

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.04.2015

DATE OF DECISION : 23.04.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.261 of 2015
and
M.P.No.1 of 2015

M.P.Muthusamy

... Appellant

Vs.

1. The Executive Engineer,
Operation and Maintenance,
Tamilnadu.
2. The Executive Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Board,
Thevur, Salem District.
3. Sidhaiyan

... Respondents

This writ appeal is preferred under Clause 15 of the Letters Patent against the order of this court dated 17.07.2013 made in W.P.No.22941 of 2010.

Petition presented under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents 1 and 2 to grant Agricultural Electricity Service Connection to the well in S.F.No.60/4B, Thevur Village, Salem District by giving effect to the proceedings made in Letter No.EE/O&M/SANG/Tho Noo/Ka Thani/No.251-74/2005 dated 21/10/2005 issued by the 1st Respondent herein without insisting no objection from the 3rd Respondent or others in view of the petitioner's readiness to execute indemnity bond in the name of the Board.

For Appellant : Mr.L.P.Maurya
for M/s.K.R.Govindarajan

For Respondents : Mr.S.K.Raameshuwar for RR1 and 2
Mr.R.Marudhachalamurthy for R-3

JUDGMENT

SATISH K. AGNIHOTRI, J.

Challenging the order dated 17.7.2013 rendered in W.P.No.22941 of 2010, the appellant, who was the writ petitioner, has come up with the instant appeal, questioning the validity of the order on the ground that if the co-owners of the property in question do not give consent letter or no objection to the electricity connection in the name of the writ petitioner, the service connection can be given to the occupant, on indemnifying the licensee against any loss on account of disputes arising out of effecting service connection and also acceptance to pay security deposit twice the normal rate. As such, the writ petitioner is entitled to electricity connection on submission of the indemnity bond and also payment of security deposit twice the normal rate.

2. The facts in brief are that the writ petitioner seeks agricultural electricity service connection to the Well situated in S.F.No.60/4B, Thevur village, Salem District without no objection certificate from the third respondent and others, who are co-owners of the Well in question. The learned Single Judge, relying on the provision of Clause 27(2) of the Tamil Nadu Electricity Distribution Code, 2004 (for short "Code 2004") rejected the writ petition on the ground that agricultural electricity service connection cannot be granted without no objection certificate obtained from the co-sharer / co-owner of the Well in question. Feeling aggrieved, the writ petitioner is before us, in the instant appeal.

3. The question before us for consideration is whether Clause 27(4) of the Code 2004 is applicable to the agricultural service connection for the Well owned and shared by the third respondent and others for want of no objection certificate from them.

4. The learned counsel appearing for the appellant would submit that Clause 27(4) of the Code 2004 clearly provides that if owner refuses to give consent letter, including the co-owner, the intending consumer, after producing proof of lawful occupation of the premises,

including Well and also on executing an indemnity bond in Form 6 of the Annexure III to the Code, indemnifying the licensee against any loss on account of disputes arising out of effecting service connection to the other owner and also on payment of security deposit twice the normal rate, is entitled to electricity service connection. The writ petitioner /appellant is ready and willing to execute such indemnity bond and also to produce relevant certificate indicating that he is the co-owner of the Well and shall also pay the security deposit twice the normal rate.

5. It is further contended by the learned counsel for the appellant that the third respondent is already having a connection in the Well though he is one of the co-owners and despite that, he is objecting the other co-owners, which is not proper and the same cannot be denied if the indemnity bond in the statutory form is executed and the requisite fee is paid by the intended consumer, relying on a decision of this Court in A.Muthusamy and others Vs. The Assistant Engineer, Tamil Nadu Electricity Board, V.M.Chathiram, Tirunelveli¹.

