

(2012) 11 KL CK 0054

In the High Court Of Kerala

Case No : Writ Petition (C) No. 25042 of 2011

Sreyas Marketing

APPELLANT

Vs

Chief Electrical Inspector

RESPONDENT

Date of Decision : 14-11-2012

Acts Referred:

Bureau of Indian Standards Act, 1986 — Section 2
Electricity Act, 2003 — Section 162, 176, 176(2)(x), 177, 2(3)

Citation : (2013) 2 KLJ 322 : (2013) 1 KLT 277

Hon'ble Judges : C.K. Abdul Rahim, J

Bench : Single Bench

Advocate : K. Sri Kumar, A. Mohamed Mustaque, K.R. Avinash Kunnath, R. Ranjini, P. Satheesan, V.G. Arun, T.R. Harikumar, Santhosh Mathew, Sathish Ninan, Arun Thomas, Jennis Stephen, Vijayan Mannaly, A.D. Shajan, M. Balagovindan, Liji J. Vadakedom, P.A. Rabeez, Remy Elizabeth Thomas, K. Manoj Chandran and P.R. Ajith Kumar, for the Appellant; V. Vijulal, Government Pleader, T.R. Rajan, Sanjeev Kumar K. Gopal, Manoj Ramaswamy, P. Parameswaran Nair, Asst Solicitor General of India and Jaice Jacob, for the Respondent

Judgement

C.K. Abdul Rahim, J.—Challenge in these batch of Writ Petitions is against circular dated 18.8.2012 issued by the Chief Electrical Inspector, Government of Kerala, copy of which is produced as Ext.P1 in W.P.(C) No. 25712/11. In the impugned circular all officers of the Department of Electrical Inspectorate were directed to give intimation to all contractors/clients who have already got scheme approval to relocate "Generator Sets" in the ground floor itself. The circular is issued as a guideline for installation of "Diesel Generator Sets" (hereinafter referred to as "Generators" for short). It says that Generators should not be allowed to be installed above the ground floor or below the first basement level of any building and there shall be separate provision for direct escape and entry into the areas from outside in case of fire. Reference in the circular is to the "National Building Code 2005". In many of the cases, notices issued by the Electrical Inspectors declining approval of scheme for installation of Generators are under challenge. In some cases request for compliance of the guidelines in

order to approve schemes is under challenge. Attack against the circular impugned is inter alia on the ground that the Chief Electrical Inspector has no jurisdiction or authority to prescribe guidelines and to stipulate conditions with respect to installation of Generators. It is contended that the competent authority to specify technical standards for construction of electrical plants, electric lines and connectivity to the grid, is the "Central Electricity Authority" (hereinafter referred to as the "Authority" for short) established under S. 73(b) of the Electricity Act 2003 (hereinafter referred to as "the Act" for short). S. 177 of the Act deals with powers of the Authority to make regulations. Referring to sub-s.2(b) of S. 177, it is contended that the power to make rules with respect to suitable measures for safety and electric supply, as contemplated under S. 53 of the Act, is vested only with the Authority. S. 53 of the Act empowers the Authority to specify such suitable measures in consultation with the State Government. Reference is also made to provisions of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 (hereinafter referred to as the "Electricity Authority Regulations" for short). Evidently, the Electricity Authority Regulations are framed by virtue of power derived from S. 177 of the Act. Regulation 12 of the Electricity Authority Regulations deals with general safety requirement pertaining to construction, installation, protection, operation and maintenance of electric supply lines and apparatus. Regulation 12(2) reads as follows:-

save as otherwise provided in these regulations/the relevant code of practice of the Bureau of Indian Standards or National Electrical Code, if any may be followed to carry out the purposes of this regulation and in the event of any inconsistency the provisions of these regulations shall prevail.

