

(2008) 05 CAL CK 0031
In the Calcutta High Court
Case No : Writ Petition No. 9228 (W) of 2007

Ranjit Singha

APPELLANT

Vs

The West Bengal State Electricity Distribution Company
Limited and Others

RESPONDENT

Date of Decision : 16-05-2008

Acts Referred:

Constitution of India, 1950 — Article 226
West Bengal Ground Water Resources (Management, Control and Regulation) Act,
2005 — Section 3, 7

Citation : (2008) 05 CAL CK 0031

Hon'ble Judges : S.P. Talukdar, J

Bench : Single Bench

Advocate : Biswajit De and Panchanan Hazra, in W.P. 9228W of 2007 and Rabindranath Mahato, in W.P. 8629W of 2007, for the Appellant; Gopa Roy and Tapas Ghosal, in W.P. 9228(W) of 2007 and Sumit Panja and S. Roy, in W.P. 8629(W) of 2007, for the Respondent

Judgement

S.P. Talukdar, J.—In response to the submission made by learned Counsel for the parties and having regard to the fact that the controversies raised in the two applications substantially relate to the same subject matter, both the writ applications are taken up together for consideration and are governed by the same judgment and order. Grievance, as ventilated in W.P. No. 8629 (W) of 2007, may briefly be stated as follows:

The petitioner is a resident of Village- Kanchia, Post Office- Radhanagar, Police Station- Ghatal, District- Midnapore (West). Some persons of the said village were trying to install submersible pump without any permission from the authorities concerned under the West Bengal Ground Water Resources (Management, Control and Regulation) Act, 2005. They were, thus, trying to frustrate the purpose of the West Bengal Ground Water Resources (Management, Control and Regulation) Act, 2005. Installation of unauthorized submersible pump is injurious to health of the residents of the locality. In response to the

form received from respondent No. 5, the Station Manager of Birsingha Group Electric Supply being respondent No. 4 herein has been taking steps for supply of electricity to run unauthorized submersible pump. The petitioner raised objection to that and submitted representations. In view of consistent non-response on the part of the authorities, the petitioner through his learned Advocate by letters dated 5th March, 2007 and 23rd March, 2007 demanded justice. The respondent No. 4, by his letter dated 17th March, 2007, supplied to the petitioner through his learned Advocate copy of the circular received from Director of Water Investigation and Development Department as also from the Chief Engineer of the Board.

2. Being aggrieved by such wrongful, illegal and arbitrary decision of the respondent authorities regarding effecting electric supply connection to the unauthorized STW/SMP as per the prayer of respondent No. 5, the petitioner approached this Court with such application under Article 226 of the Constitution. The said respondent No. 5, as petitioner, filed an application under Article 226 of the Constitution being W.P. No. 9228(W) of 2007 with the following grievances:

In response to his application for supply of electric connection with the purpose of running shallow tubewell, the West Bengal State Electricity Board issued quotation and as required, the petitioner paid the application fees of Rs. 500/- on 8.8.2002. The petitioner's name appears as against serial No.2 in the list of Intending Agricultural Consumer prepared by the Distribution Company. The name of the private respondents have been appearing as against serial Nos. 12 and 13 in the said list. The petitioner's application No. is 47 dated 20.9.2002 and the private respondents' application Nos. are 66 and 67 dated 5.5.2004. When the petitioner approached the respondent authority for permanent electric connection i.e. dated 20th September, 2002, no submission of SWID clearance certificate was required for effecting new electric connection for running shallow tubewell. But in the case under reference, the Board issued quotation to the private respondents without providing the writ petitioner with necessary electric connection. The Station Manager of the Distribution Company sent his proposal to his higher officer for effecting supply to the petitioner's shallow tubewell in question on 9th October, 2002. But there was no direction for submission of any SWID certificate. This was made effective from the year, 2003. Petitioner installed his shallow tubewell in the year, 2002, but till the date of filing of the application, no electric connection has been provided by the respondent authority. The petitioner, in view of such whimsical and arbitrary action on the part of the authorities, filed a writ application on 6th January, 2005 being W.P. No. 19520 (W) of 2004.

3. It was disposed of by directing the respondent authorities to hear the petitioner and other effected parties and the authority concerned was directed to take necessary steps in effecting connection to the petitioner within a period of six weeks from the date of compliance of all the formalities. The private respondents got SWID certificate on 26th April, 2004. It was for the said

respondents to maintain the minimum spacing of 200 metres during installation/energisation of submersible pump from any existing ground water structure. It was indicated that failing that the clearance certificate would be cancelled. In violation of such observation, the private respondents installed their submersible pump within the distance of 200 metres from existing ground water structure.