6. On the other hand, Mr.S.K.Raameshuwar, learned counsel appearing for the Electricity Board and R.Marudhachalamurthy, learned counsel appearing for the co-owner / third respondent would submit that Clause 27(4) of the Code 2004 is applicable only to the premises for availing supply in case the owner refuses to give consent letter or he is not available to give the consent letter on the condition specified therein. In the case on hand, the service connection is required for Well, which is not the premises and also the appellant is not the occupant or a resident as required under the provisions of Sub-clause 4 of Clause 27 of the Code 2004 to get the benefit under the said provision.

7. We have considered the rival contentions carefully and also examined the pleadings and documents appended thereto.

8. It is beneficial to refer and extract the relevant provisions of Clause 27(2) and (4) of the Code 2004.

"(2)Supply to Agricultural category : Application for supply to agriculture category shall be in Form 2 of Annexure III. In respect of the agricultural category, this provision shall be governed by the directives issued by the Commission from time to time, on the basis of the guidance on this matter by the National Electricity Policy (as stipulated in sub

¹ 2009 (4) CTC 606

section 4 under section 86 of the Act) and the policy directions in public interest given by the State Government under sub section (1) of section 108 of the Act.

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(4)An intending consumer who is not the owner of the premises shall produce a consent letter in Form 5 of Annexure III to this code from the owner of the premises for availing the supply. If the owner is not available or refuses to give consent letter, the intending consumer shall produce proof of his/her being in lawful occupation of the premises and also execute an indemnity bond in Form 6 of the Annexure III to this code indemnifying the licensee against any loss on account of disputes arising out of effecting service connection to the occupant and acceptance to pay security deposit twice the normal rate."

9. On perusal of the relevant provisions, it appears that Clause 27(4) of the Code 2004 is intended to provide supply of electricity to the occupant of the premises, who is unable to obtain consent letter from the owner of the premises either on account of non availability or refusal to give consent letter, on production of proof of occupancy, execution of indemnity bond in Form 6 of the Annexure III and also payment of security deposit twice the normal rate.

10. There is no dispute that in the instant case, the property in question is a Well owned by the co-sharers /co-owners. The appellant is one of the sharers / owners of the Well. The well cannot be held from any point of view as premises for the purpose of taking the benefit under the provisions of Clause 27(4) of the Code 2004. The reliance of the petitioner in A.Muthusamy case (supra) is misplaced as the facts in that case was that the intended consumer therein was seeking electricity service connection to the residential house, which was acquired by the Government for the purpose of the housing scheme.

11. Clause 27(4) of the Code 2004 contemplates requirement of production of consent letter in Form 5. Form 5 is annexed in Annexure III to the Code. Clause 27(4) refers to a premises whereunder the tenant is an occupant and in the event of refusal to give consent by the owner, a deed of indemnity bond in Form 6 of the Annexure III to the Code shall be executed which also refers to the premises taken on lease by the intending consumer. Form 2 of Annexure III to the Code

is the proper form for making an application for agriculture service connection. But, in the case of agriculture service connection, there is no provision for availability of Clause 27(4) of the Code 2004. Sub clause (2) of Clause 27 deals with the supply to agricultural category. Sub clause (3) of Clause 27 deals with application for HT supply and sub clause (4) of Clause 27 deals with the supply of electricity connection to the tenant or lessee in the premises owned by other persons.

12. Examining from all angles, as aforesaid, we are of the considered view that the provisions of Clause 27(4) of the Code 2004 shall not be available and applicable in case of agriculture service connection as in the case on hand.

13. For the reasons and analysis herein-above, no case has been made out for interference. Thus, the writ appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vvk

To

1. The Executive Engineer,
Operation and Maintenance,
Tamilnadu.
2. The Executive Engineer,
Operation and Maintenance,
Tamil Nadu Electricity Board,
Thevur, Salem District.

+1cc to M/s.S.K.Raameshuwar, Advocate, S.R.No.22710

+1cc to M/s.K.R.Govindarajan, Advocate, S.R.No.22231

+1cc to M/s.R.Marudhachalamurthy, Advocate, S.R.No.22420

W.A.No.261 of 2015

MP(CO)
CA(15/05/2015)