

(2001) 09 MAD CK 0114
In the Madras High Court

Tamil Nadu Min Oppanthakararkal Min Eanipalarkal Central
Association and Another

APPELLANT

Vs

Tamil Nadu Electricity Board and Another

RESPONDENT

Date of Decision : 21-09-2001

Acts Referred:

Electricity Act, 1910 — Section 37

Citation : (2001) 3 MLJ 771 : (2002) WritLR 130

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Division Bench

Judgement

K.P. Sivasubramaniam, J.—These two writ petitions are filed by the respective Association registered as Trade Union under the Trade Unions Act, 1926, the members of the Association being licensed Electrical Contractors. The petitioners pray for the issue of a writ of certiorarified mandamus to call for the records relating to B.P.(FB) No. 25 (Accounts Branch) dated 31.10.2000 of the Tamil Nadu Electricity Board to quash the same and to direct the respondent to follow the existing procedure for effecting new service connection in respect of all low tension services by the Tamil Nadu Electricity Board.

2. According to the petitioner, respondent/ Board is constituted under the Indian Electricity Supply Act, 1948. The power to frame the regulations came to be vested on the Electricity Board by virtue of Section 37 of the Indian Electricity Act, 1910. u/s 26 of the Indian Electricity (Supply) Act, 1948 powers and obligations of the licensees are controlled. Therefore, being a licensee under 1910 Act the Electricity Board is statutorily bound by the various Rules and Regulations framed under 1910 Act. By virtue of Section 37 of 1910 Act, Indian Electricity Rules, 1956 have been framed. Rules 45 and 139 provide for the procedure for issuing Certificate of competency before electrical installation work is carried out. Rule 139 provides for penalty for breach of Rule 45.

3. According to the petitioners who claimed to be holding a certificate of competency, the licenses are issued both periodically and renewed with .strict

conditions and they are also liable for suspension or cancellation if the license holder is found guilty of any misconduct. For the purpose of any prospective consumer obtaining supply of electrical energy he has to submit the necessary from prescribed by the Board. In the original form column No. 8 requires that the wiring work has to be done by a licensed contractor and the name of the registered Wiring Contractor has to be given with his address and license number. After the said application is presented, the respondent/ Board has prescribed a test report to be submitted by the consumer which has to be certified by the licensed contractor to the effect and that installations have been constructed and inspected and tested by him and it complies with the Rules and Regulations. However, the respondent/ Board had now by virtue of the impugned notification had dispensed with the role played by the licensed contractors. The reason for doing so is alleged to be for elimination of certain alleged complaints said to have been received from the consumers. As a result of the modified procedure under the impugned order, the necessity to get certificate of the wiring contractor has been dispensed with. Further the consumer is obliged to give the name and address of the Wiring Contractor. As a result of the modified procedure about 1,50,000 electrical contractors throughout the State are deprived of their livelihood. The revised procedure has been prescribed without any rhyme or reason. The revised procedure is in violation of the various provisions of the Indian Electricity Act, 1910 and the Electricity Rules, 1956 and hence the writ petition.

4. In the counter-affidavit filed by the respondent, Electricity Board it is stated that there is no violation of the Rules or Act. It has been specifically mentioned in the impugned order that the Wiring should be done only by the licensed wiring contractor as per the conditions stipulated in the Electricity Act. Even though the Board has specified that the signatures of the contractors can be dispensed with, it is insisted that the consumers should furnish undertakings that the wiring of the electrical fittings are done by the competent licensed contractor/ electrician as stipulated under the Electricity Act. The Board has not interfered with or restricted the contract between the consumer and the electrical contractor. The Board has also not prevented the work of the electrical contractor being proceeded with. There is no interference with the rights of the licensed contractors. In the impugned order itself reasons have been stated as to why the revised form has been prescribed. Therefore, there was no violation of any of the Rules or Regulations.

5. Mr. N.G.R. Prasad, learned Counsel for the petitioner contends that the provisions of the Indian Electricity Act, 1910 prescribes certain basic requirements to eliminate sub-standard work in providing electrical connections which are bound to result in accidents of short-circuits, fire accident and related risk factors. That is the reason why, the Rules require that the wiring work has to be done by a licensed contractor. The competent electrical contractor has to certify that the installation was done, inspected and tested by him. The Wireman also countersigns and it is only thereafter the officials of the Board could inspect

the premises. The impugned action is contemplated in the name of elimination of defects and alleged that complaints were received from consumers. The reasons do not justify removing all the precautions which have been statutorily incorporated. Dispensing with the basic requirement would result in the removal of the safeguards. The impugned action also results in throwing out thousands of electrical contractors jobless and depriving of their livelihood. Learned counsel also took me through the relevant statutory provisions and the Forms of Certificates to emphasise the basic requirements and as such the impugned action of dispensing with the said requirement was detrimental to public interest. I would refer to those provisions later.

