 21 and (S. 22, sub-sec: (2) of S. 22A and Ss. 23 and 27) of that Act or in (Clauses I to V, clause VII and clauses IX to XII) of the Schedule to that 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."

(underlining is mine)

As can be seen from the. Second proviso to the above Section, the provisions contained in Clause VI of the Schedule to the 1910Act are made applicable for the supply of electricity by the Board in respect of the area where distribution mains have been laid by the Board. Clause VI of the Schedule to the 1910 Act to the extent it is necessary for the purpose of this case reads :

"(1) where, after distributing mains have been laid down under the provisions of clause IV or Clause V arid 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 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 :

XXXX XXXX XXXX XXXX

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 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."

According to the above clause, the Board is under a duty to supply electricity to any person, after distributing mains have been laid within one month from the date of making a requisition for the supply of electricity. It is only under extraordinary circumstances like cyclones, storms etc. the Board can refuse supply of electric energy within the specified period. The other conditions under which the Board could refuse supply of electric energy and that too for a period of not exceeding six months are incorporated in the last clause of the proviso extracted above.

7A. The contention of the petitioners is that the distributing mains have already been laid and none of the grounds specified in the main clause or the proviso is in existence to make the basis for the Board to say that it cannot supply the electricity and that no other condition can be laid down by the Board as a condition precedent for the supply of electricity and therefore Regn. 2(f) is invalid and consequently a writ of mandamus has to be issued to the Board to supply electricity as sought for by each of the petitioners.

8. The question for consideration, in the light of the rival contentions, is, whether the conditions prescribed in clause VI of the Schedule to 1910 Act are exhaustive and it is not competent for the Board to lay-down any additional condition to be complied with for supply of electric energy. It appears to me, in Clause VI certain basic conditions on the fulfillment of which supply of electricity should be given by the Licensee or the Board as the case may be are incorporated. In addition to them, S. 49 of the 1948 Act empowers the Board to supply electric energy upon such terms and conditions as the Board thinks fit S. 79 of the 1948 Act expressly provides that the Board may frame regulations. Laying-down the principles governing the supply of electric energy to persons other than licensees under S. 49 of that Act. Therefore, it is competent for the Board to make a rule to the effect I hat production of a certificate that the building concerned is unauthorised one, as a condition precedent for the supply of electricity. Such a condition supplements the conditions prescribed under Clause VI of the Schedule to the 1910 Act and cannot be regarded as inconsistent with the rules incorporated therein. Therefore, I am unable to agree that under S. 79 the Board has no power to frame a regulation imposing such a condition.

9. In these cases it is necessary to observe that the provisions of the Municipal Corporation Act which regulates the construction of building, the provisions of the Land Revenue Act which prescribes the conditions for use of agricultural land for non-agricultural purpose, the Bangalore Water Supply &- Sewerage Act, 1964

which regulates the supply of water to the buildings and the provisions of the Electricity (supply) Act which regulates the supply of electricity to buildings have to be implemented in a harmonious way. The provisions of one of these enactments cannot be used in a manner which brings about the defeat of the object and purpose of other enactments. The Officers or the Authorities who are administering the provisions of the enactments are under a duty to frame regulations so as to ensure that the relevant provisions of each of the enactments are complied with.

10. If the contention of the petitioners were to be accepted, it would mean that any person can put up a building on a revenue land violating the provision of S. 95 of the Karnataka and Revenue Act and/or he could also construct a building without securing a licence under the provisions of the Corporation Act and still the Electricity Board would be under a duty to supply electric energy to such an unauthorised construction and the Water Board would be under a duty to supply water to such an unauthorised construction. A construction which leads to such absurd result has to be eschewed. It is also pertinent to note that just as the Electricity Board has framed Regn. 2(f) the Bangalore Water Supply & Sewerage Board has also framed regulations called the Bangalore Water Supply Regulations 1965. Regn. 5.1. thereof reads :-

"Applications for House Constructions. -

The owner, lessee or occupier, who desires to have a supply of water shall make an application for water connection to the Water Supply Engineer, in the form prescribed by the Board through a Plumber licensed by the Board. The application shall be accompanied by sanctioned plan or Tax Paid Receipt, an endorsement for having paid the road cutting charges to appropriate authority, a detailed estimate of cost of connections, and three prints of the several houses in the compound and the details of layout of the pipe lines, in relation not only to the Board's distribution lines running close but also to the public and private drains, latrines, etc."

(underlining is mine)

As can be seen from the Regulation, the production of a sanctioned plan of a Tax Paid Receipt which pre-supposes that there had been a Sanctioned Plan, is a condition precedent for supply of water. The Regn. 2(f) framed by the Board is also to the same effect regarding supply of electricity. The framing of such Regulation is absolutely essential in order to ensure that no unauthorised constructions are put up in violation of the provisions of the Land Revenue Act or the provisions of the Municipal Corporation Act.

11. The illustration given by the learned Counsel that the Government cannot refuse to give a ration card to a family on the ground that it is residing in an unauthorised construction is not at all apposite. There is a clear and inseparable nexus between a building and supply of electric energy or water to the building. They are so essential supplies with which alone a building becomes fit and

suitable for residential or non-residential use. Therefore, any rule framed imposing a condition namely that production of a certificate for the construction is an authorised one is necessary for the supply of electric energy would be a valid condition and within the powers of the Board under S. 79 of the (1948) Act. In the light of the above discussion, I answer the question set-out first as follows :

Regulation 2(f) of the Electricity supply Regulations made by the Karnataka Electricity Board which provides that the Board may require an applicant seeking supply of electric energy to produce a certificate from the concerned Local Authority to the effect that the construction is an authorised one as a condition for supply of electric energy, is valid.

