

Writ Appeal

Present:

The Hon'ble Justice J.N. Patel, Chief Justice

And

The Hon'ble Justice Bhaskar Bhattacharya

Judgment on 24.08.2010

F.M.A. No. 268 of 2010

The Secretary, West Bengal State Electricity Board & Anr.

Versus

Sunil Dutta & Ors.

Points:

Submersible Pump- Whether licensing authority is required to give connection to the submersible pump from the existing 19 KVA transformer on the basis of SWID certificate issued in favour of the petitioner - West Bengal Electricity Regulatory Commission (Recovery of Expenditure for Providing New Connection) Regulations, 2005 - West Bengal Ground Water Resources (Management Control and Regulation) Act, 2005

Facts:

Respondent no.1 moved writ seeking directions against the appellant/respondents to give electricity connection from the existing 10 KVA Transformer which may be required for such irrigation purpose primarily on the ground that the writ petitioner having installed a submersible pump in his agricultural land. The Learned Single Judge found that the petitioner is entitled to take electricity connection from the 10 KVA Transformer for operating his submersible pump, and the learned Judge directed the authorities of the West Bengal State Electricity Board to effect

electricity connection to the submersible pump of the petitioner without any further delay and positively within a period of 4 weeks from the date of the completion of the formalities as SWID Certificate is issued by the Authority in favour of the writ petitioner.

Held:

Appellant placed reliance on the decisions rendered in the cases of *Secretary, West Bengal State Electricity Board vs. Deb Kumar Jash [2005 (4) CHN 24]* and *[West Bengal State Electricity Board vs. Mehedi Hasan Reza [2007(4) CHN 767]*. Court held that the impugned order dated July 30, 2003 deserves to be quashed and set aside as the issue stands covered by the two decisions of this court referred by the learned counsel for the appellant. In both the decisions, this court was required to consider and distinguish cases of Kartick Chandra (supra) and B. Chowdhury (Supra) observing that major basis on which the Learned Single Judge passed the order on July 30, 2003, was no longer valid inasmuch as by July 30, 2003, the new Act has come into force and statutory context has totally changed. It is further observed that in order to obtain SWID certificate, a distance of 200 meters between two submersible pumps is required in view of the decreasing water level in the district of Burdwan.

Paras 5 and 6

It will be open for the writ petitioner to make a fresh application to the Board by adhering to the provisions contained in the West Bengal Electricity Regulatory Commission (Recovery of Expenditure for Providing New Connection) Regulations, 2005 for providing electric connection and West Bengal Ground Water Resources (Management Control and Regulation) Act, 2005 and rules framed thereunder.

Para 8

Cases cited:

AIR 2000 Cal 218 [Kartick Ch. Bose vs. West Bengal State Electricity Board] and 2001 (1) CHN 262 [B. Chowdhury vs. West Bengal State Electricity Board]. Secretary, West Bengal State Electricity Board vs. Deb Kumar Jash [2005 (4) CHN 24] and [West Bengal State Electricity Board vs. Mehedi Hasan Reza [2007(4) CHN 767].

For the Appellants : Mr. Sumit Panja, Mr. Mihir Kundu

J. N. Patel, C.J. : This appeal is preferred by the original respondents against the judgment and order dated July 30, 2003 passed by the Learned Single Judge in WP No. 11464(w) of 2003. The writ petitioner moved this court seeking directions against the appellant/respondents to give electricity connection from the existing 10 KVA Transformer which may be required for such irrigation purpose primarily on the ground that the writ petitioner having installed a submersible pump in his agricultural land in block No. 1041, J.L. 115 Mouza Shitalgram, Block Mongalkot Dist. Burdwan. It was the case of the writ petitioner that having complied with all the necessary formalities like an application for getting water available certificate in his favour in order to install submersible pump for irrigation and upon maintaining the norms of 200 meters from the nearest irrigation tubewell/drinking tubewell and submersible pump in his block, the writ petitioner on 26.6.2002, applied for electric connection but as the appellant/respondent failed to provide electricity connection he was required to file an application under Article 226 of the Constitution of India.

2. According to the writ petitioner, the original respondent is bound to give electricity connection upon receiving the application along with necessary certificate from the writ petitioner. It was stated that prior to the

installation of tubewell for agricultural land there was no other mode of irrigation and the writ petitioner had to solely depend upon rain water for irrigation as he being the resident of a remote village in Burdwan. Farmers in the region have been using the tubewell for the purpose of irrigation and, therefore, the writ petitioner decided to incur expenditure approximately Rs. 40,000/- and a 40 feet deep pipe was placed beneath for installing the submersible pump for irrigation from the tubewell and as there existed a 10 KVA Transformer, at a short distance, respondents ought to have supplied electric connection to his submersible pump from the said Transformer.

