
(2014) 03 KL CK 0047
In the High Court Of Kerala
Case No : W.A. No. 1873 of 2013

The Chief Electrical Inspector

APPELLANT

Vs

Ascend Telecom Infrastructure Pvt. Ltd.

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Electricity Act, 1910 — Section 37

Electricity Act, 2003 — Section 162, 162(1), 172, 176, 176(2)(x)

Citation : (2014) 4 KHC 570 : (2014) 2 KLT 912

Hon'ble Judges : Antony Dominic, J; Anil K. Narendran, J

Bench : Division Bench

Advocate : M. Mohammed Shafi, Sr. Government Pleader, Advocate for the Appellant; P. Satheesan and Sajeevkumar K. Gopal, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Antony Dominic, J.—These Writ Appeals are filed by the respondents in W.P. (C).25042/11 and connected cases (Sreyas Marketing Vs. Chief Electrical Inspector,), which were disposed of by a common judgment rendered on 14.11.2012. The Chief Electrical Inspector issued two circulars, on 18.8.2011 and on 19.8.2011. These circulars are almost identically worded and are addressed to the Deputy Chief Electrical Inspectors, Electrical Inspectors, Technical Officers in the office of the Chief Electrical Inspector and to the President of A class Electrical Contractors" Association. The relevant part of these circulars reads thus:

The generating sets should not be allowed to be installed above ground floor or below first basement level of building. There shall be provision of separate direct escape and entry into these areas from outside in case of fire.

All officers should be intimated this to all contractors/clients who have already been got scheme approval from our department and to re-locate the generator sets in the ground floor itself.

2. In the Writ Petitions that were filed, the circulars were challenged mainly on the ground that the Chief Electrical Inspector did not have the jurisdiction to issue the circulars. By the impugned judgment, the learned single Judge disposed of the Writ Petitions, holding thus:

On the basis of the discussions hereinabove contained, conclusions and reliefs can be summed up as follows:-

(1) 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 Section 2 in Part 8 of the Building Code as part of the Electricity Authority Regulations.

(2) 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.

(3) The Chief Electrical Inspector will be at liberty to insist upon compliance of the code of practice enumerated in clause 4.2.1 of Section 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.

(4) 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 hereinabove, cannot be insisted for approval of schemes and for permitting installation and connectivity of Generators.

3. The reasoning of the learned single Judge is reflected in paragraph 14 of the judgment, which reads thus:

14. 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.

4. Learned single Judge also held that even if a circular is to be validly issued in compliance with the directions in the judgment, the same can have only prospective effect. It is aggrieved by this judgment, these Writ Appeals are filed.

5. We heard the learned counsel for the appellants and the learned counsel appearing for the party respondents.

6. In so far as the direction of the learned single Judge that the circulars can only be of prospective nature is concerned, the appellants have conceded before us that the circulars have only prospective effect from the date of its issuance and we record the same.

7. In so far as the validity of the circulars is concerned, we shall first refer to the statutory provisions which are relevant. S. 162 of the Electricity Act, 2003 provides for the appointment of Chief Electrical Inspector and Electrical Inspector and this section reads thus:

162. Appointment of Chief Electrical Inspector and Electrical Inspector.--

(1) The Appropriate Government may, by notification, appoint duly qualified persons to be Chief Electrical Inspector or Electrical Inspectors and every such Inspector so appointed shall exercise the powers and perform the functions of a Chief Electrical Inspector or an Electrical Inspector under this Act and exercise such other powers and perform such other functions as may be prescribed within such areas or in respect of such class of works and electric installations and subject to such restrictions as the Appropriate Government may direct.

(2) In the absence of express provision to the contrary in this Act, or any rule made thereunder, an appeal shall lie from the decision of a Chief Electrical Inspector or an Electrical Inspector to the Appropriate Government or if the Appropriate Government, by general or special order so directs, to an Appropriate Commission.

8. Reading of this section shows that the Inspector appointed shall exercise the powers and perform the functions of a Chief Electrical Inspector or an Electrical Inspector under the Act and exercise such other powers and perform such other

functions as may be prescribed within such area or in respect of such class of works and electric installations and subject to such restrictions as the appropriate Government may direct. S. 176 of the Act provides for the power of the Central Government to make rules and clause (x) of sub-section (2) thereof provides for the framing of the rules regulating the powers to be exercised and the functions to be performed by the inspectors appointed under S. 162(1) of the Act. S. 176(2)(x) reads thus:

176. Power of Central Government to make rules-

(1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a).....

.....

(x) the powers to be exercised and the functions to be performed by the Inspectors under sub-section (1) of Section 162.

