
(2010) 10 MAD CK 0153

In the Madras High Court

Case No : Writ Petition No. 8787 of 2003

S. Sivaprakasam and Others

APPELLANT

Vs

Tamil Nadu Electricity Board

RESPONDENT

Date of Decision : 26-10-2010

Acts Referred:

Citation : (2010) ELR 1167

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : T.P. Manoharan, for the Appellant; J. Ravindran, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—The Writ Petition is directed against the order of the third respondent dated 03.03.2003, by which the third respondent has directed the petitioners not to use the electricity supply for the strength more than 5 HP for which permission was granted and also directed to remove the additional load of 25 HP, failing which, suitable action will be taken in the disconnection of the electricity supply.

2. Originally, Smt. Selvarathinam and five others owned agricultural lands in S. No. 112/2 in Kupbandapalayam Village, Bhavani Taluk to an extent of 0.9 1/2 cents and another adjacent land to the extent of 20 acres in Vembathi Village. In the land situated in Kupbandapalayam Village, two wells are in existence and it is stated that the persons using the adjacent lands to the extent of 20 acres have obtained easement right for laying underground pipe lines from the said wells. The Tamil Nadu Electricity Board has granted service connection in S.C. No. 414 under the Keelavani Distribution Circle for 5 HP for one of the said wells. It is stated that the above said persons using the water for agricultural purpose by way of irrigation have been using additional load of 25 HP by fitting 30 HP motor and pump set and taking water through the underground pipelines for irrigating and cultivating the 20 acres of land situated in Vembathi Village.

3. The Electricity Board has introduced Voluntary Disclosure Scheme to regularized the additional loads of electricity used by the agriculturists on certain conditions. Accordingly, the above said persons have registered themselves for regularization under the Scheme by paying necessary registration fee on 30.12.1999 in the third respondent's office and they have been continuously using the 30 HP for irrigation. Since the previous owners in whose name the service connection was granted were unable to use the land effectively, they offered to sell the said lands in favour of the petitioners and accordingly, the petitioners have purchased the said lands under the sale deed dated 23.10.2001.

4. It is the case of the petitioners that the wells are situated far away from the prohibited distance as contemplated under the Scheme and the regularization of the irregular use of HP has been effected by the Government as a matter of policy for the benefit of agriculturists for proper irrigation process for agricultural production. As per the sale deed dated 23.10.2001 executed by the vendors, the petitioners have not only purchased the agricultural lands, but also the easement rights for drawing water through underground pipelines and necessary consent deeds have also been executed. After the purchase, one of the vendors, namely, K.S. Senthamarai has given a letter to the second respondent informing about the sale effected in respect of the properties along with the service connection and requesting the second respondent to effect transfer of service connection in the name of the petitioners. It is seen that pursuant to the said request, the Electricity Board has in fact effected name transfers in the name of the petitioners on 19.02.2003. After the purchase, the petitioners, based on the Scheme, laid down pipelines by spending huge amount for the purpose of proper irrigation on their agricultural lands and it is stated that they have spent Rs. 70.00 lakhs in that regard and they have been raising various crops, like, Sugarcane, Tapioca, Groundnut, Turmeric etc. It is also the case of the petitioners that in respect of the similarly situated adjacent lands, who were using the electricity more than the sanctioned strength, when the unauthorized use was found on inspection, such unauthorised use came to be regularized by the respondents. On record, it is seen that at least in respect of two persons, namely, A. Ramasamy and M.P. Angappan, who are the holders of the adjacent lands, the unauthorised use of electricity more than the sanctioned strength came to be regularised by the respondents under the Scheme. However, when the respondent authorities found that in respect of the petitioners' lands, who were granted only 5 HP were using 30 HP in respect of their service connection, the impugned order came to be passed by the third respondent stating that there is no provision for regularisation of the unauthorized use of 25 HP and directed to abandon the use of additional strength of 25 HP in the land within a period of seven days. This is as against the said order, the present Writ Petition is filed on various grounds that the order of the third respondent is arbitrary and the third respondent, who is bound by the scheme of the Electricity Board for the purpose of regularization of the unauthorized excess use of electricity for irrigation purposes cannot taken a stand as if the petitioners are not entitled and on many

legal grounds.

