

(1999) 10 PAT CK 0099

Patna High Court

Case No: C.W.J.C. No. 2381/98 R

Janardan Pd. Sharma

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision: Oct. 12, 1999

Acts Referred:

- Constitution of India, 1950 - Article 12
- Electricity Act, 1910 - Section 3

Citation: (1999) 3 PLJR 23

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

M.Y. Eqbal, J.

In this writ application the petitioner has prayed for issuance of an appropriate writ commanding upon the respondents-State of Bihar to pass an order directing the respondent-Tata Iron & Steel Com. Ltd. (Tisco for short) to supply commercial electric energy in the premises of the petitioner and for a further direction for quashing the orders dated 25.10.97 and 14.1.98 issued by respondents 7 and 8, one Director and the General Manager, tisco Jamshedpur whereby they have rejected the request of the petitioner to supply commercial electric energy in the portion of the premises of the petitioner. Petitioners" case is that respondent 6, the Tisco has been granted (sic)cencd by the State of Bihar for supply of energy in the specified area in Jamshedpur u/s 3 of the Indian Electricity Act. The petitioner is a handicapped person as he has completely lost his sight of one of his eyes and one of the legs is amputated. It is stated that a piece of land situated in contractor"s area near Ramdas Bhatta was leased out by Tisco to one Gourishanker Permanand through a registered deed of lease dated 17.3.1922. In terms of the lease the lessee

was allowed to run office, workshop and residential houses on the land. Accordingly, the lessee constructed house, office etc. on the land. The petitioner is one of the sons of late Permanand Sharma. In a partition between his brothers and sisters the petitioner got 4,963 sq. feet and a share in common residential house. Petitioner's further case is that after demolishing the old structure he got a multi storeyed apartment constructed known as Janki Apartment. The plan of the same was duly approved by the Jamshedpur Notified Area Committee and the Tisco. The petitioner allotted certain flats to different persons and retained two flats for himself and three units of basement and half of the parking area. It is stated that respondents 6 to 8 gave domestic electric line to Janki Apartment Owners' Association. The petitioner who is handicapped, runs a STD booth and a Xerox Kiosk office in the portion under his occupation. Since the petitioner carries on commercial activities in his portion of the apartment, he was not allowed to use the residential connection for commercial purposes. The petitioner then applied for commercial connection in his premises in which he is doing commercial activities. In spite of complying all the requirements respondents 6 to 8 refused to supply electric connection in said premises of the petitioner. Then the petitioner approached the Govt, through the Deputy Commissioner, Singhbhum to prevail upon respondents 6 to 8 to give him the electric connection to his said premises. The Deputy Commissioner, by letter dt. 11.11.97 directed the respondents 6 to 8 to look into the matter and take action but nothing was done. However, the petitioner got the impugned letter from respondent no. 6 by which the request of the petitioner for supply of commercial electric connection in his flat was rejected on the ground that commercial connection shall be given only when the entire building is converted into a building for commercial purposes.

2. Counter affidavit has been filed stating, inter alia, that the writ application as against Tisco is not maintainable for the reason that it is not a State with the meaning of Article 12 of the Constitution rather it is a non-statutory body not under the control of the State or the Union Govt. It is stated that in the apartment domestic electric line has already been given for residential purposes and, therefore, no separate electric connection can be given in a portion of the apartment which is meant for residential purposes. It is further stated that respondent no. 6 has its own policy for supplying electric connection.

3. I have heard Mr. S.K. Dwivedi, learned counsel for the petitioner and Mr. M.M. Banerjee, counsel for the Tisco. I have also heard Mrs. Ritu Kumar, JC to learned Govt. Advocate.

4. So far the first objection with regard to maintainability of the writ application is concerned, I find that the stand of the respondent is wholly misconcieved and devoid of any substance. Admittedly, Tisco is sanction holder under the Indian Electricity Act and as such, it is a licensee within the meaning of the said Act. The respondent is discharging the function of the Bihar State Electricity Board and also

the State of Bihar in the matter of supply for electricity which is a monopoly business of the State. In that view of the matter a writ will lie against the respondent-Tisco for discharging the duty conferred upon it in accordance with law.

5. So far merit of the petitioner's case is concerned, it has not been disputed by the respondent-Tisco that land was leased out in favour of the predecessor-in-interest of the petitioner giving right to use the land by constructing residential bungalows, work sheds and offices etc. It is also not disputed that a big apartment was constructed and a portion of which has been retained by the petitioner for his own use and purposes. In the said apartment residential electric connection was given by the respondent-Tisco for residential purposes and the concerned occupants are using their respective flats for residential purposes. The petitioner has been using his portion for commercial purposes.

6. The only stand taken by the respondent-Tisco in the counter affidavit is that the petitioner is not entitled to the commercial electric connection in view of the policy of the respondents, paras 1 and 12 of the counter affidavit are reproduced hereinbelow for better appreciation case of the respondents :

11. That I further say and submit that the respondent No. 6 for supplying electric connection has got its own policy from which it cannot deviate and the petitioner does not come under the said policy/criteria for an electrical connection.

12. That under the facts and circumstances stated above the petitioner is not entitled for a separate commercial electric connection to for the premises namely, "Janki Apartment" which has already been provided with a domestic connection and this two plication is fit to be dismissed in limine with heavy cost.

7. It is not the case of the respondent-Tisco that the petitioner is not entitled to use his portion of the apartment for commercial purposes. It is also not the case of the respondent-Tisco that the petitioner is not entitled to get commercial connection under the provisions of the Indian Electricity Act or the Indian Electricity Supply Act or the rules framed thereunder. The only ground upon which the claim of the petitioner was rejected is that the respondent-Tisco has framed its own policy and has fixed a criteria of its own for the purposes of supply of electricity. In my opinion, such policy/criteria framed by the respondent Tisco which is not in consonance with the Act and the rules, referred to above, will be illegal, arbitrary and unconstitutional. Merely because the respondent-Tisco is a sanction holder and a licensee, it cannot frame its own rules debarring the persons who are entitled to get supply of electricity under the law. There is no bar for supply of electric line for both residential and commercial purposes in the same premises when the consumer is ready to pay all the charges payable in accordance with law. The denial of supply of commercial line to the petitioner by the Tisco, in my opinion, is absolutely illegal and arbitrary action which cannot be sustained in law. For the reasons aforesaid, this writ application is allowed and the impugned letters rejecting the claim of the

petitioner for supply of commercial electric line by respondents 6 to 8 are hereby quashed. The respondent-Tisco including respondents 6 to 8 are directed to give commercial electric connection in the premises of the petitioner within a month from the date of receipt of a copy of this order if he fulfils and complies all the requirements and deposits the necessary amounts/fees.