105 CWN 82

Calcutta High Court

Case No: C.O. No. 2369 of 1999 With C.O. No. 2098 of 1999

Ramananda Mondal and Others	APPELLANT
Vs	
C.E.S.C. Limited	RESPONDENT

Date of Decision: Feb. 2, 2000

Acts Referred:
Constitution of India, 1950 â€" Article 12#Criminal Procedure Code, 1973 (CrPC) â€" Section 144, 151

Citation: 105 CWN 82

Hon'ble Judges: Bhaskar Bhattacharya, J

Bench: Single Bench

Advocate: Bidyut Kr. Banerjee and Shila Sarkar, for the Appellant;Sudhis Dasgupta, Joy Saha and Durbadal Sen, for the Respondent

Final Decision: Allowed

Judgement

Bhaskar Bhattacharya, J.
In both these civil revisional applications the subject matter of challenge is the same order viz. Order dated

August 7, 1999 passed by the learned Civil Judge, Senior Division, Sealdah in Misc. Appeal No. 68 of 1999 thereby disposing of a misc. appeal

preferred by the plaintiff against Order No. 19 dated July 21, 1999 passed by the learned Civil Judge, Junior Division, 1st Court, Sealdah in Title

Suit No. 213 of 1997 rejecting an application for temporary injunction. The plaintiffs filed the aforesaid suit being Title Suit No. 213 of 1997 in the

court of Civil Judge, Junior Division, Sealdah against CESC for a decree for permanent injunction restraining it from forcibly disconnecting the

supply of electricity at the premises of the petitioners and from making any disturbances in the supply of electricity in the said premises. It may be

mentioned here that three electric meters are the subject, matter of dispute. According to the plaintiffs, on June 6, 1997 the Officers of the

defendant and their men and agents tried to disconnect supply of electricity through the aforesaid three meters on the ground that there had been

tampering of the meters and theft of electrical energy but due to resistance offered by the local people they could not disconnect the supply. The

plaintiffs went to the police seeking help but the local police advised them to go to the court. Accordingly, on June 9, 1997 the plaintiffs filed an

application u/s 144 of the Code of Criminal Procedure before the learned Executive Magistrate and on the next day filed the instant suit.

2. After filing of the aforesaid suit, on the self-same allegations, the plaintiffs filed an application for temporary injunction thereby praying for an

order restraining the defendant from disconnecting the electric supply and the learned Trial Judge by Order No. 3 dated June 11, 1999 restrained

the defendant from disconnecting the supply of electricity.

3. After entering appearance the CESC authority filed written objection thereby opposing the prayer of the plaintiffs and their defence was that

they had already disconnected the supply of electricity on June 6, 1997 when the inspection team of the defendant found the seals of these three

meters in broken condition. According to the defendant the claim over the disputed three meters were Rs. 2,03,768.15 paise, Rs. 4,53,396.74

paise and Rs. 1,94,706.57 paise respectively.

4. The learned Trial Judge after hearing the parties by Order No. 19 dated July 21, 1999, a short order, rejected the application for temporary

injunction on the ground of suppression of material fact by the plaintiffs in the applications for temporary injunction.

5. Being dissatisfied, the plaintiffs preferred an appeal before the learned District Judge which was ultimately heard by the learned Civil Judge,

Senior Division, Sealdah and by the order impugned herein the learned first appellate court below allowed the appeal thereby directing the

appellants to pay l/5th of the amount of Rs. 4,53,396.74 paise within seven days from the date of the said order and directed the CESC to restore

supply of electricity after receiving the reconnection charge. It was further ordered that so far claims of balance amount are concerned those will be

considered after full trial of the suit.

6. Being dissatisfied both the plaintiffs and the defendant/CESC authority have preferred these two separate revisional applications.

7. Mr. Banerjee, the learned advocate appearing on behalf of the plaintiffs has attacked the order of the learned first appellate court below on the

ground that under Indian Electricity Acts, the CESC is not vested with any power to disconnect supply of electricity on the ground of alleged

pilferage and there is no provision either in the Act or in the Rule for determining the question of alleged pilferage by a consumer. Mr. Banerjee

contends that even if there has been pilferage, CESC authority cannot disconnect the electricity without giving notice to the consumer and as such

demand of such excessive amount though not indicated in the meters was illegal and without jurisdiction. Mr. Banerjee therefore contends that the

learned court of appeal below erred in law in directing payment of 1/5th of the aforesaid amount of Rs. 4,53,396.74 paise as condition of

reconnection.

8. Mr. Dasgupta, the learned senior counsel appearing on behalf of the CESC Limited has on the other hand criticized the order of the learned

District Judge for giving direction of payment of only l/5th of amount and that too payable by the plaintiffs in respect of one of the three meters.

