K.S.E. Board Vs. Sakeena

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SooperKanoon Citation : sooperkanoon.com/730755

Court : Kerala

Decided On : Dec-13-2005

Reported in : 2006(2)KLT629

Judge : K.S. Radhakrishnan and; K.T. Sankaran, JJ.

Acts : Electricity Supply Act 1948 - Sections 79; Electricity Act 1910; Electricity Rules, 1956 - Rules 50A and 50A1; Kerala Municipality Building Rules, 1999 - Rules 2(1), 110, 111, 112, 113, 114, 115, 117, 118, 119 and 120

Appeal No. : W.A. No. 732 of 2003

Appellant : K.S.E. Board

Respondent : Sakeena

Advocate for Def. : C.P. Mohammed Nias, Adv.

Advocate for Pet/Ap. : N.D. Premachandran, Adv.

Judgement :

K.S. Radhakrishnan, J.

1. Whether the height of a multi-storeyed building has to be measured from the basement or from the ground level for the purpose of Rule 50A of the Indian Electricity Rules 1956 read with Regulation 12 of the Conditions of Supply of

Electrical Energy is the question that has come up for consideration in this case.

2. Learned single Judge made reference to Rule 110 of the Kerala Municipality Building Rules, 1999 and took the view that 'high rise building' is one which is having more than four floors and/or 15 metres of height from the ground level. Reading Rule 50A of the Indian Electricity Rules in conjunction with Rule 110 of the Kerala Municipality Building Rules learned Judge took the view, for determination of the height, the ground level has to be taken into account and not the floor level. Board is aggrieved by the reasoning of the learned single Judge and has filed this appeal.

3. Application preferred by the petitioner for electric connection was not entertained by the Electrical Division, Kozhikode due to noncompliance of the provisions of Rule 50A of the Indian Electricity Rules. The Executive Engineer of the Board sent a letter dated 27-11-2002 to the petitioner stating that petitioner's building is a multi-storeyed building having more than 15 metres in height and electric connection would be given to the petitioner only if a written communication is received from the Electrical Inspector. Petitioner filed his reply stating that Rule 50A would not apply to his case, which was not accepted by the Executive Engineer who issued communication dated 30-11-2002 stating that the petitioner should produce the necessary sanction from the Electrical Inspector for considering the application for supply of electrical energy. The Executive Engineer took a specific stand that the petitioner's building is a multi-storeyed building with a height of more than 15 metres and that Rule 50A of Electricity Rules 1956 does not specify that the height is to be measured from the ground level only. The petitioner then took up the matter with the Chief Engineer (Electrical Division) Kozhikode who rejected the petitioner's request vide his letter dt. 18-12-2002 stating as follows:

Rule 50A of Indian Electricity Rules 1956 prescribes certain procedures for supplying electricity to multistoreyed buildings. (Buildings more than 15 metres in height). The Electrical Inspector, Kozhikode had already clarified that 'The height of the building shall be measured from the basement itself and not from any ground level, and this height shall be considered as the actual height of the

building.

4. Therefore the sole question to be decided is whether the height is to be measured from the basement or from the ground level. How the height has to be measured is not indicated either in the Indian Electricity Rules or in the Conditions of Supply of Electrical Energy framed by the Board under Section 79(j) of the Electricity Supply Act 1948. The moot question is whether we should import the meaning given to the expression 'high rise building' under Rule 110 of the Kerala Municipality Building Rules so as to understand the meaning of multi-storeyed building used in Rule 50A of the Indian Electricity Rules 1956. We are of the view, the object and purpose of Kerala Municipality Building Rules and the Indian Electricity Rules 1956 are entirely different. Kerala Municipality Building Rules is meant to regulate the construction of buildings including multi-storeyed buildings. The word 'building' has been defined under Rule 2(1) of the Kerala Municipality Building Rules. Rule 2(j) of the Rules defines 'basement floor' which means the lower storey of a building below or partly below the ground floor which is stated to be synonymous with cellar. Therefore the word building under the Muncipality Building Rules takes in basement floor also. The height of the building is defined under Rule 2(aq) of the Municipality Building Rules to mean the vertical distance measured from the average level of the ground contiguous to the building which evidently does not exclude the basement.

