

D. SARAVANAN

A

v.

SUPERINTENDING ENGINEER TANGEDCO TNEB
DISTRIBUTION CIRCLE & ORS.

(Civil Appeal No. 3763 of 2018)

B

APRIL 12, 2018

[A. K. SIKRI AND ASHOK BHUSHAN, JJ.]

Electricity Laws:

Tamil Nadu Electricity Distribution Code, 2004: Clause 27 – Requisition for supply of energy – Agricultural electrical service connection – Application for grant of – Application returned after pointing out the defect that application did not have signature of Village Administrative Officer – Removal of defects and resubmission of the application, however, no action taken by respondent – Writ petition by the appellant – Direction by Single Judge to the respondent to consider the application – In pursuance thereof, submission of application by appellant on 27.01.2017 referring to his earlier application – By another application submission of demand draft of Rs 550/- – Thereafter, communication by Executive Engineer that application not submitted with the registration fee of Rs. 50/- – Respondent challenging judgment of the Single Judge on the ground of incomplete application for non-submission of registration fee – Division Bench held that the application submitted by the appellant in 2017 be considered – On appeal, held: Clause 27 cast obligation on the respondents-electricity department to indicate the defects in application and return the same – Non-submission of registration fee is also a defect in the application as contemplated by Clause 27 – Note which is a statutory in nature obliges the respondents to communicate defects in the application returned to the appellant – No such defect of non-deposit of registration fee of Rs.50/- was pointed out by the respondents – Respondents cannot be allowed to take the benefit of its inaction or its lapse which is not in conformity with the statutory obligation cast on it – Non-remittance of Rs.50/- was, thus, not such reason on the basis of which entire claim of the appellant could be rejected –

C

D

E

F

G

H

A *Claim of appellant regarding seniority of his application from 06.12.2010 cannot be accepted since the respondents immediately pointed out the defect on 07.03.2011 and returned the application and re-submitted on 21.03.2011 – Appellant entitled for consideration of his application from the date of resubmission-21.03.2011.*

B

Disposing of the appeal, the Court

HELD: 1.1 Clause 27 of the Tamil Nadu Electricity Distribution Code, 2004 cast obligation on the respondents to indicate the defects in application and return the same. When the application of the appellant was returned on 07.03.2011 only defect pointed out was that ‘application does not have signature of Village Administrative Officer’, no other defect was pointed out nor it was pointed out that registration fee of Rs.50/- is not deposited. The respondents submitted that it was the duty of the appellant to deposit registration fee of Rs.50/- which is required by the procedure prescribed. The respondents rely on a procedure for getting agricultural service connection. In the procedure as laid down by the respondents, registration fee of Rs.50/- was required to be submitted. The non-submission of registration fee is also a defect in the application as contemplated by Clause 27 of the Code, 2004. The note which is a statutory in nature obliges the respondents to communicate defects in the application returned to the appellant. No such defect of non-deposit of registration fee of Rs.50/- has been pointed out by the respondents and now the entire case of the respondents is based on the above shortcoming of non-deposit of registration fee of Rs.50/-. The respondents cannot be allowed to take the benefit of its inaction or its lapse which is not in conformity with the statutory obligation cast on it. It is further to be noted that vide letter dated 10.02.2017 the demand draft of Rs.550/- was deposited which consisted registration fee of Rs.50/- and Rs.500/- as scheme advance. The said demand draft was returned by the respondents on 20.02.2017. The directions issued by the Single Judge did not contain any direction which, in any manner, can be said to cause any prejudice to the respondents. The Single Judge only permitted the appellant to fulfill the necessary conditions

