

Manoj Kanti Dey Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: April 19, 2012

Citation: (2012) 3 CALLT 741 : (2012) 5 CHN 459

Hon'ble Judges: Debasish Kar Gupta, J

Bench: Single Bench

Advocate: Chinmoy Pal and Mr. Anirban Sen, for the Appellant; Samit Panja and Mr. Mihir Kundu for the Respondents No. 2-4, for the Respondent

Judgement

Debasish Kar Gupta, J.

None appears on behalf of the respondent No. 5 even after service of a copy of this writ application under her.

Let the affidavit of service be kept on record. On the prayer made on behalf of the petitioner leave is granted to the petitioner to add the West

Bengal State Electricity Distribution Company Limited as party respondents to this proceeding. Since Mr. Samit Panja, learned counsel appears on

behalf of the newly added respondents along with Mr. Mihir Kundu, learned counsel, the formality of serving a copy of the amended writ

application upon the newly added respondents is dispensed with.

2. This writ application is taken up for final disposal with the consent of the parties.

3. This writ application is filed by the petitioner on the ground of inaction on the part of the competent authority of the respondent No. 6 in giving

new electricity connection (domestic) at the residence of the petitioner at 89-B, Pioneer Park. Nopara, Post Office and Police Station-Barasat,

District-North-24 Parganas.

4. The back drop of this case is as under.

5. The petitioner submitted an application dated November 22, 2011 in a prescribed form in the office of the respondent No. 4 for giving new

electricity connection at the above premises. The petitioner received a communication dated December 2, 2011 from the respondent No. 4 to the

effect that due to an objection raised by the respondent No. 5 the aforesaid new electricity connection could not be given to the petitioner. The

petitioner submitted his reply to the same on December 15, 2012. According to the petitioner, no further step was taken by the respondent

authority in the matter. Hence, this writ application.

6. It is submitted by Mr. Chinmoy Pal, learned counsel appearing with Mr. Anirban Sen, on behalf of the petitioner, that the petitioner is a patient

of acute heart disease. He is badly in need of electricity at this residence. Due to inaction on the part of the respondent authority he is deprived of

the essential amenity of life.

7. Mr. Samit Panja, learned counsel appearing on behalf of the respondents No. 1 to 4, submits that apart from the objection raised by the

respondent No. 5 in giving new electricity connection to the petitioner, there were outstanding bills from the month of August, 2011 in respect of

the premises in question. According to Mr. Panja, it was communicated to the petitioner by a letter dated January 18, 2012.

8. The attention of the Court is drawn towards the provisions of Clause 2.5 of the West Bengal State Electricity Distribution Company Limited

Procedures-A (2010) (hereinafter referred to as the said "WBSEDCL Procedure-A (2010)") to submit that in view of the above guideline the

petitioner is under obligation either to clear the aforesaid dues or to raise an objection against the above claim.

9. I have heard the learned counsel appearing for the respective parties at length and I have also considered the facts and circumstances of this

case. In order to ascertain the full and complete text context of the communication dated January 18, 2012 the same is quoted below:-

Memo No. NPCCC/SC/1379

Dated: 18.01.2012

To

Monoj Kanti Dey

89A, Pioneer Park.

Barasat. 24-Pgs. (N)

Sub: Objection against effect of new service connection

Ref: Our office memo No. NPCCC/SC/1327 Dated 10.01.2012

Sir.

In connection of our previous office memo No. under reference this may also be added that from our record it has been revealed that a good

amounts are lying as unpaid at the premises in question against existing S/C no having CON-NO. B10114, since AUG" 2011.

As such before taking any action i.r.o. the said premises clearance of outstanding dues will be required. This is for your information please.

(P. Sengupta)

Senior Manager

Noapara CCC

10. In order to ascertain the procedure to be followed by the respondent authority in the light of provisions of Clause 2.5 of said "WBSEDCL.