Contention based on the above quoted provisions is that, the competent authority to prescribe safety measures is the Authority, and as long as the Authority has not prescribed any conditions as contained in the impugned circular, insistence by the Chief Electrical Inspector cannot be sustained as legal and as one issued under proper authority and jurisdiction.

2. For a proper adjudication of the above contention, it is necessary to examine the scope of powers vested on the Chief Electrical Inspector and Electrical Inspectors. S. 162 of the Act deals with appointment of Chief Electrical Inspector and Electrical Inspectors. It provides that Electrical Inspectors appointed by the appropriate Government shall exercise such powers and functions as may be prescribed within their jurisdiction, in respect to such electric installations, subject to such restrictions as the appropriate Government may direct. S. 176(2) (x) of the Act empowers the Central Government to make Rules prescribing powers to be exercised and functions to be performed by Electrical Inspectors. By virtue of power conferred under S. 176, the Central Government have framed the Qualifications, Powers and Functions of Chief Electrical Inspector and Electrical Inspectors Rules, 2006 (hereinafter referred to as "the Qualification Rules" for short). The Qualification Rules authorize Chief Electrical Inspector and

Electrical Inspectors to inspect all works and electrical installations. R.7(2) authorizes Chief Electrical Inspector and Electrical Inspectors to conduct inspections for satisfying with respect to adequacy of safety regulations provided under the Act and under the Electricity Authority Regulations. Under Regulation 32 of the Electricity Authority Regulations power is conferred on the appropriate Government to prescribe the capacity above which Generators are required to be inspected by Chief Electrical Inspector or Electrical Inspectors, before commissioning, through notifications to be issued, in exercise of power vested under S. 176(2)(x) of the Act and under S. 162 of the Act.

3. Sri. Vijulal, learned Government Pleader has produced copy of the Government Order, G.O.(MS) No. 17/87/TD dated 26.10.87. The said order deals with delegation of powers in the Department of Electrical Inspectorate. It indicates that, scrutiny regarding installation of Generators having capacity exceeding 250 KVA and approval of its schemes is conferred on the Chief Officer, whereas scrutiny and approval of schemes with respect to Generators having capacity up to 250 KVA is conferred on the District Officers. The above delegation is seen made by virtue of power derived under the erstwhile Indian Electricity Act, 1910 and the Rules framed thereunder. But until a corresponding Notification is issued under the Electricity Authority Regulations, the said Government order can be construed as valid and binding with respect to power for inspection, scrutiny and approval of scheme for installations of Generators by the Electrical Inspectors.

4. Learned Government Pleader pointed out that, by virtue of provisions contained in the KSEB Terms and Conditions of Supply 2005 (hereinafter referred to as "the Terms and Conditions"), the Electrical Inspectors are conferred with ample powers to conduct inspections in order to "satisfy" the safety requirements and also to scrutinize and approve schemes for installations. Particular reference is made to clause 11(4) of the Terms and Conditions, which specifies that for every installation the consumer shall strictly comply with all directions, specifications, clearance and standard layout prescribed by the Board, Inspectorate and Bureau of Indian Standards, from time to time. Referring to clause 12 of the Terms and Conditions, it is pointed out that wiring of any apparatus or electrical equipment, if it is to be connected to the Board's supply, approval in writing of the Electrical Inspector should be obtained under R.63 of the Indian Electricity Rules 1956. Chapter VII of the Indian Electricity Rules stipulates various conditions to be complied with in respect of electric supply lines, systems and apparatus for high and extra-high voltages. R.63 of the Rules deals with approval of the Electrical Inspector before installation and commissioning. Learned Govt. Pleader further pointed out that clause 13 of the Terms and Conditions, which relates to Electrical connections to multi storied (High Rise) buildings, insists on approval of the Electrical Inspectors. So also it is pointed out that under clause 23(6) of the Terms and Conditions, the approval of Electrical Inspectors with respect to providing of temporary connections is also enumerated. Referring to all the above said provisions, it is contended that

Electrical Inspectors are competent authorities to conduct inspections in order to satisfy compliance of required specifications and safety measures and they are competent to grant approval of schemes for installation of Generators.