4. The SWID certificate dated 26.4.2004 was valid for the period of 90 days from the date of issue. Since the scheme for energisation could not be completed within the period of 90 days, the clearance certificate stood automatically cancelled. Private respondents are not entitled to get any electric connection, since they did not maintain the minimum spacing of 200 metres from the existing ground water structure. The said private respondents filed two writ applications being W.P. No. 10582 (W) of 2005 and W.P. No. 10583 (W) of 2005.

5. Learned Single Bench of this Court, by order dated 7th July, 2005, directed the Board to consider all the three applications strictly in accordance with law. Liberty was given to submit water availability certificate from the senior Geologist. The private respondents did not shift their submersible pump nor did they comply with the formalities but managed to get quotation for getting connection to their submersible pump.

6. West Bengal Ground Water Resources (Management, Control and Regulation) Act, 2005 was enforced w.e.f. 15.9.2005. The said Act indicates that obtaining of permit from State Level Authority, District Level Authority or Corporation Level Authority is required for any use of such pump. The petitioner approached for new electric connection and paid the quotation amount of Rs. 96,255/- on 15.2.2007 for his shallow tubewell installed in 2002. In absence of any permit, the private respondents should not be provided with any electric connection. The petitioner, in such circumstances, approached this Court for redressal of his grievances.

7. The learned Counsel for the writ petitioner in W.P. No. 9228(W) of 2007 submitted that question of providing the private respondents with necessary electric connection for running of submersible pump without asking them to submit permission is illegal and the authority concerned for the purpose of doing the same must proceed serially on the basis of the applications made.

8. On behalf of the writ petitioner, it was further submitted that the private respondents have their submersible pumps within the distance of 100 metres and this was in clear violation of Section 3 of the Act. In course of submission, learned Counsel for the writ petitioners in both the cases as well as for the respondents/distribution company referred to the various provisions of the West Bengal Ground Water Resources (Management, Control and Regulation) Act, 2005.

9. It is 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. Concern for the ground water i.e. the water which exists

below the surface of the ground at any particular location can be well appreciated. Following the provisions of the said Act, different committees i.e. the State Level, District Level and Corporation Level were established. Inviting attention to Section 7, it was submitted that a permit is required to be obtained in connection with sinking of wells for extracting or using ground water on and from the date of coming into force of the Act.

10. The matters available on record indicate that a system of a mandatory clearance of SWID was introduced in eight districts in the State of West Bengal in the year, 1993 as a pre-requisite for electrification by W.B.S.E.B. of STWs fitted with submersible pumps belonging to private individuals for imposing indirect restrictive measure towards indiscriminate use of ground water. The said Act came into effect on and from 15th September, 2005 and the Rules came into effect w.e.f. 1.8.2006. To have permit for construction of new tubewell and certificate of registration for the existing tubewells have been made mandatory by such Act and its rules. But it does not refer to any issuance of clearance by SWID for energisation by W.B.S.E.B. of shallow tubewells fitted with submersible pumps. It was clarified by the appropriate authority of the West Bengal State Electricity Board that taking into consideration such change in the legal complexion, the issue of clearance by SWID for energisation of shallow tubewells fitted with submersible pumps was discontinued w.e.f. 1.8.2006.

11. Learned Counsel for the petitioner, Ranjit Singha, in course of submission, referred to the guidelines issued by the Electricity Distribution Company for energisation of tubewells. Inviting attention of the Court to the copy of the Form-6, as filled in by the writ petitioner, Ranjit Singha, it was submitted that the distance of the existing well from the nearest shallow tubewell fitted with submersible pump is 250 metres. Such well was constructed in March, 2004.

12. In connection with the writ application filed by Sagar Singha, it was submitted by learned Counsel for the petitioner that it is for the State Level Authority to take into consideration every aspect in order to manage the ground water resources and it is necessary to consider the certificate of registration or permit. It was submitted that Ranjit Singha, who is respondent No. 5, installed the submersible pump without such permission and as such, in an unauthorized manner. Such a pump cannot be energized. Such Sagar Singha appears to have ventilated his grievances before the various authorities. The complaint was lodged even before the concerned Station Manager of Birsingha Group Electric Supply in this regard as far back as in 23rd March, 2007. This was in connection with the attempt to installation submersible pump without any permission from the authorities. Approach was, thus, made for taking appropriate steps by way of stopping installation of electric supply connection to the unauthorized pump. Objection to installation of electricity to the unauthorized submersible pump was, therefore, raised on 5th March, 2007 on behalf of the writ petitioner, Sagar Singha. On the other hand, the writ petitioner, Ranjit Singha, in the other case approached this Court with a direction upon the respondent distribution company

for not supplying electric connection to the submersible pump of the private respondents therein without getting necessary permits.