12. At the time of hearing of these petitions, learned Counsel for the petitioners fervently appealed for the issue of a direction to the Board to supply electric energy on humanitarian grounds. They submitted that apart from the petitioners there have-been, hundreds of persons similarly situated who belonged to poor classes and who, having no other alternative, were forced to purchase revenue sites which were available at lower rates and to put up construction to meet the dire need of residential accommodation. The learned counsel submitted that on account of the failure on the part of the Government and the Bangalore Development Authority in discharging their duties of providing House Sites to the needy persons the petitioners and others were left with no option than to resort to purchase of revenue sites and put up residential building. They also submitted that if no such directions were to be issued to the Board to supply electricity, these hundreds of families residing in such an unauthorised constructions would be put to considerable hardship and misery.

13. While I fully appreciate the circumstances which forced the petitioners and other persons to purchase revenue sites and put up unauthorised constructions, as also the hardship to which they would be put to, if no such direction is given, I find it difficult to concede their prayer in the petitions, for, this Court Cannot issue a writ to the Board to supply electric energy contrary to law. The function of this court is to enforce the law and not to compel the authorities to act in disobedience of law on the grounds of hardship. Therefore, I had told the learned counsel that I had no alternative than to dismiss the petitions though reluctantly.

14. However, it so happened that before the conclusion of the hearing of these petitions there was an announcement in the Press about a policy decision taken by the Government to regularise the unauthorised conversion of agricultural lands as building sites and to regularise the constructions put up on such sites on payment of prescribed fine. This decision came as a great relief both to the petitioners as also to me. In view of this decision the petitioners came forward with the plea that the Board may be directed to supply electricity to the buildings of the petitioners subject to their producing the certificate from the Local authority to the effect that the constructions had been regularised, within a period of one year. I suggested, to the Board that, in view of the decisions of the

Government and the plea of the petitioners based on it, that the Board might supply electricity to each of the petitioners, if each of the petitioners were to give an undertaking to produce the certificate, within one year and that if any of the petitioners fail to produce such certificate within one year, the Board would be at liberty to withdraw the supply of electricity. The learned Counsel for the Board also agreed that such an order could be made as in a few cases electricity has already been supplied pursuant to an interim order by this Court.

15. In the circumstances I reserved orders and requested the learned Counsel to produce a copy of the Government Order providing for the scheme for regularisation of the conversion of agricultural land and for regularising the constructions on such land. Accordingly, the learned Counsel for the Board has produced a copy of the Government Letter dt. 12th Oct. 1987 incorporating therein the decisions of the Government and directing the authorities concerned to implement the said decision. The relevant portion of the letter reads :

"I am directed to forward herewith the statement indicating in juxtaposition, the decisions of the Government on the Central issue of regularisation of unauthorised buildings in Urban areas and the consequential and incidental matters arising there from the Department/or organization/authority for which is required to take action to implement the decisions.

Government desires that all the authorities concerned should take immediate steps to give effect to the several decisions with least possible delay.

SI. Description of the (decision of) Government No. Department/Organization
which is required to take action

X X XX XX

2. The compounding fees for diversion of agricultural land Revenue Department for non-agricultural purposes without the authority of the Revenue officer shall be collected at 25% of the rates as now In force and shall be collected in two annual installments.

3. Regularisation shall also cover unauthorised constructions Bangalore Development

On lands which have been acquired by the Bangalore Authority Development Authority.

4. Regularisation shall also apply to Revenue Lands formed Revenue Department and

into sites without getting them converted for non-agricultural Town Planning Authorities

purposes from the Revenue Authorities. Including Bangalore

Development Authority

5. To amend the Karnataka Town and Country Planning Director of Town Planning Act, 1961 so as to make provisions therein for :

a) Regularising from a retrospective date conversion of lands without the orders of the concerned revenue officer, formation of unauthorised layouts/sites and or unauthorised erection of buildings.

b) an appeal against the orders of the Planning Authority in individual cases where regularisation might be refused.

_____ I request you to kindly take action accordingly in so far as the decisions relate to your Organisation/Department.""

The learned Counsel for the petitioners had agreed to secure regularisation of conversion and construction by complying with the conditions presented by the Government.

16. In the result, I make the following

ORDER (i) All the Writ Petitions in so far as they relate to the challenge to the validity of Regn. 2(f) of the Electricity Supply Regulations is concerned, they are dismissed. (ii) A direction shall, however, issue to the Electricity Board to supply electricity to the premises of each of the petitioners, for a period of one year from today on his giving an undertaking that he will secure regularisation of the use of agricultural land for non-agricultural purpose, on payment of the prescribed fee and also to produce a certificate from the Corporation of the City of Bangalore or the Bangalore Development Authority, as the case may be, to the effect that the construction in question has been regularised, within one year. (iii) If any of the petitioners fails to furnish such certificate within one year the Board shall be at liberty to disconnect the, supply of electric energy thereafter. 17. Order accordingly.