

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE Dr.JUSTICE VINEET KOTHARI

WP No.47730/2016 (GM-KEB) DATED:05-09-2017

BRUHAT BANGALORE MAHANAGARA PALIKE, BANGALORE-560 001 REPRESENTED BY ITS COMMISSIONER VS. BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED K R CIRCLE BENGALURU-560 001 BY ITS MANAGING DIRECTOR AND OTHERS

JUDGMENT

Mr.B.S.Gautham, Adv., for petitioner Mr.Vikram.U, Adv., for R1, Mr.M.Nikhilesh Rao, Adv., for R2, Mr.Prashant T.Pandit, Adv., for R4, Mr.Sridhar Prabhu, Adv., for R5 & R6.

The petitioner-BBMP has filed this petition aggrieved by the order passed by the Karnataka Electricity Regulatory Commission, Bengaluru (hereinafter referred to as ' KERC ') on 9.4.2015, Annexure- K, whereby on the Complaint No.1/2015 filed by the Consumer Association namely, Vidyuth Grahakara Hitarakshana Vedike and Karnataka State Licenced Electrical Contractors Association, it inter alia held in para (n) of its order that the respondent Distribution Companies like BESCO, Date of Judgment 05.09.2017 in WP No.47730/2016 Bruhat Bangalore Mahanagara Palike VS. Bangalore Electricity Supply Company Limited and Ors. CESCO etc., could not insist upon the consumers to prove their occupation of the premises by the " Occupancy Certificate " to be issued by the Municipal Bodies like BBMP.

2. The relevant para of the said order dated 09.04.2015 passed by KERC, is re-produced hereunder:

" (n) Electricity is an essential commodity for all the persons. Section 43 of the Act, envisages an universal obligation on the part of the Distribution Licensee to provide electricity on an application by the owner or occupier of any premises. Under the Act, the Commission has been delegated with the powers to frame suitable Regulations for supply of electricity to the consumers, on such terms and conditions. The CoS is duly framed and approved by this Commission, specifying the terms and conditions for supply of electricity to the consumers. The CoS has the full force and effect of a statute. This Commission alone has the right to amend or modify any of the provisions of the CoS. All persons, who are entitled to get supply of electricity under the terms of the CoS, cannot be denied the supply of electricity for any extraneous reasons. Therefore, even a person, whose occupation of a building is not as per the provisions of the Municipality Act and Bye-Laws, is entitled for supply of electricity to his premises, if he satisfies the provisions of the COS. In this way, the object of universal obligation to supply electricity to all persons is met with. Hence, the supply of electricity to an occupant of a building, whose occupation may not be authorized under the Municipality Act and Bye-laws, serves a greater cause and does not amount to abetting any illegality. For the above reasons, issue No. (2) is answered in the affirmative. "

3. The petitioner BBMP was not even a party before the said KERC in the aforesaid Complaint No.1/2015. Still it has chosen to assail the said order of the KERC before this Court and the petitioner-BBMP has filed this petition with the following prayers:

" Wherefore, the petitioner prays that this Hon'ble Court may be pleased to:

(i) Issue a writ of certiorari or any other writ quashing the order dated 9.4.2015 in Complaint No.1/2015 on the file of Karnataka Electricity Regulatory Commission, Bengaluru produced at Annexure- K. And in the alternative, remand the matter to the Karnataka Electricity Regulatory Commission, Bengaluru after quashing the impugned order and directing to pass a fresh order after hearing the petitioner in the matter.

(ii) Grant such other order or direction as deems fit to grant in the facts and circumstances of the case. "

4. Learned counsel for the petitioner, Mr. B.S.Gautham explained that in view of the Circular issued by the State Government vide Annexure- A dated 18.07.2014 mandates to prove all occupation in the form of " Occupancy Certificate " and that is why cause to file the present petition arose to BBMP. The relevant portion the said Circular dated 18.07.2014 issued by the State and is also quoted below for ready reference:

"Government of Karnataka

No.UDD 556 MDP 2013

Ministry of Government of
Karnataka
Vikassoudha,
Bangalore, Date:18.07.2014

CIRCULAR

Sub: Precautionary action to be taken in accordance with acts and rules regarding regularization of illegal construction.

