

(1980) 03 GUJ CK 0025
In the Gujarat High Court

Case No : Letters Patent Appeal No. 275 of 1974

M.J. Purohit and Another

APPELLANT

Vs

The Executive Engineer, Gondal and Another

RESPONDENT

Date of Decision : 13-03-1980

Acts Referred:

Electricity Rules, 1956 — Rule 45(1), 45(2)

Citation : AIR 1980 Guj 205 : (1981) 22 GLR 1

Hon'ble Judges : B.J. Divan, C.J.;G.T. Nanavati, J

Bench : Division Bench

Advocate : M.R. Anand, for the Appellant; B.J. Shelat, for the Respondent

Judgement

B.J. Divan, C.J.—This appeal under Clause 15 of the Letters Patent has been filed against the judgment and order of our learned Brother. S. H. Sheth, J. in Special Civil Application No. 1181 of 1973. Our learned Brother dismissed the special civil application and discharged the Rule and the original petitioner has filed this Letters Patent Appeal against the judgment and order of our learned Brother.

2. The facts leading to this litigation are that petitioner No.1 has been working as an electrical contractor. He is the holder of a licence in that behalf under the provisions of the. Indian Electricity Rules, 1956 and is duly qualified for carrying out electric installation work in Junagadh and surrounding areas. The second petitioner is the Secretary of Gujarat Vijali Contractors" Mandal and he thus comes in on behalf of the association of electrical contractors working throughout the State of Gujarat. The Gujarat Electricity Board wanted to carry out electrification work of the staff quarters of the Board at Sardhar, Virpur and Talaja. Tenders were invited and petitioner No. 1 submitted his tender. Respondent No. 2 is also an electrical contractor, though not qualified and licensed to carry on that work, and three other persons also submitted their tenders. The tender of respondent No. 2 was accepted though he did not hold a licence to carry out the work of electrical contractor for installation work and the tender of petitioner No.1 was rejected. The association of licenced electrical

contractors has entered in the present dispute between the first petitioner and the Executive Engineer of this Gujarat Electricity Board who is the first respondent herein. The petition has been filed by the two petitioners against rejection of the tender of petitioner No1 and acceptance of the tender of respondent No. 2. The main question "which is required to be considered is under Rule 45 of the Indian Electricity Rules, 1956. That rule provides as follows:

"Precautions to be adopted by consumers, owners, electrical contractors, electrical workmen and suppliers- (1) No electrical installation work, including additions, alterations, repairs and adjustments to existing installations, except such replacement of lamps, fans, fuses, switches, low voltage domestic appliances and fittings as in no way alters its capacity or character, shall be carried out upon the premises of or on behalf of any consumer or owner, for the purpose of supply to such consumer or owner, except by an electrical contractor licensed in this behalf by the State Government. and under the direct supervision of a person holding a certificate of competency issued or recognised by the State Government:

Provided that in the case of works executed for or on behalf of the Central Government and in the case of installations in mines, oil fields and railways, the Central Government and in other cases the State Government may, by notification in the Official Gazette exempt, on such conditions as it may impose, any such work described therein either generally or in the case of any specified class of consumers or owners, from so much of this sub-rule as requires such work to be carried out by an electrical contractor licensed by the State Government in this behalf."

Under sub-rule (2), suppliers are prohibited from connecting electrical installations with the supply lines if the installation had not been carried out in accordance with sub-rule (1). We are not concerned with sub-r. (3) of R. 45. It is thus clear that so far as the suppliers are concerned, R. 45 clause (2) requires the suppliers to see to it that electrical installations work at any premises is carried out by licensed electrical contractors, that is contractors who are licensed by the State Government in this behalf. The electrical contractor must be licensed and the person who supervises the installation work must also be a holder of a certificate, of competency issued or recognised by the State Government. Thus, in order to prevent accidents and in order to see that safety is properly assured, this rule has been made under the powers conferred on the State Government by Section 37 of the Indian Electricity Act, 1910. Rules have been made by the Central Electricity Board after following the procedure laid down by Section 38 of the Act. The emphasis is on the words "consumers or owners". Mr. Anand has emphasized and pressed before us that the Gujarat Electricity Board which is otherwise a supplier is, for the purpose of quarters for its employees, the owner of the premises and hence would fall within the provisions of sub-rule (1) of Rule 45. As against this contention, it must be borne in mind that the question as to how tenders were invited for the electrical

installations in the quarters has been point-ed out in the affidavit-in-reply. The affidavit is by R. D. Mehta, Executive Engineer (Construction) of the Gujarat Electricity Board, being affidavit dated September 18, 1973. In paragraph 6 of the affidavit-in-reply it has been pointed out that in the Fourth Five Year Plan two schemes were approved by the Government, namely, (1) Talaja 33 KV Sub-station and lines and (2) Sardhar 33 KV Sub-station and lines. Over and above these two schemes, the Gujarat Electricity Board also included a third scheme, that is, Virpur 33 KV Sub-station, though it was not included in the plan formulated by Government. As the Gujarat Electricity Board had taken up the aforesaid three schemes, a tender notice was issued in "Jansattal as has been mentioned by the petitioner in Exhibit A and it was also mentioned in the tender notice that the tenders were invited from experienced contractors. It has been pointed out in paragraph 8 of the affidavit-in-reply that the Board had to carry out various activities in implementing the schemes framed by it. The Board employs qualified persons to mainly do the work of supervision and it is further stated that for the purpose of carrying out the works of the same, tenders are invited and works are given on contract to various contractors. It is stated that all these works are supervised by the employees of the Gujarat Electricity Board who are qualified to supervise the same. In paragraph 9 it is stated:

