

The Assistant Executive Engineer vs Consumer Grievance Redressal Forum(Northern Region), Vydyuthi Bhavan, Gandhi Road ,Kozhikode

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Court : Kerala

Decided On : Mar-01-2023

Judge : Honourable Mr.Justice Mohammed Nias C.P.

Appeal No. : WA/178/2023

Appellant : The Assistant Executive Engineer

Respondent : Consumer Grievance Redressal Forum(Northern Region), Vydyuthi Bhavan, Gandhi Road ,Kozhikode

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR & THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P. WEDNESDAY, THE 1ST DAY OF MARCH 2023 / 10TH PHALGUNA, WA NO. 178 OF 2023 AGAINST THE ORDER/JUDGMENT IN WP(C) 7091/2021 OF HIGH COURT OF KERALA APPELLANTS/PETITIONERS: 1 THE ASSISTANT EXECUTIVE ENGINEER ELECTRICAL SUB DIVISION, KSEB LTD., ,BALUSSERRY, KOZHIKODE DISTRICT- 673612 2 THE ASSISTANT ENGINEER ELECTRICAL SECTION, KSEB LTD,UNNIKKULAM, KOZHIKODE DISTRICT, PIN - 673574 BY

ADV B.PREMOD RESPONDENTS: 1 CONSUMER GRIEVANCE REDRESSAL FORU, NORTHERN REGION, VYDYUTHI BHAVAN, GANDHI ROAD ,KOZHIKODE -673011 2 P.T.MATHEW PLANTHOTTAM HOUSE MALAPARAMBA P O KOZHIKODE DISTRICT- 673009, PIN - 673009 ADV VV SURENDRAN SRI.SRI.P.A.HARISH THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 01.03.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: A.K. JAYASANKARAN NAMBIAR &

MOHAMMED NIAS C.P., JJ

..... ----- Dated this the
1st day of March, 2023

JUDGMENT

Mohammed Nias.C.P. J. This writ appeal is filed by the Assistant Executive

Engineer and the Assistant Engineer of the Electrical Sub Division, Kozhikode District of the Kerala State Electricity Board Ltd., aggrieved by the dismissal of their writ petition filed challenging Ext.P1, whereby, the Consumer Grievance Redressal Forum (CGRF), Kozhikode, directed the appellants to effect electric connection under the Total Electrification Programme (TEP) in the premises belonging to the second respondent herein.

2. The brief facts leading to the above writ appeal are as follows:-

The second respondent herein applied for an electric connection under the TEP. The Implementation Committee which is to identify the beneficiaries initially included the petitioner under the TEP, but later deleted his name on the ground that the second respondent was not a permanent resident in the house to which the connection

was sought. The second respondent alleged that the TEP was pursuant to the Government Order, GO(MS)No.18/2016 dated 26.8.2016 and that the petitioner is residing in the house, which is part of a large holding where agricultural operations are carried out. Against the deletion of the petitioner's name, he approached the

CGRF Northern Region, impleaded as the first respondent herein, which by order dated 6.2.2018 allowed the application of the second respondent and directed the appellants to effect electric connection under the TEP within 60 days from the date of receipt of a copy of the order. The said order, Ext.P6, was challenged by the appellants herein by filing WP(C)No.13420 of 2018. The contention of the appellants was that a building under the TEP can be given electric supply only for domestic purposes and that the building in question is not being used as a residential house but as a godown for stacking rubber sheets and such a building will not come under the ambit of TEP.

3. Opposing the said contention the second respondent herein

had submitted before the learned single Judge that going by the relevant Government Orders, he is eligible as he is using the building in the property as a residence and a portion of which is used for stacking rubber. There is no such restriction mentioned in the Government Orders for offering electric supply under the TEP merely because a portion of the said building is used for other purposes as the primary use is for residence.

