

(2021) 08 CAL CK 0027

Calcutta High Court (Appellate Side)

Case No: CAN 1 Of 2021, MAT NO. 117 Of 2021 , Writ Petition No. 11107 Of 2020

Cesc Limited & Anr.

APPELLANT

Vs

Sk. Ansar Ali

RESPONDENT

Date of Decision: Aug. 12, 2021

Acts Referred:

- Electricity Act, 2003 - Section 43, 45, 181, 181(2)(u)
- West Bengal Electricity Regulatory Commission (Recovery Of Expenditure For Providing New Connections) Regulations, 2013 - Regulation 14

Hon'ble Judges: Subrata Talukdar, J; Saugata Bhattacharyya, J

Bench: Division Bench

Advocate: Subir Sanyal, Dr. Madhusudan Saha Roy, Bidyut Kumar Halder, Indranil Halder

Final Decision: Allowed

Judgement

Saugata Bhattacharyya, J

The present mandamus appeal has arisen out of the order dated 20th January, 2021 passed by the Honâ€™ble Single Bench on the writ petition being

WPA 11107 of 2020 (Sk. Ansar Ali Vs. CESC Limited & Anr.). The said appeal and the connected stay application are taken up together with the

consent of the parties upon treating the same on dayâ€™s list since the parties to this appeal through their learned Counsel submitted before this Court

that the issue involved in this appeal can be finally adjudicated upon without calling for affidavits on placing reliance on the report of the District

Engineer, West Suburban District, CESC Ltd. prepared on the basis of the inspection carried out on 9th January, 2021 and was placed before the

Honâ€™ble Single Bench which is also made part of the record of this appeal.

Whether the writ petitioner/respondent is entitled to get supply of electricity from a new meter to be installed by the appellants herein or from the existing meter already installed by the Calcutta Electricity Supply Corporation Limited (hereinafter referred to as "CESC") is the fulcrum which can be gone into by placing reliance upon Section 43 of the Electricity Act, 2003 (hereinafter referred to as "the Act of 2003") vis-a-vis Regulation 14 of West Bengal Electricity Regulatory Commission (Recovery of Expenditure for Providing New Connections) Regulations, 2013 (hereinafter referred to as "the Regulations of 2013").

The writ petitioner/respondent filed connected writ petition, inter alia, stating that he is one of the co-sharers of the premises No. W-159/5, S.A.

Farooque Road, Kolkata - 700018 which is presently described as W-159/5, Akra Road (Metiabruz), Kolkata - 700018, P.S.-Rajabagan, where

he resides with his family. The respondent applied for new electric connection for domestic use to his premises. Based on such application made by

the respondent the CESC Authority inspected premises of the respondent on 4th December, 2020 and subsequently by letter dated 5th December

2020 rejected the application of the respondent on the ground that the premises of the respondent has already been provided with facilities of getting

electric connection and further application for new connection would lead to splitting of electricity load for deriving the benefit of lower charges on

placing reliance upon Regulation 14 of the Regulations of 2013. However, the respondent was advised to approach the concerned Regional Manager

of CESC within 7 days from the date of communication of the said letter dated 5th December, 2020 if he is aggrieved by such refusal on the part of

the CESC Authority.

In the writ petition the respondent made following prayers:

a) Writ in the nature of Mandamus commanding the respondents to give electric connection to your petitioner by installing a new meter in the said premises immediately.

b) Writ in nature of Certiorari directing the respondents to produce the records of the case so that on perusal of such records the letter dated

5.12.2020 may be quashed and/or set aside and/or conscionable justices may be done between the parties.

Mr. Subir Sanyal, learned Counsel representing the appellants in support of the case made out in the appeal has submitted that the premises where the respondent resides with his family is a two-storied building together with one asbestos shaded structure alongside such two-storied building containing four rooms. There are already three meters for the said two-storied building and two meters for the asbestos shaded four rooms and the respondent is desirous to have a separate LT meter for electric supply to one of the four asbestos shaded rooms. In course of submission advanced by Mr. Sanyal, reliance has been placed on a report prepared based on an inspection carried out on 9th January, 2021 in terms of the order of the Honâ€™ble Single Bench dated 6th January, 2021 signed by the District Engineer, West Suburban District, CESC Ltd. dated 14th January, 2021, at page 40 of the Stay Application. From the said report it transpires as also submitted on behalf of the appellants that already three meters were installed for the two-storied building and two meters for the asbestos shaded four rooms and in one of these four rooms the respondent along with his family members reside. The said inspection report also reveals that the asbestos shaded portion of the premises does not have any separate kitchen facility. Mr. Sanyal echoed the concern which has been expressed in the said report of the District Engineer, West Suburban District, CESC Ltd. that further installation of meter in the said premises wherein already five meters have been installed, may lead to cause fire hazard and loss of lives and property and electrical accidents. The said report also states the sorry state of affairs in maintenance of electrical wires without any proper insulation and unauthorized shifting of meter-board where five meters have already been laid to a place which is under polythene sheet.

