
(2008) 08 GUJ CK 0054

In the Gujarat High Court

Case No : Special Civil Application No. 6107 of 2007

Patel Prakashbhai Bhagwandas

APPELLANT

Vs

Central Gujarat Electricity Company Ltd.

RESPONDENT

Date of Decision : 26-08-2008

Acts Referred:

Constitution of India, 1950 — Article 19(1)

Citation : AIR 2009 Guj 14

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Ramnandan Singh, Petitioner 1, for the Appellant; Lilo K Bhaya, for Respondent 1, for the Respondent

Judgement

Jayant Patel, J.—Rule. Ms. Bhaya, learned Counsel appearing for the Electricity Company waives notice of Rule.

2. With the consent of the learned advocate appearing for both the sides, the matter is finally heard.

3. The short facts of the case appears to be that the petitioner was having one electric connection for a tube well of 20 HP for the purpose of irrigation. As per the petitioner, it did applied for another connection on 01.06.2006 by paying the requisite fees for registration of Rs. 200/-. Thereafter, the estimate was also prepared and the petitioner deposited the requisite amount of Rs. 9,855/-. As per the petitioner, the another connection was applied for another tube well since in the existing well, where the connection was in existence as per the petitioner, there was no sufficient water. The petitioner accordingly dug the well, but the connection was not granted to the petitioner for 20 HP load. Under these circumstances, the petitioner has approached to this Court by way of the present petition.

4. Heard Mr. Ramnandan Singh, learned Counsel appearing for the petitioner and Ms. Bhaya, learned Counsel appearing for the Electricity Company.

5. Mr. Singh, learned Counsel appearing for the petitioner submitted that since the electricity supply was granted for one bore well, which was in existence and the water was not sufficient, the petitioner has dug another tube well for which, the application was made. Thereafter, the amount as per the estimate was also paid, but the connection is not released. As a result thereof, the petitioner is not in a position to make use of the tubewell for irrigation purpose and therefore, this Court may direct the respondent Authority to release the electricity connection within stipulated time limit.

6. The learned Counsel for the respondent Electricity Company contended that at the initial stage, the officers of the electricity company were under the impression that the petitioner is desirous to have extra load in the existing connection and therefore, the estimate was prepared. However, since it was a case of new connection and not for extra load, the connection has not been released. She submitted that for new connection, there is waiting list and the turn of the petitioner has also not reached. Therefore, the petitioner would not be entitled for the connection as per the seriatum. She also resisted the direction for grant of connection on the ground that if a person is having one agricultural connection, he would not be entitled for the second connection in the same premises. It was submitted that unless the ownership is different, the petitioner would not be entitled for the second electric connection for the same agricultural land though the well may be different. Therefore, it was submitted that the direction may not be issued by this Court.

7. The learned Counsel for the respondent has relied upon the Electricity Supply Code No. 4.1.17 for supporting the contention that if one connection is already in existence, second connection cannot be granted. Electricity Supply Code No. 4.1.17, which is pressed in service by the learned Counsel for the respondent Electricity Company reads as under:

4.1.17. The distribution license will not provide more than one connection/meter for one premise. The consumer opting for second meter will have to produce separate legal entity such as documents of separate income tax number/sales tax number, ration card and rent or lease agreement.

8. If the aforesaid Supply Code is read as it is, it can hardly be said that there is any absolute bar for second meter which would include a separate connection, also. What required is that a separate legal entity or the documents in support thereof is required to be produced. The Code suggests separate legal entity in the context of income tax number or sales tax number or ration card or rent or lease agreement. Such documents or proof showing the separate legal entity as mentioned in the Code are only some of the examples and they are not exhaustive in their list. The factum showing permissibility to produce the document for separate legal entity itself shows that the nature of documents mentioned are by way of inclusive language and not by way of exhaustive language. The reason being that there can be more than one contingency as mentioned in the aforesaid supply code to show separate legal entity or a

separate status of the person concerned. Further, since the language used in the Supply Code for separate legal entity in the context of income tax, sales tax, ration card, rent or lease agreement, shows that it is for a separate legal status, the documents are to be produced and for showing a separate and distinct use for such separate meter or connection. If a person is having one tube well and if in the same agricultural land, another tube well is dug, a separate and distinct use of the another tube well can be identified. It may be that the electricity company could verify as to whether separate tube well is dug by the petitioner or not. Further, the tube well has manifold purpose including the irrigation of the land for the land owned by the person where the tube well is located and it could also be permitted to be used for irrigation of the additional adjoining land, may be on payment of charge or otherwise. Therefore, on reading of the aforesaid clause of the Electricity Code, it appears that if a separate and distinct use for a specific purpose is identified, no bar operates for grant of connection, unless the electricity company finds that it may not be possible for separately preparing the bill for the electricity supply. If in one premises or land there are more than one owner or one owner is desirous to have more than one separate and distinct activity which requires separate assessment under the Income Tax Act or Sales Tax or ration card etc. separate connection can not be said as impermissible, e.g. In one large portion of land/premises different co-owner are desirous to have different and separate residential or commercial activities or in one large portion or premises one owner is desirous to make use for residential, commercial or industrial activity separately or that he desirous to have more than one residential or commercial or industrial activities. If in all such circumstances, separate connection is read as impermissible, it would result into large number of legal complication for Income Tax, Sales Tax, excise, local tax etc. to the very person for such various district and separate use. Therefore, the word legal entity is to be understood in the context to a particular and distinct separate independent use. If such meaning is not given, the said clause of Supply Code may be rendered unconstitutional putting absolute bar to the rights guaranteed to citizen under Article 19(1)(g) of the Constitution of India. As in the present case, the petitioner has applied for a separate connection for a distinct use for a different tube well, the same is not prohibited as per the Supply Code. Hence, the interpretation as sought to be canvassed by the learned Counsel for the respondent, under these circumstances, is not correct for contending that a separate connection cannot be granted to the petitioner even if separate and distinct tube well having different status altogether is dug by the petitioner in the very agricultural land.

9. The aforesaid takes me to examine the aspects for issuance of the direction to release the agricultural connection. The learned Counsel for the respondent Electricity Company is right in submitting that unless in serial, the turn of the petitioner has become due for allotment of separate agricultural connection, the direction cannot be given for release of the electricity supply within a stipulated time limit.

10. It has been submitted by the learned Counsel for the respondent Electricity Company that there is a waiting list for agricultural connection. Therefore, it would be required for the petitioner to wait until his turn becomes due on the basis of the date of the application made by the petitioner and it is only thereafter, the connection can be granted to the petitioner by the respondent Electricity Company.

11. In view of the above, it is directed that the respondent Electricity Company shall release the electric connection to the petitioner as and when his turn for such connection becomes due as per seriatum periodically. However, after the date on which such connection becomes due, as per the earlier direction, the actual connection shall be supplied, preferably within a period of one month from such date.

12. Petition is partly allowed to the aforesaid extent. Rule made absolute accordingly.