

(1989) 12 GUJ CK 0011

In the Gujarat High Court

Case No : Special Civil Application No. 5454 of 1989

Shantilal Keshavlal Pathak

APPELLANT

Vs

The Assistant Collector, Vadodara and Others

RESPONDENT

Date of Decision : 11-12-1989

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 23
Electricity Act, 1910 — Section 12(2)

Citation : AIR 1990 Guj 147 : (1990) 1 GLR 549

Hon'ble Judges : A.P. Ravani, J

Bench : Single Bench

Advocate : N.A. Pandya, for the Appellant; R.N. Shah, for the Respondent

Judgement

1. The petitioner is occupying tenanted premises belonging to respondent No. 2 herein. In the said premises, the petitioner is carrying on business as Optician and is also selling optical frames and glasses in the said premises. As the petitioner desired to have three-phase connection and as the landlord did not give consent for such electric connection the petitioner applied to the Assistant Collector for grant of permission for the electric connection under the provisions of Section 23-A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (the Act). Before the Assistant Collector, Vadodara the petitioner submitted that he was occupying premises as tenant for the last 34-years, He was doing business in optical frames and lens and that two of his sons were working with him; that there was single phase connection but since business was to be developed and for that purpose the Computer was imported from Japan, three-phase connection was required for the purpose of Air conditioning the premises. The Assistant Collector has rejected the application on the ground that the petitioner was not without electric facility and that he desired to have electric connection facility for the purposes of his business and not for his residential premises. In the opinion of the Assistant Collector since three-phase connection for supply of electricity was required for the purpose of business and not for residence, the application cannot be accepted and hence Assistant Collector,

Vadodara rejected the application as per order dt. April 18, 1989. The petitioner has challenged the legality and validity of this order by filing this petition.

2. Section 23-A of the Act, applies to the residential as well as business premises. Similarly the scope of the Section cannot be restricted to the premises wherein there is no electric connection at all. The Section applies, to all the premises, residential or business,¹ wherein "tenant desires to get supply of electricity at his own cost". This phrase in the context should be interpreted to mean everil additional supply of electric power. The Collector has only to see as to whether the person applying for permission is lawfully occupying the premises as tenant or not. If a person occupying the premises lawfully as tenant is denied consent by his landlord for obtaining electric supply, whether afresh or by way of addition, the Collector is required to be approached by such person for necessary permission so as to comply with the provisions of the Indian Electricity Act, 1910. Sub-section (3) of S. 23-A of the Act provides that on such permission being granted by the, Collector, the owner of the premises shall be deemed to have given the requisite consent under sub-section (2) of S. 12 of the Indian Electricity Act, 1910. Thus, this is merely enabling provision enacted with a view to relieve the tenants of their hardships in cases where a recalcitrant landlord is bent upon creating difficulties in the peaceful and comfortable enjoyment of the premises by the tenants. Whether premises are business premises or residential premises or whether electric connection is for being applied afresh or for additional electric supply are not relevant considerations. Such grounds are not required to be given any weight whatsoever by the Collector. Moreover, as to whether threephase connection would be feasible or not is also not a question to be gone into by the Collector. It will be for the licensee under the Electricity Act, 1910 to decide technical feasibility of the supply of the electricity. The technical feasibility of the supply of electricity is not to be determined by the Collector.

3. In the above view of the matter, the order passed by the Assistant Collector, Vadodara cannot be sustained inasmuch as the same is based on irrelevant and extraneous grounds. Hence, the order passed by the Assistant Collector, Vadodara, produce at Annexure-A to the petition is required to be quashed and set aside.

4. In the result, the petition is allowed. The order produced at Annexure-A to the petition passed by Assistant Collector, Vadodara is quashed and set aside. The Assistant Collector, Vadodara is directed to decide application of the tenant in accordance with law and by keeping in mind the principles laid down in this judgment and observations made hereinabove. The Assistant Collector shall decide the application within a period of one month from the date of the receipt of the writ of this court. Rule made absolute accordingly.

5. Petition allowed.