

Gaurav Sharma vs State Of U.P. And 4 Others on 18 September, 2018

Bench: Shashi Kant Gupta, Ajit Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. - 32

AFR

Case :- WRIT - C No. - 8396 of 2018

Petitioner :- Gaurav Sharma

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Yogendra Pal Singh

Counsel for Respondent :- C.S.C., Chandan Agarwal

Hon'ble Shashi Kant Gupta, J.

Hon'ble Ajit Kumar, J.

1. By means of this writ petition, the petitioner has challenged the order dated 30.11.2017 passed by Sub-Divisional Officer, Electricity Distribution Division-II, Garhmukteshwar, Hapur rejecting the application of the petitioner for sanction of new electricity connection. The reason assigned in the order impugned is that the petitioner, being neither a tenant nor, the owner of the house in question and his father who is already having connection in another house, has refused to give his consent/ no objection for a separate connection, it would not be legal to grant new connection.

2. Facts of the case are that the petitioner, who claims to be the adopted son of Dayanand Sharma, is living in one of the houses owned by his father, but due to some family dispute between the wife of petitioner and his father, goods and belongings of the petitioner were thrown out of the house in question. The petitioner thereafter, along with his wife, approached the Superintendent of Police on 27.02.2013 for redressal of his grievances. On its intervention, goods and belongings of petitioner were restored and petitioner could able to get re-entry in the house. Thereafter, respondent no. 5 again lodged a complaint against the petitioner, in which summons were issued. However, further proceeding of the said criminal case has been stayed by this Court.

3. Contention raised on behalf of the petitioner is that the petitioner is living separately in the house in question. Respondent no. 5 does not reside with him. Accordingly, petitioner applied for electricity connection along with a house tax receipt issued by Municipality to demonstrate that he is paying the house tax in respect of the premises in question and is in absolute possession and occupation thereof and therefore, under the circumstances, he is entitled to have electricity connection.

4. From the perusal of documents that have been brought on record, we find that as it was very difficult for the petitioner and his family to survive without electricity, he applied for a new electricity connection, some inquiry was got conducted by the Electricity Supply Division and a report was submitted that petitioner's father have two houses, petitioner is living in one with his family and his father is living in the other. Petitioner's father who is residing in Ward No. 25, Mohalla Jamindaran, Brijghat, Hapur has requested the Executive Engineer (Electricity) not to give any electricity connection to his other house situate in Mohalla Brajghat wherein the petitioner along with his family is residing. This complaint therefore, appears to have become main reason for not granting electricity connection to the petitioner and the same was rejected vide order dated 27.05.2017. Petitioner filed Writ - C NO. 42301 of 2017 but the co-ordinate Bench of this Court vide order dated 13.09.2017 refused to interfere with the order refusing the power connection to the petitioner. The order of the Division Bench dated 13.09.2017 is reproduced hereunder:

"Heard learned counsel for the petitioner, Sri Chandan Agarwal, learned counsel for the respondent nos. 2, 3, 4 and 5 learned Standing Counsel for the State-respondent.

This writ petition has been filed by the petitioner with a prayer to issue a writ order or direction in the nature of certiorari quashing the impugned order dated 22.05.2017 passed by respondent no. 2 by which the application moved by the petitioner before him for grant of power connection has been rejected by him on the ground that the petitioner is not the owner of the premises in respect of which power connection is sought and a suit between him and his father, who is the owner of the premises in question is pending before the Civil Court.

It has been submitted by the learned counsel for the petitioner that the petitioner is seeking power connection in the premises in which he is residing not in the capacity of the owner of the premises but in the capacity of its occupier and hence his application for grant of power connection could not have been rejected on the ground that he is not the owner of the premises in question.

However, upon perusal of the application moved by the petitioner for grant of power connection before the respondent no. 2, it transpires that the same does not contain any recital that the petitioner was seeking power connection in the premises in question in his capacity of an occupier.