6. Mr. T.R. Rajagopalan, learned Senior counsel for the respondent/ Board contended that there have been several complaints from the consumers/ public about unnecessary harassing by the contractors in the matter of furnishing the certificate and that the public were being fleeced by vested interests. The Government had several meetings in this context and it was finally decided to do away with unnecessary formalities and also to simplify the procedure. There was no question of any compromising with the quality of the nature of the work to be carried out. There was also no possibility of any risk factors considering that the ultimate discretion to give the supply of electricity was with the authorised engineers of Tamil Nadu Electricity Board who would inspect the premises and only after they are satisfied with the quality of the work power supply would be sanctioned. The petitioner Unions were representing, vested interests of a group of individuals who were trying to monopolise the right to carry out the work of electrical installation and also resulting in harassment of the consumers. Hence, simplification of the entire procedure has been contemplated only in public interest.

7. In W.M.P. No. 2505 of 2001 the rival Union, Ramanathapuram Mavatta Thaniyar Min Thozhilalar Sangham, has prayed for impleadment of that Sangham as respondent in the writ petition alleging that their interest is very much involved. Considering the fact that they are also equally interested as much as the petitioner Union, I am inclined to allow the said petition and I have also allowed Mr. V. Prakash, learned Counsel for the impleaded party to address arguments on the merits of the writ petition.

8. In support of the petition for vacating the order of interim stay, rival union has contended that there is no violation of Rule 45 of the Indian Electricity Rules. The Rule does not provide any personal technical qualification and all that a licensed contractor has to do is to employ a wireman holding a Wireman competency certificate, such as the members of the Union/impleaded party. The solvency required was only Rs. 500 By virtue of the Government Order relating to the criteria for the grant of E.B. grade contractor license, it will be seen that the criteria was not a personal technical qualification, but only employment of a wireman, who has been duly certified. The Electricity Board realising that there was no difference between the wireman holding Wireman Competency Certificate

and E.B. license holding contractors and also realising the fact that the real persons doing the work are persons holding Wireman certificates, it was found that E.B. license holders were only middlemen taking money from the consumer for merely affixing their signatures. Therefore, the impugned procedure are only in conformity of Rule 45 and there is no violation of the said Rules. The writ petitioner Association has also not disclosed as to how they are really aggrieved by the impugned order.

9. Mr. V. Prakash contends that it is the Indian Electricity Act. 1910 which has given the power to the Government to prescribe the basic requirement for giving service connections. Under the Electricity (Supply) Act, 1948 respective Boards were vested with the power to prescribe requirements of effecting power supply. u/s 18(c) the power was vested on the State Electricity Board to exercise control and in relation to generation, distribution and utilisation of electricity within the State. Under Rules 46, 47 and 48 sufficient safeguards are prescribed to ensure proper service connections. The supplier has to test the installation before giving power supply and also after giving power supply periodical inspection and testing of installation is also contemplated under the Rules. The impugned proceedings do not in any manner deviate from the basic requirements of the quality of the materials or workmanship which are made subject to approval and inspection by the Engineers of the Board. Therefore, there is absolutely no possibility of the Board giving up or loosening statutory control over the installations. In the impugned proceedings, the only change is that the signature of the contractor alone is dispensed with. This was unavoidable because the manner in which the consumer was being put into the difficult situations by self seeking contractors. These contractors were only middlemen who have carried out the work with the licensed Wireman who were actually doing the job. No owner would employ an incompetent person and thereby resulting in huge loss of life and property. The impugned proceedings do not dispense with the requirements of the work done by the contractor and the owner has to certify that the work had been carried out by a competent licensed contractor and Wireman. Therefore, the members of the petitioner Union cannot be aggrieved in any manner. In dispensing with their signature, no harm is done and there is no question of the quality of the work being affected in any manner. The anxiety on the part of the petitioner Unions in filing writ petitions only expose their anxiety to monopolise the work. There was nothing wrong in liberalising the process of certification which would ensure proper distribution of employment potential. The members of the impleaded party/ Union were no less qualified than the members of the petitioner Union.