4. The learned single Judge remitted the matter before the

first respondent for a reconsideration on the limited question as to whether the building in question is being used as a residential accommodation for the second respondent and his labourers or whether it is being exclusively used as a godown for commercial purposes. The order of the first respondent was directed to be modulated or confirmed to such an extent making it clear that the other findings are not disturbed and the remit was solely for the purpose of the above evaluation. The first respondent, pursuant to the directions as aforesaid again passed an order upholding the earlier order and directing the appellants to effect electric connection under TEP by orders dated 11.1.2019, Ext.P8.

5. The appellants filed a review as RP No.224 of 2020 in

WP(C)No.13420 of 2018 on the ground that the first respondent - CGRF had no jurisdiction to consider the aspects mentioned in Ext.P5 order and that only if a

person is found to be eligible by the beneficiary committee, can a connection be given and in the instant case the beneficiary committee found the second respondent not to be entitled for two reasons (a) that the building in question was being used by him as a godown and commercial building and (b) that he is not entitled to the benefits under the TEP when the cost of electrification of his premise will be more than 2,07,000/- as he does not belong to the economically lower category and the TEP is meant exclusively for citizens belonging to the lower strata. The review was opposed by the second respondent herein contending that new grounds not raised earlier have been raised in the review and that the Government Order pertaining to the TEP does not differentiate between one belonging to the economically weaker class from a person who is not so and that the scheme is intended to obtain total electrification in the State of Kerala without any distinction between the different classes of people and thus the order of the CGRF after remit passed on 11.1.2019 is in order.

6. The learned single Judge after considering the rival

contentions clearly found that the question of jurisdiction of the CGRF was never raised by the KSEB at any point of time and therefore the contentions in that regard were rejected. However, the learned single Judge found some force in the submission on behalf of the Board on the question whether the applicable Government Orders allow the grant of free electrical connection to a premise owned by a person of economically higher class, and since that contention was not adverted to in the judgment originally delivered and as the same is intrinsically connected to the question in issue, the matter has further remanded to the CGRF to consider the limited aspect of whether the Government Order with respect to the TEP would cover a person like the second respondent, who is admittedly not from an economically weaker class and then to pass a fresh order.

7. The decision in the review petition was accepted by both

sides as a result of which, the only question now available for the appellants to urge is on the applicability of the TEP to the second respondent and nothing else. The CGRF after the second remand, again passed orders on 7.9.2020 Ext P11, upholding the previous orders and specifically stating that there was no reason for

denial

of the connection to the second respondent herein and the

Government Orders dated 26.8.2016 and the subsequent ones, only made a restriction about the APL consumers under the TEP which directed that the cost for weatherproof support/pole insertion need not be realised from APL category and may be included in the contribution from other sources. It is also directed that the cost of the weatherproof service line can be recovered from the APL beneficiaries. The Forum further found that as part of the State Government policy, the TEP meant that the State Government had declared its commitment to provide 24x7 power for all households in the State. Ext P 11 order was challenged by the Electricity Board before the learned single Judge.

8. Before the learned single Judge, the KSEB contended that

Ext.P11 is illegal, against the provisions of the Indian Electricity Act, 2003, The Kerala Electricity Supply Code 2014 as well as against the guidelines pertaining to the TEP, and hence vitiated. It was the further argument that the TEP was meant only for the poor, who are not able to meet the expenditure for having electricity and no Government Order would permit electrical connection to affluent persons to get connection free of cost and therefore the object of

the scheme was not properly appreciated by the CGRF while passing Ext.P11 order.

9. The learned single Judge after hearing both sides by

judgment dated 14.07.2022 took note of the Government Order

dated 9.11.2016 and held that the appellants can raise a demand on the second respondent for electric connection on deposit of weatherproof service line charges, and the KSEB was directed to

provide electricity within 45 days thereof. It is the said judgment

that is challenged before us in this writ appeal.

10. We have heard Sri.B.Premod, the learned standing counsel for the KSEB, Sri.V.V.Surendran, and Sri.P.A.Harish, the learned counsel for the second respondent.