3. The Learned Single Judge found that the petitioner is entitled to take electricity connection from the 10 KVA Transformer for operating his submersible pump, and the learned Judge directed the authorities of the West Bengal State Electricity Board to effect electricity connection to the submersible pump of the petitioner without any further delay and positively within a period of 4 weeks from the date of the completion of the formalities as SWID Certificate is issued by the Authority in favour of the writ petitioner.

4. It further directed to provide electric service connection from the existing Transformer if the said Transformer can bear the requisite load and if it does not, appropriate steps should be taken by the authorities for installation of the new Transformer for the petitioners as well. The learned Judge also observed that the expenses for the installation of such Transformer will be borne by the West Bengal State Electricity Board by placing reliance on the two decisions of this court reported in *AIR 2000 Cal 218 [Kartick Ch. Bose vs. West Bengal State Electricity Board]* and *2001 (1) CHN 262 [B. Chowdhury vs. West Bengal State Electricity Board]*. The court having disposed of the writ petition, an application was moved by the

appellant/respondent for recalling the earlier order dated July 30, 2003 and the same also came to be rejected by the order dated November 25, 2000.

4. At the time when the appeal was listed for hearing none appeared for the respondent. Therefore, this court proceeded to hear the learned counsel for the appellant. It is contended by the learned counsel for the appellant that the Learned Single Judge was pleased to pass the impugned order without verifying as to whether the writ petitioner has made a proper application and complied with the necessary formalities for getting electric connection and without giving opportunity to the appellant board to examine the feasibility of providing new submersible pumps. It is further contended that in the event of compliance of formalities by the respondent, the charges for installation of Transformer will have to be borne by the writ petitioner. It is submitted that as a matter of policy in case permanent electric connection is to be provided to the agricultural land, in view of Policy of 2002 issued by the West Bengal State Electricity Board, electric connection cannot be provided from the main or transmission network for various reasons and that the Board cannot be called upon to install 10 KVA Transformer to provide electricity to the petitioner at their cost as the 10 KVA Transformer has to be installed at the cost of the consumer for providing such electric connection.

5. Therefore, considering that the petitioner has not made a proper application and complied with the formalities, the impugned order providing electric connection to the respondent by installing a new Transformer at the cost of the Board was not justified in the facts and circumstances of the case. Learned counsel for the appellant further submitted that the Board was required to install Transformer at its costs. During the currency of the Indian Electricity Act, 1910, and Electricity Supply Act, 1948 and after passing of the Electricity Act, 2003, there is no obligation on the part of the

appellant Board to provide the installation of the Transformer. It is further contended that the erection of Transformer and connection for the submersible pump through the Transformer cannot be said to be for domestic consumption. He placed reliance on the decisions rendered in the cases of *Secretary, West Bengal State Electricity Board vs. Deb Kumar Jash* [2005 (4) CHN 24] and *[West Bengal State Electricity Board vs. Mehedi Hasan Reza* [2007(4) CHN 767].

6. We have no hesitation to come to the conclusion that the impugned order dated July 30, 2003 deserves to be quashed and set aside as the issue stands covered by the two decisions of this court referred by the learned counsel for the appellant. In both the decisions, this court was required to consider and distinguish cases of Kartick Chandra (supra) and B. Chowdhury (Supra) observing that major basis on which the Learned Single Judge passed the order on July 30, 2003, was no longer valid inasmuch as by July 30, 2003, the new Act has come into force and statutory context has totally changed. It is further observed that in order to obtain SWID certificate, a distance of 200 meters between two submersible pumps is required in view of the decreasing water level in the district of Burdwan.

7. It appears that the learned Judge while dealing with the case in hand also disposed of the same in similar manner on July 30, 2003 that too without adhering to the policy of the appellant Board and provisions of the Electricity Act of 2003 and the prevalent rules and regulations.

8. We, therefore, set aside the impugned order. It will be open for the writ petitioner to make a fresh application to the Board by adhering to the provisions contained in the West Bengal Electricity Regulatory Commission (Recovery of Expenditure for Providing New Connection) Regulations, 2005 for providing electric connection and West Bengal Ground Water Resources

(Management Control and Regulation) Act, 2005 and rules framed thereunder.

9. The appeal is allowed in the aforesaid terms with no order as to costs.

(J. N. Patel, C.J.)

I agree.

(Bhaskar Bhattacharya, J.)