According to Mr. Dasgupta the consistent view of the Apex Court is that in these type of cases, before claiming restoration the consumer should

be directed to deposit at least half of the claimed amount. Mr. Dasgupta further contends that, the learned first appellate court below totally

overlooked that the total claim of the CESC was more than eight lacs of rupees whereas the learned first appellate Court below and for passing for

deposit of at least half of the total amount claimed by the CESC in respect of the unmetered amount consumed through the three meters.

9. The first question that arises for determination in this application is whether the application for temporary injunction filed by the plaintiffs should

fail for suppression of material fact.

10. The learned Trial Judge accepted the case of the CESC that at the time of filing of the suit on June 10, 1997 there was no electricity inasmuch

as the CESC had already disconnected the line on June 6, 1997.

11. Mr. Banerjee, the learned counsel appearing on behalf of the plaintiffs has vehemently challenged the said finding of the learned Trial Judge by

drawing attention of this court to the fact that although an order of ad interim temporary injunction was passed on June 11, 1997 and the CESC

entered appearance in the suit after service of the order of ad interim injunction on July 5, 1997, no application for variation of the ad interim of

injunction was filed. Mr. Banerjee further submits that his client on September 25, 1997 filed an application u/s 151 of the Code of Criminal

Procedure thereby praying for a direction upon the CESC to send regular bills by making specific allegation that inspite of an order of injunction,

the CESC was not sending any bill. It appears from the record, Mr. Banerjee points out, on several dates the CESC authority took time for filing

written objection against such application but ultimately no written objection was filed against such application and the learned Trial Judge by

Order No. 15 dated April 5, 1999 allowed such application. Mr. Banerjee submits that even prior to the disposal of the said application u/s 151 of

the Code, the CESC from the month of December 1997 started sending regular bill and in the first of such bills included the entire consumption

from June, 1997 till December, 1997. It appears from the record that the CESC on December 1, 1998 ultimately filed written objection to the

main application for temporary injunction and in the said written objection took the plea that in the month of November 1997 its employees

detected that although electric lines were disconnected from June 6, 1997, the plaintiffs allegedly reconnected line themselves and as such from the

month of December, 1997 they started sending regular bills. In this court Mr. Dasgupta, the learned counsel appearing for the CESC, after taking

instruction from his client submitted a written note given by Deputy Manager, Central, dated January 6, 2000 wherefrom it appears that the CESC

authority on November 27, 1997 repunched the alleged broken seal being Punching No. M-158 when they found that the supply has been illegally

reconnected.

12. In view of the aforesaid fact, I find substance in the contention of Mr. Banerjee that if the electricity was already disconnected on June 6, 1997

but the plaintiffs reconnected the same illegally after getting ad interim order of injunction on June 11, 1997, it was the duty of the CESC to draw

attention of the court to such fact. As pointed out earlier, in spite of entering appearance in the suit in the month of July 1997 till December 1998

the CESC authority went on taking time or filing written objection and in the meantime from the month of December 1997 started sending regular

bills without raising any objection. Even in the month of April 1999, when the application for a direction for sending regular bills filed by the plaintiff

was allowed, against such order the CESC did not move higher forum. Under the aforesaid circumstances, it is very difficult to believe the case of

the CESC, at least prima facie, that they had already disconnected electricity through the disputed meters on June 6, 1997. They did not draw the

attention of the court to such fact but on the other hand started realising amount through the alleged tampered meters from the month of December

1997 although at that point of time no direction was given upon them to supply regular bills. It further appears that they allegedly repunched the

disputed seal thus demolishing even the evidence of tampering of meter without taking leave from court. The learned Trial Judge while arriving at

the conclusion that the application for temporary injunction should be dismissed for suppression of the material fact did not at all consider all these

aspects and thus this court is unable to accept the contention of Mr. Dasgupta that the application for injunction should be dismissed for

suppression of the material fact that there was no electricity on June 11, 1997 as alleged. The conduct of the CESC does not disclose that

electricity was really disconnected on June 6, 1997. Even CESC could not place any material before court showing that any criminal case has been

started against the plaintiffs at their instance. Mere lodging of G.D. before police is not sufficient. If in spite of lodging G.D. no criminal case has

been started, it was the duty of the CESC to take appropriate step before criminal court. Otherwise, it should be presumed that the allegation of

the CESC was baseless.

13. Therefore, the learned Trial Judge acted illegally and with material irregularity in rejecting the application for temporary injunction on that

ground alone.

14. Next question is whether the learned first appellate court below acted illegally and with material irregularity in passing the order impugned.

15. In order to succeed in the application for temporary injunction the plaintiffs must prove strong prima facie case to go for trial and that the

balance of convenience and inconvenience must be in favour of granting injunction. Over and above, it must be established that for refusal of

injunction they will suffer irreperable loss and injury. Therefore, the next question is whether the plaintiffs been able to prima facie prove that they

have not made any pilferage of electricity and that the allegation of the broken seal was false.