5. On an evaluation of the various statutory provisions enumerated herein above, there is no hesitation to hold that the Chief Electrical Inspector or the Electoral Inspectors, as the case may be, are authorities competent to conduct inspections to scrutinize the specifications and safety measures and they are competent to approve the schemes for installation of Generators. But a more intrinsic question remains as to whether the Chief Electrical Inspector or the Electrical Inspectors are authorized and competent to prescribe any specification or any safety regulations.

6. As already observed, S. 73(b) of the Act deals with functions and duties of the Authority. It authorizes the Authority to specify technical standards for construction of electrical plants, electric lines and connectivity to the grid. S. 177 of the Act deals with powers of the Authority to make regulations. Sub-s.2(b) of S. 177 empowers the Authority to prescribe suitable measures relating to safety and electric supply under S. 53 of the Act. Under S. 53 of the Act power is vested with the Authority to specify suitable measures in consultation with the State Government. Therefore, it is contended on behalf of the petitioners that, even though power is conferred on Electrical Inspectors to conduct inspection, to scrutinize specifications and safety measures and to approve schemes for installations, no power is granted to formulate or prescribe any specification or safety regulations. On such premise, contention is that the Chief Electrical Inspector is not competent or authorized to introduce any specifications or safety measures through the impugned circular.

7. Per contra, Sri. Vijulal placed much reliance on Regulation 12 of the Electricity Authority Regulations. Regulation 12 deals with general safety requirements pertaining to construction, installation, protection, operation and maintenance of electric supply lines and apparatus. Regulation 12(2) (extracted above) provides that, the relevant code of practice of the Bureau of Indian Standards or National Electrical Code, if any may be followed to carry out the purpose of this regulation. It is contended that the impugned circular is issued on the basis of provisions contained in the National Building Code of India, 2005 (hereinafter referred to as the "Building Code" for short). The Building Code is framed under the Bureau of Indian Standards Act, 1986. S. 2 in Part 8 of the Building Code deals with electrical and allied installations. Clause 4 of that section particularly deals with planning of electrical installations. Clause 4.2 deals with location and requirement of substation. In sub-clause (m) of clause 4.2.1 it is mentioned that emergency power supply (such as Generating Sets) should not be allowed to be installed above ground floor or below first basement level of the building and there shall be provision for separate direct escape and entry into these areas from outside so that in case of fire the electrical supplies can be disconnected to avoid additional losses which may be caused due to electrical supply present at

the time of fire. Contention of learned Government Pleader is that since the Building Code contains such a provision dealing with location relating to installation of Generators and since such a provision is formulated by virtue of powers conferred under the Bureau of Indian Standards Act, necessarily such specifications will form part of safety measures, by virtue of regulation 12(2) of the Electricity Authority Regulations. It is also pointed out that provisions contained in Part 2 deals with electrical installations in stand-by generating stations and captive substations. Clause 6.4 of Part 2 of the National Electrical Code insists upon that, foundation of the stand-by Generating sets shall preferably be isolated from other structures of the building so that vibrations are not carried over. Clause 6.5 stipulates that the Diesel Generating sets should be provided with integral acoustic enclosure conforming to requirements as laid down in the Environment Protection Act. Since the Building Code and National Electrical Code prescribe specifications and safety measures, those requirements need be followed as requirements prescribed under the Electricity Authority Regulations by virtue of Regulation 12(2), is the contention.

