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Court : Chennai

Decided On : Aug-30-2012

Judge : V. Dhanapalan

Appeal No. : W.P. Nos. 16460 & 16461 of 2012 & M.P. No. 1 of 2012

Appellant : K.S. Moorthy and Another

Respondent : The Executive Engineer, O and M, Tamil Nadu Electricity Board and Others

Advocate for Pet/Ap. : For the Petitioners: S.N. Kirubanandam, Advocate. For the Respondents: S.K. Rameshwar, Advocate.

Judgement :

(Prayer: Writ Petition No.16460 of 2012 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the first respondent dated 15.2.2012 in “TAMIL” ;/051-12. quash the same and direct the respondents to provide 30 HP agricultural service connection to the Well situated in Survey Old No.294, New No.14/2A2 (patta land) T.Goundam Palayam, Paramativellur Taluk.

Writ Petition No.16461 of 2012 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records on

the file of the first respondent dated 15.2.2012 in “TAMIL”;/051-12. quash the same and direct the respondents to provide 30 HP agricultural service connection to the Well situated in Survey Old No.294, New No.153/B/1B2 (patta land) Kothamangalam Village, Paramativellur Taluk, Namakkal District.)

1. In these Writ Petitions, the petitioners are mother and son and they call in question the order passed by the first respondent herein in proceedings, dated 15.2.2012, seeking to quash the same and for a consequential direction to the respondents to provide 30 HP agricultural service connection to the Well situated in the respective Survey Numbers.

2. According to the petitioners, during 1990 and prior to that, there was no necessity to have the Well in the patta lands and the only necessity is to register with the respondents for an agricultural service connection and the same may be provided according to seniority. Though the lands comprised in the respective Survey Numbers are Government Revenue lands, the Well is under the exclusive possession and enjoyment of the petitioners and they are drawing water for agricultural activities through the generator set. Several persons like the petitioners have registered their request for agricultural purpose in river poramboke land and on attaining their seniority, they have effected agricultural service connections to their Wells in the patta lands. The petitioners also made similar request to the Assistant Engineer, TNEB, Kabilar Malai, Paramativellur. The second respondent has also recommended to the first respondent to provide agricultural service connection to the Wells situated in the petitioners' patta lands as done for the similar placed persons.

3. The petitioners have applied for agricultural service connection for their Wells in their old S.No.294, New No.14/2A2 and old S.No.294, New No.153/B/1B2 respectively on 28.5.1990 and 7.5.1990 and from that date onwards, they are waiting to get 30 HP agricultural service connection to the Well situated in the Villages of Paramativellur Taluk. While so, the first respondent in his proceedings in Letter No.EE/PV/JBN/A3-90-91 and Letter No.EE/PV/JPM/A8-90-91, dated 30.10.2010, called upon the petitioners to register their willingness to take agricultural service connections and accordingly, the petitioners in their letters

dated 3.11.2010, requested further time of 30 days to register their willingness.

4. It is the further case of the petitioners that on information furnished by the Assistant Engineer, Operations and Maintenance, Jedarpalayam of Paramathivelur Taluk, TNEB under the Right to Information Act, the same would clearly demonstrate the fact of provision of agricultural service connections in poramboke lands and later on transferred to the patta lands and therefore, the petitioners, being similarly placed persons as of others, are also entitled to get the service connections to their Wells.

5. While things stood thus, the first respondent, vide impugned proceedings, dated 15.2.2012, without any reason, cancelled the seniority, which was registered 20 years back and without any notice before passing the impugned proceedings, committed gross error and such impugned proceedings are in gross violation of the principles of natural justice.

6. Challenging the above proceedings, the petitioners are before this Court on the ground that the proceedings are arbitrary, illegal and passed with total non-application of mind and the same are violative of Articles 14 and 19(1)(g) of the Constitution of India, as there was no notice before cancellation, and therefore, it is in violation of the principles of natural justice and without jurisdiction. Hence, the impugned proceedings are tainted with mala-fides.