H

with regard to submission of the application/rectify the defects. A
The Single Judge also noticed that the shortcoming which was
pointed out by the letter dated 07.03.2011 did not mention the
shortcoming of non-remittance of Rs.50/-. Non-remittance of
Rs.50/- was, thus, not such reason on the basis of which entire
claim of the appellant could be rejected. The petitioner in the
writ petition has also clearly mentioned that his application may B
be considered under free agricultural service connection or under
Revised Self Financing Scheme(RSFS) by paying the scheme cost
for a sum of Rs.10,000/- or Rs.25,000/- or Rs.50,000/- by fixing
the seniority from 06.12.2010. [Para 15-16] [442-D-H; 443-A-E]

1.2 In so far as the claim of the appellant regarding seniority C
of his application from 06.12.2010 is concerned, there is no
inclination to accept the same since the respondents immediately
pointed out the defect on 07.03.2011 and returned the application.
The application which was re-submitted on 21.03.2011 ought to
have been accepted by the respondents since no other defect D
was pointed out. In any view of the matter, the appellant would
have asked to remit registration fee of Rs.50/- by the respondents
for registering the application. In the LPA by which the judgment
of the Single Judge was challenged, the resubmission of the
application on 21.03.2011 was not questioned, however, it was E
pleaded that after five years of resubmission, the writ petition
has been filed. [Para 17] [443-F-H]

1.3 It is accepted that the appellant's application was
resubmitted on 21.03.2011. The appellant, thus, was entitled to
consider his application treating to have been submitted on
21.03.2011. The respondents on trivial issue of non-remittance F
of Rs.50/- as registration fee has been denying the claim of the
appellant. The Division Bench noted that the appellant is a
practicing Advocate and he ought to have known about the rules
and regulations. The case of the appellant that he was not aware
that Rs.50/- was required to be deposited has been disbelieved G
only because he is an Advocate. A presumption that an Advocate
is supposed to know the law can be raised but there can be no
presumption that an Advocate is well aware of all procedural
requirements regarding making of an application for agricultural

A service connection. The payment of Rs.50/- as registration fee was a part of the procedure. The procedure also clearly indicates that a scheme is applicable category wise which could have been availed by anyone. There was no excluded category so as to infer that a practicing Advocate is not eligible to avail the benefit of the scheme. [Para 18] [444-B-E]

B
1.4 The Division Bench without any basis refused to accept the stand of the appellant that he is not aware that Rs.50/- was to be submitted as registration fee. The respondent while writing letter dated 07.03.2011 pointed out the defect in the application dated 06.12.2010 and the defect of non-remittance of Rs.50/- as registration fee would have been as well pointed out which could have obviated the litigation and loss of time and energy of both the parties. The respondents cannot be allowed to take benefit of their lapse in not pointing out the defect while they wrote letter dated 07.03.2011. However, the appellant was entitled for consideration of his application only with effect from 21.03.2011 which is the date on which application was resubmitted and the respondents cannot be allowed to take benefit of their own inaction in not communicating the defect by letter dated 07.03.2011. [Para 19] [444-G-H; 445-A-B]

C
D
E
F
1.5 The respondents are directed to consider the application of the appellant treating it to be registered with effect from 21.03.2011, i.e., the date it was resubmitted; the appellant shall resubmit a fresh demand draft of Rs.550/- which was returned by the respondent on 20.02.2017; and the respondents may process the application and intimate within a period of three months about any further fee or other requirements. [Para 20] [445-C-D]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3763 of 2018.

G From the Judgment and Order dated 28.06.2017 of the High Court of Judicature at Madras at Madurai in W. A. (MD) No. 846 of 2017.

S. Nagamuthu, M. P. Parthiban, A. S. Vairawan, Ms. Sneha Kalita, Advs. for the Appellant.

Vinodh Kanna B., Adv. for the Respondents.

H

The Judgment of the Court was delivered by

A

ASHOK BHUSHAN, J. 1. Leave granted.

2. This appeal has been filed against the Division Bench judgment dated 28.06.2017 of the Madurai Bench of Madras High Court allowing the writ appeal filed by the respondents. The appellant aggrieved by the judgment of the Division Bench has come up in this appeal.

