

(2003) 03 KL CK 0060
In the High Court Of Kerala
Case No : O.P. No. 5089 of 2003

Saidalavi

APPELLANT

Vs

Assistant Executive Engineer

RESPONDENT

Date of Decision : 04-03-2003

Acts Referred:

Constitution of India, 1950 — Article 246

Citation : (2003) 2 KLT 170

Hon'ble Judges : M.R. Hariharan Nair, J

Bench : Single Bench

Advocate : K.M. Sathyanatha Menon, for the Appellant; C.C. Thomas and K.I. Abdul Rasheed, for the Respondent

Judgement

M.R. Hariharan Nair, J.—The four petitioners are agriculturists. Their case is that under the Government Orders in force, electricity charges in respect of their agricultural connections were being paid by the Agricultural Department through Krishi Bhavan and that without any notice and alleging arrears, the connections provided to these petitioners were disconnected on 16.1.2003, 20.1.2003, 30.1.2003 and 27.1.2003 respectively. It is stated that all these petitioners hold less than 2 Hectares of land each and as such are covered by the Government Orders in force for the eligibility of free electric supply for the agricultural connections.

2. On behalf of the State, it is pointed out that exemption would be given only in case their names are recommended for the benefit by the Krishi Bhavan and in the instant case that was not there.

3. That the 1st petitioner got the benefit of exemption is sought to be established based on the endorsement in Ext.PI bill for the period August, 1995. The respondents do not specifically deny that fact. If so the next question is whether he had disintitiled himself to that benefit by alienating his agricultural property or by acquisition/inheritance of more property in such a way that the total extent goes beyond 2 Hectares. Even though a connection is raised by the learned

Government Pleader that the petitioner failed in applying to the Krishi Bhavan in time, that contention does not appeal to me in view of the decision which has attained finality passed in *Ammini Gopalakrishnan v. State of Kerala* (2002 (3) KLT 553) to the effect that the cut off date, fixed in an inter-departmental communication between the Government Secretary and the Director of Agriculture, has no special significance and that irrespective of whether the application was made before the cut off date of 20.5.2001, the consumer would continue to get the benefit. It was directed that the petitioner in that case should approach the Local Agricultural Officer who should visit the farm of the petitioner, conduct investigation and then certify his eligibility within a period of one month.

4. The question is whether the said procedure should be followed in the present case. According to me, in cases where an agriculturist is once granted exemption, there is no need for any fresh application to be made periodically for continuing to get that benefit during the subsequent periods. In case the particular consumer becomes ineligible for some reason, it should be for the KSEB or the Krishi Bhavan to take up the matter; issue notice to the consumer and after hearing him, to pass an order finding that he is disentitled to get the benefit for the future periods for stated reasons. The need for making applications every year and the need to take the Agricultural Officer to the farm to facilitate sending up of reports etc., will cause immense difficulties to the farmers and result in wastage of time of the Agricultural Officer and all concerned. Once a consumer's name is recommended by the Agricultural Officer, the Agricultural Department and the KSEB have to presume that he is a consumer until disconnection is applied for or some other factor justifying disconnection come to their notice. In other words, once a person is certified by the Agricultural Officer of Krishi Bhavan, his eligibility for free electric supply has to be presumed for coming years also unless some factor which justifies withdrawal of the benefit comes to the notice of the Agricultural Officer/KSEB officials. A contrary decision can be taken only on proved facts like disposal of the agricultural property or acquisition/inheritance of more lands so as to make the extent go beyond 2 Hectares or on his ceasing to be a consumer of the KSEB with respect to agricultural connection as per orders passed for valid reasons and the like. Once the sanctity for the cut off date is gone as laid down in *Ammini Gopalakrishnan v. State of Kerala* (2002 (3) KLT 553) there would be justification for denying the benefit of free electric supply to the agricultural consumers only based on a report from the Krishi Bhavan or KSEB officials to the effect that the particular consumer has disentitled himself to get the benefit. Until such a finding is entered, his name should continue to be included in the list of eligible consumers sent up from the Krishi Bhavan to the Board from time to time. Any way this is a matter that should engage the consideration of the Government and I do not think that the above view should be thrust upon the Department through judicial orders. It will be better if the Government applies its mind on these aspects and issue appropriate orders. To enable such consideration in three months I direct that a copy of this judgment be sent over to the Secretary to

Government, Agricultural Department forthwith.

5. Coming back to the present case, Ext.PI does not show the name of the consumer. No authentic record is placed before me to show that the petitioners were exempted from payment of electricity charges. As such, and as things stand at present, it is for them to approach the Krishi Bhavan with request that their names be sent up to the Board's Section Officer for inclusion in the list of eligible consumers entitled for free electric supply. Necessary applications will be filed by them within a period of three weeks from today in which case that would be promptly dealt with by the Krishi Bhavan and appropriate orders passed in two weeks from the date of receipt of application. Pending such consideration, status quo in respect of the electric connections of the petitioners would be maintained for a period of upto three months from today. If disconnection has already taken place, reconnection would be provided by the KSEB as and when the report of the Krishi Bhavan certifying their eligibility is received by the 1st respondent.

6. Before parting with the case it is necessary to highlight the fact that the important dictum in Ammini Gopalakrishnan's case has not percolated so far to the level of Krishi Bhavan and KSEB Sections. This leads to the filing of a large number of writ petitions by individual agriculturists who have been enjoying the benefit for long seeking direction to the Agricultural Officers and electrical Sections for continuance/restoration of free electric supply. This results in wastage of time and expense for all concerned. It is high time that the decision aforementioned is brought to the notice of all Krishi Bhavan and Electrical Sections by the Director of Agriculture and KSEB respectively. I therefore direct the Registry that copies of the said decision be sent over to the 3rd respondent and to the Director of Agriculture with direction that the dictum in the said case viz., that there is no time limit for applying to Krishi Bhavan for recommending grant/continuance of the benefit of free electric supply to eligible agriculturists be brought to the notice of all Agricultural Officers in charge of Krishi Bhavans through the proper channel. Likewise, one copy of that decision will be sent over to the Secretary of the KSEB also with direction that the above aspect be brought to the notice of all Electrical Sections. Existing connection to agriculturists as on 20.5.2001 which was the cut off date that was struck down by this Court shall be liable to disconnection only after getting ineligibility Certificate from the Krishi Bhavan and after individual notice of not less than 2 weeks to the affected consumer is given. This position should continue until the Government takes its decision as directed in para.4 above.

7. Communication as directed in this judgment shall also be issued by the Registry forthwith.

The Original Petition is disposed of as above.