7. The first respondent has filed counter affidavit inter-alia stating that the petitioners have applied for agricultural service connection to their Wells situated in the respective Survey Numbers and they have applied and their applications were registered vide application Nos.EE/PV/JPM/A3/90-91 and EE/PV/JPM/A8/90-91, dated 30.5.1990. It is also admitted as true that 30 days' notice had been released from the Divisional Office, Paramativellur to the petitioners to enter their readiness to get the agricultural service connection with Revenue records. As the petitioners were unable to produce the records within the stipulated time, they requested for extension of time, which has also been permitted upto 3.1.2011 to submit the Revenue records. The respective Survey Numbers are government poramboke lands adjacent to the bank of River Cauvery. The petitioners have applied for agricultural service connection to the Wells

existing at the respective Survey Numbers and their applications were registered at the Divisional Office, Paramativellur on 30.5.1990, in which the Village Administrative Officer certified that the Wells in the respective Survey Numbers, are in the possession and enjoyment of the applicants.

8. It is further stated in the counter affidavit filed by the first respondent that prior to 1992, the process of getting Revenue records along with the applications, had not been insisted for registration. It is now in practice that if any application had to be registered in the Cauvery poramboke Wells, the applicant should submit Chitta, Adangal, Survey Field Map, VAO Certificate, Government Order and No Objection Certificate from Public Works Department along with the applications. It is true that the details were furnished in the third respondent's letter “TAMIL”; 21-2012. dated 17.4.2012, as the details were requested by the petitioners under the Right to Information Act. The third respondent deny that he had cancelled the petitioners' applications without any reason. Since the applications had been registered to a poramboke Wells not owned by the applicants, clarification had been sought for from the Headquarters/TANGEDCO/Chennai. In this connection, clarification had been received from the Headquarters/TANGEDCO, vide “TAMIL”; 22/12/2010. and in the said letter, it is stated as follows:

“TAMIL”

Since the applicants applied for the Wells not owned by them, as per the instructions of the Headquarters/TANGEDCO, order had been issued by the first respondent vide the impugned orders, cancelling the registered applications, which is in order. The first respondent is not the competent authority to decide the policy decision of the TANGEDCO such as to effect service connections to the Wells applied in poramboke lands. The first respondent prayed for dismissal of the Writ Petitions.

9. Similar line of statements have been made by the third respondent in his separate counter affidavits to the effect that the applicants had applied for the Wells not owned by them and the cancellation order had been issued as per the instructions of the Headquarters/TANGEDCO and accordingly, the impugned orders had been passed cancelling the registration of the applicants.

10. Mr.S.N.Kirubanandam, learned counsel appearing for the petitioners, in his submissions, strenuously contended that there was no practice prior to 1992 to enclose any Patta or Chitta documents for agricultural service connection, as the Government lands were utilised for the purpose of having Wells and later on, the said applications for agricultural connections had been transferred as to the patta lands in most of the cases and therefore, similar treatment has to be extended to the petitioners also. He strongly contended that the impugned orders are legally infirmed for the reason that without notice and an opportunity of hearing, the same had been passed straightaway and therefore, they are vitiated by non-application of mind and are in violation of principles of natural justice.

11. Per contra, Mr.S.K.Rameshwar, learned counsel appearing for the respondents contended that in view of the existing policy that unless the applications for agricultural service connections are made enclosing the Chitta, Adangal, Survey Field Map, VAO Certificate, Government Order, NOC from the PWD, it is not proper for the respondents to consider the applications pending, and therefore, they have rightly cancelled the registration of the applicants/petitioners as per the instructions from the Headquarters/TANGEDCO, Chennai, and therefore, the impugned orders cannot be found fault with.