11. Learned counsel for the appellants reiterated the

contentions taken in the writ petition and submits that the learned single Judge has failed to take note of the essential fact that the scheme for 'total electrification' introduced by the Government of Kerala aimed to provide electricity connection only to the under privileged who were still deprived of the electricity connection and that it was not meant for an affluent person like the second respondent. It is also argued that the beneficiary committee found the petitioner ineligible and as such the petitioner could not have been granted the electricity connection under TEP. On behalf of the

appellants, an application was filed to receive additional documents, Annexures A2 to A11, to support their contention.

12. Learned counsel for the respondents, however, argues that

pursuant to the order in the review petition, Ext.P9, CGRF was bound to consider only the limited question remitted by this Court, and the fresh contentions now raised cannot be considered. We find considerable force in the said contention as it is clear from Ext.P6

judgment of this Court and the judgment in the review petition,

Ext.P9, that all other findings of the CGRF were upheld both in Exts.P6 and P9 and the remand was only for a limited purpose namely to find out whether the scheme is applicable to the second respondent. None of the Government Orders produced before the learned single Judge or now produced in appeal would advance the contention of the Board that the scheme is not applicable to the second respondent.

13. In as much as the Government Orders referred above do

not prohibit the second respondent from getting an electric connection, his entitlement, as rightly found by the CGRF on three occasions requires to be upheld and we do so. We are not inclined to consider the contentions never raised earlier and for the first time in this appeal. It was the deletion of the second respondent's name from the beneficiary list that was challenged before the CGRF in the first instance by the second respondent herein. KSEB did get an opportunity at every stage of the proceedings to produce relevant materials to show the second respondent to be ineligible in

any manner. We do not find any error or illegality in the judgment

of the learned single Judge or in the order impugned in the writ petition. The writ appeal lacks merit, and the same is accordingly dismissed. Sd/- A.K. JAYASANKARAN NAMBIAR, JUDGE Sd/- MOHAMMED NIAS C.P. JUDGE
dlk/17.3.2023 APPENDIX OF WA 178/2023 PETITIONERS ANNEXURES
Annexure1 THE TRUE COPY OF THE BO (FTD) NO. ELECTRIFICATION-PH
3/2016) DATED , TVPM, Annexure A2 THE TRUE COPY OF THE BOARD
ORDER B.O

(FTD) NO. 2677/2016 DATED 19-09-2016

Annexure A3 THE TRUE COPY OF THE GOVERNMENT ORDER

DATED 06-10-2016 VIDE G.O. (MS) Annexure A4 THE TRUE COPY OF THE
BOARD ORDER B.O

(DB) NO. 2982/2016 DATED 18-10-2016 Annexure A5 THE TRUE COPY OF THE
G.O (MS) NO. Annexure A6 THE TRUE COPY OF THE BOARD ORDER B.O

(FTD) NO. 3058/2016 DATED 27-10-2016

Annexure A7 THE TRUE COPY OF THE ORDER DATED 05-11- 2016 VIDE NO.
3025/2016 ISSUED BY THE LOCAL SELF GOVERNMENT DEPARTMENT
Annexure A8 THE TRUE COPY OF THE BOARD ORDER B.O

(FTD) NO. 3173/2016 DATED 09-11-2016 Annexure A9 THE TRUE COPY OF THE BOARD ORDER B.O

(FTD) NO. 3242/2016 DATED 17-11-2016

Annexure A10 THE TRUE COPY OF THE GOVERNMENT ORDER

G.O (RT) NO. 228/2016/PD DATED 21-11Annexure A11 THE TRUE COPY OF THE BOARD ORDER B.O

(FTD) NO. 426/2017 DATED 20/02/2017 Annexure A12 THE TRUE COPY OF THE BOARD ORDER B.O

(FTD) NO. 544/2017 DATED 04-03-2017

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