5. The Chapter XVII of the Kerala Municipality Building Rules deals with safety provisions for high rise buildings. Rule 110 deals with high rise building which says that for the purpose of Chapter XVII high rise building means a building having more than four floors and or 15 metres of height from ground level. Rule 111 says that in the case of high rise buildings, the provisions in these rules elsewhere shall apply subject to modification in this Chapter. Rule 112 deals with staircase. Rule 113 deals with guard rails or parapets. Rule 114 deals with fire escape stairway. Rule 115 deals with ducts and Rule 117 deals with open space for fire fighting. Rule 118 deals with lift for residential apartments. Rule 119 deals with parapets to terrace floor and Rule 120 deals with structural design. Rule 110 specifically states that it is for the purpose of Chap. XVII that a building having more than four floors and or 15 metres of height from ground level is a high rise building. When Rule

110 itself says that it is only for the purpose of Chap. XVII such a meaning has been given to the expression 'high rise building', in our view, there is no justification in importing that meaning while interpreting Rule 50A of the Indian Electricity Rules 1956 or Regulation 12 of Conditions of Supply of Electrical Energy. Safety measures to be adopted under Indian Electricity Act 1910 and the Rules 1956 as well as Conditions of Supply of Electrical Energy are different from the safety measures provided under the Kerala Municipal Building Rules. Different statute may give distinct and separate meaning to the word 'building' depending upon the purpose and object of the statute. This Court in Roman Pillai v. George 1974 KLT 246 : ILR 1974 (1) Ker. 284, held that the word 'building' should be given a literal meaning as something which is built.

6. Indian Electricity Act was enacted to lay down the law relating to supply and use of electrical energy. Part II of the Act deals with supply of energy. Part IIA deals with transmission of energy. Part III deals with supply, transmission and use of energy by non-licensees and Part IV deals with general aspects which contains protective clauses. Section 37(f) authorises the Board to make rules to provide for protection of persons and property from injury by reason of contact with, or proximity of, or by reason of the defective or dangerous condition of, any appliances or apparatus used in the generation, transmission, supply or use of energy. Section 37(2)(j) enables the Central Electricity Board to make rules to authorise the Electrical Inspector or other officer of a specified rank and class to enter, inspect, and examine any place, carriage or vessel in which he has reason to believe any appliance or apparatus used in the generation, transmission, supply or use of energy to be, and to carry out tests therein, and, to prescribe the facilities to be given to such Inspectors or officers for the purposes of such examinations and tests. It is in exercise of rule making power conferred under Section 37 the Indian Electricity Rules 1956 has been framed. Rule 50A is the provision relevant for our purpose which is extracted hereunder for easy reference:

50 A. Additional provisions for supply and use of energy in multi-storeyed buildings (more than 15 metres in height)

(1) Before making an application for commencement of supply or recommencement of supply after an installation has been disconnected for a period of six months or more the owner/occupier of a multi-storeyed building shall give not than 30 days notice in writing to the Inspector together with particulars. The supply of energy shall not be commenced or recommenced within this period, without the approval or otherwise in writing of the Inspector.

(2) The supplier/owner of the installation shall provide at the point of commencement of supply a suitable insulation device with cut-out or breaker to operate on all phases except neutral in the three-phase four-wire circuit and fixed in a conspicuous position at not more than 2.75 metres above the ground so as to completely isolate the supply to the building in case of emergency.

(3) The owner/occupier of a multi-storeyed building shall ensure that electrical installations/works inside the building are carried out and maintained in such a manner as to prevent danger due to shock and fire hazards, and the installation is carried out in accordance with the relevant codes of practices.