B

3. The brief facts of the case which are necessary to be noted for deciding this appeal are:

The appellant has submitted an application dated 06.12.2010 praying for grant of Agricultural Electricity Service Connection for use of agricultural equipments with reference to his agricultural land admeasuring 5 acres. The application was returned by the Executive Engineer (Distribution) Rural, Tamil Nadu Electricity Board, with the following observation:

C

“The application which you sent does not have signature of VAO, Village Administrative Officer and hence the same is returned back.”

D

4. The appellant after getting defects removed, resubmitted the application on 21.03.2011. No action having been taken by the respondents on the said application writ petition was filed by the appellant in the Madurai Bench of Madras High Court.

E

5. Learned Single Judge after noticing the case of the appellant disposed of the writ petition with the following direction:

“4. The above submission made by the learned counsel for the respondents is placed on record. It is open to the petitioner to fulfill the necessary conditions with regard to submission of application/rectify the defects, if any, in the application already filed, within a period of one month from today and thereafter, the respondents shall consider the application of the petitioner in accordance with law and pass appropriate orders, if there are no legal impediments within a period of one month thereafter.

F

G

With the above direction, this Writ Petition is disposed of. No costs.”

H

A 6. In pursuance of the direction of learned Single Judge dated
20.01.2017, the appellant submitted an application on 27.01.2017 referring
to his application as earlier made on 06.12.2010 with request to provide
the details of the fees to be remitted. By further application dated
10.02.2017 demand draft of Rs.550/- was also submitted. The Executive
B Engineer vide his letter dated 15.02.2017 communicated that the
application of the appellant having not been submitted along with payment
of fee of Rs.50/- as per procedure to obtain agricultural electricity service
connection and further he has not deposited Rs.500/- towards plan
advance deposit. Letter stated that in the event a fresh application is
C filed along with recent revenue documents along with fee of Rs.50/-, the
application shall be considered as fresh application on priority basis.
Further, by letter dated 20.02.2017 the Assistant Executive Engineer
returned demand draft for Rs.550/- and the appellant was requested to
apply afresh as advised earlier on 15.02.2017.

D 7. The respondent challenged the judgment of the learned Single
Judge dated 20.01.2017 by filing a Letters Patent Appeal(Writ Appeal)
before the Madras High Court at Madurai. In the LPA main ground
taken was that application of the appellant was not submitted along with
registration fee of Rs.50/-, the same was not a complete application,
hence, learned Single Judge committed error in directing to consider
such application. The Division Bench vide its judgment dated 28.06.2017
E set aside the order of learned Single Judge. The Division Bench further
observed that the application submitted by the appellant in the year 2017
be considered, if it is otherwise in order and pass orders in accordance
with law. The appellant aggrieved by the judgment of Division Bench
has come up in this appeal.

F 8. A perusal of the judgment of the Division Bench indicates that
the Division Bench took the view that the appellant (who was respondent
in the writ appeal) being member of the legal profession is presumed to
be aware of the rules and regulations, hence, no relaxation or latitude
can be granted to the appellant. The Division Bench, further, observed
G that attempt of the appellant/writ petitioner is to take advantage of his
own wrong in not complying with the terms and conditions stipulated for
grant of free agricultural service connection.

9. A counter-affidavit has been filed by the respondents where
the provisions of Tamil Nadu Electricity Distribution Code, 2004

H

(hereinafter referred to as the 'Code, 2004') have been referred. The respondents have supported the order passed by the Division Bench. It is pleaded that application of the appellant dated 06.12.2010 having been incomplete on account of non-deposit of registration fee of Rs.50/-, the same was not required to be registered. It is further pleaded that the appellant approached the High Court after a delay of six years.

A

B

10. We have heard the learned counsel for the parties and perused the records.

11. From the judgment of the Division Bench which is impugned in this appeal it is clear that application for agricultural service connection submitted by the appellant is registered in the year, 2017 and the respondents have been directed to consider the same in accordance with law. The only issue needs to be considered is as to whether the appellant is entitled to treat his application from any earlier point of time.