We do not find any reason to interfere with the impugned order. However, in case the petitioner is actually occupying the premises in question he may move a fresh

application before the concerned authority for grant of power connection. In case, any such application moved by the petitioner within two weeks from today along with certified copy of this order before the respondent no. 2, he shall examine and decide the same as expeditiously as possible preferably within a period of two months from the date of receipt of such application.

Subject to the aforesaid directions, this writ petition is disposed of."

5. Thereafter, the petitioner moved another application to the Executive Engineer on 24.09.2017 along with the certified copy of the order of the Court for necessary compliance. From the perusal of the application, it transpires that the petitioner put up his claim within time as owner of the property/ premises in question and being the occupier, in such capacity, he wanted electricity connection.

6. Considering the grievance of the petitioner and legality of the impugned order, whereby, the electricity connection has been refused to the petitioner, we find that vide Section 43(1) of the Electricity Act, 2003 an owner or occupier of any premises is entitled to apply for electricity supply and in the event of such application being made, within one month of receipt of such application, the supply shall be made by the Electricity Department. Section 43 of the Electricity Act, 2003 is reproduced hereunder:

"Section 43. (Duty to supply on request): --- (1) 1[Save as otherwise provided in this Act, every distribution] licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

[Explanation.- For the purposes of this sub-section, "application" means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.] (2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1) :

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he

has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default."

7. From the perusal of explanation appended to sub-section (1) of Section 43 of the Act, where the word 'application' has been defined as application means an application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances. Exercising power under Section 176 read with Section 183 of the Electricity Act, the Central Government by its notification framed "U.P. Electricity Supply Code, 2005". The Electricity Supply Code, 2005 takes full care of every aspect of the electricity supply and distribution and lays down complete procedure, not only in respect of supply of electricity but the redressal of grievance of consumers at the same time. Clause 4.3 of the Supply Code deals with new electricity connection in general and clause 4.4 deals with processing of application. What is therefore, required is that a prospective consumer has to apply as per the prescribed procedure for a new connection. As we have noticed under Section 43 vide its explanation provides for an application to be made in a complete form, clause 4.4 of the Supply Code lays down how the application for new connection has to be made in the prescribed form. Clause 4.4 of the Supply Code is reproduced hereunder:

"4.4 Processing of Application for Supply:

(a) Application for new connections, in prescribed form (Annexure 4.1) and complete in all respects and accompanied by the prescribed Registration-cum-processing fee, shall be filed in duplicate in the office, specified by the Licensee, along with -attested true copies of the following documents:

(i) Proof of ownership of the premises in the form of registered sale deed or partition deed or succession or heir ship certificate or deed of last will or Proof of occupancy such as valid power of attorney or latest rent paid receipt or valid lease deed or indemnity form as per Annexure 4.2. Order Copy of appropriate court, in case of litigation regarding ownership of the premises, has to be enclosed.

(ii) Approval / permission / NOC of the local authority, if required under any law /statute.

(iii) In case of a partnership firm, partnership deed.

(iv) In case of a Limited Company, Memorandum, articles of Association, Certificate of incorporation and list of Director's / certified addresses.

(v) 3(4) [Work completion and Test certificate, on the prescribed format (Annexure 4.4), given by the licensed electrical contractor can be submitted later but prior to commencement of supply.]

(vi) Owner's consent for getting new supply connection. (Annexure 4.3)

(b) Licensee shall arrange to assist the applicants, if required, in completing the application form.

(c) The Licensee shall verify the application and the enclosed documents at the time of receipt of application. Written acknowledgement shall be issued on the spot. The acknowledgement shall indicate the date of proposed inspection (not later than 10 days in electrified areas, and two weeks in un-electrified areas) if the application is complete, otherwise it should mention the shortcomings if the application is incomplete.

(d) No application for the new connection for an electrified area shall be refused under any circumstances if it complies with statutory requirements and is in conformity with Act. In case consumer has not been intimated within stipulated period about any deficiencies in his application, the application shall be deemed to have been accepted for processing by the licensee.

(e) Licensee shall not be responsible if the reasons for delay are on account of Right of Way, acquisition of land, technical feasibility and lack of transmission capacity etc, over which the licensee has no reasonable control, provided the reasons for the expected delay are communicated to the applicant within the period specified for energisation.