"I say that the aforesaid three schemes included a sub-station consisting of control room, yard, office and quarters. I say that the m in work of a sub-station is to receive high voltage electrical energy and transform it into low voltage electrical energy for transmission to villages. I say that similarly a control room controls such transmission lines. I say that in the yard transformers, switches, coil circuit, brakes and other equipment are installed. I say that all these works require constant presence o " f the qualified employees and therefore, their quarters are also constructed as a part of the same sub-station. I say that when the work of construction of a sub-station is going on, it is done under the constant supervision of the employees of the Board. I say that as the Board does not employ a large number of persons for carrying out the installation work, tenders are invited from the contractors. I say that every work which is being carried out by the contractors is done under the constant supervision of the qualified employees of the Board."

In view of what has been stated in paragraphs 6, 7, 8 and 9 of the affidavit-in-reply, it is clear that the Gujarat Electricity Board was putting up a complex for the sub-station at each of the three centres, namely, Talaja, Virpur and Sardhar. At each place there was a complex consisting of a sub-station, a control room, a yard and quarters for the employees who would be required to keep constant attendance at the sub-station. The quarters for the staff who are working at the sub-station are part of the sub-station complex and thus connected with the functioning of the Gujarat Electricity Board as supplier of electricity. It is undoubtedly, the owner of the quarters but it is not as the owner that the quarters are put up. The quarters are put up as an integral part of the sub-station which the Gujarat Electricity Board has to install as part of its functioning

as supplier. It is possible that in its capacity as employer the - Gujarat Electricity Board may put up a housing colony or it may put up residential quarters by way of providing amenities to its employees or it may put up an office, for its office staff. In such cases, the office building or the housing colony will not be an integral part of the functioning of the Gujarat Electricity Board as supplier. Therefore, the two functions of the Gujarat Electricity Board, one As supplier and another as employer, or the body running " the administration which would require offices for its functioning, have to be separated. If the construction work is put up by the Board as part of its functioning as supplier, it would be putting it up not in its capacity as owner of the premises but as a supplier and the requirement of sub-rule (1) of Rule 45 only is in connection with owners or consumers, not in connection with suppliers. The only requirement of subrule (2) is that the supplier will not connect electrical installation which has been carried out in contravention of subrule (1) with the works of the supplier. So far as the quarters which are an integral part of the sub-station are concerned, they are altogether different from the works which are referred to in sub-rule (1) of Rule 45 so far as owners or consumers are concerned. Gujarat Electricity Board is neither an owner nor a consumer so far as the quarters which are an integral part of the sub-station are concerned. This distinction between the two functions of the Gujarat Electricity Board, one as supplier and the other when it functions in any other capacity, has to be borne in mind. So far as the capacity other than the capacity as supplier is concerned, it will be the owner of the premises and would be bound by sub-rule (1) unless a special exemption has been granted by Government concerned. functioning under the proviso to sub-rule (1) of Rule 45.

3. In the instant case we find from the affidavit⁴ⁿ-reply that the quarters in question which were constructed at Talaja, Sardhar and Virpur were integr al parts of the sub-stations which were being put up by the Gujarat Electricity Board at these three different centres. They were being put up in the capacity as suppliers and not in any other capacity and therefore, looking to the wording of Rule 45, sub-rule (1), the provisions of sub-rule (1) will not apply since the Board in that capacity is neither an owner nor a consumer.

4. Under these circumstances, our conclusion is that in the light of the facts and circumstances of this case which have been pointed out by the affidavit in-reply dated September 18, 19-73, it was not necessary for the Gujarat Electricity Board when it gave the contract of work in respect of electrical installations in the quarters attached to the substations at Virpur, Talaja and Sardhar to engage the services of a licensed e ectrical. contractor. No violation of subrule (1) of Rule 45 took place in this: eventuality. However, we wish to make it clear that if the capacity of the Electricity Board had been other than that of supplier, sub-rule (1) of Rule 45 would certainly apply.

5. Mr. Anand is right when he contends that our Brother S. H. Sheth, J. has imported the meaning of owner of mines while reading sub-rule (1) of Rule 45 when that is not called for but even independently of the reason which appealed

to our learned Brother, our conclusion is the same, namely, that sub rule (1) of Rule 45 does not ap to these particular three installations in the quarters attached to the sub-stations at Virpur, Talaja and Sardhar.

6. Allegations have been made in the petition regarding mala fides on the part of the officers of the Gujarat Electricity Board at the time of inviting tenders and these allegations have been denied in the affidavit-in-reply. Since it is not possible to ascertain or decide the question of mala fides merely on the affidavit and since it is not possible for us to do so on the materials before us, we refrain from expressing any opinion regarding the averments of mala fides.

7. In our opinion, the conclusion reached by our learned Brother was correct though the reasons which appealed to him are different from the reasons which appealed to us. This letter Patent Appeal therefore, fails and is dismissed. There will be no order as to costs.

8. Appeal dismissed.