9. Similarly, S. 177 of the Act enumerates the powers of the Central Electricity Authority to make regulations and clause (b) of sub-section (2) thereof enables the authority to frame regulations with suitable measures relating to safety and electric supply under S. 53 of the Act. S. 177(2)(b) reads thus:

177. Powers of Authority to make regulations-

(1) The Authority may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the power conferred in sub-section (1), such regulations may provide for all or any of the following matters, namely:-

(a).....

(b) suitable measures relating to safety and electric supply u/s 53;

10. In exercise of its powers under S. 162(1) and section (x) of sub-section (2) of S. 172 of the Act, the Central Government framed "The Qualifications, Powers and Functions of Chief Electrical Inspector and Electrical Inspectors Rules, 2006". R.6 of the rules provide for the powers of Chief Electrical Inspector and Electrical Inspector and R.7 provides for the power of entry and, inspection. These rules being relevant, are extracted below for reference:

6. Powers of the Chief Electrical Inspector and Electrical Inspector:-The Chief Electrical Inspector and the Electrical Inspector shall have powers to inspect the works and electrical installations in his area in respect of which, such an

Inspector has been directed by the Central Government to exercise his powers and perform functions under sub-section (1) of the Section 162 of the Act.

7. Powers of entry and inspection:-For carrying out inspections as referred to in Rule 6 above,-

(1) The Inspector may enter, inspect and examine any place, carriage or vessel in which he has reason to believe that there is any appliance or apparatus used in the generation, transmission, transformation, conversion, distribution or use of energy and may carry out tests therein.

(2) Every supplier, consumer, owner and occupier shall afford all reasonable facilities to any such Inspector to make such examinations and tests as may be necessary to satisfy himself as to the due observance of the safety regulations as specified by the Authority u/s 53 of the Act. The Indian Electricity Rules, 1956 made u/s 37 of the Indian Electricity Act, 1910 (now repealed) shall continue to be in force till the regulations u/s 53 of the Act are made.

(3) An Inspector may require a supplier of the electricity to submit to him a list of all persons supplied with energy by him, the addresses at which such energy is supplied, the month of connecting services, the voltage of supply, the connected load and the purpose of supply and the supplier shall comply with such requisitions.

(4) Every licensee and every owner of a generating station shall, if required so to do by an Inspector, provide reasonable means for carrying out all tests, specified under the Act or regulations thereunder, of the appliances or apparatus used for the supply or use of energy by him, as the case may be.

(5) Upon such inspection, an Inspector may serve an order, within 15 days from the date of such inspection, in the Form A, to any licensee, consumer, owner or occupier, calling upon him to comply with any specified regulation and the person so served shall thereupon comply with the order within the period specified therein, and shall report in writing to the Inspector serving the order mentioning therein as to when the order has been complied with:

Provided that, if within the period specified in the aforesaid order an appeal is filed against the order by the person on whom such order has been served, the appellate authority may suspend its operation pending the decision of the appeal.

11. In exercise of its powers under S. 177, the Central Electricity Authority framed The Central Electricity Authority (Measures Relating to safety and Electric Supply) Regulations, 2010. Chapter III of the Regulations deal with the general safety requirements and clause 12 thereof provides for general safety requirements pertaining to construction, installations, protection, operation and maintenance of electric supply lines and apparatus. Being relevant, it reads thus:

(1) All electric supply lines and apparatus shall be of sufficient rating for power, insulation and estimated fault current and of sufficient mechanical strength, for

the duty cycle which they may be required to perform under the environmental conditions of installation, and shall be constructed, installed, protected, worked and maintained in such a manner as to ensure safety of human beings, animals and property.

(2) 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.

(3) The material and apparatus used shall conform to the relevant specifications of the Bureau of Indian Standards or International Electro-Technical Commission where such specifications have already been laid down.

(4) All electrical equipment shall be installed above the Mean Sea Level (MSL) as declared by local Municipal Authorities and where such equipment is to be installed in the basement, consumer shall ensure that the design of the basement should be such that there is no seepage or leakage or logging of water in the basement.

12. The above statutory provisions of the Act, Rules and the Regulations show that a Chief Electrical Inspector appointed under the Act shall exercise the powers and perform the functions under the Act and perform such other functions as may be prescribed under the Act.

13. Under Regulation 6 of "The Qualification, Powers and Functions of Chief Electrical Inspector and Electrical Inspectors Rules, 2006, the Chief Electrical Inspector shall have the powers to inspect the works and electrical installations. Regulation 7 which confers power of entry and inspection, under clause (5) thereof provides that upon inspection, he may serve an order on any licensee, consumer, owner or occupier calling upon him to comply with any specified regulation and the person who is served such an order shall thereupon comply with the order and report compliance thereof. A consumer who is aggrieved by such an order has been recognised a right of appeal in terms of Regulation 8 of the said Rules.