(f) If any information furnished in application form is found wrong or the installation is defective or the energisation would be in violation of provision of Act / Electricity Rules / Tariff Order, the licensee shall not sanction the load and shall intimate the applicant the shortcomings / reasons thereof in writing on the spot as far as possible."

8. Learned counsel for the petitioner placed before this Court, two Division Bench judgments wherein similar issue has come to be considered and the Division Bench in 2014 (6) ADJ 672 (DB) Seema Mansoor v. U.P. Power Corporation Ltd., Lucknow & Others has held that considering the provisions, as contained in clause 4.4 of the Supply Code and annexure 4.2, it can safely be discerned that Supply Code has taken full care of unauthorized occupants also for grant of electricity connection. Para 14 to 16 of the judgment of Seema Mansoor (supra) are reproduced hereunder:

"14. A perusal of Clause 4.4 of the Code 2005 goes to show that indemnity form as per annexure 4.2 can also be filed along with an application for new connection. The purpose is to enable such tenants, in respect of whom the owner or landlord refuses

to give no objection for a new connection.

15. A perusal of Annexure 4.2 reproduce herein-above goes to show that the purpose as is obvious from the reading of the aforesaid form is to indemnify the licensee for any loss that may accrue on account of any act of a person in occupation of the building though he may not be owner. Thus, the Code 2005 provides either for consent letter of owner of the premises or in the absence thereof indemnity bond by the lessee/tenant or occupier of the premises. Intention is, thus, clear that either there should be owner's consent to indemnify the licensees in case the tenant/lessee or occupier vacates and vanishes without leaving his address or in the alternative tenant/lessee or occupier may give an undertaking indemnifying any loss or damage to licensee on account of electricity connection being given to him without the consent of the owner of the land or premises making it recoverable from him and his property under the provisions of the Revenue Act in force at the time of such recovery, or by such other proceedings as the Licensee may deem fit to initiate.

16. From the reading of the aforesaid provisions, it is clear that licensee is under an obligation to supply electrical energy on a proper application being made and every owner or occupier, which will include a tenant, of the premises has statutory right to apply and obtain electricity supply from the licensee subject to his fulfilling requirements under the provisions of the Electricity Act, 2003 and the Electricity Supply Code 2005. Thus, an application for grant of electricity connection cannot be refused by licensee on the ground that there is no consent of the landlord. From the scheme of the Act and the duties cast upon the licensee and right conferred upon the person making application for supply of electrical energy in case he submits indemnity bond, a lessee/tenant or occupier cannot be refused electricity connection merely for want of consent of the landlord."

9. Further, Misc. Bench No. 9588 of 2014, Smt. Sushama Chowdhary v. U.P. Power Corporation Ltd. & 4 others decided on 24.09.2014 a concurrent Bench of this Court has relied upon a judgment of Supreme Court in AIR 2011 SC 2897 Chandu Khamaru v. Smt. Nayan Malik, wherein, Supreme Court has come to interpret sub-Section (1) of Section 41 and has held that in case of family dispute, the Electricity Act takes full care for grant of electricity connection and it ensures that nobody is deprived of electricity connection only on account of internal family dispute. The Division Bench in Sushama Chowdhary (supra) held thus:

"Section 43 (1) of the Electricity Act, 2003¹ provides that save and otherwise provided in the Act, every distribution licensee shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises within one month after receipt of an application requiring such supply. Section 43 (1) of the Act of 2003 casts an affirmative obligation on the distribution licensee to supply electricity on an application being moved by the owner or occupier. A corresponding entitlement or right is conferred by the statute on the owner or occupier to require a supply of electricity. This legal position is not in doubt. In Chandu Khamaru v. Smt.