16. Of late, in several decisions, this High Court has laid down that so far the allegation of pilferage of electricity is concerned, there is no provision

in the Indian Electricity Act or regulation in that behalf or in any agreement between the parties empowering the CESC authority to raise bill

towards unmetered consumption on the ground of tampering of the meter. It has been consistently held in those decisions that the course left open

to the CESC is to realise such amount by establishing such claim. In several writ matters, this court has held that such dispute relating to tampering

of meters can be referred to and determined by electrical inspector. [See Ganges Manufacturing Limited vs. West Bengal State Electricity Board;

1993(2) CLJ 210, Hanuman Steel Rolling Mills & Anr. vs. CESC, 1996 (1) CHN 469].

17. In the instant case the plaintiffs have already filed a suit for declaration that the CESC is trying to disconnect electricity without any just cause

and in view of the defence taken in such a suit by the CESC, in the suit such issue will be decided. From the aforesaid materials it is clear that in

spite of taking such defence in the written objection to application for injunction, the CESC authority without any protest and without making any

prayer for variation of interim injunction order started sending bills from the alleged tampered meters and also realised those amounts. It further

appears that they have already repunched the alleged broken seal. Under the aforesaid circumstances, in my opinion, the CESC is unable at this

stage to prove prima facie that the plaintiffs are guilty of pilferage. Next question is whether the CESC in the fact of the present case can demand

such a huge amount towards consumption for the alleged pilferage. As pointed out by the Division Bench of this court in the case of the CESC

Limited vs. Koran Caffe, reported in 2000 WLR Cal. 21, it is the duty of the CESC even in such cases where allegation of pilferage is made to

show how and on what basis such demand has been prepared.

Reasonableness or otherwise of the claim must be shown to the court before a consumer may be asked to pay the portion of amount or furnish

security therefore. In the instant case Mr. Banerjee has drawn attention of the court to the fact that there is no disparity between the bills prior to

June 1997 and bills raised by the CESC during the pendency of the suit through the alleged tampered meter.

18. This court is quite conscious that, mere absence of any regulation cannot confer unbridled power upon the CESC to resort to the extreme step

of disconnecting electric supply and the consumer has to be protected from the vagaries and arbitrariness of licensee. Actions of the CESC have to

conform to the standard as of an authority within the meaning of Article 12 of the Constitution. At the same time, this court is quite alive to the

position of law that dishonest consumer cannot be allowed to play tyrant with file public property. In the instant case, in view of the fact that the

CESC authority on his own repunched the disputed meter and has even changed the said meter on its own while giving restoration of electric

supply by virtue of the order passed by this court at the time of entertaining this revisional application, in my opinion, no further direction should be

given to the consumer to pay any additional sum over and above Rs. 30,000/- already ordered by this court. In the suit, the CESC is required to

prove that the earlier meter was tempered by the petitioner by giving appropriate evidence. Under the aforesaid circumstances, I find that the

plaintiffs have proved a strong prima facie case to go for trial and the balance of convenience and inconvenience is in favour of granting injunction.

It goes without saying that without electricity, plaintiffs shall suffer irreparable loss and injury. In view of the fact that all metered consumption has

been paid by the plaintiffs and at the time of entertaining their revisional application, the direction of this court is deposit a sum of Rs. 30.000/- by

way of security has already been complied with, no further direction need be made as a condition of grant of injunction.

19. In the event, it is finally decided in the suit that the plaintiffs are guilty of pilferage, the CESC will be at liberty to adjust the said sum of Rs.

30,000/- towards the amount of misappropriated electricity; on the other hand, if the suit is decreed with a finding that the CESC failed to prove

pilferage, the learned Trial Judge will pass necessary direction for refund of the said sum of Rs. 30,000/- with interest at the rate of 12% p.a. from

the date of deposit.

20. With the above observation, these two revisional applications are disposed of. The order passed by the learned first appellate court below is

set aside, the CESC authority is restrained by an order of injunction from disconnecting supply of electricity provided the petitioners go on paying

the amount shown in the newly installed meter and does not commit any violation of the Electricity Act, Rules or the agreement between the

parties. In future, if the CESC finds any pilferage, in that event, before removing the meter the CESC must seal the said meter in the presence of

uninterested witnesses and the plaintiffs after drawing attention of the learned Trial Judge.

21. The learned Trial Judge is directed to dispose of the suit positively within six months from date. I make it clear that the observations made

herein are only prima facie for the purpose of disposal of the proceedings of temporary injunction and will not be binding upon the learned Trial

Judge at the time of disposal of the suit on the basis of evidence to be adduced by the parties.

22. No costs.

23. Let the L.C.R. be sent down immediately. Revision allowed favouring consumer.