C

12. As per the counter-affidavit filed by the respondents only limited agricultural service connections are given in each year that too on the basis of seniority of the application. There is no dispute of the fact between the parties that originally the application was filed for agricultural service connection on 06.12.2010 on which an objection was raised by the respondent- The Executive Engineer (Distribution) vide letter dated 07.03.2011 stating that the application sent by the appellant does not have signature of Village Administrative Officer and hence the same is returned back. The appellant obtained signature of Village Administrative Officer and re-submitted the application on 21.03.2011. No action was taken by the respondents, thereafter, the writ petition was filed in the Madurai Bench of the Madras High Court. The writ petition was disposed of by the learned Single Judge on 20.01.2017 directing the respondents to consider the application of the appellant in accordance with law. The appellant was granted liberty to fulfill the necessary conditions with regard to submission of application/rectify the defects. After the order of the Court, the Executive Engineer pointed out that application having not been submitted with registration fee of Rs.50/-, the same cannot be considered and it is open for the appellant to make a fresh application along with necessary fee.

D

E

F

G

13. The respondents rely on the provisions of the Code, 2004, Clause 27(1), Explanation of which is to the following effect:

H

A **“27. Requisitions for Supply of Energy:**

(1) xxx xxx xxx

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.”

B

14. In Clause 27, itself there is a note to the following effect:

“Note: Requisitions for supply of energy (Application), even if incomplete, and irrespective of whether they are handed over in person or by post, should be acknowledged in writing. If they are in order, they shall be registered immediately and acknowledged. If they are incomplete, the defects should be indicated and returned without registration.”

C

15. The above provision, thus, cast obligation on the respondents to indicate the defects in application and return the same. When the application of the appellant was returned on 07.03.2011 only defect pointed out was that ‘application does not have signature of Village Administrative Officer’, no other defect was pointed out nor it was pointed out that registration fee of Rs.50/- is not deposited. The respondents submitted that it was the duty of the appellant to deposit registration fee of Rs.50/- which is required by the procedure prescribed. The respondents rely on a procedure for getting agricultural service connection, Annexure R/1 has been filed with the heading “**PROCEDURE FOR GETTING AGRICULTURAL SERVICE CONNECTION**”, Clause 7 of which is to the following effect:

D

E

F

“7. The filled up application form along with above mentioned documents should be submitted at the Executive Engineer/ Operation and Maintenance Office of the jurisdiction concerned. For registering the application Rs.50/- has to be paid. After registering the application an acknowledgement mentioning the registration number and date of registration will be given to the applicant.”

G

16. Thus, in the procedure as laid down by the respondents, registration fee of Rs.50/- was required to be submitted. The non-submission of registration fee is also a defect in the application as

H

contemplated by Clause 27 of the Code, 2004. The note as extracted above which is a statutory in nature obliges the respondents to communicate defects in the application returned to the appellant. No such defect of non-deposit of registration fee of Rs.50/- has been pointed out by the respondents and now the entire case of the respondents is based on the above shortcoming of non-deposit of registration fee of Rs.50/-. Can the respondents be allowed to take the benefit of its inaction or its lapse which is not in conformity with the statutory obligation cast on it ? The answer obviously has to be 'no'. It is further to be noted that vide letter dated 10.02.2017 the demand draft of Rs.550/- was deposited which consisted registration fee of Rs.50/- and Rs.500/- as scheme advance. The said demand draft was returned by the respondents on 20.02.2017. The directions issued by the learned Single Judge as extracted above in paragraph 4 of the judgment did not contain any direction which, in any manner, can be said to cause any prejudice to the respondents. Learned Single Judge only permitted the appellant to fulfill the necessary conditions with regard to submission of the application/rectify the defects. Learned Single Judge has also noticed that the shortcoming which was pointed out by the letter dated 07.03.2011 did not mention the shortcoming of non-remittance of Rs.50/-. Non-remittance of Rs.50/- was, thus, not such reason on the basis of which entire claim of the appellant could be rejected. The petitioner in the writ petition has also clearly mentioned that his application may be considered under free agricultural service connection or under Revised Self Financing Scheme(RSFS) by paying the scheme cost for a sum of Rs.10,000/- or Rs.25,000/- or Rs.50,000/- by fixing the seniority from 06.12.2010.