Ref: Proceedings of the Meeting held on 27.05.2014 in the room of Chief Secretary to Government regarding re-examination of acts and rules pertaining to regularization of illegal constructions.

In accordance to the subject referred above and also the proceedings of the meeting for the purpose of taking precautionary actions before initiating Akrama-Sakrama programmes in the State of Karnataka, the Chief Secretary had held meeting on 27.05.2014. The proceedings of the meeting is enclosed with this circular.

When asked information regarding what nature of violation will be important as provided under regularization of illegal developments and violations under the present programme, for which have informed to consider the violation of construction and sites of specific measurement based on the approved sketch.

When discussed regarding what nature of action would be taken if approved sketches is not available, had directed to pass suitable directions against the officers who become responsible for cause of such violations. After discussing in this regard, while discussing regarding the stoppage of water supply and electricity supply

to control the violations in future, it was directed to issue Occupancy Certificate in the violation cases keeping in mind to control such violations before issuance of Occupancy Certificate through the local bodies including B.B.M.P. after constructions of the buildings.

In this regard have directed to provide water and electric connections only after obtaining of No Objection Certificate/Occupancy Certificate through Bangalore Development Authority or BBMP.

Accordingly the Bangalore Water Supply and Sewage Board and K.P.T.C.L authorities should not provide new water supply and electricity supply without Occupancy Certificate/No Objection certificate from the Bangalore Development Authority/Bruhath Bangalore Mahanagara Palike. Accordingly after passing of the Circular for such cases, if water and electricity connections are provided without no objection/occupancy certificate from Bangalore Water Supply and Sewage Board or through K.P.T.C.L. then action will be initiated on the concerned Executive Engineer.

It has been objected to initiate the above directions at BBMP and BDA Jurisdictional areas at first state. Hence, the Commissioner, Bangalore Water Supply and Sewage Board and Managing Director, K.P.T.C.L are been directed to follow the above instructions strictly. Accordingly the Commissioner, Bruhath Bangalore Mahanagara Palike and Commissioner, Bangalore Development Authority are directed to issue Occupancy Certificate only for those buildings which does not violates in accordance with this circular. If violations comes to the notices of government after passing this circular, then the concerned Executive Engineer will alone be made responsible for such cases.

Sd/
(T.M. Vasudeva Rao)
Under Secretary to Government,
Urban Development Department.

5. Having heard the learned counsels, this Court is satisfied that the conditions of Supply Regulations as they exist as of now do not require the proof of Occupation in the form of " Occupancy Certificate " to be issued by the respective Municipal bodies including BBMP for regulating the electricity supply in the State. The KERC is the sole Authority and it has rightly held in the impugned order that the proof of ownership and occupation of the premises in question can be proved by any consumer or applicant seeking the power connection in the manner stipulated in the Conditions of Supply (CoS), read with Section 43 of the Electricity Act, 2003. In the absence of any amendment of the relevant bye-laws or CoS, the State Government could not have insisted upon, as has been done in the impugned Circular Annexure- A dated 18.07.2014 to ask the Distribution Companies to insist for the production of " Occupancy Certificate " by the Consumer/applicant in a multi-storied building, whereas, the " Occupancy Certificate " has to be obtained by the Developer/Builder from the BBMP. The individual flat owners, who may be the consumers or applicants, may not have any access or right to obtain such " Occupancy Certificate " at all from the Municipal bodies like BBMP and therefore, insistence

upon them to produce " Occupancy Certificate " as a condition for obtaining the power connection would be per se illegal.

6. The State Legislature is of-course at liberty to amend the relevant Rules and Regulations, but so long as they stand now, the KERC cannot be faulted in passing the impugned order on the complaint filed by the Consumer Association.

7. Therefore, the present writ petition filed by the petitioner BBMP is without any merit and deserves to be dismissed and the same is accordingly, dismissed. No costs.