

(2000) 10 KL CK 0023
In the High Court Of Kerala
Case No : O.P. No. 26341 of 2001

Sasidharan

APPELLANT

Vs

K.S.E.B.

RESPONDENT

Date of Decision : 12-10-2000

Acts Referred:

Electricity Act, 1910 — Section 30

Electricity Rules, 1956 — Rule 10, 135, 142, 2, 29

Citation : (2001) 1 KLJ 109 : (2001) 1 RCR(Civil) 679

Hon'ble Judges : R.Bhaskaran, J

Bench : Single Bench

Advocate : S. Siri Jagan, for the Appellant; R.K. Venu Nair, for the Respondent

Final Decision : Allowed

Judgement

R. Bhaskaran, J.

1 This Original Petition is filed to quash Exts. P4 and P6 and also for a writ of mandamus directing respondents 1 to 3 to give electricity connection to the petitioner's auditorium as approved by the 4th respondent in Exts. P1 and P1(a) approval. Petitioner has constructed an air conditioned auditorium at Oachira by name "Regency Hall". Petitioner has decided to have a generating unit having capacity of 200 KVA for working the air conditioning unit and he requires electricity from the Electricity Board only for the purpose of lights and fans. Petitioner submitted the said scheme for approval. The scheme showed that there is separate line from the generator to the air conditioner without having any connection to the line connected to the supply of electricity from the Kerala State Electricity Board. Ext. P1 is the proceedings of the Electrical Inspector, Kollam giving sanction under S. 30 of the Indian Electricity Act and Rules 47A and 135 of the Indian Electricity Rules for energisation of 200 KVA DG set installed in the premises of the petitioner. On receipt of Ext. P1 approval from the 4th respondent, petitioner applied to the third respondent for electric connection from the Kerala State Electricity Board as per Ext. P2. Petitioner has also applied

for permission for operation of the generator as per Ext. P3. He has also submitted an undertaking that the generator set installed will not be synchronised with the KSEB supply. Ext. P3(a) is the undertaking. The third respondent by Ext. P4 letter dated 20.6.2000 directed the petitioner to submit power allocation application by including the load of the generator set. On receipt of Ext. P4, petitioner again requested for power allocation for lights and fans alone in the auditorium. The third respondent by Ext. P6 informed the petitioner that the proper allocation of lights and fans alone without including the generator is not acceptable. It is the case of the petitioner that after the approval is granted for electrical installation by the competent authority, the K.S.E.B, is bound to give electric connection to the applicant as per the approval, Petitioner relies on R. 47A of the Indian Electricity Rules, 1956. The said rule reads as follows:

"Where any consumer or occupier installs a generating plant, he shall give a thirty days" notice of his intention to commission the plant to the supplier as well as the Inspector."

According to petitioner, the action of third respondent in refusing to grant permission to the petitioner for the supply of energy for the lights and fans alone is illegal and goes against R. 47A of the Indian Electricity Rules.

2. The third respondent has filed a counter affidavit. Along with the counter affidavit, the third respondent has produced Ext. R3(a) Circular by the Chief Engineer on 4.4.2000. In the circular it is stated that the power allocation shall be granted to the total connected load i.e., the load proposed to be fed from the K.S.E.B, system and consumer"s own generators. It is stated that in the light of Ext. R3(a) circular, the petitioner is not entitled for power allocation for the lights and fans alone. Petitioner has filed an application for amendment of the Original Petition and has challenged the validity of Ext. R3(a) circular. It is stated that Ext. P7 circular which is the same as Ext. R3(a) is ultra vires the Indian Electricity Supply Act and the Rules made thereunder. It is also stated that the Act, the Rules and Conditions of Supply of Electrical Energy do not have any provision to impose such a condition and the circular is inconsistent with R.47A of the Indian Electricity Rules. It is further stated that the circular is not applicable in the petitioner"s case as his application was on 19.1.2000 and the circular was issued only on 4.4.2000. Petitioner has also a case that the respondents have given the facility similar to the one asked for by the petitioner to other persons without insisting on the total connected load by including the load fed from the consumer"s own generators. In the Additional Statement filed on behalf of the respondents, this fact is not disputed, but it is stated that those cases related to the period prior to Ext. P7 circular. Learned counsel for the respondents has also submitted that if the petitioner"s application is allowed, it will lead to the possibility of the petitioner misusing the system and he can take energy from the K.S.E.B. line even for working the air condition unit.