8. Sri. A. Mohamed Mustaque, learned counsel appearing for the petitioner in W.P. (C)No. 25712/2011 had drawn my attention to the policy of liberalization regarding licensing envisaged under the new Electricity Act, 2003. He pointed out that, S. 7 of the Act enables any generating company to establish and operate generating stations without obtaining a licence under the Act, if it complies with technical standards relating to connectivity with the grid as referred to in clause (b) of S. 73. As already observed, S. 73(b) empowers the Authority to specify technical standards for construction of electrical plants, electric lines and connectivity to the grid. Contention is to the effect that if the generation station complies with the technical standards applicable to connectivity as prescribed by the Authority, then no permission is required from any authority to construct, install or establish such generating stations. But still it has to be conceded that, with respect to connectivity, such permission is required and the technical standards need be complied. Argument is raised to the effect that with respect to grant of permission for connectivity, the authorities cannot prescribe any specifications in relation to location of the generating stations or any specification relating to its establishment. On the other hand, learned Government Pleader contended that a stand-by a diesel generator sets cannot be construed as a "generating stations" and what is contemplated under S. 7 is only the substations and other power stations which are connected to the main grid. Referring to definition of "generating station" contained in S. 2(3) of the Act, learned Government Pleader emphasized that the Generators will not come within its purview. On the other hand, it is contended that Generators will squarely fall within the term of electrical plant, machinery, installations or apparatus as defined under provisions of the Act, Regulations, Supply Code and Terms and Conditions of Supply.

9. Sri Mustaque raised a contention that, in contra distinction with S. 44 of the repealed Electricity Supply Act, 1948, the scheme of the Electricity Act, 2003 is

based on the liberalized policy of the Central Government with respect to licensing. According to him, any specification or safety measure can be prescribed only within the legislative province of "connectivity" under proper competence and authority. Therefore the Regulation prescribing specifications with respect to location or establishment cannot be sustained.

10. While evaluating contentions, on the above aspects, I am of the considered opinion that an adjudication as to whether the stand-by generating set will fall within the scope of "generating station" mentioned in S. 7 need not be undertaken. This is because of the fact that, even going by S. 7 of the Act there is insistence for complying with technical standards relating to connectivity. Sri. Mustaque made an attempt to draw a distinction between standards of safety measures pertaining to installation and standards of safety measures pertaining to connectivity. But I am of the view that when any specification is insisted with respect to location, construction, installation or establishment of any apparatus, the same can definitely be construed as a safety measure or a specification for the purpose of permitting connectivity. According to the learned counsel, applicability of provision of the National Electrical Code or Bureau of Indian Standards Act can be considered only to the extent of specifications or standards prescribed for the purpose of connectivity and any specification or standard with respect to location cannot be insisted upon. But on a reading of Regulation 12 it is evident that it deals with safety requirements pertaining to construction, installation, protection, operation and maintenance of electric supply lines and apparatus. I am of the view that the general safety requirements prescribed therein need be complied with respect to all installations which is being connected to the electric supply line. Therefore, I am of the considered opinion that specifications contained in the Building Code can also be considered as a requirement of general safety with respect to installation of Generators.

11. Yet another contention raised is that, specifications in the Building Code which is adopted in the impugned circular, is only a specification regarding location for establishment of Generators and it is more concerned with safety of the building and not in any manner concerned with the connectivity aspect. Therefore it cannot be insisted as specification for permitting connectivity. But as already mentioned, S. 2 in Part 8 of the Building Code deals with electrical and allied installation. Therefore, it can only be construed as a general safety requirement with respect to installation of Generators and not a matter relating to safety of the building or a specification in respect of security of the building. Therefore I hold that, clause 4.2.1(m) contained in S. 2 in Part 8 of the Building Code is a safety measure, which can be followed as per regulation 12(2) of the Electricity Authority Regulations.