(4) No other service pipes shall be taken along the ducts provided for laying power cables. All ducts provided for power cables and other services shall be provided with fire-barrier at each floor crossing.

The provision makes it imperative that the owner/occupier of a multi-storeyed building shall give not less than 30 days notice in writing to the Inspector together with particulars before making an application for commencement of supply or recommencement of supply after an installation has been disconnected for a period of six months or more. It is also provided therein that supply of energy shall not be commenced or recommenced within this period without the approval of otherwise in writing of the Inspector. Sub-r.(2) states that the supplier/owner of the installation shall provide at the point of commencement of supply a suitable insulation device with cut-out or breaker to operate on all phases except neutral in the three-phase four wire circuit and fixed in a conspicuous position at not more than 2.75 metres above the ground so as to completely isolate the supply to the building in case of emergency. Further, the owner/occupier of a multi-storeyed building shall ensure that electrical installations/ works inside the building are

carried out and maintained in such a manner as to prevent danger due to shock and fire hazards, and the installation is carried out in accordance with the relevant codes of practices. Regulation 12 of the Conditions of Supply of Electrical Energy has been framed under Section 79(j) of the Electricity (Supply) Act, 1948 which stipulates that before making an application to the Board for providing electric connections to the multi-storeyed buildings, the owner/consumer of the building shall give a notice of not less than thirty days to the Electrical Inspector as specified in Rule 50A(i) of the I.E. Rules 1956, and the owner/consumer shall forward a copy of such notice to the Assistant Engineer/Assistant Exe. Engineer of K.S.E. Board. A Note has been added to Regulation 12 stating that every building exceeding 15 metres in height shall be considered as multi-storeyed (high rise) building. Regulation 12 is extracted hereunder for easy reference:

12. Electric Connection to Multi-Storeyed (High Rise) Buildings.

(i) Before making an application to the Board for providing electric connections to the multi-storeyed buildings, the owner/consumer of the building shall give a notice of not less than thirty days to the Electrical Inspector as specified in Rule 50A (i) of the I.E. Rules 1956. The owner/consumer shall forward a copy of such notice to the Assistant Engineer/Assistant Exe. Engineer of K.S.E. Board.

Note: Every building exceeding 15 metre in height shall be considered as multi-storeyed (high rise) building.

(ii) After expiry of thirty days of the notice under Rule 50A(i) of I.E. Rules, the Board shall be free to energise the installation in the multi-storeyed building after an officer of the K.S.E. Board not below the rank of Executive Engineer is satisfied that the provisions of the Rules have been adhered to. The Board shall not energise the installation, if the Board's authorised officer has received a communication with specific reasons from the Electrical Inspector prohibiting the connections. A report indicating defect shall not be considered as a direction prohibiting the connections. Connections shall however be given after rectification of defects to the satisfaction of the K.S.E. Board Engineer.

(iii) The rising mains may be employed where the current exceeds 250A. In other cases there is no bar to use armoured cables for the purpose.

(iv) In case cables are used instead of rising mains for feeding different floors, individual feeders should be taken to each floor and the cables should be armoured type.

(v) In large multi-storeyed commercial complexes, housing offices or shopping centres, there should be at least two rising mains mainly located in separate shafts.

(vi) Soak pit/oil draining arrangements must be provided wherever transformers are installed either inside the building or near it, wherever the oil content exceeds those specified in the Rules.

(vii) Where more than one transformer is installed in the same premises near to each other, fire partition walls should be provided between the two.

(viii) A generator of minimum capacity of 10 KVA should be provided for the multi-storeyed buildings having more than four storeys for the operation of lifts, staircase lighting, water supply, corridor lighting, yard lighting etc. Separate metallic conduits/ armoured cable wiring should be provided for essential lighting and the same should be able to be switched on to the generator supply or Kerala State Electricity Board supply, as required.