On behalf of the appellants upon placing reliance on Regulation 14 of the Regulations of 2013 a specific submission has been made that further installation of meter based on the application made by the respondent will amount to splitting of electrical load for deriving undue benefits in terms of charging of units consumed by the consumer at a lower rate which is not permissible under the Regulations of 2013.

On behalf of the appellants in addition to Section 43 of the Act of 2003 reliance has also been placed on Section 45 and Section 181(2)(u) of the Act

of 2003 in order to bring to the attention of this Court that the benefit of Section 43 as envisaged under the said Act of 2003 is circumscribed by

Section 45 and Section 181(2)(u).

On behalf of the appellants further submission has been made that since the application of the respondent was rejected upon placing reliance on

Regulation 14 of the Regulations of 2013 the appropriate course left open to the respondent is to approach the Ombudsman as contemplated under the

Regulations of 2013 and it is the onus of the respondent to prove that application for new connection is not for the purpose of splitting the load.

In support of the contention raised on behalf of the appellants, reliance has also been placed on an unreported judgment of the Honâ€™ble Division

Bench dated 5th February, 2021 passed on MAT 73 of 2021 (C.E.S.C. Ltd. & Anr. Vs. Asifa Bibi), wherein it has been held that splitting of electrical

load upon installation of new meter where the consumer is already in receipt of supply of electricity from the existing meter installed in the premises is

contrary to the scheme as propounded under the Regulation 14 of the Regulations of 2013.

Per contra Mr. Bidyut Kumar Halder, learned Counsel representing on behalf of the respondent submitted that there is no electrical meter existing in

his name in the premises where the respondent along with his family reside which makes him entitled to have a new meter for getting supply of

electricity in terms of the provisions of Section 43 of the Electricity Act of 2003 notwithstanding existence of five other meters in the said premises

and receipt of supply of electricity by him from one of such meters since the respondent is residing with his family separately in the said premises-in-

question. It has also been contended on behalf of the respondent that Section 43 confers him unfettered right to get electricity in view of the scheme

of the Act of 2003 which cannot be curtailed upon placing reliance on Regulation 14 of the Regulations of 2013 and in case of repugnancy in between

Section 43 and Regulation 14 the provision of Section 43 would prevail over the said Regulation 14. The respondent has also relied upon the order of

the Honâ€™ble Single Bench dated 2nd February, 2021 passed on WPA 8290 of 2020 (Gobinda Bhuniya Vs. CESC Ltd. & Anr.) and it has been

contended that on similar facts the Honâ€™ble Single Bench granted relief to the writ petitioner by giving direction upon the distribution company to

take steps for supply of electricity upon installation of new meter.

We have heard the learned Counsel representing the appellants and the respondent and considered the report of District Engineer, West Suburban

District, CESC Ltd. dated 14th January, 2021 and the legal points raised by the respective parties before this Court upon placing reliance on the

relevant provisions of the Electricity Act of 2003 as well as the Regulations of 2013 framed under the said Act of 2013.

This Court finds it apposite to quote below Section 43, Section 45 and Section 181(2)(u) of the Electricity Act of 2003 as well as Regulation 14 of

West Bengal Electricity Regulatory Commission (Recovery of Expenditure for Providing New Connections) Regulations, 2013:

â€œ43. Duty to supply on request.â€“(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.â€“For the purposes of this sub-section, â€œapplicationâ€ 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.

45. Power to recover charges.â€"(1) Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence.

(2) The charges for electricity supplied by a distribution licensee shall be â€

(a) fixed in accordance with the methods and the principles as may be specified by the concerned State Commission;

(b) published in such manner so as to give adequate publicity for such charges and prices.

(3) The charges for electricity supplied by a distribution licensee may includeâ€

(a) a fixed charge in addition to the charge for the actual electricity supplied;

(b) a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.

(4) Subject to the provisions of section 62, in fixing charges under this section a distribution licensee shall not show undue preference to any person or class of persons.

(5) The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulations made in this behalf by the concerned State Commission.