Procedure-A (2000)"" is quoted below:-

2.5 On receipt of application, the office will check from office record whether any outstanding dues (OSD) or theft case/unauthorised use related

dues are pending against that premises or any other premises where service connection in his name exists/lying disconnected or not. If such amount

lies pending against the premises or any other premises where service connection in his name exists/lying disconnected then the application for

connection according to the SOP Regulation shall be considered only if all dues of the applicant in respect of that premises and/or any other

service connection held in his name in the WBSEDCL's area of operation have been cleared. Where there are arrears of charges outstanding for a

premises, before the application is processed the application shall be liable for clearing the dues if nexus is established with erstwhile defaulting

consumer and in such case the intending consumer shall be intimated of such dues within 10 days from the date of receipt of such application.

However, if such dues are not cleared, where applicable, within one hundred (100) days from the date of intimating the intending consumer about

such dues and the intending consumer has not contested such claim then the application in Annexure-A will be treated cancelled and the earnest

money will be forfeited.

11. After considering the above communication dated January 18, 2012. I find neither the amount due and payable was mentioned in that letter nor

any nexus of the petitioner with the erstwhile defaulting consumer was disclosed in the above communication. It may opinion, the above

communication cannot be said to be issued in compliance of the provisions of Clause 2.5 of the WBSEDCL, Procedure-A (2000).

12. In order to establish any nexus of the petitioner with the erstwhile defaulting consumer of the premises in question the respondent authority is to

cause a quasi-judicial enquiry in exercise of adjudicative power. The term "quasi-judicial"" denotes that proceeding in question is similar to a judicial

proceeding and the person whose interests may be prejudicially effected by such proceeding must have natural justice. Therefore, while discharging

a quasi judicial or adjudicative function, the respondent authority must act adhering to the principles of natural justice even in absence of any

explicit indication in the said WBSEDCL, Procedure-A (2000).

13. In the context of the nature of quasi judicial enquiry involved in this case on the basis of facts and circumstances mentioned hereinabove

opportunity of hearing is considered indispensable to eliminate the risk of victimization of the petitioner by depriving him of enjoying essential

amenity of life namely, electricity. Since notice is the sine quo of a fair hearing a valid and effective notice must be served upon the petitioner before

giving him opportunity of hearing for the purpose of passing reasoned order in the matter of following settled principles of law. Reference may be

made to the decision of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, and the relevant portions of the above decision are

quoted below:-

20. The aim of the rules of nature justice is to secure justice or to put in negatively to prevent miscarriage of justice. These rules can operate only in

areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural

justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely: (1) no one shall be a

Judge in his own case (nemo debet esse iudex propriae causae) and (2) no decision shall be given against a party without affording him a reasonable

hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi judicial enquiries must be held in good faith,

without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural

justice. Till very recently it was the opinion of the Courts that unless the authority concerned was required by the law under which it functioned to

act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of

the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative

enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi judicial enquiries. Enquiries which were

considered administrative at one time are now being considered as quasi judicial in character. Arriving at a just decision is the aim of both quasi

judicial enquiries as well as administrative enquiries. As unjust decision in an administrative enquiry may have more far reaching effect than a

decision in a quasi judicial enquiry. As observed by this Court in Suresh Koshy George v. The University of Kerala & Ors. the rules of natural

justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and

circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons

appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice had been contravened the Court

has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

14. So far as other aspects of the matter is concerned, since the respondent No. 5 has raised a written objection before the respondent authority a

copy of the same must be send to the petitioner for dealing with the same. Since arriving at a decision with regard to that complain is a kind of

adjudication, reasonable opportunity must be given to the objector and the petitioner for the purpose of complying with the rules of principles of

natural justice.

15. In view of the discussions and observations made hereinabove the respondent No. 4 is directed to issue a notice to the petitioner within three

days.

16. Leave is granted to the petitioner to give reply to the same within seven days thereof.

17. On receipt of the reply of the petitioner the respondent No. 4 is directed to decide the claim of the petitioner to give new electricity connection

under reference to him by passing a reasoned order within a period of a week from the date of receipt of the communication from the petitioner, if

any, as also after giving opportunity of hearing to the petitioner and other persons concerned.

18. Since no affidavit-in-opposition is filed on behalf of the respondent, the allegations made against them in this writ application are to be treated

as denied by them.

19. This writ application is disposed of. There will be, however, no order as to costs.

Let a plain photostat copy of the order duly counter signed by the Assistant Registrar (Court) be given to the parties on the usual undertakings.