

(2014) 12 CAL CK 0033

Calcutta High Court

Case No: M.A.T. No. 2238 of 2014 and CAN No. 12437 of 2014

Laxmi Kanta Pal

APPELLANT

Vs

Sudarshan Pal

RESPONDENT

Date of Decision: Dec. 24, 2014

Acts Referred:

- Electricity Act, 2003 - Section 43

Hon'ble Judges: Jayanta Kumar Biswas, J; Ishan Chandra Das, J

Bench: Division Bench

Advocate: Soumen Kumar Dutta and Subhash Jana, Advocate for the Appellant; Debasish Sur and Suman De, Advocate for the Respondent

Judgement

Jayanta Kumar Biswas, J.

The appellant in the MAT is aggrieved by a single Judge decision dated December 3, 2014 disposing of the first respondent's WP No. 8749(W) of 2013.

2. The decision dated December 3, 2014 is quoted below:--

"By this writ petition, the petitioner seeks direction on the respondent No. 3 to consider his application for new electrical connection (domestic).

The Distribution Company is ready and willing to effect supply, but for the physical obstruction caused by the private respondent at the time of inspection, supply could not be effected. Admittedly, no written objection has been filed.

Section 43 of the 2003 Act mandates supply on request. As a request has been made and no written objection filed, the petitioner is entitled to supply of electrical connection.

Accordingly, the respondent No. 3 is directed to effect supply to the petitioner's premise within three weeks from the date of receipt of this order. Needless to mention, that the connection be given to the petitioner only upon compliance of

formalities.

In spite of service, none appears on behalf of the private respondent.

Affidavit of service filed in Court today be kept on record.

In view of the aforesaid, this application is disposed of.

Certified copy of this order, if applied for, be given to the parties on priorities basis."

3. The first respondent applied to West Bengal State Electricity Distribution Company Limited, a licensee under the Electricity Act, 2003, on December 26, 2011 for supply of electricity. He filed the WP dated March 2013 alleging that for resistance put up by the private respondents (including the appellant) in the WP the licensee could not give him the supply. By the impugned decision the single Judge directed the licensee to give him the supply on the grounds that there was no written objection to the application for supply.

4. Mr. Dutta appearing for the appellant has submitted as follows. Anticipating the first respondent's steps, the appellant and a few others submitted an objection dated August 26, 2009 to the licensee on August 28, 2009. Suppressing the objection, the licensee stated before the single Judge that the private respondents in the WP had not submitted any written objection to the application for supply. Besides, the WP was taken up for hearing without proper notice to the appellant.

5. Mr. Chattopadhyay appearing for the licensee has submitted as follows. The objection dated August 26, 2009 was not found in the records of the licensee. In any case, the first respondent submitted the application for supply on December 26, 2011. After this date the appellant did not submit any written objection to the application for supply.

6. Mr. Sur appearing for the first respondent has submitted as follows. It is wrong to say that the WP was taken up for final hearing without proper notice to the appellant. The appellant had no right to object to supply of electricity to the first respondent using and over the property mentioned in the application for supply.

7. The WP was dated March 2013. It was taken up for admission hearing on December 3, 2014. When the appellant was not present to contest its admission and the first respondent's prayer for interim relief, in our opinion, the single Judge ought not to have finally disposed of it; for the appellant not appearing at the time of its admission could not be deprived of the right to contest it at the time of its final hearing. In the situation the Judge ought to have examined the question of its admission and interim relief to the first respondent.

8. The licensee did not place the proper facts before the single Judge. It did not disclose that the appellant and a few others had submitted an anticipatory objection dated August 26, 2009. The objection was received by the office of the licensee on August 28, 2009. If the objection was not found in the records, it was possible that

some people of the licensee had removed it from the records of the licensee.

9. In the objection the appellant and a few others very clearly stated that the first respondent was making arrangement to take supply to his premises using the post erected on their lands and over their properties. Needless to say that the objection merited consideration; for if the supply was actually to be drawn using and over the property of the appellant and the others submitting the objection, then the licensee could not give it without their consent. This is the clear provision of the Works Rules.

10. Over the course of hearing Mr. Chattopadhyay has submitted that in compliance with the single Judge order the licensee gave the first respondent supply yesterday; and that the licensee received the notice of the appeal also yesterday, but after giving the supply. Mr. Dutta has contested the submission saying that the appellant very clearly told the officials of the licensee that he had already filed an appeal against the order for executing which they were at the property with police.

11. In view of the above-noted situation, this court has suggested the available courses to Mr. Dutta, Mr. Chatterjee and Mr. Sur. Mr. Sur has submitted that it will be in the interest of justice, if instead of keeping the appeal pending with an interim order, it is disposed of directing the licensee to decide the first respondent's application for supply of electricity examining the written objection of the appellant and others.

12. Mr. Chattopadhyay has submitted that if the appeal is disposed of asking the licensee to decide the matter, then the officials of the licensee will restore that condition of the property that was existing before execution of the order yesterday.

13. Under the circumstances, we are of the opinion that purpose of justice will be served if we direct the licensee to decide the appellant's objection to supply of electricity to the first respondent using and over the property in question. Needless to say that the licensee is to examine only the evident facts, not to decide the title of the parties over the properties; and that if it finds any unresolvable title dispute, it is to give a decision to that effect so that the parties may take further steps according to law for establishing their respective rights over the property.

14. From the Stamp Reporter's report we find that the defects are as to some parties impleaded in the MAT, though they were not parties to the MAT; and as to one party who has not been impleaded in the MAT, though he was a party to the MAT. We think the prayer for amendment of the case title of the MAT and the other records should be allowed.

15. For these reasons, we grant leave to amend the MAT case title and the other case papers, as to parties; dispose of the CAN for stay; set aside the single Judge decision; allow the MAT and dispose of the WP ordering as follows:--

"The condition of the property shall be restored to its day before yesterday condition at once. Keeping in mind the guidelines stated hereinbefore, the licensee

shall give a decision in the first respondent's application for supply after examining the merits of the appellant's objection dated August 26, 2009, within four weeks from the date this order is served on its Station Manager concerned."

The s. 43 authority of the licensee shall make necessary inquiry and hear the parties for ascertaining the evident undisputed facts. If it is found that the first respondent is entitled to supply using and over the property, then steps for the purpose shall be taken immediately. No costs. Certified xerox.