3. Learned counsel for the respondents brought to my notice clause (d) which is

the definition of "Consumer". Clause (d) in the Conditions of Supply of Electrical Energy defines the word "Consumer" as a person and as the owner or occupier of the premises connected for supply of electrical energy with the Board's power system and in whose name the installation stands registered and clause (j) "consumer's installation" means any composite electrical unit including the whole of the electric wires, fillings, motors and apparatus erected and wired by or on behalf of the consumer as well as the teak wood/metallic meter boards and PVC/MS conduits/cables required for service connection on one and the same premises. It is stated by the learned counsel for the respondents that if the petitioner's application is allowed, it will cause damage to the system. Some of the equipments in the other Section can also be energised using the power from the power light section. A statement is filed. It is stated that if the reliefs sought for are granted, it will virtually enable the petitioner to energise the unit which he now says are to be energised from the power generated from the diesel generator from the power light system. By such a procedure, the maximum demand charges that can be levied by the respondents if power is allocated for the total power, is denied.

4. By R.47A, the intention of the authority is clear and it only says that a consumer who installs a generating plant should give thirty days' notice of his intention to commission the plant and he should get the previous approval in writing of the Inspector. Admittedly, the petitioner has satisfied both these conditions. If the petitioner uses the energy more than what is sanctioned to him, it can always be detected by the respondents and his supply disconnected. The fact that the K.S.E.B. may not be able to get the fixed monthly charges by including the load from the generator also, may not be a reason for denying the permission to the petitioner for using energy from the generator and for that purpose no extra amount need be given to the K.S.E.B.. There is no authority for the Board to collect the monthly fixed charges by including the power which may be generated by the generator. The other provisions in the Electricity Supply Rules are also relevant in this connection. R.135 of the Indian Electricity Rules states that if any person other than a non-licensee is supplied with energy by a non-licensee or other person or has his premises for the time being connected to the conductors or plant of a non-licensee or other person, or himself generates energy and uses such energy or part thereof, such person shall be deemed to be a consumer for the purposes of Rr. 9, 10, 29 to 33, 45 to 70, 87 and 142. It is thus clear that when a licensee generates energy and uses such energy, it is only the provision specified in R. 135 that has to be complied with. It can be seen that none of these rules is violated when Exts. P5 order is made. None of these rules speaks about enabling the respondents to collect higher fixed charges by including the power generated by the consumer's own generator.

5. In this connection, it is also relevant to note the definition of "connected load" in regulation 1(n) of the Conditions of Supply of Electrical Energy. "Connected load" is defined as follows:

"Connected load" means the sum total of the installed capacities of all the energy consuming devices on the consumers' premises connected to the system which can be operated simultaneously".

Therefore, it is only where the energy consuming device is connected to the system that it can be said that the installed capacity becomes part of the connected load. "System" is defined in (ae) of R. 2 of the Indian Electricity Rules as follows:

"System" means an electrical system in which all the conductors and apparatus are electrically connected to a common source of electric supply".

Undoubtedly, it is only when the conductors and apparatus are connected to the common source of supply, it can be said that the sum total of installed capacities can be brought in within the definition of "connected load". In this case, the power used for the air conditioner is directly generated by the generator and is not connected to the system common to the generator and for light and fan purpose. Therefore, merely for enabling the Electricity Board to collect fixed charges every month, the Chief Engineer cannot by circular act against the provisions contained in Rr. 47A and 135 of the Indian Electricity Rules.

6. I therefore, allow this Original Petition and quash Exts. P4 and P6 and direct the respondents to give electric connection to petitioner's auditorium as per Exts. P1 and P1(a) approval. The same shall be done within a period of two weeks from today after completing the other formalities.