

(2005) 08 CAL CK 0057

Calcutta High Court

Case No: Writ Petition No. 14746 (W) of 2005

Chabi Rani Ghosh

APPELLANT

Vs

CESC Limited and Others

RESPONDENT

Date of Decision: Aug. 2, 2005

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 154
- Electricity Act, 2003 - Section 126, 135, 135(2), 135(4), 151

Citation: (2006) 1 CALLT 309

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: Keshab Debnath, Sandip Kumar Bhattacharjee, Himadri Kumar Bandyopadhyay, for the Appellant; Rita Mukherjee, for the Respondent

Final Decision: Dismissed

Judgement

Jayanta Kumar Biswas, J.

The writ petitioner questions the validity of Golabari P.S. Case No. 149 of 2005 dated June 22nd, 2005 initiated u/s 135 of the Electricity Act, 2003 and also of the disconnection of supply effected by the respondents.

2. Advocate for the petitioner says that alleging theft of electricity by the petitioner, as consumer within the meaning of the Electricity Act 2003, police authorities on the complaint of CESC authorities, wrongfully registered an FIR u/s 135 of the Electricity Act, 2003. He contends that since, in view of provisions of Section 151 of the Electricity Act, 2003, an offence committed u/s 135 thereof in a non-cognizable offence, police was not competent to register the FIR and make investigation.

3. His further submission is that in view of Section 135(4) of the Electricity Act, 2003, without obtaining a duly issued search warrant, police authorities or the authorised officer was not competent to search the premises, and seize the articles, allegedly connected with the act of theft of electricity.

4. According to him, as a result, the FIR, in so far as the petitioner is concerned, is liable to be quashed.

5. I am unable to agree with him. Provision of Section 151 of the Electricity Act, 2003 have nothing to do with classification of the offence committed u/s 135 of the Electricity Act, 2003, either as a cognizable offence or as a non-cognizable offence. They only provide the manner how, and the time when, the Court shall take cognizance of any offence committed under any provisions of the Electricity Act, 2003.

6. Needless to say that acts of the police leading to registration of an FIR and making the investigation have nothing to do with the exact stage of taking cognizance of the offence by the Court.

7. Admittedly, an offence committed u/s 135 of the Electricity Act, 2003 is punishable with imprisonment for three years. Hence in view of provisions of the first schedule to the Code of Criminal Procedure, 1973 such an offence has to be regarded as a cognizable offence. So on receipt of information about commission of an offence under the provision by anyone, police can register an FIR u/s 154 of the Code of Criminal Procedure, 1973.

8. I also do not find any merit in the submission that in the absence of any search warrant, duly issued by the competent magistrate, police authorities and the authorised officer would not be empowered to search the premises of the consumer (here the premises of the petitioner) and seize the offending articles.

9. Provisions of sub-section (2) of Section 135 of the Electricity Act, 2003 distinctly empower the authorized officer to search the premises and seize the offending articles. Sub-section 4 thereof only says that provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, as far as may be, to searches and seizure under the Electricity Act, 2003.

10. In my view, when the statute gives specific power to the authorized officer to search the premises and seize the offending articles, there is no scope to say that in the absence of a search warrant, duly issued by the magistrate, the authorised officer would not be entitled to exercise the power. If such an interpretation is given, then the clear and unambiguous intention of the legislature indicated in Section 135(2) of the Electricity Act, 2003 shall simply be defeated.

11. In such a case the police authorities, it seems to me, act only in aid of the exercise of power by the authorized officer. I do not see anything wrong if the authorised officer takes the assistance of the police authorities for the purposes of detecting a case of unauthorized use of electricity by a consumer, searching the premises in question, seizing the offending articles, etc.

12. For these reasons, I find no merit in the contention that the FIR registered by the police authorities cannot be permitted to be acted upon for making further

investigation and instituting the criminal case by the competent authority before the competent Court.

13. As to validity of disconnection of supply, advocate for the petitioner says that it was effected in violation of provisions of Section 135 of the Electricity Act, 2003, in that it was effected in the physical absence of the petitioner, though her son was present, and also in violation of para 5.2.1 of the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulation, 2004, in that though the provision required service of prior notice regarding the proposed disconnection, no such notice had been served before entering into the premises. He further says that, though under said provisions of para 5.2.1 the petitioner had a right of appeal against disconnection, no forum was made available.

14. I also do not find any substance in the contention that in view of provisions of para 5.2.1 of the 2004 regulation, the petitioner was entitled to get a prior notice about the proposed disconnection on the allegation of theft of electricity by her.

15. The disconnection according to the provision is a necessary consequence of detection of a case of theft of electricity by a consumer. So, before detecting an act of theft there is no question of serving a prior notice on the consumer about any proposed disconnection. The consumer has no right to get a notice saying that the authorised officer would search the premises at a particular time on a future day for detecting the act of theft of electricity by the consumer.

16. There is no dispute in this case that before disconnection notice had been duly served by the inspecting team about the proposed disconnection on the allegation of theft of electricity, and that the notice was received by the person who represented the petitioner at the time in question.

17. I do not see how a reference to the right of appeal against disconnection is relevant in the case. The absence of a forum for preferring the appeal cannot make the disconnection bad.

18. Advocate for CESC submits that the assessing officer has already made the order of provisional assessment in terms of Section 126 of the Electricity Act, 2003, and that the petitioner has already preferred an appeal before the appellate authority. Advocate for the petitioner clearly says that in this writ petition his client is not challenging the orders made by the assessing officer u/s 126 of the Electricity Act, 2003. So, there is no reason for me to say anything regarding restoration of supply that is wholly connected with the assessment proceeding already Initiated.

For these reasons I do not find any merit in the writ petition. It is accordingly dismissed without any order for costs.

Xerox copy of this order duly countersigned by the Assistant Registrar (Court)/Assistant Court Officer shall be given to advocates for the parties on usual undertakings.