5. In the counter affidavit filed by the respondents while admitting the application made by the vendors of the petitioners for the purpose of regularization of the unauthorized use of electricity supply and the electricity connection having been transferred in the name of the petitioners, however, has taken a stand that one of the names of the vendors, viz., K.S. Senthamarai has been wrongly mentioned as K.S. Senthamari, wife of Duraisamy instead of K.S. Senthamarai, wife of Sadhasivam. It is stated in the counter affidavit that one of the said vendors of the petitioners have accepted to produce the rectification deed in respect there of and in spite of such undertaking, such rectification deed has not been produced before the Electricity Board. One other reason that made the Board for passing the impugned order as stated in the counter affidavit filed by the respondents is that the said well is situated within the prescribed prohibited distance from the river bed, canals and water ways etc. and therefore according to the Scheme, the petitioners are not entitled for the further strength of electricity supply.

6. On a reference to the counter affidavit shows that these are the two reasons, which have entered into the minds of the third respondent while passing the impugned order. Even though the learned Counsel appearing for the respondents would vehemently contend that the wells are situated within the prohibited area and therefore under the Scheme the petitioners are not entitled for regularisation, such ground was never raised in the impugned order. Law is well settled that when the impugned order is silent about the particular reason, the same cannot be explained by the respondents in the counter affidavit.

7. It is also relevant to note that even under the Scheme such restriction regarding the prohibited distance is not available. On the other hand, as correctly submitted by the learned Counsel appearing for the petitioner, a reading of the Scheme, which is in the form of various memorandum issued by the Electricity Board shows in category term that in case the agriculturists are using the power, which is more than the sanctioned strength, the same has to be allowed by way of regularization liberally and the approval to be given to the additional load as seen in the Scheme appears to be a routine matter. The memorandum also shows that even in case where necessary applications are not made, for the purpose of regularization of the unauthorized use of electricity supply, it is the duty of the Board that on finding out the unauthorized use of power, make necessary arrangement for the purpose of regularization and the Scheme is called as self-finance scheme. The Scheme in its turn appears to be based on the policy of the Government, it being free power supply to the agriculturists for irrigation purposes. If that is the basis of the Scheme, the reason assigned by the respondents in the counter affidavit as if the Well is situated within the prohibited distance of river bed, canals and waterways cannot be sustainable. What is not available in the Scheme and more particularly as what has not been raised in the impugned order cannot be permitted to raise and explain in the

counter affidavit filed by the respondents.

8. As far as the next aspect which is raised in the counter affidavit about the name of one of the vendors, viz., K.S. Senthamarai, is concerned, it is seen that by following the procedure established by law, the respondents themselves have accepted the transfer of electricity connection in the name of the petitioners in respect of S.C. No. 414, which stood originally in the name of the vendors of the petitioners, namely, K.S. Senthamarai. As it is seen in the order of the Electricity Board dated 19.2.2003, after effecting such name transfer, it is too late for the respondents to raise such an objection as if the name of one of the vendors of the petitioners was wrongly mentioned and not rectified. The said two reasons, which are explained in the counter affidavit, I am of the considered view that cannot be the grounds at all for the purpose of denying the right of the Scheme to the petitioners, who are admittedly using the well for irrigation purposes. No where in the counter affidavit it is stated that the water drawn from the well are used for different purposes other than the irrigation purpose. In such view of the matter, it is certainly mandatory on the part of the respondents to regularise the use of the electricity by the petitioners for irrigation purposes.

9. It is seen that by virtue of the interim order passed by this Court, the petitioners are continuously using the electricity more than 5 HP.

10. In the light of the above, the order of the third respondent stands set aside with a direction to the third respondent to pass appropriate orders regarding regularization of the unauthorized use of the electricity supply by the petitioners in respect of the lands belonging to the petitioners purchased by them in the year 2001 and pass orders accordingly within a period of eight weeks from the date of receipt of a copy of the order. The Writ Petition is allowed accordingly. No costs.