181. Powers of State Commissions to make regulations.â€

(1) The State Commissions may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the power contained in sub-section (1), such regulations may provide for all or any of the

keeping in mind the provisions of Section 45 and Section 181(2)(u) as quoted above. It is trite law that in case of repugnancy in between plenary law

and the regulations made under the said law the plenary law shall prevail over the regulations but the case at our hand does not suggest any

repugnancy rather the said Regulations of 2013 have been framed under section 181 in tune with the Act of 2003 and such Regulations were framed

to carry out the provisions of the said Act. The State Commission in tune with one of the objects of the said Act of 2003 namely rationalization of

electricity tariff made the Regulations of 2013 and this Court does not find any repugnancy in between Section 43 of the Act of 2003 vis a vis

Regulation 14 of the Regulations of 2013 in absence of any challenge being thrown to the said Regulations.

Keeping note of the report dated 14th January, 2021 prepared by the District Engineer, West Suburban District, CESC Ltd. this Court is also

expressing concern about the safety of the inhabitants of the premises in question where asbestos shaded four rooms are provided with already two

meters and there are altogether five electrical meters installed by the distribution licensee which are kept at a place under the cover of polythene sheet

without proper maintenance of live electrical wires which as reported are not properly insulated. Considering these hazardous state of electrical

arrangements made at the said premises it would definitely raise a question in the mind of a prudent person whether further installation of meter for

supplying electricity to a particular asbestos shaded room upon accepting the application made by the respondent on the strength of Section 43 of the

Act of 2003 may lead to fire hazards. Therefore, the benefit of Section 43 definitely is available to a consumer of electricity but extension of such

benefit can only be granted if situation so demands considering the prevailing circumstances and it needs to be examined on case to case basis.

From the letter dated 5th December, 2020 which is neither annexed to the writ petition nor made part of the record before the Appellate Court, during

course of hearing copy of the said letter is handed over by the learned Counsel representing the appellants, it appears that relying upon Regulation 14

of the Regulations of 2013 the concerned authority of the appellants rejected the application of the respondent for supply of electricity through a new

meter in accordance with the provisions of Regulation 14 could have been questioned before the Ombudsman since Regulation 14 is not under

challenge in the writ petition but the respondent in his turn straightway approached the High Court by invoking writ jurisdiction which cannot be

countenanced. In this regard reliance is placed on unreported judgment dated 5th February, 2021 passed in Asifa Bibi (Supra) whereby the

Honâ€™ble Division Bench of this Court has held on an identical issue that if the application of the consumer is rejected on the ground that installation

of new meter would lead to splitting of electrical loads for availing of the benefit of paying electricity bill at the lower rate under Regulation 14 the

appropriate course is to approach the Ombudsman instead of invoking of writ jurisdiction since the onus to prove the application for new connection is

not for the purpose of splitting the load is on such applicant which is a matter of evidence in some cases as the facts might be disputed by the parties

to the proceedings. The relevant part of the said judgment and order dated 5th February, 2021 is quoted below:

â€œAs far as the stand taken by the learned counsel for the appellants regarding splitting of connection and the remedy available to the

respondent/writ petitioner, if application for release of new connection is rejected on that ground, we find merit therein. Regulation 14 of the

Regulations clearly provides that in case any application is rejected on the ground of splitting of load, the remedy available to an applicant is to file

application before the Ombudsman. The onus to prove that the application for new connection is not for the purpose of splitting the load is on such

applicant, which may be matter of evidence also in some cases as facts will be in dispute. Instead of availing that remedy the respondent/writ

petitioner hurriedly approached this Court without even waiting for one month, the period is available to the licensee for release of connection.â€

The respondent cited an order dated 2nd February, 2021 passed by the Honâ€™ble Single Bench in Gobinda Bhuniya (Supra) may not be relied upon

in the case at our hand since the said Honâ€™ble Single Judge did not have the occasion to rely on the judgment and order dated 5th February, 2021

passed by the Honâ€™ble Division Bench in Asifa Bibi (Supra).

In view of the above discussion the order under appeal dated 20th January, 2021 passed by the Honâ€™ble Single Bench is set-aside and the appeal

is allowed.

However, this order shall not preclude the respondent to approach the Ombudsman in accordance with the Regulation 14 questioning the rejection of the application of the respondent for installation of new electrical meter provided the respondent upgrades the electrical arrangement at the said premises including the place where electrical meters are installed ensuring safety measures. If such application is made before the Ombudsman by the respondent within a reasonable period same shall be decided in accordance with law.

All parties to act on a server copy of this order downloaded from the official website of this Court.

Urgent photostat certified copies of this order shall be supplied to the parties, if applied for, upon compliance of all formalities.