12. Learned counsel for the petitioners pointed out that the restriction imposed in the Building Code with respect to installation of Generators above the ground floor or below the first basement level is not an absolute bar. It is clarified in the latter part of the said clause itself that there should be provision for direct escape

and entry into the area from outside so that in case of fire the electricity supply can be disconnected to avoid additional losses. Hence it is contended that if the location is in an area with facility for easy entry, then it cannot be insisted that the location should be in the ground floor level or in the first basement level. It is further contended that blind adoption of the said provision from the Building Code, without any application of mind and without arriving at any conclusion that introduction of the said provision is necessary for generally safety, is unreasonable and unjustifiable. Further contention is that before insisting such condition the Chief Electrical Inspector has not sought any clarification or opinion from the Central Electricity Authority. No consultation was made with the Authority who is competent to formulate and prescribe regulations requiring general safety measures. The circular is issued in a most cryptic manner, is the contention.

13. It is to be noted that there is no materials available to show that before issuing the impugned circular the Chief Electrical Inspector had made any consultation or sought opinion from the Central Electricity Authority. Regulation 12(2) of the Electricity Authority Regulations provides that any code of practice in the Electrical Code or Bureau of Indian Standards "may be followed to carry out the purpose of this regulation" (emphasis supplied). It indicates that any code of practice in the Electrical Code or Building Code will not automatically become part of the Electricity Authority Regulations, unless it is decided to be followed. Whether any code of practice need be followed as a regulation or not is a matter which need be decided by the competent authority. The word "may" used in Regulation 12(2) is a clear indication of such a discretion. Definitely, it should be left to the decision of the authority who is competent to formulate the Regulations. Therefore, the competent authority to decide as to whether any code of practice contained in the National Building Code need be followed, for the purpose of the Electricity Authority Regulations, is the Central Electricity Authority. Without any decision of the said Authority, the Chief Electrical Inspector is not competent to insist upon that such code of practice need be followed as a measure of safety under the Electricity Authority Regulations. Therefore, unless the Central Electricity Authority recognizes the code of practice contained in the Building Code as a safety measure which need be followed for permitting installation and connectivity of Generators, the Chief Electrical Inspector or the Electrical Inspectors cannot insist compliance of such code of practice as a pre-condition for sanctioning scheme or for installation or for permitting connectivity of Generators. Therefore, the impugned circular is lacking jurisdiction and authority and is liable to be quashed.

14. Contentions are also raised challenging retrospective effect of the impugned circular, even in a case where the circular is to be held as valid. The Chief Electrical Inspector and the Electrical Inspectors are not justified in insisting changes with respect to scheme of installations already approved, on the basis of the impugned circular, is the argument. But in the counter affidavit filed on behalf of the Chief Electrical Inspector it is conceded that compliance of the

impugned circular is not insisted with respect to existing Generators and in cases where installation schemes were approved. I am of the view that even if the code of practice in the Building Code is decided to be followed as a safety regulation, the same can be given only prospective effect. On the basis of the discussions herein above contained, conclusions and reliefs can be summed up as follows:-

i) Circular No. B4. 15044/2011/CEI dated 18-8-2011 of the Chief Electrical Inspector, Government of Kerala, is hereby quashed on the ground that there is no decision taken or consent obtained from the Central Electricity Authority to follow the said code of practice contained in clause 4.2.1(m) of S. 2 in Part 8 of the Building Code as part of the Electricity Authority Regulations.

ii) It is held that the Chief Electrical Inspector and the Electrical Inspectors are competent authorities duly authorized to conduct inspections and to scrutinize - specifications and safety measures with respect to installation of Generators and to approve scheme for such installations.

iii) The Chief Electrical Inspector will be at liberty to insist upon compliance of the code of practice enumerated in clause 4.2.1 of S. 2 in Part 8 of the Building Code, on a prospective basis, for the purpose of approval of schemes for installation of Generators, after seeking consent or opinion from the Central Electricity Authority and on such authority consenting to follow such code of practice as part of the Electricity Authority Regulations,

iv) Till any such consent or decision is obtained from the Central Electricity Authority and till such decision is notified through any appropriate circular, the specifications/ conditions stipulated in the circular of the Chief Electrical Inspector, which is quashed herein above, cannot be insisted for approval of schemes and for permitting installation and connectivity of Generators.