10. Mr. Hariparanthaman while replying, on behalf of the petitioners contended that the impugned process was in clear violation of Rule 45. He also took me through the various Rules and Forms in the certificates to be issued for giving supply which require certification by qualified electrical contractors as an indispensable feature. I will make a reference to those Rules and Forms subsequently. He would also state that even some of the members of the Union represented by Mr. V. Prakash were holders of competency Certificate and hence

their interests were also affected by the impugned notification. The test report was completely dispensed with under the present scheme and hence was not in public interest.

11. I have considered the submissions of both sides. The crux of the dispute relates to the dispensing of the signature and seal of the licensed wiring contractor. The said requirement is replaced by the consumer himself giving the declaration that the Wiring had been carried out by a competent Licensed Contractor as per the conditions laid under the Indian Electricity Act, 1910. The impugned notification itself gives out the reasons for changing nature of certification. It is stated that there were complaints of avoidable delay in effecting service connections due to procedural requirements and suggestions were called for from the public and in the interest of simplifying the procedure, after detailed study and examination, a committee has suggested the modified proposals which were accepted by them.

12. Therefore, what is required to be considered is as to whether changes are in conformity with the statutory provisions. It may be that factually what Mr. Prakash says is true namely that the Contractors are attempting to act as middlemen without any personal qualification and to exploit the need to obtain their signature and seal. I do not propose to give any finding on that allegation, but even so this Court can only see as to whether the changes are consistent with the statutory requirements.

13. Rule 45 mandates that no electrical installation work could be carried out except by an Electrical contractor licensed by the State and under the direct supervision of a person holding a certificate of competency and by a person holding a permit issued and recognised by the State Government. Any violation of the said Rule exposes itself to a punishment under Rule 139. Therefore, in order to ensure strict compliance of the statutory requirements under Annexure VI (Model form of draft conditions of supply), Clause VII specifies that for protection of the consumer and the public, it was necessary that the wiring will be carried out only by a licensed electrical contractor and the supervision only by a holder of certificate of competency and that any person committing breach of the Rule shall be liable for punishment under Rule 139. Under Annexure VII being the form of requisition of supply of energy, the name, address, and license number of the contractor have to be given. He has to certify that the wiring had been done by him and the statement is to be signed by him with his seal. Now in terms of the modified procedure, all the aforesaid requirements are dispensed with and it is sufficient if the consumer/ applicant merely declares that the wiring has been carried out by the competent licensed contractor/ electrician as per the conditions laid down under the provisions of the Indian Electricity Act, 1910. There is no column which requires even the name and address of the contractor to be stated.

14. I have no doubt in my mind that the impugned procedure which is stated to be aimed at simplifying the procedure had resulted in over simplification thereby

violating the basic statutory requirements. The Statute (Rule 45) requires certification by a licensed contractor. This is a positive requirement. The annexure which is also a part of the statute has prescribed the format and the said format cannot be amended or altered without invoking the Rule making power. It cannot be done by an administrative order. It is settled to be done in a particular manner, it cannot be sustained or modified by any other procedure.

15. Another outcome of the modified procedure is the risk to which the contractor who is named in the application is exposed for punishment under Rule 139 if there is any complaint or violation. A perusal of Rule 139 discloses that apart from the consumer or the occupier, the contractor is also liable for punishment. The consumer at his will and pleasure can name a, b or as the contractor who had carried out the work and such a statement which is not countersigned by the contractor, will expose the contractor to penal action and also cancellation of his licence.

16. Therefore, the amended procedure is in clear violation of Rule 45 and the statutory requirements under Annexure VI and VII and hence liable to be set aside. If the members of the public have any genuine grievance, some other mythology has to be visualised. If there is any exploitation by the contractors or as Mr. Praskah contends that the contractors have no better personal qualification than the wireman, then it is necessary to carry out the required changes in the Rules itself as well as the Annexure and forms appended to the Rules without which the modified procedure by mere administrative instructions cannot be justified. Therefore the writ petitions are allowed and the respondents are directed to follow the existing procedure for effecting new service connection in respect of Low tension service.

17. In the result, with the above observations, the writ petitions are allowed. No costs. Connected W.M.Ps. are closed as unnecessary.