
(2008) 01 CAL CK 0069
In the Calcutta High Court
Case No : M.A.T. No. 392 of 2007

Amarendra Singh

APPELLANT

Vs

Calcutta Electric Supply Corporation Ltd. and Others

RESPONDENT

Date of Decision : 10-01-2008

Acts Referred:

Constitution of India, 1950 — Article 19(1)
Electricity Act, 2003 — Section 43

Citation : AIR 2008 Cal 66 : (2008) 1 CHN 718 : (2008) 4 RCR(Civil) 384

Hon'ble Judges : Tapan Mukherjee, J; Pranab Kumar Chattopadhyay, J

Bench : Division Bench

Advocate : Debabrata Saha Roy, Indranath Mitra and Bikas Goswami, for the Appellant; Saptangshu Basu and Bimalendu Das for Respondent Nos. 11 to 14, Sanjib Kr. Mal, for Respondent No. 15 and Saumik Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal has been preferred assailing the judgment and order dated 9th January, 2007 whereby and whereunder the learned Single Judge dismissed the writ petition bearing W.P. No. 2351 (W) of 2006 filed on behalf of the appellant herein on the ground that the writ petitioner did not lawfully enter into the portion of the premises in question. The learned Counsel representing the appellant invited our attention to various documents included in the paper book.

2. In scrutinising those documents, we find that the Kolkata Municipal Corporation authorities realised rent from the appellant accepting him as occupier in respect of a portion of the premises in question and the appellant although has been occupying the portion of the premises in question for a considerable period, neither any objection was ever raised nor any proceeding was initiated by or at the instance of the respondents challenging the authority of the said appellant to occupy the said premises. In view of the provisions in Section 43 of the Electricity Act, 2003, the appellant herein being the occupier is entitled to enjoy the electricity at the occupied portion of the premises in

question.

3. The legality and/or validity of the occupation of the premises in question by the appellant can be decided in the Civil Court but that will not prevent the said appellant from enjoying the benefit of electric connection.

4. The Supreme Court in the case of Chameli Singh and others etc. Vs. State of U.P. and another, discussed the components of right to live and specifically observed that right to life included the right to live with human dignity. In the aforesaid judgment, Hon"ble Supreme Court specifically observed that right to live guaranteed in any civilised society implies the right to shelter and while discussing the right to shelter, the Honorable Supreme Court also held that the same includes electricity which is undisputedly an essential service to the shelter for a human being. The relevant portions from the aforesaid decision of the Supreme Court are set out hereunder:

7. In State of Karnataka v. Narasimhamurthy SCC p. 526 para 7 : JT at p. 378 para 7, this Court held that right to shelter is a fundamental right under Article 19(1) of the Constitution....

8....Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation....

5. In the aforesaid circumstances, request for supply of electricity at the premises in question occupied by the appellant should not be refused.

6. For the reasons discussed hereinabove, we are not inclined to approve the judgment and order under appeal and the same is, therefore, set aside.

7. Mr. Mukherjee, learned Counsel representing the C.E.S.C. Ltd. authorities submits that the son of the appellant herein is also residing at the portion of the said premises in question and has already deposited the requisite amount in compliance with the direction of the C.E.S.C. Ltd. Mr. Mukherjee further submits that subject to completion of certain minor formalities, supply will be given to the said son of the appellant herein viz., Utkarsh Singh, wherefrom electricity will be supplied to the appellant after installation of the separate meter. Mr. Mukherjee also submits that due to the objection raised by the other occupants, the supply could not be effected to Utkarsh Singh in the earlier occasion.

8. Mr. Saptangshu Basu, learned Counsel representing the respondent Nos. 11 to 14 submits that supply can be given at the premises in question under occupation of the appellant herein without prejudice to any right of his clients or creating any right in favour of the appellant.

9. Considering the aforesaid submissions, we direct the concerned authorities of the C.E.S.C. Ltd. to take necessary steps to supply electricity at the portion of the premises under occupation of the appellant without any further delay but

positively within a period of three days from the date of completion of necessary formalities by the appellant herein. However, we make it clear that supply of electricity to the appellant at the portion of the premises in question will not confer any right in his favour or the same will not prejudice the rights or contentions of the other respondents under any circumstances.

10. Mr. Basu, learned Counsel of the respondent Nos. 11 to 14 also submits that the appellant herein may change the user of the portion of the premises in question in connivance with other interested persons. We are, however, not concerned with the aforesaid issue at this stage and the aforesaid respondents will be at liberty to take necessary steps at the appropriate stage in accordance with law. We also make it clear that we have not decided the right of the appellant herein to occupy the portion of the premises in question in the present proceeding and the same should be decided by the appropriate Civil Court in an appropriate proceeding.

11. Needless to mention that the competent authority of the C.E.S.C. Ltd. will be at liberty to request the Officer-in-Charge of the local police station to provide necessary police assistance for the purpose of effecting supply of electricity at the portion of the premises in question in terms of this order and if such request is made, then the Officer-in-Charge of the concerned police station shall provide necessary assistance without any further delay.

With the aforesaid observations and directions, this appeal stands allowed. There will be, however, no order as to costs.

Let xerox plain copy of this order countersigned by Assistant Registrar (Court) be given to the appearing parties on usual undertaking.

P.K. Chattopadhyay & T. Mukherjee, JJ.