12. I have heard the learned counsel appearing for the parties and perused the material documents.

13. A circumspectionof the facts would reveal that the petitioners have made their applications for agricultural service connections to their respective Wells on 28.5.1990 and 7.5.1990 and the same were registered by the respondents on 30.5.1990. The same are pending for more than 20 years. As per the Electricity Board Rules and Regulations, any agricultural service connection is to be given as per the seniority of the applicant's registration and only on ripening of the applications, necessary willingness will be called for from the respective applicants and also to issue preparatory notices for installation of necessary meters and motor pump sets. Such a practice has been followed by the respondents all along.

14. The respondents, on 30.10.2010, called upon the petitioners to register their willingness to take agricultural service connections and accordingly, by letter dated

3.11.2010 , the petitioners requested further time of 30 days to register their willingness/readiness to get the agricultural service connections with the Revenue records and they were also granted extension of time upto 3.1.2011 to get and submit the Revenue records. However, it was not submitted and the Wells in question are in poramboke lands. It is stated by the learned counsel for the petitioners that the respondents have considered for agricultural electricity service connections for the Wells located in poramboke lands and transferred it to the patta lands in some cases like Arumugam, S.K.Shanmugam, and President of Irrigation Society in S.No.294, Palanisamy, A.P.Murugesan and Ganesan in S.No.261 and V.Ramalingam in S.No.56 and they have also considered in respect of S.Nos.24, 23, 81, 51 and 279. Therefore, such a course has been adopted by the respondents without taking NOC from them and they have provided shifting of lands from poramboke lands to patta lands for giving agricultural electricity service connections to those persons and similar such treatment has also to be given to the petitioners also who are entitled to the agricultural service connections. The petitioners have also given representation for change of the poramboke lands to patta lands for agricultural electricity service connections. That being the position, the petitioners' claim for shifting of their application for electricity service connection to the Well from poramboke lands to patta lands, has to be considered.

15. On the above background, the petitioners assailed the impugned orders on the ground that even after 20 years of their applications, when the policy of the Government was in vogue and in practice during that period of time without any enclosures, as they have made their applications in 1990, it is not proper for the respondents to demand such enclosures like Chitta, Adangal, VAO Certificate, Government Order, NOC from PWD etc., as there is no change in policy giving the retrospective effect of the applications to those which were pending from 1990 onwards.

16. A serious contention has been raised by the learned counsel for the petitioners that the impugned orders suffers from legal infirmity, because, there was no notice and opportunity of hearing to the petitioners before cancelling the registration of their applications, and therefore, there is violation of principles of natural justice. If a public authority intends to cancel the applications pending for more than 20

years, it is obligatory on their part to put the person aggrieved on notice and after hearing them and after getting their explanation as to why their applications should not be cancelled for want of Revenue records, the impugned orders could have been passed and such a course is not adopted by the respondents in this case, and therefore, the impugned orders are in clear violation of the principles of natural justice. On this score also, the impugned orders suffer from legal infirmity and the same cannot be sustained.

17. The reasons assigned in the impugned orders is that the applications were made for agricultural service connections in the Wells in poramboke lands and it is not permissible, in view of the decision of the Headquarters/TANGEDCO, which is not an acceptable ground for the respondents to reject the applications when their policy was not in force during 1990. Any policy of the respondents shall have only prospective effect and not to be treated to have retrospective effect.

18. Analysing the entire factors involved in these cases, the impugned orders suffer from legal infirmity, firstly for the reason that the policy of the respondents cannot be said to have any retrospective effect; secondly, when the respondents have followed certain procedures in respect of other persons even to poramboke lands including the shifting to patta lands, the same has to be extended to the case of the petitioners also, and lastly, as there was no notice and opportunity of hearing, there is clear violation of the principles of natural justice. Thus, the impugned orders are passed in total violation of the above principles and the same cannot be allowed to stand.

19. Upon perusing the entire facts and circumstances of the case, and in view of the discussion made above, I am of the considered opinion that the impugned orders passed by the respondents are legally infirmed and not sustainable in law, and therefore, they are hereby set aside. The Writ Petitions stand allowed with a direction to the respondents to consider the case of the petitioners' applications as done in the case of others and the respondents shall pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order. No costs. The Miscellaneous Petitions are closed.

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