13. At the time of hearing, reference was made to the Division Bench judgment of this Court in the case of West Bengal State Electricity Board and Others Vs. Mehedi Hassan Reza, . Learned Division Bench of this Court in the said case held that in absence of compliance of formalities for extracting of water mentioned in the West Bengal Ground Water Resources (Management, Control and Regulation) Act, 2005, not writ Court can pass direction upon the licensee to give connection of electricity for the purpose of extraction of underground water.

14. In the case of Kartick Chandra Mondal Vs. Chairman, WBSEB and Others, , learned Single Bench of this Court, after taking into consideration the Electricity Act of 2003 and the said Act of 2005, observed that there is need for both the authorities to work in tandem in order to ensure that the provisions of the two Acts are not made unworkable.

15. Reference was also made to the decision in the case of Secretary, West Bengal State Electricity Board and Others Vs. Deb Kumar Jash and Another, , wherein the learned Division Bench of this Court held that in order to obtain SWID certificate, a distance of 200 metres between two submersible pumps is required to be maintained.

16. So far the claim of the writ petitioner, Ranjit Singha, is concerned, it appears that the authority concerned relied upon a circular No. 683 dated 17.12.2007 and took the stand that for energisation of existing tubewells application may be accepted without certificate of registration. This may be followed up by issuing quotation and accepting the quoted amount. Service connection may also be provided with provisionally. But it is to be disconnected if the competent authority under the Act refused to grant certificate of registration. With reference to the approach of the writ petitioner, Ranjit Singha, the authority concerned took the stand that he only wanted service connection provisionally for five months to his STW and he also assured that no objection would be raised if the said line is disconnected for non-submission of valid registration certificate within the period of five months.

17. It appears from the materials available on record and the submission made by learned Counsel for the parties that the writ petitioners in the two cases are entangled in the controversy over supply of electricity for the purpose of running of submersible pump since long. It is no wonder that according to the writ petitioner, Ranjit Singha, the claim made by Sagar Singha is without any basis and the said Sagar Singha raised serious objection to effecting electric supply connection to the unauthorized STW of such Ranjit Singha. Having regard to the stand taken by the parties in the two writ applications, it appears that the facts are disputed. The grievances, as raised in the two writ applications, however, deserve proper and effective consideration. Those do not only relate to alleged arbitrariness on the part of the authorities. Those involve serious concern for

maintenance of ground water level. Ranjit Singha in his application sought for a direction upon the authority for considering all aspects of the matter before giving electric connection to the submersible pump of the private respondents. On the other hand, the applicant, Sagar Singha, in his application sought for direction upon the concerned authority for not proceeding any further in regard to energizing the unauthorized submersible pump of Ranjit Singha. The requirement of law while considering any application for providing one with necessary electric connection has already been discussed. It is for the appropriate authority to take the same into consideration. And, this Court is of the view that interests of justice will be best served, if the respondent distribution company proceeds with the matter strictly in accordance with law and takes appropriate action ? of course, after giving opportunity of hearing to the rival parties.

18. Considering all such facts and circumstances, the present writ applications being W.P. No. 9228(W) of 2007 and W.P. No. 8629(W) of 2007 are disposed of with direction upon the petitioners to submit fresh representation before the appropriate authority ventilating their grievances within a period of four weeks. The respondent authority being the Station Manager, Birsingha Group Electric Supply, upon receipt of such representation, must consider such representation within a period of four weeks thereafter and may take appropriate action or pass necessary orders in accordance with law and certainly, after giving the writ petitioners in both the matters as well as other interested parties, if any, particularly the private respondents, an opportunity of hearing. Action to be so taken or order to be so passed must be duly communicated to the writ petitioners within a further period of two weeks.

19. It is needless to add that while providing any writ petitioner with such supply, the respondent authority must ensure that all the legal formalities including payment of the requisite amount under the rules have been duly complied with. There is no order as to costs.

20. Urgent xerox certified copy of the order be supplied to the parties, if applied for, as expeditiously as possible.