Nayan Malik², the Supreme Court, while interpreting the provisions of Section 43 (1) of the Act of 2003, observed as follows:

"Sub-section (1) of Section 43 provides that every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply. These provisions in the Electricity Act, 2003 make it amply clear that a distribution licensee has a statutory duty to supply electricity to an owner or occupier of any premises located in the area of supply of electricity of the distribution licensee, if such owner or occupier of the premises applies for it, and correspondingly every owner or occupier of any premises has a statutory right to apply for and obtain such electric supply from the distribution licensee."

Again, in a subsequent part of the aforesaid decision, the Supreme Court emphasized the statutory right of an occupier and the corresponding statutory obligation on the distribution licensee to supply electricity. The Supreme Court observed as under:

"...The appellant has a statutory right to apply for and obtain supply of electricity from the distribution licensee and the distribution licensee has a corresponding statutory obligation to supply electricity to the appellant."

We find merit in the contention of the petitioner that the impugned order dated 2 August 2014 contains no reason for the denial of electric supply, save and except for making a reference to the provisions of Clause 4.4 of the Electricity Supply Code-2005³. Clause 4.4 of the Code-2005 is in aid of the statutory duty cast by Section 43 of the Act of 2003.

As a matter of fact, an Indemnity Bond, a proforma of which is contained in Annexure 4.2 of the Code-2005, deals with a situation where an occupier of the premises applies for the grant of an electricity connection, but is unable to produce the consent of the owner. Obviously, in a situation, where a dispute is between the owner and occupier (in the present case, the dispute is between members of a family), a provision has been made for furnishing an Indemnity Bond. The record would, in fact, indicate that on 21 July 2014, the petitioner had furnished an Indemnity Bond, describing herself as an occupier of the premises and said that she was unable to obtain the consent of the owner in view of the pendency of the litigation before the Court. Despite this, the Executive Engineer has acted in breach of the statutory obligation, which is cast on a distribution licensee to provide supply of electricity. The impugned order reveals a total non-application of mind and an unawareness of the obligation, which is cast by Section 43 of the Act of 2003 on the distribution licensee.

10. From the annexure that has been appended to the Supply Code as 4.1, one has to declare that he is the owner of the premises and in case if he is not the owner then annexure 4.2 will be the format of the application and in that he has to demonstrate that he is a genuine occupier and not the trespasser. Annexure 4.2 is an indemnity bond which has to be filled in and to be annexed along with an application for grant of electricity connection, but what is required further, is clause 4.4(i) of

the Supply Code that provides for the documents that have to be annexed in which one has to supply proof of ownership of premises in the form of registered sale deed etc. or heirship certificate. In the event of a mere occupancy, one has to give document of Power of Attorney or rent receipt or valid lease deed or indemnity bond as per annexure 4.2. In the indemnity bond while one makes a declaration that though he has not been able to get the NOC from the owner of the land but he has to declare that he is in occupation of the premises either by virtue of valid Power of Attorney or by latest rent receipt or registered lease deed. The object is to deny connection to a tress-passer or a house grabber. So is also the purpose of executing the indemnity bond. Applying the aforesaid provisions to the facts of the present case, we find that the applicant, though is in possession of the premises, as he claims but he is an occupier of the premises being son of the owner, a genuine occupier. It has also been a fact so stated that he has been depositing the house tax and has annexed receipts thereof.

11. In this case we have noticed that father is residing in different premises whereas the petitioner is residing separately in the premises in question, where he has applied for electricity connection. Son is naturally a successor of his father and we see no reason as to why Electricity Department cannot provide electricity connection by getting indemnity bond fulfilled by the petitioner as required under the Supply Code, 2005.

12. Thus, here is a clear case of family dispute between the father in law with his daughter in law and the NOC is not being given or in other words objection has been raised only on account of this dispute. Under the circumstances, the applicant in spite of being son, his family is forced to live without electricity. In our considered opinion the petitioner's case is covered by the judgment of this Court (supra).

13. In view of the above, the impugned order is quashed, respondents are directed to reconsider grant of the electricity connection to the petitioner by getting all formalities fulfilled preferably within a period of three weeks from the date of production of a certified copy of this order.

14. Accordingly, the writ petition is allowed.

Order Date :- 18.9.2018 IrfanUddin