(ix) Lightning protection as envisaged under I.S. may be insisted for all multi-storeyed installation in isolated locations and for installations above five storeys in other locations.

(x) Fire protections should be insisted as per the guidelines provided under Clause 9 of N.E.C. may be followed. Only indoor installations shall be provided in urban areas coming under the three cities namely, Trivandrum, Ernakulam and Calicut and such other cities where outdoor installations may not be possible due to space limitations and safety aspects.

(a) Wherever rising mains are not necessary the owner of the building while providing Main or Sub Switch Board's shall provide sufficient space and meter Boards to house Board's metering equipment near each outlet which should be exclusively provided for each consumer.

(b) Such meters will have to be installed together, preferably at not more than four locations in a building.

(c) Installations on the LV side of transformer will be maintained by the Consumer and the maintenance will be done only after informing the Board local officers. All switches and switch boards of the consumer coming before the Board's meter will be kept sealed by Kerala State Electricity Board's officers.

(d) In the case of multi-storeyed buildings with rising mains, provision should be made to provide all the meters at each floor in one area near the rising main.

(xi) The 11 KV indoor Sub Station, rising mains, Switch Boards and switches etc. coming before Board's metering will have to be erected by the owner of building. The owner of the building shall also be responsible for the maintenance of these installations and replacements and these shall be carried out with the concurrence of local Board's officers and, the seals can be broken only by them. A competent person shall also be appointed and authorised by the owner of the building for its operation and maintenance. A separate agreement will be executed containing these provisions by the owner of the building and he should agree that any expenses the Board has to incur due to his failure to do these duties, will be payable by him and such dues, if any, will form first charge on the property.

Meaning that is being attributed to high rise building in the Kerala Municipality Building Rules 1999 cannot be imported when we understand the meaning of the expression 'building' in the Indian Electricity Act and the Rules framed thereunder and also while applying the Regulation 12 of the Conditions of Supply of Electrical Energy. We are of the view, for the purpose of Indian Electricity Act and the Rules, building as such has to be taken as a unit which takes in the basement as well. There is no logic in excluding basement and measuring the height from the ground floor, which in our view, would defeat the purpose of Rule 50A.

7. The Electrical Inspector has also in another case taken the same view in his letter No. B2-3515/98/SIC. dated 20-9-1998, the relevant portion of the same is extracted below:

Please note that the height of the building shall be measured from the basement itself and not from any ground level, and this height shall be considered as the actual height of the building. Hence the above building conies under the high rise category and its overall height 18.7m. Hence it is a clear violation of Rule 50 A 1 of I.E. Rules 1956 and also the conditions of supply Part I Clause 12(1) of K.S.E. Board that you have not taken into account the actual height of the above high rise building and complied with the required formalities, while effecting service connection to the building. Please furnish your reply in the matter.

Counsel appearing for the Writ Petitioner however, made available a letter No. Plg. Com. 3565/98/4/99 dated 13-11-98 issued by the Chief Engineer, K.S.E.B., Trivandrum to Executive Engineer, Electrical Division, Calicut stating that the definition of high rise (a multi storeyed) building was prescribed by the Board after examining the provisions in the Municipal Building Rules. There is no basis in that statement. First of all the multistoreyed building has not been defined either in Indian Electricity Rules or in the Conditions of Supply and that the Electrical Inspector has taken the view that the height has to be measured from the basement and not from the ground floor for the purpose of Rule 50A of the Indian Electricity Rules read with Regulation 12 of the Conditions of Supply of Electrical Energy.

8. The counsel for the petitioner submitted that the electrical connection has already been given to the petitioner's building and that in the Kerala Electricity Supply Code 2005, the multistoreyed building has been defined as building exceeding 15 metres in height from ground level. Under such circumstance and due to the fact that electric connection has already been given to the petitioner, we are not inclined to interfere with the direction of the learned single Judge though we disagree with his reasoning.

Writ Appeal is therefore disposed of as above.