

Constitutional Writ

Present : The Hon'ble Mr Justice Jayanta Kumar Biswas

Judgment on : March 11, 2010

W.P.No.13651(W) of 2005

Jaiswal Namkin Bhandar

-vs-

The Calcutta Electric Supply Corporation Ltd. & Ors.

POINTS:

Electric connection ---petitioner's application for electricity through separate line and meter---electric supply through high tension line provided by CESC to the other occupiers of the premises-----CESC, if under any obligation to provide electric connection low tension line ---- Electricity Act, 2003,Section 43.

FACTS:

Writ Petitioner, a tenant, applied for new electric connection through separate line and meter. The petitioner alleged that the electricity authority did not provide this electric connection and sat tight over the matter. They filed a Writ Petition. The licensing authority contended that they have been giving electricity to the premises through a high tension line, and that all occupiers of the premises are free to take supply from the consumer to whom electricity is given through the high tension line. Under the circumstances, it is not technically possible to give low tension separate supply to any occupier of the premises.

HELD:

Dismissing the writ petition the Court held as an occupier of the premises, the petitioner, by submitting an application seeking electricity through a separate line and meter, could not create a statutory obligation of CESC under Section 43 of the Electricity Act, 2003. If the low tension supply is to be given to the petitioner, then the high tension supply has to be stopped, and that is just not possible, since no other occupier of the premises wants withdrawal of electricity through high tension line.

PARA--- 9

Mr. A.B. Chatterjee

Mr. Murari Chakrabortyfor the petitioner

Mr. Om Narayan Raifor CESC

THE COURT:

1.The petitioner in this art.226 petition dated July 4, 2005 is seeking a mandamus commanding the respondents to give him electricity through a separate line and meter.

2.Case of the petitioner is this. The petitioner is a tenant with respect to certain portions in premises no.5/1, Chowringhee Place. The third respondent, West Bengal Film Development Corporation Limited, is the landlord. "...the respondent no.2 and 3 in collusion and conspiracy with each other and joined hands with them neither the respondent no.3 any sorts of assistance to provide separate electric meter in the name of the petitioner in respect of the said suit premises but till date the respondents no. 1 and 2 have practically sat tight over the matter." (Para.17 at pp.13-14).

3.In para.3(b) of the opposition dated November 18, 2005 filed by CESC it has stated as follows:

"Respondent No.3 is the consumer of High Tension Supply at the said premises under Consumer No.0104700800. Petitioner is not the consumer of CESC and there is no privity of contract by and between the petitioner and CESC."

4.With respect to the allegations made in para.17 of the petition, in para.8 of its opposition CESC has said that the petitioner has sought to involve CESC in a private dispute between the petitioner and the third respondent.

5.Referring me to an order of this court dated February 16, 2005, Annexure P7 at p.38, counsel for the petitioner has argued that in the civil revision petition concerned this court directed CESC to give the petitioner electricity through a separate line and meter.

6.Counsel has submitted that during pendency of the petition the third respondent transferred its property to Kolkata Municipal Corporation, and hence the petitioner has taken out CAN No.9174 of 2009 for adding the corporation as a respondent. He has submitted that the petitioner has taken out CAN No.9175 of 2009 for bringing subsequent developments to the court's notice.

7.The question is whether CESC was under any statutory obligation to give the petitioner supply through a separate line and meter.

8.The admitted position, as will appear from the pleadings, especially the opposition, is that CESC has been giving electricity to the premises through a high tension line, and that all occupiers of the premises are free to take supply from the consumer to whom electricity is given through the high tension line. Under the circumstances, it is not technically possible to give low tension separate supply to any occupier of the premises.

9.This being the position, as an occupier of the premises, the petitioner, by submitting an application seeking electricity through a separate line and meter, could not create a statutory obligation of CESC under s.43 of the Electricity Act, 2003. If the low tension supply is to be given to the petitioner, then the high tension supply has to be stopped, and that is just not possible, since no other occupier of the premises wants withdrawal of electricity through high tension line.

10.The order of this court relied on does not create any obligation of CESC to give the petitioner electricity through a separate line and meter. The order was made in a civil revision petition arising out of an order made by the trial court in the petitioner's suit brought against the third respondent. CESC was not a party to the suit. It is evident from the order that this court directed the third respondent to restore electricity to the suit premises, and the petitioner was directed to install a separate meter in his own name. For the things CESC was not supposed to do anything. I am, therefore, of the view that this is a misconceived petition.

11.In view of the above-noted situation, I find no reason to keep the petition pending for hearing the corporation after adding it and also for considering the subsequent developments stating which the petitioner took out an application.

12.For these reasons, the petition is dismissed. CAN Nos.9174 and 9175 of 2009 shall be deemed to be disposed of. Nothing herein shall prevent the petitioner from executing the order of the civil court and taking electricity from the landlord in terms of the order of the civil court. No costs. Certified xerox.

(Jayanta Kumar Biswas, J)

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