14. We shall now turn to the provisions of Regulation 12 of the 2010 Regulations (supra) which states that all electric supply lines and apparatus shall be of sufficient rating for power, installation and estimated fault current and of sufficient mechanical strength for the duty cycle which they may be required to perform under the environmental conditions of installation and shall be constructed, installed, protected, worked and maintained in such a manner as to ensure safety of human beings, animals and property. Sub-clause (2) extracted earlier shows that save as provided in 2010 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 the Regulations and in the event of any inconsistency, the provisions of the Regulations shall prevail.

15. The relevant extract of the National Electric Code made available by the learned Government Pleader shows that it incorporate the National Building Code of India by reference and the relevant part of the National Electrical Code reads thus:

2. References

This Part 3/Section 7 of the Code should be read in conjunction with the following Indian Standards:

16. The National Building Code contains the following provisions:

4.2.1.

(m) The emergency power supply (such as Generating Sets) should not be allowed to be installed above ground floor or below first basement level of building.

There shall be provision of separate direct escape and entry into these areas from outside so that in case of fire, electrical supplies can be disconnected to avoid additional losses which may be caused due to electrical supply present at the time of fire.

17. The above provisions of the National Electric Code read with the National Building Code shows that the emergency power supply such as generating sets should not be allowed to be installed above ground floor or below the first basement level of a building. It further requires that there shall be provision for separate direct escape and entry into these areas from outside so that in case of fire, electric supply can be disconnected to avoid additional loss, which may be caused due to electric supply present at the time of fire.

18. It can be seen on an analysis of the above that under the 2010 Regulations, all electric supply lines and apparatus shall be of sufficient rating of power etc., and shall be constructed, installed, protected, worked and maintained in such a manner as to ensure safety of human beings, animals and property. Under sub-regulation (2), save as otherwise provided in the Regulations, the authorities under the Regulations are given freedom to follow the relevant Code of Practice of the Bureau of Indian Standards or National Electric Code to carry out the purpose of the 2010 Regulations and in the event of any inconsistency, the regulation itself provide that the 2010 Regulations shall prevail. Therefore, in the Regulations itself, the authorities have been given the freedom and liberty to follow the Code of Practice of the Bureau of Indian Standards or the National Electric Code. Further, R.7(5) of the Qualification Rules, 2006 enables the Chief Electrical Inspector to ensure compliance of such specified regulations. If that be so, it cannot be contended that the Chief Electrical Inspector did not have jurisdiction to compel compliance of the 2010 Regulations, in which the national Building Code is also incorporated.

19. Once it is held so, the further question to be examined is whether there is

any substance in the contention of the party respondents that the Chief Electrical Inspector did not have any jurisdiction to issue general circulars such as those issued by him on 18.8.2011 and 19.8.2011, without consulting the Central Electricity Authority or obtaining its concurrence.

20. As we have already stated, the circulars mentioned above were issued by the Chief Electrical Inspector to his subordinates requiring them to ensure compliance of the regulations, we have already found that the provisions of the National Building Code which, is incorporated in the National Electric Code is a part of clause 12(2) of the 2010 Regulations. We have also found that the Chief Electrical Inspector was well within his powers to ensure compliance of the regulations also. In such a situation, according to us, the chief Electrical Inspector was well within his powers in issuing the circulars in question to his subordinates, requiring them to ensure compliance of regulation 12(2) of the 2010 Regulations and by no stretch of imagination, can it be said that the Chief/Electrical Inspector was acting outside his powers.

21. The contention that is accepted by the learned single Judge and the ground on which the circulars in question were quashed was that the Chief Electrical Inspector issued the circulars in question without consulting the Central Electricity Authority. As stated above, the provisions of the National Building Code which has been incorporated in the National Electric code is apart of the Regulations. The Chief Electrical Inspector is empowered to ensure compliance of the regulations. There is no provision either in the 2010 Regulations or elsewhere which makes it obligatory on the part of the Chief Electrical Inspector to consult or obtain approval of the Central Electricity Authority while exercising the powers vested in him under the Regulations, in such situation, an additional obligation to consult the Central Electricity Authority before issuing circulars in question could not have been fastened on the Chief Electrical Inspector. Therefore, that finding of the learned single Judge cannot be accepted. In the result, we uphold the validity of the circulars dated 18.8.2011 and 19.8.2011 issued by the Chief Electrical Inspector and the judgment of the learned single Judge allowing the Writ Petitions is, therefore, set aside. The appeals are allowed, however, recording the submission of the appellants that the circulars in question will be implemented only with prospective effect, viz., from the date of its issuance.

Appeals disposed of accordingly.