17. In so far as the claim of the appellant regarding seniority of his application from 06.12.2010 is concerned, we are not inclined to accept the same since the respondents immediately pointed out the defect on 07.03.2011 and returned the application. The application which was re-submitted on 21.03.2011 ought to have been accepted by the respondents since no other defect was pointed out. In any view of the matter, the appellant would have asked to remit registration fee of Rs.50/- by the respondents for registering the application. It is relevant to notice that in the LPA by which the judgment of the learned Single Judge was challenged, the resubmission of the application on 21.03.2011 was not questioned, however, it was pleaded that after five years of resubmission, the writ petition has been filed. It shall be useful to notice ground 'c' of the writ appeal which is to the following effect:

A
B
C
D
E
F
G
H

A *“c. The Learned Judge ought to have seen that the writ petitioner has submitted the application on 06.12.2010 and resubmitted on 21.03.2011 and has filed the writ petition in the year 2016 i.e. after the lapse of five years and no reason was attributed to delay in filing.”*

B 18. We, thus, accept that the appellant’s application was resubmitted on 21.03.2011. The appellant, thus, was entitled to consider his application treating to have been submitted on 21.03.2011. The respondents on trivial issue of non-remittance of Rs.50/- as registration fee has been denying the claim of the appellant. The Division Bench in its judgment has noted that the appellant is a practicing Advocate and he ought to have known about the rules and regulations. The case of the appellant that he was not aware that Rs.50/- was required to be deposited has been disbelieved only because he is an Advocate. A presumption that an Advocate is supposed to know the law can be raised but there can be no presumption that an Advocate is well aware of all procedural requirements regarding making of an application for agricultural service connection. The payment of Rs.50/- as registration fee was a part of the procedure envisaged by the respondents as is clear from Annexure R/1 to the counter-affidavit. The procedure Annexure R/1 also clearly indicates that a scheme is applicable category wise which could have been availed by anyone. There was no excluded category so as to infer that a practicing Advocate is not eligible to avail the benefit of the scheme. The procedure (Annexure R/1) clearly contemplates:

E *“A. Free agricultural service connection is being given to the following categories and the Board is bearing entire estimate cost.*

F *i. Normal :-*

Any one can apply in this case.

ii. xxx xxx xxx.”

G 19. We are of the view that the Division Bench without any basis refused to accept the stand of the appellant that he is not aware that Rs.50/- was to be submitted as registration fee. The respondent while writing letter dated 07.03.2011 pointed out the defect in the application dated 06.12.2010 and the defect of non-remittance of Rs.50/- as registration fee would have been as well pointed out which could have

H

obviated the litigation and loss of time and energy of both the parties. A
We are, thus, of the view that the respondents cannot be allowed to take
benefit of their lapse in not pointing out the defect while they wrote
letter dated 07.03.2011. We, however, are of the view that the appellant
was entitled for consideration of his application only with effect from
21.03.2011 which is the date on which application was resubmitted and B
the respondents cannot be allowed to take benefit of their own inaction
in not communicating the defect by letter dated 07.03.2011.

20. We, thus, dispose of this appeal with the following directions:

(1) The respondents are directed to consider the application of
the appellant treating it to be registered with effect from 21.03.2011, i.e., C
the date it was resubmitted.

(2) The appellant shall resubmit a fresh demand draft of Rs. 550/-
which was returned by the respondent on 20.02.2017.

(3) The respondents may process the application and intimate D
within a period of three months about any further fee or other requirements
which need to be complied with by the appellant for the purpose.